

## Shashi Bala Gupta & Ors vs Manish Gupta on 7 September, 2022

**Author: Yashwant Varma**

**Bench: Yashwant Varma**

\$~46 & 47

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ RC.REV. 208/2022, CM APPL. 38054/2022 (Stay)

SHASHI BALA GUPTA & ORS. .... Petitioner

Through: Mr. Sunil Goel, Mr. Shubhankar and  
Mr. Mayank Goel, Advs.

versus

MANISH GUPTA .... Respondent

Through: Mr. Arvind Kumar Gupta, Mr. C.  
Prakash, Mr. Abhiesimat Gupta, Mr.  
Shaurya Dogra and Mr. Abhishek  
Rana, Advs.

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+ RC.REV. 212/2022, CM APPL. 38301/2022 (Stay), CM APPL.  
38300/2022 (for exemption)

SMT. SHASHI BALA GUPTA & ORS. .... Peti

Through: Mr. Sunil Goel, Mr. Shubhank  
Mr. Mayank Goel, Advs.

versus

SHRI. MANISH GUPTA .... Resp

Through: Mr. Arvind Kumar Gupta, Mr.  
Prakash, Mr. Abhiesimat Gupta,  
Shaurya Dogra and Mr. Abhishek  
Rana, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

ORDER

% 07.09.2022 The petitioner who was a tenant in shop Nos. 6 (VI) and 7 (VII) situate in F-14/19, Model Town- II, Delhi assails orders dated 24 March 2022 passed by the Administrative Civil Judge acting as the Rent Controller in terms of which eviction petitions have come to be allowed and the applications seeking leave to defend rejected. The eviction petitions were instituted by the respondent, owner and landlord, who sought release of the premises on the ground of a "bona fide need".

According to the landlord, he was engaged in the business of financing of automobiles through a partnership firm which was a franchisee of ICICI Bank from a property situate in East Patel Nagar, New Delhi. It was asserted that since the business had increased over a period of time, a need was felt for expansion of its business in North and South Delhi. The landlord further asserted that the property of which release was sought was located in a thickly populated area having immense commercial potential. The landlord further disclosed that he was currently conducting business in East Patel Nagar from a basement of a property and therefore the suit property was liable to be

released in terms of the provisions made in Section 14(1)(e) of the Delhi Rent Control Act 1958 ["the Act"]. The petitions were resisted by the petitioner here who sought leave to defend and oppose the prayers as made by the landlord.

While before the Rent Controller certain issues relating to whether the provisions of section 14(1)(e) of the Act would apply to a commercial property as well as whether the respondents were liable to be recognised as owners of the suit property were raised, before this Court learned counsel has restricted his submissions to the findings as returned by the Rent Controller with respect to "bona fide need" and the denial of the application seeking leave to defend.

While controverting the claim of the landlord that the premises was required bona fide and that he had no other alternative accommodation, the petitioner contended that there were various other portions of the suit property which were originally being used for commercial purposes by occupants thereof. It was pointed out that the father of the petitioner was using the upper floors of the suit property for residential purposes and that another property in the vicinity, albeit standing in the name of the father, was also available and, therefore, the need as set up by the landlord was neither genuine nor bona fide.

Controverting the aforesaid pleas as taken in support of the prayer for leave being granted, the landlord submitted that on account of marital discord he was forced to sever all ties with his family and to reside separately from his parents since 2009. It was contended that relations with the father, though cordial, would not extend to the petitioner being permitted to use the other parts of the property for commercial purposes. In any case it was pointed out that the shops in question were in his ownership and consequently, it would be inequitable for the landlord being required to establish his business in any other property which may be owned by his father.

The Trial Judge, while examining the issue of "bona fide need", has taken specific note of the plea taken by the landlord who had contended that for the purposes of laying in place basic infrastructure and maintaining the standards of its firm in the northern part of the National Capital Territory, he required a minimum space of 300-350 square feet. It also took note of the categorical assertion of the landlord that since he and the other partners of M/s Axiom Associates had no other commercial space at their disposal, there was an eminent requirement for the two shops which formed subject matter of the eviction petitions being vacated and handed over.

Taking note of the challenge which was addressed by the tenant while seeking leave, the Trial Judge has observed that the tenant had conceded that the suit property stood in the name of the father of the petitioner except for the two shops of which release was sought. It has gone on to observe that even if it were presumed that the landlord was residing with the father or that the father had other vacant portions in the suit property, that would not detract from the "bona fide need" as setup by the landlord especially when the two shops in question were undisputedly owned by him. The Rent Controller has in light of the aforesaid facts, proceeded to deny granting leave and has ultimately framed directions for eviction.

In order to adjudge the soundness of the view taken by the Rent Controller, it would be apposite to firstly deal with the scope of Section 25B of the Act. The scope and ambit of Section 25B was reiterated and explained by the Supreme Court in its recent decision in *Abid-Ul-Islam v. Inder Sain Dua*<sup>1</sup>, in the following terms: -

"16. We may usefully refer to the decision of this Court in *Inderjeet Kaur v. Nirpal Singh* [*Inderjeet Kaur v. Nirpal Singh*, (2001) 1 SCC 706] :

(SCC pp. 711-13, paras 9-13) "9. Chapter III-A deals with summary trial of certain applications expressly stating that every application by a landlord for recovery of possession on the ground specified in clause (e) of the proviso to sub-

section (1) of Section 14 of the Act, or under Section 14-A or 14-B or 14-C or 14-D shall be dealt with in accordance with the special provisions prescribed in Section 25-B of the Act. As per the broad scheme of this Chapter a tenant is precluded from contesting an application filed for eviction on the grounds mentioned in the aforementioned provisions unless he obtains leave from the Controller to contest the eviction petition. In default of obtaining leave to defend or leave is refused to him an order of eviction follows. It appears recourse to summary trial is adopted having due regard to nature of the grounds on which the eviction is sought with a view to avoid delay so that the landlord should not be deprived or denied of his right to immediate possession of premises for his bona fide use.

10. At the same time, it is well settled and accepted position in law that no one shall be subjected to suffer a civil consequence like eviction from a premises resulting in hardship to him without (2022) 6 SCC 30 providing adequate and effective opportunity to disprove the case against him and establish his case as pleaded.

11. As is evident from Sections 25-B(4) and (5) of the Act, burden placed on a tenant is light and limited in that if the affidavit filed by him discloses such facts as would disentitle the landlord from obtaining an order for the recovery of the possession of the premises on the ground specified in clause (e) of the proviso to Section 14(1) of the Act, with which we are concerned in this case, are good enough to grant leave to defend.

12. A landlord, who bona fide requires a premises for his residence and occupation should not suffer for long, waiting for eviction of a tenant. At the same time a tenant cannot be thrown out from a premises summarily, even though prima facie he is able to say that the claim of the landlord is not bona fide or untenable and as such not entitled to obtain an order of eviction. Hence the approach has to be cautious and judicious in granting or refusing leave to defend to a tenant to contest an eviction petition within the broad scheme of Chapter III-A and in particular having regard to the clear terms and language of Section 25-B(5).

13. We are of the considered view that at a stage when the tenant seeks leave to defend, it is enough if he prima facie makes out a case by disclosing such facts as would disentitle the landlord from obtaining an order of eviction. It would not be a right approach to say that unless the tenant at that

stage itself establishes a strong case as would non-suit the landlord, leave to defend should not be granted when it is not the requirement of Section 25-B(5). A leave to defend sought for cannot also be granted for mere asking or in a routine manner which will defeat the very object of the special provisions contained in Chapter III-A of the Act. Leave to defend cannot be refused where an eviction petition is filed on a mere design or desire of a landlord to recover possession of the premises from a tenant under clause (e) of the proviso to sub-section (1) of Section 14, when as a matter of fact the requirement may not be bona fide. Refusing to grant leave in such a case leads to eviction of a tenant summarily resulting in great hardship to him and his family members, if any, although he could establish if only leave is granted that a landlord would be disentitled for an order of eviction. At the stage of granting leave to defend, parties rely on affidavits in support of the rival contentions. Assertions and counter-assertions made in affidavits may not afford safe and acceptable evidence so as to arrive at an affirmative conclusion one way or the other unless there is a strong and acceptable evidence available to show that the facts disclosed in the application filed by the tenant seeking leave to defend were either frivolous, untenable or most unreasonable. Take a case when possession is sought on the ground of personal requirement, a landlord has to establish his need and not his mere desire. The ground under clause (e) of the proviso to sub-section (1) of Section 14 enables a landlord to recover possession of the tenanted premises on the ground of his bona fide requirement. This being an enabling provision, essentially the burden is on the landlord to establish his case affirmatively. In short and substance, a wholly frivolous and totally untenable defence may not entitle a tenant to leave to defend, but when a triable issue is raised a duty is placed on the Rent Controller by the statute itself to grant leave. At the stage of granting leave the real test should be whether facts disclosed in the affidavit filed seeking leave to defend prima facie show that the landlord would be disentitled from obtaining an order of eviction and not whether at the end defence may fail. It is well to remember that when leave to defend is refused, serious consequences of eviction shall follow and the party seeking leave is denied an opportunity to test the truth of the averments made in the eviction petition by cross-examination. It may also be noticed that even in cases where leave is granted provisions are made in this very Chapter for expeditious disposal of eviction petitions. Section 25-B(6) states that where leave is granted to a tenant to contest the eviction application, the Controller shall commence the hearing of the application as early as practicable. Section 25-B(7) speaks of the procedure to be followed in such cases. Section 25-B(8) bars the appeals against an order of recovery of possession except a provision of revision to the High Court. Thus a combined effect of Sections 25-B(6), (7) and (8) would lead to expeditious disposal of eviction petitions so that a landlord need not wait and suffer for a long time. On the other hand, when a tenant is denied leave to defend although he had fair chance to prove his defence, will suffer great hardship. In this view a balanced view is to be taken having regard to competing claims."

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

20. Dealing with a *pari materia* provision, this Court in *Baldev Singh Bajwa v. Monish Saini* [*Baldev Singh Bajwa v. Monish Saini*, (2005) 12 SCC 778] , was pleased to clarify the aforesaid position holding the procedure as summary. In such a case, the tenant is expected to put in adequate and reasonable materials in support of the facts pleaded in the form of a declaration sufficient to raise a triable issue. One cannot lose sight of the object behind Section 25-B in facilitating not only the expeditious but effective remedy for a class of landlords, sans the normal procedural route. In this regard, we wish to quote the decision of this Court in *Baldev Singh* [*Baldev Singh Bajwa v. Monish Saini*, (2005) 12 SCC 778] : (SCC pp. 790-93, paras 14-17 & 19) "14. The phrase "bona fide requirement" or "bona fide need" or "required reasonably in good faith" or "required", occurs in almost all Rent Control Acts with the underlying legislative intent which has been considered and demonstrated innumerable times by various High Courts as also by this Court, some of which we would like to refer to. In *Ram Dass v. Ishwar Chander* [*Ram Dass v. Ishwar Chander*, (1988) 3 SCC 131] it is said that the bona fide need should be genuine and honest, conceived in good faith. It was also indicated that the landlord's desire for possession, however honest it might otherwise be, has inevitably a subjective element in it, and that desire, to become a "requirement" in law must have the objective element of a "need", which can be decided only by taking all the relevant circumstances into consideration so that the protection afforded to a tenant is not rendered illusory or whittled down.

15. In *Bega Begum v. Abdul Ahad Khan* [*Bega Begum v. Abdul Ahad Khan*, (1979) 1 SCC 273] it was held by this Court that the words "reasonable requirement" undoubtedly postulate that there must be an element of need as opposed to a mere desire or wish. The distinction between desire and need should doubtless be kept in mind but not so as to make even the genuine need as nothing but a desire.

16. In *Surjit Singh Kalra v. Union of India* [*Surjit Singh Kalra v. Union of India*, (1991) 2 SCC 87] a three-Judge Bench of this Court has held as under : (SCC p. 99, para 20) „20. The tenant of course is entitled to raise all relevant contentions as against the claim of the classified landlords. The fact that there is no reference to the word bona fide requirement in Sections 14-B to 14-D does not absolve the landlord from proving that his requirement is bona fide or the tenant from showing that it is not bona fide. In fact every claim for eviction against a tenant must be a bona fide one. There is also enough indication in support of this construction from the title of Section 25-B which states „special procedure for the disposal of applications for eviction on the ground of bona fide requirement .

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

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19. ... In our view there are inbuilt protections in the relevant provisions for the tenants that whenever the landlord would approach the court he would approach when his need is genuine and bona fide. It is, of course, subject to the tenant's right to rebut it but with strong and cogent evidence. In our view, in the proceeding taken up under Section 13-B by the NRI landlords for the ejection of the tenant, the court shall presume that the landlord's need pleaded in the petition is genuine and bona fide. But this would not disentitle the tenant from proving that in fact and in law the requirement of the landlord is not genuine. 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 bona fide 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."

21. We further wish to place reliance upon a recent decision of this Court in *Ram Krishan Grover v. Union of India* [*Ram Krishan Grover v. Union of India*, (2020) 12 SCC 506], wherein this Court considered the aforesaid decisions in *Inderjeet Kaur* [*Inderjeet Kaur v. Nirpal Singh*, (2001) 1 SCC 706] and *Baldev Singh* [*Baldev Singh Bajwa v. Monish Saini*, (2005) 12 SCC 778] and interpreted the burden on the tenant to be rebutted at the stage of leave to defend and observed : (*Ram Krishan Grover case* [*Ram Krishan Grover v. Union of India*, (2020) 12 SCC 506], SCC pp. 529-30, para 39) "39. The requirement of a "strong case" for obtaining leave to defend means a good case that brings to fore reasonable and well-grounded basis on which the tenant seeks leave to contest the eviction proceedings. It does not mean setting up and establishing at that stage a case beyond any scintilla of doubt and debate. The grounds and pleas raised should reflect clear and strong defence and relate to the grounds mentioned in para 25 in *Baldev Singh Bajwa* [*Baldev Singh Bajwa v. Monish Saini*, (2005) 12 SCC 778]. The standard applied is similar to parameters elucidated in *Inderjeet Kaur v. Nirpal Singh* [*Inderjeet Kaur v. Nirpal Singh*, (2001) 1 SCC 706], in which this Court had held that the leave to defend should not be granted on mere asking but when the pleas and contentions raise triable issues and the dispute on facts demands that the matter be properly adjudicated after ascertaining the truth of affidavits filed by the witnesses in their cross-examination. Each case has to be decided on its merits and not on the basis of any preconceived suppositions and presumptions. By providing for a simplified procedure of eviction by the Non-Resident Indians, Section 13-B does not dilute the rights of tenants. It gives a chance to the tenants on merits to establish their case and when justified and necessary to take the matter to trial. By no means, therefore, Section 13-B can be held to be arbitrary and unreasonable."

Taking cue from the principles enunciated by the Supreme Court in *Abid-Ul-Islam*, the Court notes that at the stage of seeking leave to defend, the tenant is required to disclose that the issues raised at its behest gives rise to triable issues which would warrant a consideration on merits. The defence cannot be one which has been described to be mere moonshine. At that stage, the tenant must at least prima facie establish that the facts as disclosed in the application seeking leave to defend, would disentitle the landlord from being granted an order of eviction. As was explained by the Supreme Court in the aforesaid decision, the tenant while seeking leave to defend must disclose facts which may reasonably tend to establish that the case set up by the landlord is not liable to be

outrightly granted and that the issues raised inter partes would merit trial and examination. While the tenant is not liable at that stage to prove that the objections taken are ultimately likely to succeed, they must at least on a prima facie consideration be of a character which would merit the Rent Controller granting an opportunity to the tenant to contest the claim of the landlord.

Reverting then to the facts of the present case, the case of bona fide need as was set up was sought to be questioned on the basis of certain portions comprised in the property of the father of the landlord as being suitable for carrying on commercial activities. That in the considered opinion of the Court was clearly not germane for the purposes of deciding the application especially when it was the conceded case that the same fell in the ownership of the father. The bona fide need thus set up by the landlord could not have been denied in that backdrop. The other premises which was referred to and stated to be in the vicinity of the suit property was also not in the ownership of the landlord.

It would be pertinent to observe that it was also not the case of the petitioner that the landlord owned some other property which would have fallen in the category of alternate accommodation. It becomes pertinent to note that a case of bona fide need can be dispelled provided it is established that the landlord has suitable alternative accommodation. This burden the petitioner has woefully failed to discharge. It is also necessary to note that where the landlord is seeking release of premises which are exclusively owned by him, in such circumstances he cannot be forced to explore the possibility of carrying on his business from premises which may be owned by some other family member. In any case, such a defence, if set up by a tenant, cannot be countenanced at all. The case of bona fide need can be assailed only if it is established that the claim of the landlord is based on a mere desire as opposed to a genuine and pressing requirement. Viewed in that light, the Court is of the considered opinion that no patent or manifest error was committed by the Rent Controller in rejecting the leave to defend as was sought.

While arriving at the conclusion that the order of the Rent Controller merits no interference, the Court is also conscious of the fact that it sits and exercises jurisdiction which is essentially revisional in character as opposed to the powers that may be otherwise wielded by a Court while exercising appellate powers. In a revision, the powers of the Court are merely supervisory and one of superintendence. This aspect was reiterated and highlighted by the Supreme Court in *Abid-Ul-Islam* in the following terms:-

"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 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."

On an overall conspectus of the aforesaid discussion, the Court finds no merit in these revisions which shall consequently, along with pending applications, stand dismissed.

YASHWANT VARMA, J.

SEPTEMBER 7, 2022 SU