Smt. Radhi Raney & Another vs Mrs. Nanki Feroze on 18 July, 2018

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Author: T. Sunil Chowdary

Bench: T. Sunil Chowdary

THE HONBLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.6465 OF 2016

18.07.2018

Smt. Radhi Raney & Another ..Petitioners

Mrs. Nanki Feroze ...Respondent

Counsel for Petitioners: Sri R.A.Achuthanand

Counsel for the respondent: Sri Mohammed Imran Khan

<GIST:

>HEAD NOTE:

? Cases referred

  2014 (9) SCALE 657
2 2005 (4) ALD 249
3 1987 (2) RLR 701
4 1989 (1) RCR 409
5 AIR 1971 SC 989
6AIR 1957 SC 309
7 AIR 2000 Delhi 69
8 AIR 1998 SC 1639
9 (2004) 8 SCC 229

THE HONBLE JUSTICE SRI T. SUNIL CHOWDARY
CIVIL REVISION PETITION No.6465 of 2016
ORDER:

1 This Civil Revision Petition is filed by the petitioners-tenants under Section 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short, the Act), challenging the order dated 16.08.2016 passed in R.A.No.176 of 2013 on the file of the Chief Judge, City Small Causes Court, Hyderabad, wherein and whereby the order dated 31.07.2013 passed in R.C.No.69 of 2011 on the file of the Additional Rent Controller, Secunderabad ordering eviction of the petitioners herein from the petition schedule premises and handover the vacant physical possession of the same to the respondent, was confirmed.

2 The facts leading to the filing of the present Civil Revision Petition, in nutshell, are as follows:

3 The respondent is the absolute owner of the petition schedule premisesPlot bearing No.009, situated in ground floor of the building bearing Municipal No.1-8-161 to 164/6 (old No.142/C), Innovation Residency, P.G. Road, Secunderabad. The respondent let out the petition schedule premises to the petitioners in the year 2002 on a monthly rent of Rs.4,000/-. The respondent filed R.C.69 of 2011 on the following grounds: (1) The petitioners are having alternative accommodation {Section 10(2)(v)}; (2) the petitioners committed wilful default in payment of rent for a period of 37 months, commencing from June 2008 {Section 10(2)(i)}; and (3) the respondent is a widow and aged about 75 years {Section 10- C (1) (a) and (c)}.

4 The petitioners filed counter denying the material averments made in the petition, inter alia contending that the petition is not maintainable either on facts facts or in law. However, the petitioners admitted the jural relationship of tenants and landlord between them and the respondent.

5 To substantiate the stand, the respondent herself examined as P.W.1 and got marked Exs.P.1 to P.28. To dislodge the case of the respondent, second petitioner examined herself as R.W.1 and got marked Exs.R.1 to R.20.

6 Basing on the oral, documentary evidence and other material available on record, the Rent Control Court allowed the petition holding that the petitioners committed wilful default in payment of rent, the petitioners are having alternative accommodation and that the respondent, who is a widow and senior citizen, is entitled to recover immediate possession of the petition schedule premises. Feeling aggrieved by the order of the Rent Control Court dated 31.07.2013, the petitioners preferred R.A.No.176 of 2013 on the file of the Chief Judge, City Small Causes Court, Hyderabad. The appellate authority, after re-appreciating the oral and documentary evidence available on record, without being influenced by the findings recorded by the Rent Control Court, arrived at a conclusion that the respondent is entitled to the reliefs sought for. Hence the present Civil Revision Petition by the petitioners- tenants.

7 Sri R.A.Achuthanand, learned counsel for the petitioners strenuously submitted that the findings recorded by the authorities below are perverse and hence they are liable to be set aside. Per contra, Sri Mohammed Imran Khan, learned counsel for the respondent submitted that the authorities below considered the oral and documentary evidence available on record in the light of the provisions of the Act and arrived at a just and reasonable conclusion; therefore, it is a fit case to

dismiss this Civil Revision Petition. He further submitted that this Court shall not lightly interfere with the concurrent finding of fact recorded by the authorities below.

8 In order to appreciate the rival contentions, this court is placing reliance on the following decision:

> Hindustan Petroleum Corporation Limited vs. Dilbahar Singh wherein the Honble apex Court held at Para No.45 as under:
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> 45. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on re-appreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.

9 Let me consider the facts of the case on hand in the light of the above legal principle.

10 The learned counsel for the petitioners submitted that the finding of the authorities below that the petitioners are having alternative accommodation and hence they are liable to vacate the petition schedule premises, is without any basis. The respondent has taken a specific plea in Para No.7 of the petition that the petitioners are having a residential house at Kachiguda. In para No.10 of the counter, the petitioners have simply denied the pleading, as to the alternative accommodation, made in the petition. The petitioners have not specifically denied in the counter that they are having a house at Kachiguda. It is needless to say that the petitioners have to specifically deny the material fact pleaded by the respondent; otherwise, by necessary implication, it would certainly amount to admission of the same. In such circumstances, the Court can safely arrive at a conclusion that the petitioners are having alternative accommodation by the time of filing of the

R.C. by the respondent.

11 The first petitioner is the mother and second petitioner is the daughter. In order to appreciate the contention of the petitioners, it is apposite to extract hereunder relevant portion of the cross examination of R.W.1second petitioner:

> It is true that, my mother has a house at Kachiguda, bearing premises No.3-2-48 & 49. It is true that it is a residential property. It is true that, I carry out business at Koti, Hyderabad. It is true that the Kachiguda premises is much closer to my shop at Koti, than the petition schedule premises.

12 Basing on the above admission made by the second petitioner in the cross examination, this court can safely arrive at a conclusion that first petitioner is having own house at Kachiguda. It is not the case of the petitioners that somebody occupied the said house. As seen from the testimony of R.W.1, she has been carrying on business at Koti, Hyderabad. Her testimony further reveals that their own house is very nearer to Koti when compared to the petition schedule premises.

13 The learned counsel for the petitioners submitted that both the petitioners are joint tenants and merely because the first petitioner is having a residential house that itself is not a valid ground to order eviction of the second petitioner from the petition schedule premises. To substantiate the argument, the learned counsel for the petitioners has drawn the attention of this court to the following judgments:

> Satyanarayana v. Moizuddin Khan , wherein this Court held at para No.17 as follows:
>
> 17. I find that the additional accommodation acquired by the tenant prior to attornment of lease and prior to execution of the rental deed cannot be taken into consideration and cannot form the basis for ordering eviction of the tenant.

B.R. Mehta vs. Smt. Atma Devi , wherein the Honble apex Court held at Para No.4 as follows:

> 4. ... There was no law according to which the husband and the wife could be deemed to be one person. Therefore, where proviso (h) required that the tenant himself should acquire vacant possession of another residence before he can become liable to eviction, the effect of its language cannot be whittled down by arguing that proviso (h) would apply even if it is not the tenant himself but his wife or his other relation were to acquire such other residence.

Therefore, as a general proposition of law, the acquisition of other residence must be by the tenant himself before proviso (h) to sub-section (1) of S.14 of the Act would apply. 14 In Satyanarayana case (2nd cited supra), the landlord filed a petition for eviction of the tenant on the ground that the wife of the tenant is having own house. In the instant case, the second petitioner is an unmarried daughter of the first petitioner aged about 63 years and both of them are joint tenants. Under Hindu law, an unmarried daughter is a dependent on the parents. The material placed before the court

clinchingly establishes that from the year 2002 onwards both petitioners have been residing together in the petition schedule premises as tenants. Viewed from this angle, the second petitioner is a dependent on the first petitioner. In such circumstances, the second petitioner legitimately entitled to stay in the house of the first petitioner being an unmarried daughter. Therefore, the principle enunciated in Satyanarayana case is not applicable to the facts of the case on hand.

15 In B.R. Mehta case (3rd cited supra) the landlord filed an eviction petition against the tenant on the ground that his wife was provided with a government residential quarter. The Honble apex Court held that the house allotted to the wife for discharging of her official duties as a government employee, cannot be treated as her own house and hence eviction petition filed against the husband on the ground of availability of alternative accommodation cannot be ordered. Therefore, I am of the considered view that the decisions relied upon by the learned counsel for the petitioners are no way helpful to the petitioners on this aspect. 16 In the light of the foregoing discussion, I have no hesitation to hold that the petitioners are having alternative accommodation. The Rent Control Court as well as the Rent Control Appellate Authority have considered the material available on record in right perspective and arrived at a conclusion that the petitioners are having an alternative accommodation for their residential purpose. I am fully endorsing with the findings recorded by the authorities below on this aspect.

17 The second contention of the learned counsel for the petitioners is that the respondent herself refused to receive the rent; therefore, the petition is liable to be dismissed. Per contra, the learned counsel for the respondent submitted that the petitioners have not tendered the admitted rent; therefore, the respondent is justified in refusing to receive the same.

18 It is needless to say that exchange of notices between the parties is the genesis of civil litigation. To put it in a different way, sowing of seed of litigation commences by issuance of a legal notice. The issuance of reply notice and approaching of an appropriate forum are nothing but supplying all the necessary components to grow the seed as a tree. The edifice of civil suit is based on pleadings, which is the bedrock. The pleas taken by the parties, in legal notice and reply notice, are integral part of the pleadings, which are eventually binding on the respective parties. The respondent got issued legal notice dated 17.5.2008 under Section 106 of Transfer of Property Act, under the original of Ex.R.1, directing the petitioners to vacate the petition schedule premises. In the said notice, the respondent clearly mentioned the rent of the petition schedule premises as Rs.4,500/- per month. The petitioners got issued reply notice dated 26.6.2008, under the original of Ex.R.3, taking a specific plea that the rent of the petition schedule premises is only Rs.2,600/- per month, which includes the maintenance charges of Rs.600/- per month. From the initial stage of the litigation, there is a dispute between the parties with regard to the quantum of rent.

19 The respondent filed O.S.No.609 of 2008 on the file of the Junior Civil Judge, City Civil Court, Secunderabad against the petitioners for eviction and recovery of arrears of rent at Rs.4,500/- per month. The civil Court dismissed the said suit by giving a specific finding that the rent of the petition schedule premises is only Rs.2,000/- per month. Ex.P.1 is the certified copy of decree and judgment in O.S.No.609 of 2008. For one reason or the other, the respondent did not choose to file appeal challenging the finding of the civil Court. Thereafter, the petitioners filed R.C.No.117 of 2009

against the respondent under Section 8 of the Act seeking permission of the Rent Control Court to deposit the admitted rent. Ex.P.2 is the certified copy of the petition and Ex.P.6 is the certified copy of the order in R.C.No.117 of 2009. A perusal of Ex.P.6 reveals that the Rent Control Court after affording reasonable opportunity to both parties dismissed the petition. Challenging the order passed in R.C.No.117 of 2009, the petitioners preferred R.A. No.153 of 2012 on the file of the Chief Judge, City Small Causes Court, Hyderabad, and the same was dismissed on merits. A perusal of the record reveals that both parties approached different fora to ventilate their grievances. Of course, both parties were unsuccessful in achieving their respective goals.

20 In the backdrop of the factual scenario, the crucial question that falls for consideration is what the exact rent of the petition schedule premises is. The respondent has taken a plea in the suit as well as in the present R.C. that the rent of the petition schedule premises is Rs.4,500/- per month. On the other hand, the petitioners have taken a specific stand that the monthly rent for the petition schedule premises is Rs.2,600/-, which includes maintenance charges of Rs.600/-. It is to be seen whether the petitioners have offered the admitted rent and the respondent is justified in refusing the same.

21 To substantiate the argument, the learned counsel for the petitioners has drawn the attention of this court to the judgment of Rajasthan High Court in Shri Banshilal v. Shri Pyarelal . As per the principle enunciated in this case, rent does not include the amount paid towards furniture. He further relied on the judgment of the Honble apex Court in Manali Ramakrishna Mudaliar v. State of Madras wherein the Honble apex Court held that electric charges cannot form part of rent.

22 At the earliest point of time, the petitioners have taken a specific plea in Ex.R.3 reply notice that the rent of the petition schedule premises is Rs.2,600/- per month. The material available on record falls short to establish that the rent of the petition schedule premises is Rs.4,500/- per month as claimed by the respondent. In the counter, the petitioners have taken a specific plea that the rent of the petition schedule premises was enhanced to Rs.2,000/- from Rs.1,000/- per month. The petitioners used to pay Rs.600/- per month towards maintenance charges to the society. As per the pleadings in the counter, the petitioners have to pay Rs.2,600/- per month to the respondent.

23 The respondent filed O.S.No.609 of 2008 wherein the petitioners filed written statement by taking a specific plea that they used to pay an amount of Rs.2,000/- per month towards rent to the respondent and Rs.600/- towards maintenance charges to the society. It is not in dispute that in R.C. No.117 of 2009, second petitioner examined herself as P.W.1. It is not out of place to extract hereunder the relevant portion of the cross examination of P.W.1:

> It is true that, I have to pay a sum of Rs.2,600/- every month to the respondent..... It is true, I admit that I have to pay Rs.600/- for maintenance every month.

24 A perusal of the above portion clearly reveals that second petitioner made an admission on oath, which is binding on her. The admission made by second petitioner is substantial piece of evidence. Therefore, I have no hesitation to hold that the petitioners have to pay an amount of Rs.2,600/- per month to the respondent towards rent and maintenance charges. 25 The learned counsel for the

petitioners submitted that the monthly rent of the petition schedule premises, even as per the finding recorded in O.S.No.609 of 2008, is Rs.2,000/- and not Rs.2,600/-. A perusal of the judgment in O.S.No.609 of 2008 clearly reveals that the civil Court has given a specific finding that the rent is Rs.2,000/- per month. There is no quarrel with regard to the proposition of law submitted by the learned counsel for the petitioners that the finding recorded by the civil Court is binding on the Rent Control Court. The finding recorded in O.S.No.609 of 2008 is only with regard to the rent. Since the maintenance charges was not the subject matter in O.S.No.609 of 2008, no specific finding was given by the civil Court on that point. In such circumstances, the rigour of the principle of res judicata, as enunciated under Section 11 of CPC, is not applicable to the facts of the case on hand so far as the issue of maintenance charges is concerned. Therefore, I am of the considered view that the Rent Control Court has not committed any mistake in considering the maintenance charges also in order to arrive at a conclusion on the point as to whether the petitioners committed wilful default in payment of the rent.

26 A perusal of Exs.R.7, R.8, R.9 to R.19 and R.20 clearly shows that the petitioners made attempts to pay the rent at the rate of Rs.2,000/- per month to the respondent for the months of June 2008 to September 2008, which the respondent refused. It is not the case of the petitioners that they sent money order or demand draft for Rs.2,600/- per month to the respondent. The core point that falls for consideration is whether the refusal of rent of Rs.2,000/- per month by the respondent itself legally prevent or estop her from taking the plea that the petitioners committed wilful default in payment of the rent. Admittedly, the petitioners have not paid the maintenance charges of Rs.600/- per month to the society. On the other hand, the testimony of R.W.1 clearly reveals that the respondent used to pay maintenance charges to the society every month for all these years. Whether the act of the petitioners in sending rent at Rs.2,000/- per month to the respondent will fall outside the purview of wilful default, as enumerated under Clause (i) of Sub-section (2) of Section 10 of the Act, is to be considered by this Court.

27 The learned counsel for the respondent submitted that the petitioners have not taken any steps to pay the rent even after the dismissal of R.A.No.153 of 2012. He further submitted that if really the petitioners had the intention to pay the rent, why they did not file an application under Section 11(3) of the Act in R.C.No.69 of 2011? The record clearly shows that the petitioners did not pay any amount during the pendency of the proceedings. 28 At this juncture, let me consider whether the word rent encompasses in it the maintenance and other incidental charges or not. The word rent is not defined under the Act. One has to fall back to Section 105 of the Transfer of Property Act to ascertain what are the components covered under the word rent. In order to appreciate the rival contentions, this Court is placing reliance on the following decisions:

> Karnani Properties Ltd. V. Augustin , wherein the Honble apex Court held at para No.9 as follows:
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> 9. If, as already indicated, the term it, rent is comprehensive enough to include all payments agreed by the tenant to be paid to his landlord for the use and occupation not only of the building and its appurtenances but also of furnishings, electric installations and other amenities agreed between the parties to be provided by and at

> the cost of the land-lord, the conclusion is irresistible that all that is included in the term "rent" is within the purview of the Act and the Rent Controller and other authorities had the power to control the same.

Sewa International Fasions v. Suman Kathpalia , wherein the Delhi High Court held at para Nos.6 to 8 as follows:

> 6. In order to appreciate the contention of the learned counsel appearing for the parties, it is necessary to ascertain as to what constitutes rent. The expression 'rent' is not defined under the Delhi Rent Control Act. However, as to what constitutes rent could be found out from the provisions of Section 105 of the Transfer of Property Act wherein the word 'rent' is defined. It states that money, shares, services or other thing to be so rendered is called the 'rent'. Thus, apart from the money which is paid as rent, if any service is rendered and any payment is made in respect of the same, the same is also to be included within the definition of 'rent'. .
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> 7. The question, therefore, which arises for my consideration, at this stage is whether payment agreed to be paid by the petitioner to the respondents towards maintenance charges could be included within the ambit of the expression 'rent'. Counsel for the petitioner states that the same cannot be included as under the lease deed what would constitute rent was specified which excluded the maintenance charges. I, however, cannot agree with the learned counsel appearing for the petitioner for the simple reason that under clause (1) of the said lease deed, the parties agreed to pay a particular sum towards the use and occupation of the building which is inclusive of all taxes, rates and charges, but exclusive of the maintenance charges which were also required to be paid by the petitioner to the respondents in accordance with the stipulations in the lease deed. As it is disclosed from the records, the petitioner was paying a sum of Rs.538/- to the respondents towards the maintenance charges in respect of the aforesaid premises. Those maintenance charges were payable for the use and occupation of the premises and for the amenities provided by the landlord.
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> 8. It is an established proposition of law that rent includes not only what is originally described as rent in agreement between a landlord and tenant but also those payment which is made for the amenities provided by the landlord under the agreement between him and the tenant.

The payment made towards the maintenance charges of the premises rented out and also for providing amenities to the tenant would also come within the expression 'rent' as rent includes all payments agreed to be paid by the tenant to his landlord for the use and occupation not only of the building but also of furnishing, electric installations and other amenities.

29 As per the principle enunciated in the cases cited supra, rent includes the maintenance charges and all the payments agreed to be paid by tenant for use and occupation of the petition schedule premises. Thus, the admitted rent is Rs.2,600/- per month and the respondent is justified in

refusing to receive Rs.2,000/- as offered by the petitioners. The material placed before the Court clinchingly establishes that the petitioners committed wilful default in payment of the rent at the rate of Rs.2,600/- per month for a period of 37 months commencing from June 2008.

30 The Rent Control Court as well as the Appellate Authority have considered, in various proceedings between the parties, and arrived at the conclusion that the rent of the petition schedule premises is Rs.2,600/- per month. The finding recorded by the authorities below that the petitioners committed default in payment of the rent for a period of 37 months with effect from June 2008 is supported by oral and documentary evidence available on record. I am fully endorsing the finding recorded by the authorities below on this aspect.

31 The learned counsel for the petitioners submitted that establishment of bona fide requirement on the part of the landlord/landlady is sine qua non even if the petition is filed under Section 10-C(1)(a) and (c) of the Act. He further submitted that Section 14-D of the Delhi Rent Control Act is pari materia to Section 10-C(1) of the Act.

32 To substantiate the argument, the learned counsel for the petitioners has drawn the attention of this court to the following decision:

> M/s. Rahabhar Productions Pvt. Ltd v. Rajendrra K. Tandon , wherein the Honble apex Court held at para Nos.28 and 34 as follows:
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> 28. In Surjit Singh Kalra vs. Union of India, (1991) 2 SCC 87, a Three-Judge Bench of this Court laid down as under:-
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> "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 Section 14-B to 14-D does not absolve the landlord from proving that his requirement is bona fide or the 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."
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> 34. The decision in Surjit Singh Kalra's case (supra) was considered by this Court in Anand Swaroop Vohra vs. Bhim Sen Bahri and another , (1994) 5 SCC 372 and was followed explaining, in the process, an earlier decision in Narain Kahmman vs. Pradumar Kumar Jain, (1985) 1 SCC 1, by observing that under Section 14A, the right to recover immediate possession can be exercised by the landlord as soon as he is served with a notice to vacate the government accommodation allotted to him. In such proceedings, the landlord, in view of the language employed in that Section, has not to show that the premises are required for his own residence. On the contrary, the right available to a landlord under Section 14B to 14D is dependent upon the requirement to show that the premises shall be occupied by the landlord for his own residence. The Court did not, therefore, digress from the view propounded in Surjit

> Singh Kalra's case (supra) that while the landlord has to show and establish his bona fide need, the tenant can plead and prove that the premises were not bona fide required by the landlord.

33 As per the principle enunciated in the case cited supra, the landlord has to prove that the premises in question is required for his/her bona fide purpose. The crucial question that falls for consideration is whether Section 10-C(1) of the Act is pari materia to Section 14-D of the Delhi Rent Control Act or not. The Legislature in its wisdom and foresight amended the Act, by Act 17 of 2005, introducing Sections 10A to 10C, and facilitated certain categories of landlords/landladies to evict the tenants without resorting to Section 10 of the old Act. The Court has to interpret the provisions of the Act to achieve the avowed object for which the Act was enacted. The Court has to keep in mind the underlying object of the Act while interpreting each and every provision by letter and spirit. Under Section 10(3)(a) of the Act, the landlord is not entitled to evict the tenant without proving the bona fide requirement. The word bona fide requirement is not found place in Sections 10-A to 10-C of the Act. The Legislature intentionally did not use the word, bona fide requirement as contemplated under Section 10 of the Act. If the landlord is forced to prove bona fide requirement, as contemplated under Section 10(3)(a) of the Act, the purpose of Act 17 of 2005 will be defeated or frustrated. The Court shall not interpret the provisions of the Act to negate the very object of the enactment. On the other hand, the Court has to interpret the provisions of an Act in such a way to achieve its object. If the intention of the Legislature is that the landlord has to prove the bona fide requirement, the same might have been reflected in Sections 10-A or 10-C of the Act. Non-mentioning of the word bona fide requirement in Sections 10-A or 10-C of the Act clearly indicates the intention of the Legislature that a person who files petition under Sections 10-A to 10-C of the Act need not prove the bona fide requirement. 34 In order to appreciate the contention of the learned counsel for the petitioners, it is apposite to refer relevant provisions of the Act and Delhi Rent Control Act, which reads as follows:

> Delhi Rent Control Act 14D. Right to recover immediate possession of premises to accrue to a widow. -
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> A.P. Rent Control Act 10-C. Right to recover immediate possession of premises to accrue to a widow: -
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> (1) Where the landlord is a widow and the premises let out by her, or by her husband, are required by her for her own residence, she may apply to the Controller for recovering the immediate possession of such premises.
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> (2) Where the landlord referred to in sub-section (1) has let out more than one premises, it shall be open to her to make an application under that sub-section in respect of any one of the premises chosen by her.
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> (1) Where the landlord is-
>
> a) A widow and the premises let out by her, or by

her husband;
b) X x x x x x
c) A person who is of the age of sixty five years or more and the premises let out by him, or her;
Explanation II: The right to recover possession under this section shall be exercisable only once in respect of each for residential and for non-residential use.

Sub-section (1) of Section 14-D of the Delhi Rent Control Act is similar to Clause (a) to Sub-section (1) of Section 10-C of the Act.

Both these provisions enable the landlady, who is a widow, to file application under Section 14-D(1) of the Delhi Rent Control Act or Section 10-C(1)(a) of the Act, as the case may be. 35 Sub-section (2) of Section 14-D of the Delhi Rent Control Act is, to certain extent, similar to Explanation II to Sub-section (1) of Section 10-C of the Act. As per the provisions of the A.P. Rent Control Act, the landlord can exercise the right to recover possession only once in respect of each residential and non- residential premises. Under the Delhi Rent Control Act, if the landlord has number of houses, he can exercise the option under Section 14-D in respect of one building only. When compared to Delhi Rent Control Act, the A.P. Rent Control Act is more beneficial to the landlords. Sub-section (2) of Section 14-D of the Delhi Rent Control Act is not mutatis mutandis to Explanation II to Sub-section (1) of Section 10-C of the Act. In order to appreciate the contention of the learned counsel for the petitioners, it is not out of place to extract hereunder the relevant Sub-sections of Section 25B of the Delhi Rent Control Act:

(4) The tenant on whom the summons is duly served (whether in the ordinary way or by registered post) in the form specified in the Third Schedule shall not contest the prayer for eviction from the premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided; and in default of his appearance 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 applicant shall be entitled to an order for eviction on the ground aforesaid.

(6) Where leave is granted to the tenant to contest the application, the Controller shall commence the hearing of the application as early as practicable. (8) No appeal or second appeal shall lie against an order for the recovery of possession of any premises made by the Controller in accordance with the procedure specified in this section.

36 A perusal of the above Sub-sections clearly indicates that the tenant is not entitled to contest the petition filed by the landlord under Section 14 or Sections 14-A to 14-D of the Delhi Rent Control Act

without obtaining leave. The Rent Control Court may or may not grant leave to the tenant to contest the matter. If the Rent Control Court satisfies that the leave petition does not disclose any cause much less valid cause, the same is liable to be dismissed. No appeal lies against the order passed by the Rent Control Court in view of Sub-section (8) of Section 25-B of the Delhi Rent Control Act. However, the aggrieved tenant can prefer revision against the order of the Rent Control Court. Suffice it to say, the scope of appeal is wider than the revision. In certain circumstances only, the revisional Court can interfere with the impugned order and set aside the same. In an appeal, the appellate Court can reappraise the oral and documentary evidence afresh and arrive to its own conclusion. Section 25-B of the Delhi Rent Control Act, in one way, safeguards the interests of the landlord. Under the A.P. Rent Control Act, there is no such provision corresponding to Section 25-B of the Delhi Rent Control Act. There is no clause in Section 14-D of the Delhi Rent Control Act enabling the landlords, who crossed the age of 65 years, to file the petition under a special category unlike in Section 10-C(1)(c) of the Act. Whether the petition is filed under Section 10(2) of the old Act or Sections 10-A to 10-C of the amended Act, the Rent Control Court has to follow the same procedure. There is no provision under the A.P. Rent Control Act to resort to summary trial even though the petition is filed under Sections 10-A to 10-C of the Act. Taking into consideration the provisions of both the Acts, this Court is of the considered view that Section 10-C(1) of the Act is not pari materia to Section 14-D of the Delhi Rent Control Act.

37 The learned counsel for the petitioners further submitted that by the time of letting out the petition schedule premises the respondent is a widow, therefore, she is not legally entitled to file the petition taking aid of Section 10-C of the Act. It is not in dispute that the respondent let out the petition schedule premises to the petitioners in the year 2002. Sections 10-A to 10-C of the Act came into force with effect from 28.5.2005. Had it been the intention of the Legislature, it might have articulated Section 10-C in such a manner excluding landlady, who lost her husband, on or before 27.5.2005, from its purview. A perusal of Section 10-C(1)(a) of the Act clearly demonstrates that the landlady must be a widow by the time of filing of petition under Section 10-C(1)(a) of the Act. Whether the landlady is a widow or not by the time of entering into rental agreement, has no relevancy, in view of the language employed in Section 10-C of the Act.

38 The learned counsel for the petitioners submitted that the respondent, being a widow, by the time of letting out the premises to the petitioners, has expressly waived her right to file petition under Section 10-C of the Act. In order to resolve the issue, this court is placing reliance on the following decision:

> Krishna Bahadur v. Purna Theatre , wherein the Honble apex Court held at para No.10 as follows:
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> 10. A right can be waived by the party for whose benefit certain requirements or conditions had been provided for by a statute subject to the condition that no public interest is involved therein. Whenever waiver is pleaded it is for the party pleading the same to show that an agreement waiving the right in consideration of some compromise came into being. Statutory right, however, may also be waived by his conduct.

39 The material available on record clearly reveals that by the time of entering into rental agreement between the respondent and the petitioners, no statutory right was accrued in favour of the respondent. Waiver pre-supposes the vesting of a right. When there was no right in favour of the respondent, by the time she entered into the rental agreement with the petitioners in the year 2002, the question of waiver does not arise. The statutory right was accrued in favour of the respondent on 28.5.2005 when Section 10-C of the Act came into force. It is not the case of the petitioners that the respondent by her conduct waived her statutory right on or after 28.5.2005. It is easy to swallow the submission made by the learned counsel for the petitioners in this regard but it is highly difficult to digest the same in view of settled legal provisions and principles. By no stretch of imagination, it can be presumed that the respondent waived her right at any point of time. Therefore, I am of the considered view that the submission of the learned counsel for the petitioners has no legs to stand either on facts or in law.

40 The learned counsel for the respondent submitted that the respondent has taken a specific plea in the petition that she is a widow. The second petitioner, as R.W.1, in the cross examination categorically admitted that the respondent is a widow. By the time of filing of R.C.No.69 of 2001 in the year 2011, the respondent was aged about 78 years. The petitioners are not disputing the age of the respondent. The respondent has satisfied the basic ingredients of Section 10-C (1) (a) and (c) of the Act.

41 By the time of filing of the petition, the respondent was aged about 78 years. By this time the respondent may be aged about 85 years. The respondent approached different fora from 2008 onwards in order to get back the petition schedule premises. This is a classic case which clearly demonstrates the plight of the landladies in general, widow-landladies in particular, who crossed the age of 65 years. The respondent let out the premises to the petitioners, who are her relatives. The relationship, however close and strong, is not an exception to lead to litigation in view of the worth and value of the premises. The respondent let out the premises to the petitioners, with a fond hope, that they being ladies and relatives will help her in old age, in day to day affairs. But the petitioners forced the respondent to move from pillar to pole i.e., civil Court and Rent Control Court in order to secure the petition schedule premises, thereby to enjoy the same with her children and grand children at the fag end of her life. The first petitioner who is also aged about 85 years equally fought the legal battle with the respondent taking aid of her daughter, who is aged about 63 years. The Legislature, taking into consideration the scenario prevailing in the society, visualised the plight of the widows and senior citizens introduced Act 17 of 2005 with an avowed object in order to wipe off their tears.

42 The learned counsel for the petitioners submitted that the respondent is having another apartment, therefore, she is not required the petition schedule premises. The evidence on record clearly reveals that the respondent is having another apartment adjacent to the petition schedule premises. In the petition itself, she categorically stated that she wants to convert two apartments into one and stay along with her children and grandchildren. She further stated that the petition schedule premises is required for her personal use as well as to provide accommodation to her children and grand children. In M/s.Rahabhar Productions Pvt. Ltd (8th cited supra) case, the Honble apex Court held at para No.40 as follows:

> 40. We have also examined the facts set out by the appellant in his affidavit filed before the Rent Controller for leave to defend the present proceedings. The pleas, in our opinion, do not disentitle the landlord from recovering possession of the premises in question particularly when the respondent has clearly set out in his petition that although he owned one more house, he wanted this particular premises for his own need. The choice, and, sufficient reasons in support thereof, having thus been indicated by the respondent, the plea of the appellant about alternative accommodation being available to the landlord cannot be sustained.

43 Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, the submission made by the learned counsel for the petitioners is not sustainable in law.

44 Before parting with the order, keeping in view the backdrop of factual scenario, this Court is forced to observe that it is a matter of common knowledge that persons who crossed 80 years generally feel more comfort if they stay along with their children and grand children under the same roof. Unfortunately, in this case, the respondent was deprived of staying along with her children and grandchildren for want of sufficient and proper accommodation though she is the absolute owner of the petition schedule premises. If she is not in a position to enjoy the premises as she wished, at the fag end of her life, the very purpose of acquiring the property is meaningless. The respondent might have taken lot of pains in order to acquire the property by spending huge amounts. Unfortunately, the respondent was forced to pay maintenance charges of Rs.600/- to the society from 2008 onwards in respect of the petition schedule premises, which is being enjoyed by the petitioners even without paying the rent. If this type of tenants are allowed to squat on the premises, the dual object of the Rent Control Act will be frustrated. In view of the factual scenario prevailing in the society, the landlords are forced to keep the premises vacant or idle instead of letting out to the tenants who will squat on the premises for years together even without paying rent by taking shelter under various provisions of the Tenancy Laws and procrastinating the proceedings as far as possible by approaching different fora, by taking different pleas, sometimes may be false and frivolous. It appears that wise people always prefer to stay in rented premises.

45 It is settled principle of law that the revisional Court shall not lightly interfere with the findings recorded by the authorities below, more particularly, on a concurrent finding of fact. The Rent Control Appellate Authority is the fact finding final authority. The findings recorded by the authorities below are supported by oral and documentary evidence. The authorities have given reasons much less cogent and valid reasons to their findings. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the petitioners that the findings recorded by the authorities below are perverse either on factual or legal aspects. There is no illegality or irregularity or impropriety in the orders passed by the authorities below, warranting interference of this Court by exercising jurisdiction under Section 22 of the Act. 46 For the foregoing discussion, this Court is of the considered view that the Civil Revision Petition lacks merits and bona fides and is liable to be dismissed.

47 In the result, the Civil Revision Petition is dismissed. The petitioners are directed to vacate and handover vacant possession of the petition schedule property to the respondent within a period of three months from today. No order as to costs. Consequently, miscellaneous petitions, if any pending in this Civil Revision Petition shall stand closed.

_____ T.SUNIL CHOWDARY, J.

Date:18.7.2018