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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RC.REV. 145/2022 & CM APPL. 29424/2022

ASHOK KUMAR

.....Petitioner

Through: Ms. Sonali Malhotra, Ms. Prachi
Dutta, Advs. with petitioner in
person.

versus

ALOK MALANI

.....Respondent

Through: Mr. Ashesh Lal, Ms. Rachna Lal, Mr.
Raghav Parwatiyar, Ms. Shikha Walia,
Mr. Heemanshu, Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

21.04.2026

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

“In view of the aforesaid facts and circumstances, it is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to set aside the impugned judgment dated 22.02.2022 passed by the Court of Shri Manoj Kumar, Additional Rent Controller, Central District, Tis Hazari Courts, Delhi, in eviction petition no. 478982/2016 titled as Shri Alok Malani versus Shri Ashok Kumar, whereby the Ld. trial court was pleased to pass an eviction order in favour of the respondent and against the petitioner in respect of tenanted premises i.e, shop no. 4429-C, ward no.3, Dau Bazar/Vishnu Bazar, Cloth market, Delhi- 110006 more specifically shown in red color in the attached site plan filed by the respondent, in terms of section 14 (1) (e) r/w section 25-b of the Delhi Rent control act and the eviction petition filed by the respondent may kindly be dismissed with costs, in the interest of justice by accepting the present revision petition of the petitioners.

Such other or further orders as this Hon'ble Court may



deems fit and proper in the facts and circumstances of the present case be also passed in favour of the petitioners and against the respondents to meet the ends of justice.”

3. Learned counsel appearing on behalf of the petitioner, at the very outset, draws the attention of this Court to an order dated 28.01.2022 passed by the learned Single Judge of this Court in **CM(M) No. 92/2022**. It is pointed out that the said petition was filed by the present petitioner, assailing an order dated 30.11.2021 passed by the learned Trial Court, whereby an application under Order VI Rule 17 of the CPC seeking amendment in the leave to defend application was dismissed. The said petition was disposed of in the following terms: -

“5. With the consent of learned counsel for the parties, this petition is disposed of with the following directions:

- a. The order of the Trial Court dated 30.11.2021 is set aside and the petitioner is permitted to amend the application for leave to defend, subject to payment of costs of 50,000/- to the respondent-landlord.
- b. The respondent- landlord will be at liberty to file his reply to the amended application for leave to defend by 01.02.2022, and the petitioner-tenant may file his rejoinder thereto by 04.02.2022, so that the application for leave to defend can be taken up for arguments by the Trial Court on the date fixed, i.e., 05.02.2022.
- c. The Trial Court is requested to endeavour to dispose of the application as expeditiously as possible and practicable, and to give suitable directions for further proceedings as expeditiously as convenient.
- d. Mr. Malhotra undertakes that the petitioner herein will not seek any adjournment before the Trial Court on 05.02.2022, and will cooperate with expeditious disposal of the



proceedings.

e. It is made clear that this order does not prejudice any of the rights and contentions available to the respondent- landlord in opposing the application for leave to defend, which will remain open for adjudication by the Trial Court in accordance with law.”

4. It is pointed out that subsequently, the respondent-landlord had filed a reply to the amended leave to defend application, and thereafter rejoinder had been filed by the petitioner-tenant before the learned ARC. The said fact had been recorded by the learned ARC in the impugned order dated 22.02.2022, as under: -

“6. Notice of the petition was served upon the respondent. Vide order dated 30.11.2021, the application under Order VI Rule, 17 Code of Civil Procedure of the respondent was dismissed. The respondent preferred the appeal before the Hon'ble High Court of Delhi against the order dated 30.11.2021. Vide order dated 28.01.2022, the Hon'ble High Court of Delhi passed a consent order and allowed the respondent to amend the leave to defend application. Consequently, amended leave to defend application, reply to leave to defend application and rejoinder filed.”

5. Learned counsel appearing on behalf of the petitioner submits that additional grounds, which were taken by way of amendment in the leave to defend as well as rejoinder to the reply to the leave to defend filed on behalf of the petitioner-tenant, were not considered by the learned ARC.

6. Attention of this Court was further drawn to the following observations made by the learned ARC in the impugned order dated 22.02.2022: -

“28. Similarly, respondent tried to raise new ground in his rejoinder to the leave to defend application and contended that petitioner



become the owner of property bearing no.1278/111, Lambi Gali, Behind Novelty Cinema, Chandni Chowk, Delhi. It is contended that after the death of the father of the petitioner, he became the sole owner of the said property. The respondent further contended in his rejoinder that petitioner is running the business in the name & style of Mis. Malani Leasing & Finance Ltd. It is further contended that petitioner is also carrying on the business in the name & style of Mis. Darshan Sons Estate Pvt. Ltd. these grounds/defences were not raised in the leave to defend application. These grounds were taken for the first time in rejoinder of the respondent. Needless to say that respondent was afforded opportunity to amend his leave to defend application. Still, the above stated grounds were not incorporated in the leave to defend application. The ordinary rule of judicial procedure is that the decision should be based on the rights of the parties as they existed on the date of the commencement of the proceedings. If the respondent is allowed to keep on incorporating new facts at each stage of the case, then it becomes a never ending exercise and case would never reach to its logical conclusion. Thus, new grounds mentioned in the rejoinder or the written arguments cannot be considered for deciding the bonafide requirement of the petitioner.

The Hon'ble Supreme Court of India in "**Baldev Singh Bajwa Vs. Monish Saini**" 2005 (2) RCR (Rent) 470 held that "*A heavy burden would lie on the tenant to prove that the requirement of the landlord is not genuine. To prove this fact the tenant will be called upon to give all the necessary facts and particulars supported by documentary evidence, if available, to support his plea in the affidavit itself so that the controller will be in a position to adjudicate and decide the question of genuine or bonafide requirement of the landlord. A mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlord's favour that his requirement of occupation of the premises is real and genuine*".

The **Hon'ble High Court of Delhi** in "Lalta Prasad Gupa Vs. Sita Ram" RCR No.352/17 Judgment dated 2nd August 2017 held that "The word "discloses" in Section 25-B(5) of Rent Act has to be understood as disclosing facts which if proved would disentitle the landlord from obtaining an order of eviction under Section 14(1)(e) Delhi Rent Control Act. If it were to be held that every plea in the



application for leave to defend, however, vague and without particulars and without anything in support thereof, should be permitted to be proved, the advocates for tenant, with their astute drafting skills, will not allow the summary procedure, prescribed by legislature to be followed for petitions for eviction of tenants on the ground of requirement of the landlord of the tenancy premises for self us, to be followed in any case and leave to defend will have to be granted and each case put to trial.”

7. Learned counsel appearing on behalf of the petitioner submits that the grounds taken by the petitioner in his amended leave to defend application as well as rejoinder to the reply to the leave to defend, as noted hereinbefore, were not considered by the learned ARC, on the ground that the same were introduced after filing of the leave to defend application and ignoring the aforesaid order passed by the learned Single Judge of this Court.

8. Learned counsel appearing on behalf of the respondent refutes the aforesaid and draws the attention of this Court to paragraph “e” of the aforesaid order dated 28.01.2022, which reads as under: -

“e. It is made clear that this order does not prejudice any of the rights and contentions available to the respondent- landlord in opposing the application for leave to defend, which will remain open for adjudication by the Trial Court in accordance with law.”

9. Learned counsel appearing on behalf of the respondent draws the attention of this Court to paragraphs 13 and 14 of the impugned order dated 22.02.2022, wherein the contention of the petitioner-tenant has been duly noted, and the same are reproduced as under: -

“13. It is stated that petitioner has no concern with regard to the alleged properties as the Petitioner is not the owner of any of the alleged properties mentioned by the respondent in his application. It is further submitted that the suit property is the most suitable



property for the petitioner for prosperous growth of his business. It is denied that petitioner after filing of the leave to defend application by the respondent, has opened one new firm namely Ms. Balaji Enterprises, under his proprietorship at Panipat. It is stated that said firm was started in the year 2003 and since the GST was introduced in July, 2017, the GST registration number was taken after filing of leave to defend application and hence, the same cannot be considered as subsequent event. It is further stated that petitioner is in the business of trading of yarn and this suit property is the most suitable property for the petitioner for prosperous growth of his business."

14. The respondent filed rejoinder to the reply of the petitioner and denied the averments made in the reply of the petitioner and simultaneously reiterated and reaffirmed the contents of the application. It is stated that after the filing of the present petition for eviction, the father of the petitioner Sh. Mohan Lal Malani has expired in the year 2021. Even during the lifetime of the -father of the petitioner, the petitioner and his father have been living in property bearing no.110/3, Banarasi Dass Estate, Timarpur, Delhi and the properties which were even in the name of the father of the petitioner have been inherited by the petitioner. It is further stated that property no. 4656-58, Mahavir Bazar Market, Chandni Chowk, Delhi is also owned by the petitioner and there is no mention of this property at all in the entire petition. It is further stated that petitioner has not disclosed or made any whisper in the entire petition for eviction as to how the property in Mahavir Bazar Market, Chandni Chowk is not suitable for the petition. It is further stated that the photographs of the said properties of Mahavir Bazar Market, Chandni Chowk show that the petitioner is already carrying on his business in the said property and the entire property is owned by the petitioner. It is further stated that property no.1278/11, Lambi Gali, Behind Novelty Cinema, Chandni Chowk, Delhi is also owned by the petitioner. The entire said property is lying vacant and is hardly at the distance of 500 yards from the demised premises. It is further contended that petitioner is running business in the name & style of M/s. Malani Leasing & Finance Ltd. It is further contended that petitioner is carrying on his business in the name & style of M/s. Darshan Sons Estate Pvt. Ltd. It is further contended that petitioner had let out the 1st floor of the property bearing no.4428-30, Ward No.3, Dua Bazar/Vishnu Bazar, Delhi



vide registered lease deed dated 07.12.2018.”

10. Learned counsel appearing on behalf of the respondent submits that learned ARC has passed the impugned order while noting that the said contentions should have been raised by the petitioner at the very first instance, and therefore, necessary orders were passed keeping in mind the directions of the Hon’ble High Court in paragraph “e”, as pointed out hereinbefore.

11. Heard the learned counsel for the parties and perused the records.

12. The directions of the learned Single Judge in CM(M) No. 92/2022 were categorical, that the petitioner was allowed to file an amended leave to defend application and reply to the same was permitted to be filed on behalf of the respondent-landlord and the rejoinder thereafter by the petitioner-tenant was accordingly allowed too. Despite the fact that the learned ARC took note of this order, unfortunately in paragraph 28 of the impugned order, the learned ARC proceeded to give a finding that since the grounds were not taken at the first instance in the leave to defend application, therefore, the same would not be considered. This observation of the learned ARC is contrary to the directions given by the learned Single Judge in the order dated 28.01.2022. Since the amendment was allowed and the leave to defend application was placed on record, it was incumbent upon the learned ARC to deal with the said contention on merits and pass an order in accordance with law.

13. In these circumstances, this Court is of the considered opinion that this is an error committed by the learned ARC, apparent on the face of the record, and thus, in exercise of its revisional jurisdiction the impugned order dated 22.02.2022 is hereby set aside.

14. The matter is remanded back to the concerned learned ARC/ARC-1,



Central District, Tis Hazari Courts, Delhi, to decide the leave to defend application on its own merits and in accordance with law, keeping in mind the directions given by the learned Single Judge of this Court in CM(M) No. 92/2022.

15. Parties are directed to appear before the learned ARC-1, Central District, Tis Hazari Courts, Delhi on 30.04.2026 at 02:30 P.M.

16. The present petition is disposed of with the aforesaid directions.

17. Needless to state that the rights and contention of the parties are left open.

18. Order be communicated to the concerned learned ARC/ARC-1, Central District, Tis Hazari Courts, Delhi, for necessary information and compliance.

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

AMIT SHARMA, J

APRIL 21, 2026/kr/db