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

% ***Judgment reserved on: 09.09.2026***
Judgment pronounced on: 18.11.2026

CNR No. DLHC010426692026

\+ RC.REV. 335/2026, CM APPL. 61225/2026 (Stay), CM APPL. 61226/2026 (Delay of 18 days in Re-filing the petition) & CM APPL. 61227/2026 (Ex.)

RAM PRAKASH .....Petitioner

Through: Mr. Shlok Chandra, DHCLSC with Ms. Lolita Crasta and Mr. Parikshit Singh Bhati, Advocates alongwith Ms. Pooja D/o Ram Prakash.

versus

BALJEET SINGH & ANR. .....Respondents

Through: Mr. Madan Lal Sharma, Ms. Tejaswini Verma and Mr. Abhay Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Revision Petition has been filed under Section 25-B(8) of the **Delhi Rent Control Act, 1958**[1], assailing the **Order dated 14.03.2026**[2] passed by the **learned Additional Rent Controller, North District, Rohini Courts, Delhi**[3], in RC/ARC No. 5/2021, whereby the Application seeking leave to defend filed by the

[1] DRC Act
[2] Impugned Order
[3] Learned ARC

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Petitioner herein was dismissed and an Eviction Order was passed in favour of the Respondents in respect of **one shop admeasuring 11' x 13' situated on the ground floor of Property bearing No. 474, Railway Road, Village Azadpur, Delhi-110033**[4].

BRIEF FACTS:

2. The Respondents instituted an Eviction Petition dated 16.02.2021, under Section 14(1)(e), read with Section 25-B of the Delhi Rent Control Act, 1958, in respect of one shop situated on the ground floor of property bearing No. 474, Railway Road, Village Azadpur, Delhi - 110033. Their case was that the tenanted premises was owned by Late Shri Ram Swaroop, who had inducted Late Shri Soren Singh, father of the Petitioner, as a tenant in the premises in the year 1976 and that upon the demise of Late Shri Soren Singh, the tenancy devolved upon the Petitioner.

3. The Petitioner, in his Application seeking leave to defend dated 04.10.2021, disputed the relationship of landlord and tenant and asserted that neither he nor his father had ever been a tenant in the tenanted premises. According to the Petitioner, Late Shri Ram Swaroop, his maternal uncle, had adopted his father, Late Shri Soren Singh. The Petitioner further claimed that his father had purchased the front portion of the property from Shri Randhir Singh and that, pursuant to an alleged oral family settlement of 1985, Late Shri Ram Swaroop had given a 1/6th share in the rear portion of the property to Late Shri Soren Singh. On this basis, the Petitioner claimed that the tenanted premises had devolved upon him through his father.

[4] Tenanted Premises

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4. The Respondents, while opposing the Application for leave to defend, denied the Petitioner's claim of ownership and maintained that Late Shri Soren Singh had been inducted as a tenant by Late Shri Ram Swaroop. They disputed the alleged oral gift and family settlement and contended that the Petitioner's plea of adoption did not confer upon him any right or share in the suit property. The Respondents further asserted their ownership and landlordship over the tenanted premises and denied that the Petitioner had any independent title thereto.

5. The Petitioner also assailed the rent receipts relied upon by the Respondents, alleging that the same were forged and fabricated, particularly the counterfoils pertaining to the years 2018 and 2019, and disputed the signatures attributed to his father.

6. The learned Additional Rent Controller, *vide* Order dated 14.03.2026, dismissed the Petitioner's Application for leave to defend and allowed the Eviction Petition, directing the Petitioner to vacate the tenanted premises. Aggrieved thereby, the Petitioner has preferred the present Revision Petition.

SUBMISSIONS ON BEHALF OF THE PARTIES:

7. Learned counsel for the Petitioner assails the Impugned Order primarily on the ground that the learned ARC failed to appreciate the Petitioner's claim that his father, Late Shri Soren Singh, was the owner of the tenanted premises and that the Respondents had no subsisting landlord-tenant relationship with him. It is contended that Late Shri Ram Swaroop had adopted Late Shri Soren Singh and that the property had been transferred to the latter by way of an oral gift in 1976, followed by an oral family arrangement. The Petitioner has also

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relied upon the alleged oral settlement of 1985, whereby a 1/6th share in the rear portion of the property was stated to have been given to his father. It is further contended that the rent receipts relied upon by the Respondents are forged and fabricated and cannot establish the alleged tenancy. According to the Petitioner, these disputed questions could only have been determined after permitting the parties to lead evidence and, therefore, rejection of the Application seeking leave to defend was unwarranted.

8. **Per contra**, learned counsel appearing for the Respondents submits that the Petitioner's father, Late Shri Soren Singh, had been inducted as a tenant by Late Shri Ram Swaroop and that the Petitioner has sought to dispute the subsisting tenancy by setting up an unsupported claim of ownership through an alleged oral gift and family settlement. It is submitted that no contemporaneous document or other cogent material has been placed on record to substantiate the alleged transfer of ownership. It is further contended that the Petitioner has merely levelled bald allegations of fabrication against the rent receipts, without placing any material in support thereof. It is submitted that the learned ARC has, therefore, rightly rejected the Application seeking leave to defend.

9. No other submissions were advanced on behalf of the parties.

ANALYSIS AND FINDINGS:

10. This Court has heard learned counsel for the parties at length and, with their able assistance, perused the relevant documents as also the Impugned Order.

11. At the outset, it is apposite to establish that the jurisdiction exercised by this Court under the *proviso* to Section 25-B(8) of the

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DRC Act is revisional in nature and is not akin to appellate jurisdiction. The scope of interference is confined to examining whether the order passed by the learned Rent Controller suffers from illegality, material irregularity or such infirmity as would warrant interference in exercise of the revisional jurisdiction.

12. The scope of the aforesaid jurisdiction has been explained by the Hon'ble Supreme Court in ***Sarla Ahuja v. United India Insurance Co. Ltd.***[5], ***Hindustan Petroleum Corporation Ltd. v. Dilbahar Singh***[6], and, more recently, in ***Abid-Ul-Islam v. Inder Sain Dua***[7]. The consistent position emerging from these decisions is that the High Court, while exercising revisional jurisdiction under the *proviso* to Section 25B(8) of the DRC Act, is required to examine the legality of the order passed by the learned Rent Controller, without entering into a fresh appreciation of the material as an appellate court. The jurisdiction is intended to ensure that the order under challenge is in accordance with law, and not to permit a reconsideration of the matter merely because a different view may be possible. In this regard, the observations of the Hon'ble Supreme Court in ***Abid-Ul-Islam*** (supra) are apposite and read as under:

> "**23.** The proviso to Section 25-B(8) gives the High Court exclusive power of revision against an order of the learned Rent Controller, being in the nature of superintendence over an inferior court on the decision-making process, inclusive of procedural compliance. Thus, the High Court is not expected to substitute and supplant its views with that of the trial court by exercising the appellate jurisdiction. Its role is to satisfy itself on the process adopted. The scope of interference by the High Court is very restrictive and except in cases where there is an error apparent on the face of the record, which would only mean that in the absence of any adjudication per se, the High Court should not venture to disturb such a decision. There is no need for holding a roving

[5] (1998) 8 SCC 119
[6] (2014) 9 SCC 78
[7] (2022) 6 SCC 30

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> inquiry in such matters which would otherwise amount to converting the power of superintendence into that of a regular first appeal, an act, totally forbidden by the legislature."

13. In view of the aforesaid legal position, the scope of examination by this Court is confined to determining whether the findings recorded by the learned ARC are sustainable in law and whether any material infirmity in the Impugned Order warrants interference. The question is not whether this Court would have arrived at the same conclusion upon an independent assessment of the material, but whether the view taken by the learned ARC suffers from any illegality, material irregularity or perversity. Equally, any failure to consider a material contention bearing upon the adjudication would call for scrutiny. It is within the aforesaid parameters that the objection raised by the Petitioner against the Impugned Order falls for consideration.

14. In the present case, the principal controversy urged on behalf of the Petitioner concerns the alleged ownership of the tenanted premises by his father, Late Shri Soren Singh, through an oral gift and an alleged oral family settlement. The Petitioner seeks to contend that the occupation of his father was in the capacity of an owner and not as a tenant. The Petitioner has further relied upon the factum of adoption of Late Shri Soren Singh by Late Shri Ram Swaroop to substantiate his claim of ownership over the suit property, while also disputing the genuineness of the rent receipts relied upon by the Respondents.

15. The aforesaid contentions are required to be examined in light of the findings returned by the learned ARC in the impugned order and the material placed before it. The relevant observations of the learned ARC are extracted hereinbelow:

> **"Ownership and landlord-tenant relationship**
> 24. It is argued by Ld. Counsel for respondent that Petitioners and respondent have no landlord-tenant relationship. It is argued by

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respondent that Petitioners have not filed documents to prove that Late Sh. Ram Swaroop was the owner of the entire property measuring 256 sq. yards. It is argued that the Respondent has specifically stated in his leave to defend application that there are two portions of the entire property admeasuring 256 sq. yards i.e. front portion admeasuring 156 sq. yards and back portion admeasuring 100 sq. yards and the Petitioners although have disputed the said fact stating that there is no such front and back portion of the said entire property and the same is only a single property, however, the petitioners themselves have categorically mentioned about the front portion of the property in their written arguments as well as in their list of documents at serial no. 24. It is argued that the respondent has inherited tenanted premises from his father, Late Soren Singh. Late Soren Singh bought the front portion of property from Sh. Randhir Singh and constructed the premises himself. He gave a 16 x 11 sq. ft space to his adoptive father, Late Ram Swaroop, to build a shop measuring 8 x 11 on property no. 474, Railway Road, Azadpur, Delhi. Neither the father of the respondent nor the respondent has ever rented the property for any period.

25. The Petitioners have argued that entire property was owned by Late Sh. Ram Swaroop and after his demise they succeeded the property through inheritance. It is argued that entire property is one property without any front or back portion as alleged by respondent. It is argued that respondent has admitted the ownership of Late Sh. Ram Swaroop in leave to defend affidavit and at the same time respondent has not filed any sale document to show that alleged front portion was purchased by Late Soran Singh.

26. Respondent has alleged that entire property is divided in two parts, front and back portion, however respondent has not filed even a single document to show that there are front and back portion in the property. The property in which tenanted premises is located bears the address - 474, Railway Road, Village Azadpur, Delhi-110033, this is the same address mentioned in the documents filed by respondent. None of the documents filed by respondent like Aadhar card, bank passbook and disability certificate of son of respondent mentions the 'front portion' in the address column. It appears that respondent has raised this story of front and back portion just to seek leave to defend without any substantial document to show the existence of the same. So far as the mentioning of front portion in the written submissions and list of documents is concerned, the same cannot take place of the facts mentioned in petition and counter affidavit of petitioner.

27. It is argued by respondent that Late Ram Swaroop was owner of back portion of 100 sq. yd. only as per the order passed by Sh. H.C. Gupta, Sub-Judge 1st Class, Delhi dated 03.09.1964. It is also argued that respondent has 1/6th share in this 100 sq. yd. too being son of adoptive son (Late Soran Singh) of Late Ram Swaroop. It is argued that front portion of 156 sq. yd. of the entire property was

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purchased by Late Soran Singh from Sh. Randhir Singh. Petitioners have argued that the entire property was owned by Late Ram Swaroop and after his demise they succeeded the entire property.

28. The respondent has deposed in leave to defend affidavit that in 1985, during his life time, Late Ram Swaroop gave 1/6th share out of back portion of 100 sq. yd. to respondent namely Late Soran Singh through oral settlement and since then Late Soran Singh and his family have been enjoying the said 1/6th share. As per the site plan filed by the respondent, the entire property consisting alleged front and back portion are shown to be in possession of petitioner and his three brothers namely Sh. Shyam Lal, Sh. Ram Lal and Sh. Ranjeet Singh. The site plan is in contradiction with the deposition made by the respondent which also falsifies the stand of respondent that there is front and back portion in the property and there was oral settlement. Further, the respondent has also not filed any adoption deed showing that his father Late Soran Singh was adopted by Late Ram Swaroop. From this deposition it is clear that alleged back portion was owned by Late Ram Swaroop. Qua alleged front portion in the property, respondent has deposed that this front portion was purchase by his father Late Soran Singh from Sh. Randhir Singh, however respondent has not filed this sale document. The respondent has merely made averment that this front portion was purchased by his father, however there is no document supporting the averment. The respondent has not even mentioned the date, month or year of purchase. He has also not even mentioned the mode of purchase or the consideration amount. Respondent has vehemently argued that tenanted premises has been inherited by him from his father, however he has not been able to establish as to how his father came to be the owner of this alleged front portion consisting tenanted premises. Surprisingly, the respondent has with him the list of purchase of building material from the year 1992 that too in typed format which does not have any material information about the supplier, however at the same time he has not filed adoption deed and sale document at least then the list of building material for the reason best known to respondent. It appears that respondent has concocted the entire story of front and back portion without any substance. The landlord need not prove absoluteownership, he has to show that he is something more than a tenant. In the present case, the petitioner has deposed that Late Ram Swaroop was the owner of entire property and that he inducted father of respondent as tenant, however the respondent took stand that he succeeded tenanted premises from his father who purchased the same from Sh. Randhir Singh. The respondent did not file any ownership document hence the respondent has clearly failed to raise a prima facie case in his favour, hence it is safe to say that petitioner is something more than the tenant qua tenanted premises. The respondent has not been

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able to raise triable issue as he has not been able to prima facie show his alleged capacity in the tenanted premises.

29. It is argued that Legal Notice dated 23.01.2021 and its alleged reply dated 05.02.2021 are forged and fabricated. It is argued that Respondent has not admitted any of the contents of either the alleged legal notice dated 23.01.2021 or its alleged reply dated 06.02.2021. It is argued that Respondent has never received any such legal notice nor he has replied the same. It is argued that the address of both i.e. Petitioner and Respondent is the same in the legal notice and as such, there is all likelihood of the alleged service of the said legal notice have been manipulated by the Petitioners and thereafter, they have forged and fabricated the alleged Reply dated 06.02.2021 which was never ever given by the Respondent.

30. Petitioner has relied on the legal notice dated 23.01.2021 and its reply dated 06.02.2021. In the legal notice in paragraph no.1 the plaintiff has narrated the facts of his ownership and tenancy of respondent and in reply to this paragraph no.1 respondent has stated that contents of para no.1 are not correct.In reply, the respondent has admitted the ownership of petitioner and his tenancy, however, the respondent has argued that he never received the legal notice and the alleged reply is forged and fabricated. Admittedly the respondent has not filed any complaint before any authority regarding forgery. The reply dated 06.02.2021 has been drafted and sent by Advocate K P Singh having his chamber in Tis Hazari Courts Complex, the respondent has not even made any complaint against this advocate for the alleged forgery. So far as the delivery of legal notice is concerned, as per section 27 of General Clauses Act 1897, the legal notice shall be deemed to be served if properly address and prepaid. The address of the respondent and petitioner has to be the same as tenanted premises is located in the property of petitioner which does not have any separate description. It appears that the respondent has made mere bald allegations of forgery without any substance.

31. It is argued that measurement of tenanted premises is different in two site plans filed by petitioner. It is argued that in petition the measurement of tenanted premises is 11 X 13 feet and in the Site Plan-A, it is 11 X 13 feet, however, in Site Plan-B, it is 14 X 8 feet. It is argued that evidence needs to be lead so as to establish correct size of tenanted premises. It is further argued that even the measurement of shop of Sh. Ram Lal is different in two site plans filed by petitioners.

32. The Respondent has argued that the measurements of the tenanted premises differ in the two site plans filed by the Petitioners and therefore evidence is required to determine the correct measurement. The Respondent has also filed site plan alongwith his leave to defend application. On bare perusal, it is revealed that site plan A filed by petitioner and the site plan filed by Respondent are similar. Difference of measurement in the Site

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Plan B filed by petitioner will be of no consequence as the identity of the tenanted premises is not disputed. In the present case, the Respondent has nowhere disputed the identity, location or existence of the tenanted premises in his possession. Minor discrepancy in the site plan or measurement of the premises does not give rise to a triable issue if the tenant does not dispute the identity of the tenanted premises. A tenant cannot seek leave to defend merely by raising dispute about measurements where the identity of the premises is not in dispute. Therefore, the alleged variation in measurements does not raise any triable issue. The Respondent has further argued that the measurement of the shop of Sh. Ram Lal differs in the two site plans. This contention is wholly irrelevant. The measurement of a neighboring shop has no bearing on the tenancy of the Respondent or the issues involved in the present petition. Accordingly, the said objection is rejected.

33. It is argued that Sh. Ram Swaroop had expired on 23.10.1987 and his death was registered on 28.10.1987, however, on the same day his wife and daughter executed a Relinquishment Deed dated 28.10.1987 in favour of the sons of Late Sh. Ram Swaroop i.e. within 5 days of his death even prior to Tehravi Ceremony. It is submitted that even in the said Relinquishment Deed, it is nowhere stated as to how Late Sh. Ram Swaroop became the owner of entire property bearing No. 474, Railway Road, Azadpur, Delhi, admeasuring 256 sq. yards. It is also argued that two oral family arrangements/settlements has been alleged by petitioners, however, they have failed to give any date, month and year of those alleged oral family arrangements/settlements.

34. The Respondent has questioned the Relinquishment Deed on the ground that it was executed within a few days of the death of Late Sh. Ram Swaroop. This objection is also devoid of merit. It is settled law that a tenant has no locus to challenge family settlements or relinquishment deeds executed between legal heirs of the landlord. It is settled law that a tenant cannot question the inter se arrangement between the legal heirs of the landlord. A tenant cannot demand proof of family arrangements between co-owners. It is a matter between co-owners in which tenant has no say. Therefore, the challenge to the relinquishment deed and family arrangement is not maintainable.

35. It is argued that Petitioners have placed on record Property Tax Receipts, however, property tax of any property by any person and the receipt thereof are not at all documents of ownership of the said property and the same are only a document showing the payment of house tax/property tax of the said property by the said person, the same does not gives/conveys any right, title or interest to the person paying the said tax to municipal authorities.

36. The Respondent has argued that property tax receipts are not documents of ownership. While it is correct that property tax receipts alone do not confer title, they are relevant pieces of documents showing possession and control over the property. It is

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argued by respondent that alleged front portion including tenanted premises was purchased by his father and later on succeeded by him, however, the respondent has not filed any property tax receipts or any other document to show that he has been managing the alleged front portion including the tenanted premises. Therefore, the said objection does not advance the case of the Respondent.

37. It is argued on behalf of Respondent that Petitioners claim to have filed counterfoils of rent receipts for the alleged rent paid by the Respondent. One counterfoil dated 10.10.2017 shows the alleged rent paid by Late Soran Singh at Rs. 495/- p.m. However, the Respondent has never signed these counterfoils, and no property details are provided. It is argued on behalf of Respondent that the Petitioners allegedly rented the premises to them as owners and respondent paid rent from 2004 or 2011 until 2018. Despite this, they have failed to file a single counterfoil from 2004 to 2018, as the counterfoils filed pertain to 2018 and 2019. The counterfoil for October 2017 is also alleged to be forged and fabricated, as it is in the name of Late Soran Singh but lacks his signature. At that time, Late Soran Singh was missing. It is further argued that the Petitioners claim that the premises were rented to Late Soran Singh in 1976 at an initial rent of Rs. 100/- p.m. However, they have not filed a single counterfoil of rent receipts from 1976 to 2017 or even from 2004 when Sh. Soran Singh disappeared. The initial rent was Rs. 100/- p.m. in 1976, increased to Rs. 495/- p.m. in 2017, and allegedly increased to Rs. 2000/- p.m. in 2018 as shown in the counterfoil of rent receipts allegedly executed by the Respondent Sh. Ram Parkash. The alleged rent receipts are forged because the signatures don't belong to the Respondent, and he never signed them in favor of the Petitioners, making himself a tenant.

38. At the outset it is noted that the respondent has already admitted the ownership of petitioner and his own tenancy in reply to the legal notice of petitioner, hence the respondent can not deny the tenancy at this stage. Even if it is presumed that rent receipt are forged then also it will not raise any triable issue as the respondent has admitted the tenancy and at the same time he has not been able to establish even prima facie his alleged ownership. The Respondent has made bald allegations that rent receipt are forged without any supporting material. In Precision Steel & Engineering Works vs Prem Deva Niranjan Deva Tayal, (1982) 3 SCC 270, Hon'ble Supreme Court observed that defences of negative character which are intended to put the landlord to proof or are vague, or are raised mala fide only to gain time and protract the proceedings, are not of the kind which will entitle the tenant to the grant of leave. The respondent has not placed on record any material to substantiate allegation of forgery. The respondent has not filed any complaint or initiated any proceedings alleging forgery. Mere allegation of forgery without supporting material

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cannot raise a triable issue. Therefore, the plea regarding forged rent receipts is not sufficient to grant leave to defend.

39. The respondent has contended that rent receipts were issued in the name of Late Soren Singh even after he went missing. The petitioners have explained that since there was no legal proof of death of Sh. Soren Singh, the receipts continued to be issued in his name. Such explanation is reasonable and does not affect the relationship of landlord and tenant, especially when the respondent himself has continued to occupy the premises after Sh. Soren Singh went missing. So far as the rate of rent is concerned, same can be a ground for granting leave to defend as present petition has been filed for bona fide requirement where quantum of rent is not a relevant consideration, hence this ground is also stands rejected.

40. Petitioners have shown that they have better title to the tenanted premises then the respondent and at the same time the tenant could not even establish prima facie his ownership and consequently failed to show his capacity in the tenanted premises, hence this court finds no triable issue so far as first ingredient is concerned."

16. The Petitioner has asserted in his Revision Petition that the alleged oral gift was made by Late Shri Ram Swaroop in favour of Late Shri Soren Singh and has also referred to a subsequent family arrangement. It is pertinent to note that the specific plea of an oral gift was categorically raised by the Petitioner for the first time in the present Revision Petition and did not form part of the defence set up in the Application seeking leave to defend before the learned ARC.Before the learned ARC, the Petitioner had merely asserted that his father was the owner of the property and that Late Shri Ram Swaroop had "given" a 1/6th share in the rear portion of Property No. 474, measuring 100 sq. yds., Azadpur, Delhi, to his father in 1985 by way of an oral settlement, without clearly specifying the nature of the alleged transaction. In these circumstances, this Court considers it appropriate to examine the Petitioner's claim from both perspectives, namely, whether the alleged transaction constituted an oral gift or an oral family settlement.

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17. In any event, the mere assertion of an oral gift or family settlement, without furnishing cogent particulars and supporting material demonstrating the circumstances in which such an arrangement was arrived at and acted upon, cannot by itself be sufficient to displace the Respondents' claim of being landlords. Further, despite having asserted before the learned ARC that his father was the owner of the tenanted premises and that late Shri Ram Swaroop *"gave"* 1/6thshare of his entire properties, i.e., 474, (Rear Portion 100 sq. yds.), Azadpur, Delhi to the father of the Petitioner in 1985, the Petitioner failed to place on record any document evidencing such ownership. No material was produced to *prima facie* establish the alleged acquisition of ownership by Late Shri Soren Singh or the manner in which such ownership had devolved upon the Petitioner. In this regard, the relevant findings recorded by the learned ARC in the Impugned Order are extracted hereinbelow:

> "**28.**The respondent has deposed in leave to defend affidavit that in 1985, during his life time, Late Ram Swaroop gave 1/6th share out of back portion of 100 sq. yd. to father of respondent namely Late Soran Singh through oral settlement and since then Late Soran Singh and his family been enjoying the 1/6th share. As per the site plan filed by the respondent, the entire property consisting alleged front and back portion are shown to be in possession of petitioner and his three brothers namely Sh. Shyam Lal, Sh. Ram Lal and Sh. Ranjeet Singh. The site plan is in contradiction with the deposition made by the respondent which also falsifies the stand of respondent that there is front and back portion in the property and there was oral settlement. Further, the respondent has also not filed any adoption deed showing that his father Late Soran Singh was adopted by Late Ram Swaroop. From this deposition it is clear that alleged back portion was owned by Late Ram Swaroop.
> Qua alleged front portion in the property, respondent has deposed that this front portion was purchase by his father Late Soran Singh from Sh. Randhir Singh, however, he has not filed this sale document. The respondent has merely made averment that this front portion was purchased by his father, however there is no document supporting the averment. The respondent has not even mentioned the date, month or year of purchase. He has also not

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even mentioned the mode of purchase or the consideration amount. Respondent has vehemently argued that tenanted premises has been inherited by him from his father, however he has not been able to establish as to how his father came to be the owner of this alleged front portion consisting tenanted premises. Surprisingly, the respondent has with him the list of purchase of building material for the year 1992 that too in typed format which does not have any material information about the supplier, however at the same time he has not filed adoption deed and sale document which are crucial and important document at least then the list of building material for the reason best known to respondent. It appears that respondent has concocted the entire story of front and back portion without any substance. It does not prove absolute ownership, he has to show that he is something more than a tenant. In the present case, the petitioner has deposed that Late Ram Swaroop was the owner of entire property and that he inducted father of respondent as tenant, however the respondent took stand that he succeeded tenanted premises from his father who purchased the same from Sh. Randhir Singh. The respondent did not file any ownership document hence the respondent has clearly failed to raise a prima facie case in his favour, hence it is safe to say that petitioner is something more than the tenant qua tenanted premises. The respondent has not been able to raise triable issue as he has not been able to prima facie show his alleged capacity in the tenanted premises.

33. It is argued that Sh. Ram Swaroop had expired on 23.10.1987 and his death was registered on 28.10.1987, however, on the same day his wife and daughter executed a Relinquishment Deed dated 28.10.1987 in favour of the sons of Late Sh. Ram Swaroop i.e., within 5 days from his death even prior to Tehravi Ceremony. It is submitted that even in the said Relinquishment Deed, it is nowhere stated as to how Late Sh. Ram Swaroop became the owner of entire property bearing No.474, Railway Road, Azadpur, Delhi, admeasuring 256 sq. yards. It is also argued that two oral family arrangements/settlements has been alleged by petitioners, however, they have failed to give any date, month and year of those alleged oral family arrangements/settlements."

18. The plea of oral gift, in particular, does not withstand scrutiny even on the touchstone of the applicable statutory provisions. Section 123 of the **Transfer of Property Act, 1882**[8], mandates that a gift of immovable property must be effected by a registered instrument, signed by or on behalf of the donor and attested by at least two

[8] TPA

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witnesses. The requirement is not merely procedural but goes to the very mode of transfer prescribed by law. In ***Renikuntla Rajamma v. K. Sarwanamma***[9], the Hon'ble Supreme Court explained the statutory requirements governing a valid gift of immovable property under Sections 122 and 123 of the TPA. The relevant portion of the aforesaid Judgment is reproduced hereinbelow:

> "**9.** Chapter VII of the Transfer of Property Act, 1882 deals with gifts generally and, inter alia, provides for the mode of making gifts. Section 122 of the Act defines "gift" as a transfer of certain existing movable or immovable property made voluntarily and without consideration by one person called the donor to another called the donee and accepted by or on behalf of the donee. In order to constitute a valid gift, acceptance must, according to this provision, be made during the lifetime of the donor and while he is still capable of giving. It stipulates that a gift is void if the donee dies before acceptance.
>
> **10.**Section 123 regulates the mode of making a gift and, inter alia, provides that a gift of immovable property must be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. In the case of movable property, transfer either by a registered instrument signed as aforesaid or by delivery is valid under Section 123. Section 123 may at this stage be gainfully extracted:
>
> > "**123.** ***Transfer how effected***.—For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.
> >
> > For the purpose of making a gift of movable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.
> >
> > Such delivery may be made in the same way as goods sold may be delivered."
>
> **11.** Sections 124 to 129 which are the remaining provisions that comprise Chapter VII deal with matters like gift of existing and future property, gift made to several persons of whom one does not accept, suspension and revocation of a gift, and onerous gifts including effect of non-acceptance by the donee of any obligation arising thereunder. These provisions do not concern us for the present. All that is important for the disposal of the case at hand is a careful reading of Section 123 (supra) which leaves no manner of doubt that a gift of immovable property can be made by a registered instrument signed by or on behalf of the donor and

[9] (2014) 9 SCC 445

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> attested by at least two witnesses. When read with Section 122 of the Act, a gift made by a registered instrument duly signed by or on behalf of the donor and attested by at least two witnesses is valid, if the same is accepted by or on behalf of the donee. That such acceptance must be given during the lifetime of the donor and while he is still capable of giving is evident from a plain reading of Section 122 of the Act. A conjoint reading of Sections 122 and 123 of the Act makes it abundantly clear that "transfer of possession" of the property covered by the registered instrument of the gift duly signed by the donor and attested as required is not a sine qua non for the making of a valid gift under the provisions of the Transfer of Property Act, 1882."

19. Thus, in the absence of any registered instrument evidencing the alleged gift, the Petitioner's assertion that the tenanted premises were orally gifted by Late Shri Ram Swaroop to Late Shri Soren Singh cannot, in law, confer ownership rights upon the latter. The alleged oral gift, therefore, cannot be accepted as a legally sustainable basis to displace the Respondents' claim. Even otherwise, such a belated plea, which was not the basis of the Petitioner's defence before the learned ARC, cannot be permitted to be introduced at the revisional stage to assail the Impugned Order. The alleged oral gift made in the year 1976, therefore, cannot be accepted as a legally sustainable basis to displace the Respondents' claim.

20. The Petitioner has also sought to place reliance upon the alleged adoption of Late Shri Soren Singh by Late Shri Ram Swaroop. However, the factum of adoption cannot be presumed merely from an assertion that a child was brought up in another family or was treated as a member thereof. In ***Lakshman Singh Kothari v. Smt. Rup Kanwar***[10], the Hon'ble Supreme Court held that the ceremony of giving and taking is an essential requirement for a valid adoption

[10] AIR 1961 SC 1378

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under Hindu law. The relevant portion of the aforesaid Judgment is reproduced hereinbelow:

> "8. To appreciate this argument it is necessary to notice briefly the law of adoption vis-a-vis the ceremony of "giving and taking". Golapchandra Sarkar Sastri in his book on *Hindu Law*, 8th Edn., succinctly describes the ceremony of "giving and taking" thus at p. 194:
>
> > "The ceremonies of *giving* and *taking* are absolutely necessary in all cases. These ceremonies must be accompanied by the *actual delivery* of the child; symbolical or constructive delivery by the mere parol expression of intention on the part of the giver and the taker without the presence of the boy is not sufficient. Nor are deeds of gift and acceptance executed and registered in anticipation of the intended adoption, nor acknowledgment, sufficient by themselves to constitute legal adoption, in the absence of actual gift and acceptance accompanied by actual delivery; a formal ceremony being essential for that purpose."
>
> Much to the same effect it is stated in *Mayne's Hindu Law*, 11th Edn., at p. 237:
>
> > "The giving and receiving are absolutely necessary to the validity of an adoption. They are the operative part of the ceremony, being that part of it which transfers the boy from one family into another. But the Hindu law does not require that there shall be any particular form so far as giving and acceptance are concerned. For a valid adoption, all that the law requires is that the natural father shall be asked by the adoptive parent to give his son in adoption, and that the boy shall be handed over and taken for this purpose."
>
> The leading decision on this subject is that of the Judicial Committee in ***Shoshinath Ghose v. Krishnasundari Dasi***[11]. That was, like the present, a case of adoption among Sudras. There, it was contended, inter alia, that there was a formal adoption by giving and taking, and in the alternative it was contended that even if there had been no formal adoption as alleged, the deeds of giving and taking, executed in 1864, were sufficient to bring about the adoption and that was all that was essential in the case of *Sudras*. Sir J.W. Colvile, speaking for the Board, rejected both the contentions. He accepted the finding of the lower courts that there was no formal giving and taking, and rejected the argument that the documents themselves operated as a complete giving and taking of the adoptive boy. The learned Judge observed at p. 388 thus:

[11] (1880) ILR 6 Cal 381

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> "There is no decided case which shows that there can be an adoption by deed in the manner contended for; all that has been decided is that, amongst Sudras, no ceremonies are necessary in addition to the giving and taking of the child in adoption.... It would seem, therefore, that, according to Hindu usage, which the courts should accept as governing the law, the giving and taking in adoption ought to take place by the father handing over the child to the adoptive mother, and the adoptive mother declaring that she accepts the child in adoption."

That a formal ceremony of giving and taking is essential to validate the adoption has been emphasized by the Judicial Committee again in ***Krishna Rao v. Sundara Siva Rao***[12]. But in practice many situations had arisen when it became impossible for a natural father to hand over the adoptive boy physically, or to an adoptive father or mother to receive the adoptive boy physically due to physical infirmity or other causes. In such cases courts have stepped in and recognized the delegation of the physical act of giving and taking provided there was an agreement between the natural and adoptive parents to give and receive the boy in adoption. The scope of the power of delegation has been clearly stated by West, J., in ***Vijirangam v. Lakshuman***[13] thus:

> "The gift and acceptance in such a case must, as Sir T. Strange has observed be manifested by some overt act; and here Yeshvada bai did not in person hand over her son to Savitri. But she commissioned her uncle to do this, being at the time too unwell to attend the ceremony herself. The Hindu law recognizes the vicarious performance of most legal acts; the object of the corporeal giving and receiving in adoption is obviously to secure due publicity (*Colebrook's Digest*, Book V.T. 273, commentary), and Yeshvada's employing her uncle to perform this physical act, which derived its efficacy from her own volition accompanying it, cannot, we think, deprive it of its legal effect. We hold, therefore, with the learned Judge, that the adoption is proved and effectual."

This view was approved by the Bombay High Court in ***Shamsing v. Santabai***[14]. A Division Bench of the Madras High Court in ***Viyyamma v. Suryaprakasa Rao***[15] applied the principle to a converse case of an adoptive father delegating his power to accept the adoptive boy to another. Sir Lionel Leach, C.J., in extending the rule of delegation to a case of receiving says at p. 613 thus:

> "If this were not so, what would be the position when through accident or illness the natural father or the

[12] (1931) LR 58 IA 148
[13] (1871) 8 Bom HCR 244
[14] (1901) ILR 25 Bom 551
[15] ILR 1942 Mad 608

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> adoptive parent could not be present in person to do what is necessary? There could be no adoption."

Further citation would be redundant. It is, therefore, settled law that, after the natural and adoptive parents exercised their volition to give and take the boy in adoption, either of them could, under certain unavoidable compelling circumstances, delegate his right to give or the right to receive the adoptive son, as the case may be, to a third party.

9. Strong reliance is placed by learned counsel for the appellant on the decision of the Judicial Committee in ***Biradhmal v. Prabhahhati***[16]. There a widow executed a deed of adoption whereby she purported to have adopted as son to her deceased husband a boy. The Sub-Registrar before whom the document was registered put to the boy's natural father and to the widow questions whether they had executed the deed. The boy was also present at that time. The Judicial Committee held that, under the said circumstances, there was proof of giving and taking. The question posed by the Privy Council was stated thus: "The sole issue discussed before their Lordships was the question of fact whether on 30-6-1924, at about 6 p.m. when the adoption deed was being registered the boy was present and was given by Bhanwarmal and taken by the widow". The question so posed was answered thus at p. 155:

> "...Their Lordships think that the evidence that the boy was present at the time when the Sub-Registrar put to his father and to the widow the questions whether they had executed the deed is sufficient to prove a giving and taking."

This sentence is rather laconic and may lend support to the argument that mere putting questions by the Sub-Registrar would amount to giving and taking of the adoptive boy; but the subsequent discussion makes it clear that the Privy Council had not laid down any such wide proposition. Their Lordships proceeded to observe:

> "Even if the suggestion be accepted that the auspicious day ended at noon on the 30th and that the deed was executed before noon and before the boy arrived at Ajmer, it seems quite probable that the registration proceedings which were arranged for 6 p.m. would be regarded as a suitable occasion for carrying out the very simple ceremony that was necessary."

These observations indicate that on the material placed before the Privy Council — it is not necessary to say that we would come to the same conclusion on the same material — it held that there was giving and taking of the boy at about 6 p.m. when the document was given for registration. The Judicial Committee, in our view, did not intend to depart from the well recognized doctrine of Hindu

[16] AIR 1939 PC 152

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> law that there should be a ceremony of giving and taking to validate an adoption.
> 10. The law may be briefly stated thus : Under the Hindu law, whether among the regenerate caste or among Sudras, there cannot be a valid adoption unless the adoptive boy is transferred from one family to another and that can be done only by the ceremony of giving and taking. The object of the corporeal giving and receiving in adoption is obviously to secure due publicity. To achieve this object it is essential to have a formal ceremony. No particular form is prescribed for the ceremony, but the law requires that the natural parent shall hand over the adoptive boy and the adoptive parent shall receive him. The nature of the ceremony may vary depending upon the circumstances of each case. But a ceremony there shall be, and giving and taking shall be part of it. The exigencies of the situation arising out of diverse circumstances necessitated the introduction of the doctrine of delegation; and, therefore, the parents, after exercising their volition to give and take the boy in adoption, may both or either of them delegate the physical act of handing over the boy or receiving him, as the case may be, to a third party."

21. In the present case, the pleadings merely refer to the alleged adoption of Late Shri Soren Singh at a young age. However, no particulars of the alleged adoption, including the circumstances in which the child was given and taken in adoption, the persons who participated in the ceremony or any other material establishing the factum of adoption, have been brought on record. Neither has any contemporaneous document or other reliable material been produced to substantiate the said plea. It is not the absence of a registered adoption deed alone which is decisive; rather, it is the absence of any cogent material establishing the essential requirements of adoption which renders the plea unsubstantiated. A mere assertion regarding the relationship between the parties, unsupported by material particulars, cannot be elevated to the status of a triable issue. The relevant findings recorded by the learned ARC with respect to the Petitioner's plea of adoption of Late Shri Soren Singh by Late Shri Ram Swaroop are extracted hereinbelow:

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"**28.**The respondent has deposed in leave to defend affidavit that in 1985, during his life time, Late Ram Swaroop gave 1/6th share out of back portion of 100 sq. yd. to father of respondent namely Late Soran Singh through oral settlement and since then Late Soran Singh and his family been enjoying the 1/6th share. As per the site plan filed by the respondent, the entire property consisting alleged front and back portion are shown to be in possession of petitioner and his three brothers namely Sh. Shyam Lal, Sh. Ram Lal and Sh. Ranjeet Singh. The site plan is in contradiction with the deposition made by the respondent which also falsifies the stand of respondent that there is front and back portion in the property and there was oral settlement. Further, the respondent has also not filed any adoption deed showing that his father Late Soran Singh was adopted by Late Ram Swaroop. From this deposition it is clear that alleged back portion was owned by Late Ram Swaroop.

Qua alleged front portion in the property, respondent has deposed that this front portion was purchase by his father Late Soran Singh from Sh. Randhir Singh, however, he has not filed this sale document. The respondent has merely made averment that this front portion was purchased by his father, however there is no document supporting the averment. The respondent has not even mentioned the date, month or year of purchase. He has also not even mentioned the mode of purchase or the consideration amount. Respondent has vehemently argued that tenanted premises has been inherited by him from his father, however he has not been able to establish as to how his father came to be the owner of this alleged front portion consisting tenanted premises. Surprisingly, the respondent has with him the list of purchase of building material for the year 1992 that too in typed format which does not have any material information about the supplier, however at the same time he has not filed adoption deed and sale document which are crucial and important document at least then the list of building material for the reason best known to respondent. It appears that respondent has concocted the entire story of front and back portion without any substance. It does not prove absolute ownership, he has to show that he is something more than a tenant. In the present case, the petitioner has deposed that Late Ram Swaroop was the owner of entire property and that he inducted father of respondent as tenant, however the respondent took stand that he succeeded tenanted premises from his father who purchased the same from Sh. Randhir Singh. The respondent did not file any ownership document hence the respondent has clearly failed to raise a prima facie case in his favour, hence it is safe to say that petitioner is something more than the tenant qua tenanted premises. The respondent has not been able to raise triable issue as he has not been able to prima facie show his alleged capacity in the tenanted premises."

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22. Equally, the plea of an oral family settlement does not advance the Petitioner's case. No doubt, in ***Kale v. Deputy Director of Consolidation***[17], the Hon'ble Supreme Court recognised that a family arrangement may be oral and that a written instrument is not invariably necessary to establish its existence. However, the recognition of an oral family arrangement in law does not dispense with the requirement of establishing that such an arrangement was, in fact, arrived at. The party relying upon such an arrangement must disclose the circumstances in which it was entered into, the parties thereto, the nature of the arrangement and the manner in which it was acted upon. In the present case, the Petitioner has not disclosed any such particulars. No date, terms or circumstances of the alleged family settlement have been specified, nor has any contemporaneous material or conduct been demonstrated to indicate that the alleged arrangement was ever acted upon by the parties. The plea, therefore, remains a bald assertion, unsupported by any material capable of lending it credibility.

23. Viewed cumulatively, the pleas of an alleged oral gift, adoption and oral family settlement do not furnish a coherent or substantiated basis for the Petitioner's claim that Late Shri Soren Singh occupied the tenanted premises in the capacity of an owner. While each of these legal concepts is governed by its own requirements, the Petitioner has failed to place on record material demonstrating compliance with the same. The leave to defend proceedings cannot be converted into an opportunity to embark upon a roving enquiry on the basis of unsubstantiated assertions. The defence must disclose facts which, if established, would have a material bearing on the landlord's

[17] (1976) 3 SCC 119

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entitlement to eviction. In the present case, the pleas raised fall short of the aforesaid threshold.

24. The second limb of the Petitioner's challenge relates to the alleged fabrication of rent receipts. It has been contended that the counterfoils relied upon by the Respondents, particularly those pertaining to the years 2018 and 2019, do not bear the signatures of Late Shri Soren Singh and have been fabricated to create evidence of payment of rent.

25. In this regard, it is pertinent to note that the learned ARC has not considered the allegation of forgery in isolation but has examined the same in the context of the other material available on record. The Respondents have consistently maintained that Late Shri Soren Singh was inducted as a tenant by their father and that rent was paid in respect of the tenanted premises. The Petitioner, on the other hand, has disputed the rent receipts but has not placed any contemporaneous material in support of the allegation that the documents were fabricated.

26. The learned ARC has also taken note of the Legal Notice dated 23.01.2021 and the purported Reply dated 06.02.2021, wherein an admission regarding the ownership of the Respondents and the tenancy of the Petitioner was found to have been made. Although the Petitioner disputed the receipt and genuineness of the said Reply, the learned ARC noticed that no complaint or other contemporaneous material had been placed on record to substantiate the allegation that the Reply had been fabricated or sent without the Petitioner's authority. The learned ARC, therefore, considered the said material along with the other circumstances while examining the existence of the landlord-tenant relationship.

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27. It is trite law that mere allegations that the documents were false, forged or fabricated, without supporting material, would not constitute a triable issue warranting grant of leave to defend. Applying the aforesaid principle to the facts of the present case, a mere denial of the signatures appearing on the rent receipts or a bald allegation that the same have been fabricated cannot, by itself, compel the Rent Controller to grant leave to defend. The Petitioner has not placed any material whatsoever which would *prima facie* substantiate the allegation of fabrication.

28. The allegation of fabrication of rent receipts is required to be examined in the context of the material considered by the learned ARC, including the purported reply dated 06.02.2021 to the Legal Notice dated 23.01.2021. The learned ARC noticed that the said reply contained an admission regarding the ownership of the Petitioners therein and the tenancy of the Respondent. The Respondent disputed the genuineness of the reply; however, the learned ARC also noticed that no contemporaneous complaint or other material had been placed on record to substantiate the allegation that the reply had been fabricated or sent without his authority. It is not the mere absence of a complaint which is decisive; rather, the allegation has to be considered in the context of the specific facts disclosed and the material available on record. In the facts of the present case, this Court finds no perversity or material irregularity in the manner in which the learned ARC considered the said objection.

29. The principle laid down by the Hon'ble Supreme Court in ***Precision Steel & Engineering Works v. Prem Deva Niranjan Deva Tayal***[18], also requires the Controller to examine whether the facts

[18](1982) 3 SCC 270

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disclosed in the affidavit, if ultimately established, would disentitle the landlord from obtaining an eviction order. The statutory test is not satisfied by merely raising disputes or making allegations which remain unsupported by the material on record. The relevant portion of the aforesaid Judgment is reproduced hereinbelow:

> "**8.** That was the position under the Act. On the introduction of Chapter III-A a notable departure has been made in the Act with regard to the procedure for trial of actions brought under Section 14-A and 14(1)(*e*). When a petition is brought before the Controller under Section 14(1)(*e*) a summons has to be issued to the tenant and when the summons is served the tenant cannot straightaway proceed to contest the petition for eviction from the premises but either he must surrender possession or seek leave to contest the petition. While seeking leave he must file an affidavit setting out the grounds on which he seeks to contest the application for eviction. This is the scheme of Section 25-B(1) and (4). Then comes Section 25-B(5) which provides that the Controller is under a statutory duty — note the expression "shall give leave to the tenant to contest the application" to grant leave if the "affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession" of the premises on the ground mentioned in Section 14(1)(*e*) i.e. bona fide requirement for his personal use or the use of the members of his family.
>
> ****
>
> **12.** The question is whether this burden is in any way diluted or stands discharged or wholly shifted to the tenant because of a different procedure prescribed in Chapter III-A of the Act. Section 25(4) provides that in default of the appearance of the tenant in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the landlord shall be entitled to an order for eviction on the ground set out in Section 14 (1)(*e*). On a combined reading of Section 14(1) proviso (*e*) with Section 25-B(1) and (4) the legal position that emerges is that on a proper application being made in the prescribed manner which is required to be supported by an affidavit, unless the tenant obtains leave to defend as contemplated by sub-sections (4) and (5) of Section 25-B, the tenant is deemed to have admitted all the averments made in the petition filed by the landlord. The effect of these provisions is that the Controller would act on the admission of the tenant and there is no better proof of fact as admission, ordinarily because facts which are admitted need not be proved. But what happens if the tenant appears pursuant to the summons issued, under sub-section (2) of Section 25-B, files an affidavit

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stating the grounds on which he seeks to contest the application. As a corollary it would transpire that the facts pleaded by the landlord are disputed and controverted. How is the Controller thereafter to proceed in the matter. It would be open to the landlord to contest the application of the tenant seeking leave to contest and for that purpose he can file an affidavit in reply but production and admission and evaluation of documents at that stage has no place. The Controller has to confine himself to the affidavit filed by the tenant under sub-section (4) and the reply, if any. On perusing the affidavit filed by the tenant and the reply if any filed by landlord the Controller has to pose to himself the only question : Does the affidavit disclose, not prove, facts as would disentitle the landlord from obtaining an order for the recovery of possession on the ground specified in clause (*e*) of the proviso to Section 14(1). The Controller is not to record a finding on disputed questions of facts or his preference of one set of affidavits against other set of affidavits. That is not the jurisdiction conferred on the Controller by sub-section (5) because the Controller while examining the question whether there is a proper case for granting leave to contest the application has to confine himself to the affidavit filed by the tenant disclosing such facts as would prima facie and not on contest disentitle the landlord from obtaining an order for recovery of possession. At the stage when affidavit is filed under sub-section (4) by the tenant and the same is being examined for the purposes of sub-section (5) the Controller has to confine himself only to the averments in the affidavit and the reply if any and that becomes manifestly clear from the language of sub-section (5) that the Controller shall give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from recovering possession etc. The jurisdiction to grant leave to contest or refuse the same is to be exercised on the basis of the affidavit filed by the tenant. That alone at that stage is the relevant document and one must confine to the averments in the affidavit. If the averments in the affidavit disclose such facts which, if ultimately proved to the satisfaction of the court, would disentitle the landlord from recovering possession, that by itself makes it obligatory upon the Controller to grant leave. It is immaterial that facts alleged and disclosed are controverted by the landlord because the stage of proof is yet to come. It is distinctly possible that a tenant may fail to make good the defence raised by him. Plausibility of the defence raised and proof of the same are materially different from each other and one cannot bring in the concept of proof at the stage when plausibility has to be shown. This view taken in ***B. Kanjibhai* v. *Mohanraj Rajendrakumar*** [AIR 1970 Guj 32 : 11 Guj LR 140] and ***Kishan Singh* v. *Mohd. Shafi*** [AIR 1964 J&K 39 : 1964 Kash LJ 92] appears to have been approved in ***Santosh Kumar* v. *Bhai Mool Singh***[AIR 1958 SC 321 : 1958 SCR 1211, 1217 : 1958 SCJ 434] where at SCR p. 1217 this Court while commenting upon an order

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granting conditional leave under Order 37 Rule 3, passed by the trial Judge which was to this effect:"In the absence of these documents, the defence of the defendants seems to be vague consisting of indefinite assertions...", observed as under:

> "This is a surprising conclusion. The facts given in the affidavit are clear and precise, the defence could hardly have been clearer. We find it difficult to see how a defence that, on the face of it, is clear becomes vague simply because the evidence by which it is to be proved is not brought on file at the time the defence is put in.
>
> The learned Judge has failed to see that the stage of proof can only come after the defendant has been allowed to enter an appearance and defend the suit, and that the nature of the defence has to be determined at the time when the affidavit is put in. At that stage all that the court has to determine is whether '*if the facts alleged by the defendant are duly proved'* they will afford a good, or even a plausible, answer to the plaintiff's claim. Once the court is satisfied about that, leave cannot be withheld and no question about imposing conditions can arise; and once leave is granted, the normal procedure of a suit, so far as evidence and proof go, obtains."

The manifest error committed in the procedure followed at present by the Controller under Section 25-B may be pointed out. The tenant has to file an affidavit stating the grounds on which he seeks to contest the application. The Controller may accept an affidavit in reply if landlord chooses to file one. So far there is no difficulty. There then follows affidavit in rejoinder and sub-rejoinder and the documents are produced and when this procession ends the Controller proceeds to examine the rival contentions as if evidence produced in the form of the affidavits untested by cross-examination and unproved documents are before him on the appreciation and evaluation of which he records an affirmative finding that the facts disclosed in the affidavit of tenant are not proved and therefore leave to contest should be refused. In our opinion, this is wholly impermissible. The regular trial required to be held by a Court of Small Causes as contemplated by sub-section (6) read with sub-section (7) of Section 25-B is not to be substituted by affidavits and counter-affidavits at the stage of considering tenant's affidavit filed for obtaining leave to contest the petition under sub-section (4). Sub-section (6) enjoins a duty on the Controller where leave is granted to the tenant to contest the application to commence the hearing of the petition as early as practicable and sub-section (6) prescribes procedure to be followed as if the Controller is a Court of Small Causes. The Court of Small Causes follows the summary procedure in the adversary system where witnesses are examined and cross-examined and truth of averment is decided on the touchstone of cross-examination. A speedy trial not conforming to the well-recognised principle of

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arriving at truth by testing evidence on the touchstone of cross-examination, should not be easily read into the provision at a stage not contemplated by the provision unless the statute positively by a specific provision introduces the same. The scheme of Section 25-B does not introduce a trial for arriving at the truth at the stage of proceeding contemplated by sub-section (4) of Section 25-B.

*****

18. It is indisputable that while examining the affidavit of the tenant filed under Section 25-B(4) for the purpose of granting or refusing to grant leave to contest the petition the landlord who has initiated the action has to be heard. It would follow as a necessary corollary that the landlord may controvert the averments made in the affidavit of the tenant but the decision to grant or refuse leave must be based on the facts disclosed in the affidavit. If they are controverted by the landlord that fact may be borne in mind but if the facts disclosed in the affidavit of the tenant are contested by way of proof or disproof or producing evidence in the form of other affidavits or documents that would not be permissible. It is not the stage of proof of facts, it is only a stage of disclosure of facts. Undoubtedly, the rules of natural justice apart from the adversary system we follow must permit the landlord to contest affidavit filed by the tenant and he can do so by controverting the same by an affidavit. That would be an affidavit in reply because tenant's affidavit is the main affidavit being treated as an application seeking leave to contest the petition. But, the matter should end there. Any attempt at investigating the facts whether they appear to be proved or disproved is beyond the scope of sub-section (5) of Section 25-B. Viewed from this angle the decision in ***Mohan Lal case*** [(1982) 22 DLT 1] rendered by the Full Bench of the Delhi High Court is far in excess of the requirement of Section 25-B(5) and the view taken therein does not commend to us."

30. Thus, when the pleas concerning the alleged oral gift, adoption and family settlement are examined alongside the allegations regarding fabrication of rent receipts and the other material noticed by the learned ARC, the Petitioner's defence does not disclose a substantial issue which would warrant the grant of leave to defend. The learned ARC has considered the relevant objections and has returned findings which cannot be said to be perverse or based on a misreading of the record.

31. It is also pertinent to note that the challenge before this Court, as addressed during the course of hearing, has remained confined to

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the Petitioner's claim of ownership through the alleged oral gift and family arrangement, the alleged adoption of Late Shri Soren Singh by Late Shri Ram Swaroop, and the allegation that the rent receipts relied upon by the Respondents are forged and fabricated. None of these grounds, in the facts and circumstances of the present case, discloses a triable issue warranting interference with the Impugned Order.

32. In view of the foregoing discussion, this Court finds no jurisdictional error, perversity or material irregularity in the approach adopted by the learned ARC while rejecting the Application seeking leave to defend. The present Revision Petition is, accordingly, dismissed, and the Impugned Order dated 14.03.2026 passed by the learned ARC in RC/ARC No. 5/2021, including the Eviction Order in respect of the shop admeasuring 11' x 13' situated on the ground floor of Property bearing No. 474, Railway Road, Village Azadpur, Delhi-110033, is affirmed.

33. Accordingly, the present Petition, along with pending Application(s), if any, stand disposed of.

34. The Respondent shall be entitled to seek execution of the Eviction Order in accordance with law, subject to the statutory protection under Section 14(7) of the DRC Act, if still applicable.

HARISH VAIDYANATHAN SHANKAR, J.

NOVEMBER 18, 2026/ma

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