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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 13.02.2025*+ **RC.REV. 2/2016, CM APPL. 38179/2024****MADAN MOHAN**

..... Petitioner

Through: Mr. Pradeep Kumar Arya, Mr. Aditya Kumar Yadav, Mr. Gaurav Chaudhary, Mr. Rishabh Malhotra, Mr. Rishabh, Advts.

versus

SUDERSHAN KUMAR JAIN

.....Respondent

Through: Mr. T.K. Tiwari, Mr. Shakti Kant Pattnaik, Advts.

CORAM:**HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The present Petition seeks to challenge an order dated 20.05.2015 [hereinafter referred to as "Impugned Order"] passed by the learned CCJ-cum-ARC-1 (Central), Tis Hazari Courts, Delhi. By the Impugned Order, the Leave to Defend/Contest Application filed by the Petitioner/tenant was dismissed in view of the fact that the Petitioner/tenant failed to raise any triable issue which requires evidence to be proved.

2. The premises which forms subject matter of the present Petition is a Shop bearing No.4278, Main Bazar, Pahar Ganj, New Delhi [hereinafter referred to as "subject premises"].

3. Briefly the undisputed facts are as follows:

3.1 It is the case of the Respondent/landlord that the Respondent/landlord was a co-owner of the subject property along with his brother, Sh. Kuldeep Kr. Jain. The subject premises was inherited from the predecessor-in-interest



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of the Respondent/landlord. A Family Settlement Deed was executed between the Respondent/landlord and his brother, Sh. Kuldeep Kr. Jain on 16.10.1987 [hereinafter referred to as the “MOFS”]. Subsequently, disputes arose between the Respondent/landlord and his brothers and a partition suit was filed before this Court. By an order dated 01.12.2010, a preliminary decree was passed by this Court affirming the MOFS. In terms of the MOFS, three shops fell to the share of the Respondent/landlord and certain other residential properties were divided between the Respondent/landlord and his two brothers.

3.2 The need as set out by the Respondent/landlord was that the Respondent/landlord was previously using one of the residential properties for commercial use and needed further space for his business to be used as a godown. It was further contended that son of the Respondent/landlord required the subject premises to start his own business and the subject premises is required for this purpose.

3.3 A Petition under Section 14(e) of the Delhi Rent Control Act, 1958 [hereinafter referred to as the “DRC Act”] was filed by the Respondent/landlord seeking eviction of the Petitioner/tenant from the subject premises. It was contended in the Eviction Petition that the Respondent/landlord required the subject premises as an additional space for using it as a godown and for the *bona fide* need of his son who wants to start his business along with his wife.

3.4 The Petitioner/tenant filed a Leave to Defend/Contest Application. It was contended by the Petitioner/tenant that the Respondent/landlord has multiple properties available with him as alternate accommodations. In addition, the *bona fide* need of the Respondent/landlord was challenged



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stating that the son and daughter-in-law of the Respondent/landlord are employed with a company. The Petitioner/tenant also challenged the MOFS.

3.5 In the Reply to the Leave to Defend/Contest Application, the Respondent/landlord clarified that there were no suitable alternate accommodations available with the Respondent and that the need of the Respondent/landlord was *bona fide*.

3.6 The learned Trial Court examined the matter and found that the ownership of the subject premises and the existence of the landlord-tenant relationship was not disputed by the Petitioner/tenant. It was not disputed that the Respondent/landlord obtained ownership of some shops in terms of the MOFS.

3.7 On the *bona fide* need, the learned Trial Court found that the MCD had issued a notice and demolished certain portions of the properties in occupation of the Respondent/landlord which were being used by the Respondent/landlord as a godown and that the Respondent/landlord had a requirement of the subject premises. The learned Trial Court after an examination of the documents and the income tax returns of the son and daughter-in-law of the Respondent/landlord found them to be self-employed and working out of one of the properties in occupation with the Respondent/landlord. Thus, it was held that need of the Respondent/landlord is *bona fide*.

3.8 On the availability of alternate suitable accommodation, the learned Trial Court examined the properties which were stated by the Petitioner/tenant to be available with the Respondent/landlord and found that none of these properties were available. The learned Trial Court also found



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that no material has been placed on record by the Petitioner/tenant in support of the assertions that the Respondent/landlord owns and possesses any of the properties that were mentioned by the Petitioner/tenant in the Leave to Defend/Contest Application.

3.9 It was thus held that no triable issue has been raised by the Petitioner/tenant and the Leave to Defend/Contest Application was dismissed and the Eviction Petition was allowed.

4. The Petitioner/tenant then filed an application under Section 25B(9) of the DRC Act for review of the Impugned Order. The Petitioner/tenant had averred that the learned Trial Court has misinterpreted the law as laid down in the judgment in *Rajinder Kumar Sharma & Ors. v. Leelawati & Ors.*¹ It was further stated that the judgment is *in-curiam* and has been passed by ignoring the dictum of the Supreme Court as laid down in *Inderjeet Kaur v. Nirpal Singh*² and *Liaq Ahmed v. Habeeb-ur-Rehman*³. It was thus contended that the Impugned Order suffers from an error apparent on the face of the record.

4.1 The Respondent/landlord, on the other hand, had contended that the judgment in *Rajinder Kumar Sharma* case was passed on different facts, and thus, there was no conflict with the judgment as laid down by the Supreme Court in *Inderjeet Kaur* case and *Liaq Ahmed* case.

4.2 It was further contended by the Respondent/landlord that the final decree as passed by the High Court in the partition suit between the Respondent/landlord and his brothers was examined and taken into account

¹ 155 (2008) DLT 383

² (2000) Supp 5 SCR 707

³ AIR 2000 SC 2470



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by the learned Trial Court, prior to passing the Impugned Order. The learned Trial Court found that the Petitioner/Tenant had admitted the partition decree passed by this Court and the ownership of the three shops, and that the shops were not lying vacant, thus, the *bona fide* need of the Respondent/landlord cannot be challenged, and that the Petitioner/tenant cannot claim that the Respondent/landlord had available alternate suitable accommodations.

4.3 By an order dated 07.12.2015 [hereinafter referred to as the “Review Order”], the application for review of the Impugned Order was dismissed by the learned Trial Court and it was held that no ground for review had been made out and the Petitioner/tenant had to establish a *prima facie* case to prove availability of additional accommodation with the Respondent/landlord.

5. The Impugned Order as well as the Review Order were thereafter challenged by the Petitioner/tenant before this Court by way of the present Petition.

5.1 A Coordinate Bench of this Court on 24.02.2016 granted interim protection to the Petitioner/tenant which has continued till the present day.

5.2 By the order dated 25.09.2019, the application filed by the Petitioner/tenant for taking on record subsequent events that the brother of the Respondent/landlord filed a suit for declaration seeking to impugn the partition deed. The said application was allowed by a Coordinate Bench of this Court directing that the relevancy of the documents sought to be placed on record shall be examined at the time of the final hearing. Thereafter, interim user and occupation charges were affixed by a Coordinate Bench of



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this Court by an order dated 12.10.2023.

6. Learned Counsel for the Petitioner/tenant has raised three contentions before this Court. It is submitted that there was no *bona fide* need for the subject premises. It was contended by the learned Counsel for the Petitioner/tenant that “*need and greed*” are two different things, and that this is a case where the need is not relevant. In addition, it was contended, relying on paragraph 11 of the Leave to Defend/Contest Application, that the Respondent/landlord had available with him three properties bearing Nos. 32, 2480 and 4182, all situated at Main Bazar, Paharganj. Lastly, it was contended by the learned Counsel for the Petitioner/tenant that four separate eviction petitions were filed by the Respondent/landlord for the recovery of possession of three shops and one godown and out of these, an order was passed by this Court in RC.REV. 1/2016 dated 12.10.2023 captioned as ***Bhag Chand v. Sudershan Kumar Jain***, whereby the Respondent/landlord procured the possession of a godown. Thus, it is contended that on account of the subsequent event, the need in the present Petition does not subsist.

6.1 In addition, learned Counsel for the Petitioner/tenant has placed reliance on the judgments of the Supreme Court in ***Inderjeet Kaur*** case and ***Liaq Ahmed*** case to submit that triable issues were raised, thus, the Leave to Defend/Contest Application ought to have been granted.

7. Learned Counsel for the Respondent/landlord, on the other hand, has reiterated that the need as set out by the Respondent/landlord was for different uses. One shop and godown were required for himself, while two shops were required for his son and daughter-in-law respectively. It was contended that the need of the Respondent/landlord, for which the shop was vacated in RC.REV. 1/2016, is different from the need of the



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Respondent/landlord for the subject premises in the present Revision Petition, which is for the requirement of the Respondent himself. Thus, the need has not been satisfied despite the passing of the order dated 12.10.2023 in RC.REV. 1/2016.

7.1 Learned Counsel for the Respondent further relies on paragraph 8 and 11 of the Leave to Defend/Contest Application as well as its Reply, to state that the Respondent/landlord in his Reply to Leave to Defend/Contest Application had clearly stated that the three properties referred to therein (set out in paragraph 6 above), were not available with him.

7.2 It is further contended that so far as concerns the property No.32, Main Bazar, Paharganj, the same is now the property of his brother while property Nos.2480 and 4182, Main Bazar, Paharganj are neither owned nor in the possession of the Respondent/landlord.

7.3 It is thus contended by the learned Counsel for the Respondent/landlord that the Impugned Order does not suffer from any infirmity.

8. Learned Counsel for the Respondent/landlord relies upon the Review Order to submit that the grounds as taken before this Court were also taken before the learned Trial Court both in the Reply to Leave to Defend/Contest Application and in the Eviction Petition and that the learned Trial Court has examined these grounds and found them to be devoid of any merit.

9. The landlord-tenant relationship was not disputed by the Petitioner/tenant before the Trial Court and no contention has been raised before this Court challenging the same. However, on the aspect of ownership of the Respondent/landlord over the subject premises, one



contention which has been raised before this Court that is that brother of the Respondent/landlord has filed a suit for declaration seeking to impugn the partition deed by way of which the subject premises fell in the share of the Respondent/landlord.

9.1. This Court while discussing the issue of ownership in a Petition filed under Section 25-B(8) of the Act in a case titled ***R.S. Chadha v. Thakur Dass***⁴ has held that what a landlord has to prove is a better title than the tenant to seek his eviction for the tenanted premises. The Court relied on the judgment of the Supreme Court in the case of ***Shanti Sharma vs. Ved Prabha***⁵ to hold that the term owner has to be understood in the context of the background of the law. The relevant extract reads as follows:

“10.1 It is settled law that what a landlord has to prove is a better title than the tenant to seek his eviction from a tenanted premises under Section 14(1)(e) of the Act. The Supreme Court in the case of Shanti Sharma v. Ved Prabha has held as follows:

“14. The word “owner” has not been defined in this Act and the word ‘owner’ has also not been defined in the Transfer of Property Act. The contention of the learned Counsel for the appellant appears to be that ownership means absolute ownership in the land as well as of the structure standing thereupon. Ordinarily, the concept of ownership may be what is contended by the counsel for the appellant but in the modern context where it is more or less admitted that all lands belong to the State, the persons who hold properties will only be lessees or the persons holding the land on some term from the government or the authorities constituted by the State and in this view of the matter it could not be thought of that the legislature when it used the term “owner” in the provision of Section 14(1)(e) it thought of ownership as absolute ownership. It must be presumed that the concept of ownership only will be as it is understood at present. It could not be doubted that the term “owner” has to be understood in the context of the background of

⁴ 2024 SCC OnLine Del47

⁵ (1987) 4 SCC 193



the law and what is contemplated in the scheme of the Act.

*This Act has been enacted for protection of the tenants. But at the same time it has provided that the landlord under certain circumstances will be entitled to eviction and bona fide requirement is one of such grounds on the basis of which landlords have been permitted to have eviction of a tenant. **In this context, the phrase “owner” thereof has to be understood, and it is clear that what is contemplated is that where the person builds up his property and lets out to the tenant and subsequently needs it for his own use, he should be entitled to an order or decree for eviction the only thing necessary for him to prove is bona fide requirement and that he is the owner thereof. In this context, what appears to be the meaning of the term “owner” is vis-a-vis the tenant i.e. the owner should be something more than the tenant.** Admittedly in these cases where the plot of land is taken on lease the structure is built by the landlord and admittedly he is the owner of the structure....”*

[Emphasis supplied]

9.2. Irrespective of the pending disputes between the Respondent/landlord and his brothers, what is required to be proved before this Court is that the Respondent/landlord has a better title than the Petitioner/tenant.

9.3. In any event, once the Petitioner has admitted to being a tenant, he is estopped from challenging the title of the Respondent/landlord. The provisions of Section 116 of the Evidence Act, 1872/Section 122 of The Bharatiya Sakshya Adhiniyam, 2023 provides for an estoppel on a tenant to challenge the ownership of a landlord. Section 116 of the Evidence Act, 1872 is reproduced below:

“116. Estoppel of tenants and of licensee of person in possession. — No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such licence was given.”



9.4 The Supreme Court in the case of ***Bansraj Laltaprasad Mishra v. Stanley Parker Jones***,⁶ has held that where a person has been brought into possession as a tenant by the landlord and if such tenant is permitted to question the title of the landlord, it will give rise to extreme confusion in the matter of relationship of the landlord and tenant and hence the equitable principle of estoppel has been incorporated by the legislature. The relevant extract of the ***Bansraj Laltaprasad Mishra case*** is reproduced below:

“13. The underlying policy of Section 116 is that where a person has been brought into possession as a tenant by the landlord and if that tenant is permitted to question the title of the landlord at the time of the settlement, then that will give rise to extreme confusion in the matter of relationship of the landlord and tenant and so the equitable principle of estoppel has been incorporated by the legislature in the said section.

14. The principle of estoppel arising from the contract of tenancy is based upon a healthy and salutary principle of law and justice that a tenant who could not have got possession but for his contract of tenancy admitting the right of the landlord should not be allowed to launch his landlord in some inequitable situation taking undue advantage of the possession that he got and any probable defect in the title of his landlord. It is on account of such a contract of tenancy and as a result of the tenant's entry into possession on the admission of the landlord's title that the principle of estoppel is attracted.

15. Section 116 enumerates the principle of estoppel which is merely an extension of the principle that no person is allowed to approbate and reprobate at the same time.”

[Emphasis Supplied]

9.5. Thus, the contention of the Petitioner/tenant disputing the ownership of the Respondent/landlord over the subject premises is without any merit.

10. On the aspect of *bona fide* need of the Respondent/landlord, it is the contention of the Petitioner/tenant that the since the Respondent/landlord has gained possession of one godown which was subject matter of ***Bhag Chand***

⁶ (2006) 3 SCC 91



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case, the need as set out by the Respondent/landlord stands fulfilled. It was further contended that the “*need and greed*” are two different things, and that this is a case where the need is not relevant. This contention of the Respondent/landlord is misconceived.

10.1. Respondent/landlord has clarified that the need as set out by the Respondent/landlord is for multiple uses. One shop and godown were required for himself and while two shops were required for his son and daughter-in-law. It was contended that the need of the Respondent/landlord, for which the shop was vacated in another revision petition, is different from the need of the Respondent/landlord for the subject premises in the present Revision Petition, which is for the requirement of the Respondent himself. Clearly, thus, it cannot be said that the bona fide need of the Respondent/landlord has been satisfied in view of the passing of the order dated 12.10.2023 in ***Bhag Chand*** case.

10.2. The law on this aspect is settled. Neither the Court nor a tenant can dictate to the landlord as to how to use his premises. This Court in the case of ***Swaranjit Singh v. Saroj Kapoor***⁷, while relying on the judgement of the Supreme Court in the case of ***Sait Nagjee Purushotham & Co. Ltd. v. Vimalabai Prabhulal***⁸ and in ***Anil Bajaj v. Vinod Ahuja***⁹, has held that the tenant cannot dictate to the landlord as to which premises is more suitable for the landlord to run the business and in what manner the property is to be used. The relevant extract of the ***Swaranjit Singh*** case is reproduced below:

“46. The law is well settled that a tenant cannot dictate to the Respondent/Landlady as to which premises is more suitable to satisfy the bona fide requirement under the DRC Act. Reference in this regard may be made to

⁷ 2023 SCC OnLine Del 7396

⁸ (2005) 8 SCC 252

⁹ (2014) 15 SCC 610



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the decision of the Supreme Court in Sait Nagjee Purushotham & Co. Ltd. v. Vimalabai Prabhulal[(2005) 8 SCC 252] and in Anil Bajaj v. Vinod Ahuja[(2014) 15 SCC 610], wherein the Supreme Court has reiterated this principle in the following words:

*“6.What the tenant contends is that the Landlady has several other shop houses from which he is carrying on different businesses and further that the Landlady has other premises from where the business proposed from the tenanted premises can be effectively carried out. **It would hardly require any reiteration of the settled principle of law that it is not for the tenant to dictate to the Landlady as to how the property belonging to the Landlady should be utilized by him for the purpose of his business.**”*

[Emphasis Supplied]

10.3. The Petitioner/tenant has failed to prove that the need as set out by the Respondent/landlord is not *bona fide*.

11. On the aspect of availability of alternate suitable accommodation, it is the contention of the Petitioner/tenant that the Respondent/landlord had available with him three properties bearing Nos. 32, 2480 and 4182, all situated at Main Bazar, Paharganj. However, Respondent/landlord has in its Reply to the leave to defend Application has specified that subsequent to the partition of properties between the Respondent and his brothers property No.32, Main Bazar, Paharganj, is now the property of his brother while property Nos.2480 and 4182, Main Bazar, Paharganj are neither owned nor in the possession of the Respondent/landlord. No document has been shown by the Petitioner/tenant to show otherwise either before the learned Trial Court or before this Court.

12. The provisions of Section 14(1)(e) of the DRC Act have been provided with care by the legislature, not only is the accommodation to be ‘alternate’, but it is also required to be suitable. The Supreme Court in the



*Shiv Sarup Gupta v. Mahesh Chand Gupta*¹⁰ has held that for an Eviction Petition to fail on the ground of availability of alternate suitable accommodation, the availability of another accommodation must be suitable and convenient in all respects as the tenanted accommodation from which the landlord seeks eviction of the tenant. It was held that:

*“14. The availability of an alternative accommodation with the landlord i.e. an accommodation other than the one in occupation of the tenant wherefrom he is sought to be evicted has a dual relevancy. **Firstly, the availability of another accommodation, suitable and convenient in all respects as the suit accommodation,** may have an adverse bearing on the finding as to the bona fides of the landlord if he unreasonably refuses to occupy the available premises to satisfy his alleged need. Availability of such circumstance would enable the court drawing an inference that the need of the landlord was not a felt need or the state of mind of the landlord was not honest, sincere, and natural. **Secondly, another principal ingredient of clause (e) of sub-section (1) of Section 14, which speaks of non-availability of any other reasonably suitable residential accommodation to the landlord, would not be satisfied. Wherever another residential accommodation is shown to exist as available then the court has to ask the landlord why he is not occupying such other available accommodation to satisfy his need. The landlord may convince the court that the alternative residential accommodation though available is still of no consequence as the same is not reasonably suitable to satisfy the felt need which the landlord has succeeded in demonstrating objectively to exist. Needless to say that an alternative accommodation, to entail denial of the claim of the landlord, must be reasonably suitable, obviously in comparison with the suit accommodation wherefrom the landlord is seeking eviction.** Convenience and safety of the landlord and his family members would be relevant factors. While considering the totality of the circumstances, the court may keep in view the profession or vocation of the landlord and his family members, their style of living, their habits and the background wherefrom they come.”*

[Emphasis Supplied]

13. The accommodation stated to be available with the Respondent/ landlord is neither available nor suitable. Thus, this Court finds no infirmity with the findings of the learned Trial Court on this aspect.

¹⁰ (1999) 6 SCC 222



14. The Supreme Court in the *Abid-Ul-Islam v. Inder Sain Dua*¹¹ has held that for availing leave to defend, a mere assertion by the tenant is insufficient. Section 14(1)(e) of the DRC Act creates a presumption in favour of the landlord regarding *bona fide need*, which is rebuttable only with substantive material capable of raising a *triable issue*. It was further held that the burden of proof is on the tenant to demonstrate, with cogent evidence, that the landlord's requirement is not genuine. The Court also reiterated the settled principle of law that leave to defend should not be granted on mere asking but when the pleas and contentions raise triable issues. The relevant extract of the *Abid-Ul-Islam case* is extracted below:

“18. For availing the leave to defend as envisaged under Section 25-B(5), a mere assertion per se would not suffice as Section 14(1)(e) creates a presumption subject to the satisfaction of the learned Rent Controller qua bona fide need in favour of the landlord which is obviously rebuttable with some material of substance to the extent of raising a triable issue. The satisfaction of the Rent Controller in deciding on an application seeking leave to defend is obviously subjective. The degree of probability is one of preponderance forming the subjective satisfaction of the Rent Controller. Thus, the quality of adjudication is between a mere moonshine and adequate material and evidence meant for the rejection of a normal application for eviction.”

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20. Dealing with a *pari materia* provision, this Court in *Baldev Singh Bajwa v. Monish Saini* [*Baldev Singh Bajwa v. Monish Saini*, (2005) 12 SCC 778], was pleased to clarify the aforesaid position holding the procedure as summary. In such a case, the tenant is expected to put in adequate and reasonable materials in support of the facts pleaded in the form of a declaration sufficient to raise a triable issue. **One cannot lose sight of the object behind Section 25-B in facilitating not only the expeditious but effective remedy for a class of landlords, sans the normal procedural route.** In this regard, we wish to quote the decision of this Court in *Baldev Singh* [*Baldev Singh Bajwa v. Monish Saini*, (2005) 12 SCC 778]: (SCC pp. 790-93, paras 14-17 & 19)

“14. The phrase “bona fide requirement” or “bona fide need” or

¹¹ (2022) 6 SCC 30



“required reasonably in good faith” or “required”, occurs in almost all Rent Control Acts with the underlying legislative intent which has been considered and demonstrated innumerable times by various High Courts as also by this Court, some of which we would like to refer to. In Ram Dass v. Ishwar Chander [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131] it is said that the bona fide need should be genuine and honest, conceived in good faith. It was also indicated that the landlord's desire for possession, however honest it might otherwise be, has inevitably a subjective element in it, and that desire, to become a “requirement” in law must have the objective element of a “need”, which can be decided only by taking all the relevant circumstances into consideration so that the protection afforded to a tenant is not rendered illusory or whittled down.

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17. In Shiv Sarup Gupta v. Mahesh Chand Gupta [Shiv Sarup Gupta v. Mahesh Chand Gupta, (1999) 6 SCC 222] this Court while dealing with the aspect of bona fide requirement has said that the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, refers to a state of mind prevailing with the landlord. The only way of peeping into the mind of the landlord is an exercise undertaken by the Judge of facts by placing himself in the armchair of the landlord and then posing a question to himself — whether in the given facts, substantiated by the landlord, the need to occupy the premises can be said to be natural, real, sincere and honest.

[Emphasis Supplied]

15. The jurisdiction of this Court is only revisionary in nature and limited in scope. The Supreme Court in *Abid-Ul-Islam case* while interpreting the intendment of the legislature in removing two stages of Appeal that were earlier provided in the DRC Act has held that this is a conscious omission. It was held that the High Court is not expected to substitute and supplant its view with that of the learned Trial Court, its only role is to satisfy itself on the process adopted. Thus, the scope of revisionary jurisdiction of this Court has been limited to examine if there is an error apparent on the face of the record or absence of any



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adjudication by the learned Trial Court, and it is only then should the High Court interfere.

16. The learned Trial Court has examined the contentions as raised by the Petitioner/tenant and has found that no triable issue has been raised. The examination by this Court does not show anything to the contrary. As stated above, the revisionary jurisdiction of this Court is limited and circumspect. The examination by this Court shows that no ground for interference has been made out by the Petitioner/tenant.

17. For the reasons stated above, the present Petition is dismissed. All pending Application(s) stand closed.

18. The parties shall act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

FEBRUARY 13, 2025/ha/jn

[Click here to check corrigendum, if any](#)