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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RC.REV. 149/2020 & CM APPL. 11518/2020**

SURENDER KUMAR

.....Petitioner

Through: Mr. Pramod K. Sharma, Mr. Prakhar
Vashisht, Advs.

versus

DAYAPARKASH GUPTA (DECEASED) THR LRS

.....Respondent

Through: Mr. Vinod Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

01.04.2026

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1. This hearing has been done through hybrid mode.
2. The present petition under Section 25B(8) of the Delhi Rent Control Act, 1958, seeks the following prayers: -

“It is therefore, most respectfully and humbly prayed to this Hon'ble Court to set-aside the order dated 23.12.2019 passed by Ld. ARC in ARC No.25571/2016 titled as "DayaParkash (deceased) through LRS. Vs. Surender Kumar" and grant leave to defend the eviction petition, to the petitioner, in the interest of justice and to avoid miscarriage of justice.

Any other or further order which this Hon'ble Court may deem fit, just and proper be passed in favour of petitioner and against the respondents, in the facts and circumstances of the case.”

3. By way of the present petition, the petitioner is seeking setting aside of order dated 23.12.2019 passed by learned ARC, West District, Tis Hazari Courts, Delhi, in eviction petition, ARC No.25571/2016, filed on behalf of the deceased-Daya Prakash, respondent, whose legal heirs had been brought



on record during the course of proceedings before learned ARC. *Vide* the impugned order, learned ARC had dismissed the leave to defend application and allowed the eviction petition filed by the respondent in respect of tenanted premises, *i.e.*, one Shop No.4 in property No.WZ-93, Titarpur, Main Najafgarh Road, New Delhi-110027, as delineated red in the site plan annexed with the eviction petition, marked as Mark-P1.

4. Attention of this Court has this Court, at the very outset, has been drawn by the learned counsel for the petitioner towards the following observations made by the learned ARC in the impugned order: -

“14. Next plea is that the site plan filed by the petitioner is incorrect.

In response to which, the petitioner has denied the allegations. As discussed earlier, the respondent has already filed his own site plan in the present case. As such, these are not triable issue which could dis-entitle the petitioners to obtain the order of eviction against the respondent.

15. It is admitted by the respondent that the petitioner has six sons and it is also admitted that all the sons of the petitioner have attained majority. But, it is denied that out of six sons, three are unemployed.

On the other hand, petitioner has denied the allegations and inter-alia stated that his three sons Sh. Murari, Sh. Gopal and Sh. Anil are unemployed and are not engaged in any commercial activity due to paucity of commercial accommodation.

Perusal of record shows that petitioner himself has stated that his three sons are unemployed and not working or having any commercial activity. Moreover, in my considered view, petitioner/landlord or his children need not to be unemployed till the disposal of eviction petition U/Sec. 14(1)(e) of the D.R.C. Act to show the bonafide. Even, an employed person can have the tenanted premises in case bonafide requirement arises.



In view of observations made by Hon'ble Supreme Court; it is well settled that a person is not supposed to remain unemployed till the disposal of the eviction petition. Furthermore, this Court is of the opinion that there is nothing malafide if the petitioner wants to have the tenanted premises for the purpose of settling his children in the business. Rather, the said requirement seems to be bonafide as he wants to settle his sons for their livelihood and the tenant cannot stop the landlord/family member of landlord from starting any business for livelihood. The bonafide requirement of a landlord does not become malafide just because the children of petitioner want to run business for their livelihood from their own property. The consequent hardship to tenant from eviction order could also not convert otherwise bonafide requirement into malafide requirement. In my view, it is a right of every person to excel in his/her life and a person is not supposed to be remained in same position. As such, it is not a triable issue.

In case titled as "**Labhu Lal Vs. Sandhya Gupta**" [2011(1) RCR, (Rent) 231 (Delhi)], it has been held that the children are very much dependent on the landlord for the purpose of setting up their business and such a requirement is a bonafide one.

In the judgment of Hon'ble Supreme Court in case titled as **Raghunath G. Panhale (dead) through L.RS. Vs. Chagan Lal Sundarji & Co. (1999) 8 SCC 1** wherein it was held that:-

"It will be seen that the trial court and the appellate court had clearly erred in law. They test of "need practically equated the requirement" to be equivalent to "dire or absolute or compelling necessity". According to them, if the plaintiff had not permanently lost his job on account of the lockout or if he had not resigned his job, he could not be treated as a person without any means of livelihood, as contended by him and hence not entitled to an order for possession of the shop. This test, in our view, is not the proper test. A landlord need not lose his existing job nor resign it nor reach a level of starvation to contemplate that he must get possession of his premises for establishing a business. The manner in which the courts have gone into the meaning of "lockout" in the Industrial Disputes Act, 1947 appears to us to be nothing but a perverse approach to the problem. One cannot imagine that a landlord who is in service should first resign his job and wait for the unknown and



uncertain result of a long-drawn litigation. If he resigned his job, he might indeed end up in utter poverty. Joblessness is not a condition precedent for seeking to get back one's premises. For that matter assuming the landlord was in a job and had not resigned it or assuming that pending the long-drawn litigation he started some other temporary water business to sustain himself, that would not be an indication that the need for establishing a grocery shop was not a bona fide or a reasonable requirement or that it was motivated or was a mere design to evict the tenant".

In the case titled as **Ram Babu Agarwal vs. Jay Kishan Das 2009(2) RCR 455**, the Hon'ble Apex Court observed as under:-

"However, as regards the question of bonafide need, we find that the main ground for rejecting the landlord's petition for eviction was that in the petition the landlord had alleged that he required the premises for his son Giriraj who wanted to do footwear business in the premises in question. The High Court has held that since Giriraj has no experience in the footwear business and was only helping his father in the cloth business, hence there was no bonafide need. We are of the opinion that a person can start a new business even if he has no experience in the new business. That does not mean that his claim for starting the new business must be rejected on the ground that it is a false claim. Many people start new businesses even if they do not have experience in the new business, and sometimes they are successful in the new business also."

In the case titled as **Lajpat Rai Vs Raman Jain 2012 Law suit (Del) 1439**, it was observed by Hon'ble High Court as under:-

"The facts have been disclosed by the petitioners himself in the eviction petition: the petitioners also being a commerce graduate from the Shri Ram College of Commerce seeks an independent business of his own; thus this need to set up a business of his own cannot be in any manner be said to be imaginative or a need which is moonshine; it is a genuine need; the present petitioners having inherited this shop from his grandmother by virtue of the aforementioned Will wishes to set up his own business of rubber and latex which he was earlier



carrying on with his father and in which he has gained expertise and knowledge. Thus in no manner can it be said that this need of the landlord is not a bonafide need. The landlord is the best judge of his requirement; it is not for the tenant to dictate terms to him; neither the Court tell him the manner he wishes to set up his business."

As such, record manifestly shows that these are not triable issue which could dis-entitle the petitioner to obtain the order of eviction against the respondent.

16. Another plea of the respondent is that the shops in Tatarpur Market have not been numbered and it is only the petitioner who has put his own numbers on few of the shops but the other shops are not numbered. That many shops are available with the petitioner and his sons and some of them were let out. That in total, the petitioner owned 16 shops and out of the said 16 shops, six shops are with the petitioner and his sons from which shops the petitioner and his sons are carrying on their independent businesses since last many years.

In response to which, the petitioner has denied the allegations.

Record manifestly shows that these are not triable issue which could dis-entitle the petitioners to obtain the order of eviction against the respondent for the reasons as stated later on.

17. The next contention of the respondent is that the correct position regarding the availability of the shops with the petitioner and his sons is that Sh. Satnarayan, one of the sons of the petitioner is carrying the business of car repairs in the name and style of M/s Aggarwal Spare parts. Second shop was let out M/s Santa Motors by the petitioner. Third shop was let out to M/s Santa Motors by the petitioner. Fourth shop was let out to respondent. In the fifth shop, petitioner is carrying on the business of battery in the name and style of M/s A-von Batteries along with his son Sh. Sunil. Sixth shop was let out to M/S S.K. Tyres by the petitioner. Seventh shop was let out to M/s Behl Tyres. Eighth shop was let out to M/s Lucky Tyres by the petitioner. Two shops were sold out by the petitioner to Mr. Jaswinder Singh on 22.09.2011. Tenth shop was let out to Kafilla Hotel by the petitioner. Eleventh shop is being



run by son of petitioner Sh. Gopal in the name and style of Gopal Tyre Service and above this petitioner has built another shop with shutter which is lying vacant. 12th Shop is in possession of Sh. Raj Kumar, who is running the business in the name and style of Babu Service Centre and in the 13th shop, son of the petitioner Sh. Murari is carrying on the business of tyre puncture in the name and style of M/s V.K. Tyre punctures. In the 14th shop one of the sons of the petitioner namely Sh. Anil is carrying on the business of tyre puncture in the name and style of Anil Tyre Service.

It is claimed by the respondent that the petitioner has sixteen shops, out of these sixteen shops, six shops are with the petitioner and his sons and seven have been let out to different tenants including respondent and two shops have been sold out by the petitioner recently on 22.09.2011 and one shop is lying vacant.

On the other hand, petitioner has claimed that he is the owner of ten shops only and out of which three shops are in possession of his sons and rest seven shops are in occupation of tenants. He has also claimed that as far as disposal of two shops in the year 2011 are concerned, the litigation is already pending in the court of Sh. R.B. Singh.

Perusal of record shows that the respondent himself has admitted that 16 shops are owned by the petitioner, out of which six shops are with the petitioner and his sons and seven have been let out tenants. Moreover, he has also admitted that two shops were sold out by the petitioner on 22.09.2011.

18. It is well settled proposition of law that it is not sufficient that any kind of the property should be available to the petitioner/landlord to rule out the benefit of 14(1)(e) of D.R.C. Act. The property available with the petitioner/landlord should also be reasonably suitable property. If the petitioner/landlord has filed the eviction petition for commercial bonafide requirement but the property available with the petitioner is residential one, it cannot be said that the petitioner is having the alternative reasonably suitable commercial accommodation.

It is well settled whether the property available with the petitioner



is convenient and suitable or not is to be determined from the point of view of the petitioner/landlord and not from the point of view of the tenant/respondent. The respondent/tenant cannot dictate the terms to the petitioner to use the property in the particular manner. The petitioner/landlord is the best judge of his requirement.

Perusal of record clearly shows that in the present petition, all the shops except in the possession of the respondent are either occupied by the petitioner or his sons or by the tenants and it is not available with the petitioner and his sons for the purposes of starting the business. As far as two shops which have been claimed to have been sold out in the 2011 is concerned, the petitioner has already stated that the litigations in respect of these two shops are still pending.

Perusal of record clearly shows that the commercial accommodation owned by petitioner is either occupied by the petitioner or his sons or by number of tenants and he is not in the possession of any alternative reasonably suitable commercial accommodation which can be used to satisfy the commercial need of his children.

19. As such in my view, the petitioner is not having the alternative reasonably suitable commercial accommodation with him. Moreover, the respondent has not been able to show on record that the petitioner is having alternative reasonably suitable commercial accommodation with him.”

5. Learned counsel for the petitioner has submitted that the respondent in his eviction petition had initially stated that he is in possession of 10 shops in the subject property, and out of which, three shops were with sons of the petitioner namely, Raj Kumar, Sat Narain, and Sunil, who were doing their businesses from their respective shops, and remaining 7 shops were in possession of other tenants. However, it is contended that the respondent was in possession of 16 shops, and out of said 16 shops, six shops are with the petitioner and his sons from where they were carrying on their independent



businesses since last many years. It was the case of the petitioner that the respondent had 16 shops, out of which six were with the petitioner and his sons and 7 had been let out to different tenants including the petitioner and two shops had been sold out by the respondent on 22.09.2011 and one shop was lying vacant, and the same had been denied by the respondent in counter affidavit filed in response to leave to defend application. It is pointed out that the respondent had merely denied the aforesaid averments made on behalf of the petitioner in leave to defend application, and had stated that he is owner of the 10 shops only.

6. It is further submitted that, during the pendency of the eviction petition from amongst the 16 shops owned by deceased landlord, an eviction order in respect of another shop was passed in his favour and the tenant of the said premises in the proceedings ensuing therefrom had undertaken from this Court to vacate the said tenanted premises, and therefore, another shop premises had become available to him. It is further submitted that on the demise of the respondent, another shop had also fallen vacant during the pendency of the proceedings. It is pointed out that in 2011 itself, the landlord deceased-respondent had sold out 2 shops and the same was withheld while filing the eviction petition on ground of *bonafide* necessity in 2013. It is further submitted that the respondent had not disclosed anything with respect to availability of 6 shops in the eviction petition. It is further submitted that the learned ARC has not given any specific findings with respect to the aforesaid alternate reasonable suitable accommodation available with respondent and has dealt with the aforesaid contentions and averments raised on behalf of the petitioner in a cryptic manner in the impugned order. It is further submitted that the site plan annexed by the respondent was also



disputed as the measurement of the subject shop has been shown as 8'x 7'; however, the same is much bigger in size. It is further submitted that in the counter affidavit to leave to defend the respondent had stated that the petitioner had made unauthorised and illegal additions in the subject shop and encroached upon the other portions for which the respondent has made a counter claim. Further, in the submissions filed before this Court in the present petition the dimensions of the subject shop has been mentioned as 'measuring 17 ½' x 13' on account of unauthorised additions and alterations carried out by the petitioner/respondent'. It is pointed out that the same was not taken into consideration while passing the impugned order by learned ARC. It is further submitted that the petitioner was able to raise triable issues in their leave to defend application and the same has been wrongly dismissed by the learned ARC which is not sustainable either on facts or law.

7. *Per contra*, learned counsel for the respondent has submitted that the latter is in possession of 10 shops and other 6 shops are in the possession of his brother. It is further submitted that there are litigations pending in respect of the 2 shops which were allegedly sold by the respondent in 2011. The respondent had not concealed the actual number of shops available with his sons and him and had provided detailed correct particulars with regard to the shops in their occupation in the eviction petition itself. It is further submitted that the shop let out to the petitioner has been correctly shown in the site plan and the same is supported by the rent agreement as well as the rent receipts issued to the petitioner since the inception of tenancy, and the petitioner has made false and misleading statement to delay the disposal of the eviction petition. It was further the case of the respondent that the petitioner had made unauthorised and illegal additions and alterations in the shop and had



encroached on the other portions for which the petitioner has made a counter claim in the suit for injunction filed by the petitioner.

8. Heard the learned counsels for the parties and perused the records.

9. Perusal of the aforesaid observations made by the learned ARC in the impugned order dated 23.12.2019 shows that no reasons have been assigned by learned ARC with respect to the contentions raised on behalf of the petitioner regarding the correct position and availability of shops in possession of the respondent. It is further pertinent to note that the stand which has now been taken by the respondent in the present revision petition that, the respondent was in possession of 10 shops and remaining 6 shops were in possession of brother, was not even taken in the counter affidavit filed to the leave to defend application on his behalf. The stand taken by the respondent with respect to the averments/contentions raised on behalf of the petitioner that he is possession of 10 shops in counter affidavit filed to leave to defend application read as under: -

“12. Para no. 12 of the affidavit is incorrect and the same is denied. The respondent has knowingly made a false and misleading statement in this para of affidavit. As already submitted in the eviction petition I have ten shops in property no. WZ-93, Tatarpur, New Delhi-110027, out of which three shops are with my sons Shri Raj Kumar, Shri Sat Narain and Shri Sunil, in which they are doing their business and all other shops are with the tenants, whose names are given in the eviction petition. As regards disposal of shops to Mr. Jasvinder Singh in 2011, litigation with regard to the same is pending in the court of Shri R.B. Singh, Additional District Judge, Delhi and suit for declaration and cancellation of instruments is pending.

13. Para no. 13 of the affidavit is absolutely false and the same is denied. As already submitted in the eviction petition I have ownership of ten shops only, the details of which have already been explained in para no. 18 (a) of the eviction petition. Out of ten shops, three shops



are in occupation of my sons and other seven shops are in occupation of the tenants. As regard disposal of shops in 2011, the litigation is already pending in the court of Shri R.B. Singh, Additional District Judge, Delhi, as explained above.

14. Para no. 14 of the affidavit is incorrect and the same is denied. It is specifically denied that I have concealed the actual number of shops available to me and my sons. I have already given the detailed particulars with regard the shops and their particulars occupation in the eviction petition. It is false that the site plan filed by me with the eviction petition is not correct. The shop let out to the respondent has been correctly shown in the site plan and the same is supported by the rent agreement as well as receipts issued to the respondent since beginning of the tenancy and till December, 2012, which the respondent accepted without any the rent objection. The respondent has knowingly made a false and misleading statement in order to delay disposal of the eviction petition, as the entire affidavit does not disclose any triable issue which would disentitle me to obtain an order for recovery of premises on the ground of bonafide necessity.”

10. As noted hereinbefore, the respondent has now taken stand that other 6 shops were in possession of his brother. Further, nothing was placed on record by the respondent with respect to stand that six shops belong to his brother. Thus, at that time, there were indeed sixteen (16) shops. The respondent in his reply claims to have ten shops in his possession but does not explain the remaining six shops. This aspect has not been considered by the learned ARC. The same, therefore, in the considered opinion of this Court is a triable issue which requires consideration and legitimacy of the aforesaid stand would be adjudicated during trial at an appropriate stage by learned ARC.

11. In view of the aforesaid facts and circumstances of the present case, the present petition is allowed.

12. The impugned order dated 23.12.2019 is set aside and leave to defend application filed on behalf of the petitioner is allowed. The matter is remanded



back to learned ARC for further proceedings in accordance with law.

13. Impugned order dated 29.05.2020 stands vacated.

14. Petitioner is granted 30 days' time to file a written statement before learned ARC with advance copy to the learned counsel for the respondent appearing before the learned ARC.

15. Copy of the order be sent to the concerned learned ARC, West, Tis Hazari Courts, Delhi, for necessary information and compliance.

16. Order be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA, J

APRIL 1, 2026/kr/ns