

Delhi District Court

Vide This Judgment I Shall Decide ... vs Pooran Lal on 16 May, 2014

Author: Ms. Rachna Lakhanpal

IN THE COURT OF MS. RACHNA TIWARI LAKHANPAL,  
SCJ/RC(WEST), TIS HAZARI COURTS, DELHI

Unique ID No.02401C0043462010

E. No.-07/2010

Shri Gurbachan Singh  
S/o S. Swaran Singh  
R/o C-21, Sharda Puri,  
New Delhi-110005.

Versus

S. Daljeet Singh  
S/o S. Boor Singh  
Shop No.1, C-21, Sharda Puri,  
New Delhi-110005.

Date of institution of the petition

Date of reserving judgment

Date of pronouncement

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:  
:

#### JUDGMENT

1. Vide this judgment I shall decide the eviction petition under section 14(1)(e) r.w.s. 25-B of Delhi Rent Control Act filed by the landlord/petitioner against the tenant/respondent.

2. The brief necessary facts for the disposal of the eviction petition as per the petition are herein as under:-

3. The tenanted premises comprising of a shop was let out to the respondent @ Rs.125/- per month w.e.f. June, 1973 by the father of the petitioner. Subsequently, the rent was increased from time to time and E. No.□07/2010 Page..... 1/25 currently the respondent was paying the rent @ Rs.484/- per month excluding electricity charges. The tenanted shop has been shown in red colour in the site plan attached.

4. It has been further submitted that vide sale deed dated 02.08.1999, the father of the petitioner sold the entire premises i.e. C-21, Sharda Puri, New Delhi in favour of the petitioner. At present, in the tenanted premises, the respondent is carrying on the business of sale of marbles and other stones under the name and style of M/s. R. K. Marble Traders and has 4-5 employees. The rent was lastly increased to Rs.484/- per month which has been paid by the respondent. The petitioner several times orally and lastly vide notice dated 16.11.2009 had called upon the respondent to tender rent in respect of the tenanted premises in favour of the petitioner not in favour of the father of the petitioner as vide sale deed dated 02.08.1999, the father of the petitioner had sold the entire

premises in favour of the petitioner. That notice was duly received by the respondent who sent false and frivolous reply dated 20.11.2009. Thereafter, the petitioner sent rejoinder to legal notice dated 23.12.2009 along with copy of the said sale deed but the respondent failed to pay the rent to the petitioner.

5. It has been further submitted that the petitioner, his father, aged around 75 years old and his son S. Beant Singh, aged about 22 years are together doing the business of selling marble and other stones under the name and style E. No.□07/2010 Page..... 2/25 of M/s. Bachan Dholpur Depot from shop nos.4, 5, 6 & 7 in premises bearing no.C-21, Sharda Puri, New Delhi-110005 as shown in blue colour in the site plan. The shop no.2 and 3 in premises bearing no.C-21, Sharda Puri, New Delhi-110005, as shown in green colour in the site plan, are in occupation of M/s. Radha Madhav Marbles through its proprietor Shri Ramesh Chand and in respect of these two shops, the petitioner had filed the separate eviction petition. The rest of the entire premises is in exclusive occupation of the petitioner from where the petitioner along with his father has been doing his business of selling marbles.

6. In the past years, the son of the petitioner S. Beant Singh also joined the petitioner in the business and thus there is an urgent need for more space as the available space is extremely insufficient. The space in occupation of the petitioner is not adequate for the growing needs of the petitioner as the petitioner intends to expand his business and needs more space for storage and display of marbles particularly since the son of the petitioner has recently joined the petitioner in the business. The said son of the petitioner is dependent upon the petitioner for space for running the business. It is further submitted that with a view to expand the business and beautify the shop and make an area for people to sit, the petitioner is entitled to possession of the tenanted shop. Presently due to paucity of storage space the petitioner is constrained to store his goods on the pavement due to which the petitioner has been challaned by MCD and Delhi Police several times. The customers of the E. No.□07/2010 Page..... 3/25 petitioner have to stand in the open under the sun/rain. The tenanted shop, after vacation by the respondent, when attached to the existing portion shown in blue colour would give the petitioner more space, which is required by the petitioner and would be extremely convenient to the petitioner and customers of the petitioner.

7. It has been further submitted that currently the petitioner, his son and aged father and entire family, which comprises minor children, are surviving solely on the income earned by the petitioner. In case the petitioner gets occupation of the tenanted shop, the petitioner would be able to enhance his income and the family members of the petitioner would be able to lead comfortable life. It is submitted that the tenanted premises in occupation of the respondent is the only suitable premises from where the petitioner could operate his business more efficiently and conveniently.

8. It has been further submitted that the petitioner has no other suitable premises in Delhi. It is submitted that the respondent has been wrongly tendering the rent in favour of the father of the petitioner. Hence, it is prayed that an eviction order in respect of the shop in occupation of the respondent may kindly be passed in favour of the petitioner.

9. The respondent filed leave to defend application and the same was allowed vide order dated 09.12.2010.

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10. Thereafter, the respondent filed written statement stating therein that at present the respondent is paying rent to the petitioner without any default, however, no rent receipt was ever issued by the petitioner or earlier by his father. It has been submitted that since the rate of the rent in the locality had gone high, the intentions of the petitioner and his family became bad and they started threatening to the respondent either to vacate the shop in question or to enhance the rate of rent manifold. The respondent refused to do so, therefore, the petitioner and father of the petitioner in collusion and connivance with the local police started harassing and humiliating the respondent by all means. Hence, the respondent filed a suit for permanent injunction against the petitioner's father as well as MCD and police authorities, which was disposed of by Ld. Civil Judge on the basis of undertaking given by the father of the petitioner not to take forcible possession from the respondent or dispossess the respondent. Thereafter, the father of the petitioner blocked the public road in front of the shop of the respondent by putting marbles. The father of the petitioner also filed a civil suit for permanent injunction against the respondent by raising false and frivolous allegations that the respondent has encroached upon the government land by keeping marbles etc. which was dismissed on 15.10.2008. Various police complaints were filed alleging criminal intimidation against the petitioner & alleging that various efforts of forcible possession were made. The petitioner sent the legal notices dated 16.11.2009 and 25.11.2009 to the respondent with regard to claiming his ownership of the tenanted premises and the same were replied by the E. No.□07/2010 Page..... 5/25 respondent on 20.11.2009 and 11.12.2009 respectively. Thereafter, the respondent has been regularly paying rent to the petitioner.

11. It is submitted in written statement that the respondent is the sole earning member of his family and his family is dependent upon him and the tenanted premises for their livelihood. The respondent is having no other commercial property to run his business except this tenanted premises. It was further submitted that only son of the respondent Master Bablu is suffering from fits and is unable to support the work of the respondent.

12. It has been further submitted that the petitioner is not requiring the tenanted premises for his bonafide requirement but for the purpose to get the same evicted and to earn higher rental income from that premises. As per the respondent, the petitioner is also having two other premises (shown red in site plan) bearing no. Shop No.C-17 and C-18, Sharda Puri, Ring Road, Delhi, near to the suit property and these two shops are also under the same name and style of M/s. Bachan Dholpur Depot. The third adjoining shop bearing no.C-19, Sharda Puri is also owned by the petitioner and the same is given on rent to another person namely S. Pukhraj Joshi who is doing business under the name and style of M/s. Mateshwari Kota Stone. The petitioner is also having three industrial plots bearing no.CN-52, CN-53 and CN-49, Shiv Vihar, Nilothi Extension, Delhi. The petitioner is having residential accommodation above his shops shown yellow in the suit property and he has E. No.□07/2010 Page..... 6/25 built a Gurdwara and therefore, he is not lacking any space.

13. It has also been submitted that the petitioner and his family were also having four different shops i.e. Shop no.7, Shop No.6, Shop No.5 and Shop No.4, Sharda Puri, Delhi. It is denied that the respondent had failed to pay nor tendered rent in favour of the petitioner. It is denied that since the past years the son of the petitioner S. Beant Singh has also joined the petitioner in his business and premises bearing no.C-21, Sharda Puri, Delhi is not adequate for the growing needs of the petitioner. All the other allegations as made in the eviction petition are denied. Dismissal of the petition is prayed by the respondent on the ground that the requirement of the petitioner is not bonafide.

14. Thereafter, both the parties lead their evidences. In the evidence, the petitioner examined himself as PW-1. This witness tendered his evidence by way of affidavit Ex.P1. This witness relied on the following documents.

Site plan as Ex.PW-1/1.

Notice dated 16.11.2009 as Ex.PW-1/2.

Reply dated 20.11.2009 to the notice as Ex.PW-1/3.

Rejoinder to the notice dated 23.12.2009 as Ex.PW-1/4. The documents of Central Sales Tax as Ex.PW-1/6 and Ex.PW-1/7. Permit from transport department as Ex.PW-1/8.

Copies of challan as Ex.PW-1/9 (Colly).

Copy of title documents of plot in Nilothi as Ex.PW-/10. (Colly).

E. No.□07/2010 Page..... 7/25 Copy of sale deed dated 02.08.1999 as Mark X.

Copies of relevant receipts dated 22.02.2010 as Mark Y.

15. On the other hand, the respondent examined himself as RW-1. This witness tendered his evidence by way of affidavit Ex.RW-1/A. This witness relied on the following documents.

Copy of the undertaking given by the father of the petitioner & as well as by the petitioner in suit no.362/2003 as Ex.RW-1/1.

Certified copy of order dated 15.10.2008 in the case no.1078/06/03 filed by the father of the petitioner inter alia against the respondent and MCD as Ex.RW-1/3.

Certified copy of order dated 29.07.2010 in the suit no.122/2009 filed by the respondent against the father of the petitioner, MCD and others as Ex.RW-1/4.

Copy of complaints lodged by the respondent against the petitioner and his family members dated 09.06.2003, 26.08.2003 as Ex.RW-1/5 (Colly).

Postal receipts of reply as Ex.RW-1/7.

Certified copy of complaints by Ramesh Chand as Ex.RW-1/8 (Colly). Certified copy of charge sheet & proceedings in FIR No.312/2000 as Ex.RW-1/9.

Copy of site plan as Ex.RW-1/12.

Photographs as Ex.RW-1/13 (Colly).

Copy of proceedings of kalandra against the order dated 12.11.2009 as E. No.□07/2010 Page..... 8/25 Mark A.

Medical papers of the treatment of defendant's son as Mark B. Copy of reply of notice dated 11.12.2009 by the respondent as Mark C.

16. I have heard ld. counsel for the parties and perused the record carefully.

17. Now the issues remains to be decided before this court is whether the landlord is liable to get the tenant evicted and get possession of the tenanted premises for his bonafide requirement.

18. Although it was disputed by the respondent that the petitioner did not disclose the fact of his purchase of the tenanted premises from his father and it was only in the year 2009, the respondent was informed and thereafter, he started tendering rent to the petitioner instead of father of the petitioner. This fact was not disclosed even in the year 2004, when a suit was filed by the petitioner's father showing him as landlord.

19. However, as far as this contention is concerned, I do not deem it fit to give any finding on this aspect reason being that the respondent himself admitted that he had started giving rent to the petitioner after receiving notice and further because of the reason that copy of the certified sale deed was put on the record and was not disputed by the respondent and hence proved. Therefore, I need not require to decide the controversy of the tenant and E. No.□07/2010 Page..... 9/25 landlord relationship in the present case.

20. Before proceeding further, I feel it expedient to discuss the ingredients of section 14(1)(e) of DRC Act. Essential ingredients for attracting the proviso (e) of section 14 (1) of DRC Act are herein as under:-

21. "(a) The premises are bona fide required by the landlord either for himself or for his family member.

(b) The landlord or the family member has no other reasonable suitable accommodation.

These twin ingredients are to be satisfied conjunctively in order to attract the provisions of Section 14(1)(e) and the absence of even one of the said ingredients clearly makes the said provision in

applicable.

28. The satisfaction of the two requirements bona fide need and no reasonably suitable accommodation has been time and again emphasized by the Hon'ble Supreme Court of India in several cases and more recently in the case titled as Deena Nath Vs. Pooran Lal, V (2001) SLT 195=(2001) 5 SCC 705, wherein the Supreme Court observed thus:

22. "The Legislature in enacting the provision has taken ample care to avoid any arbitrary or whimsical action of a landlord to evict his tenant. The statutory mandate is that there must be first a requirement by the landlord which means that it is not a mere whim or a fanciful desire by him; further, such requirement must be bona fide which is intended to avoid the mere whim or desire. The bona fide requirement must be in praesenti and must be manifested in actual need E. No.□07/2010 Page..... 10/25 which would evidence the Court that it is not a mere fanciful or whimsical desire. The legislative intent is made further clear by making the provision that the landlord has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned. This requirement lays stress that the need is pressing and there is no reasonably suitable alternative for the landlord but to get the tenant evicted from the accommodation. Thus, the legislative mandate being clear and unambiguous, the Court is duty-bound to examine not merely the requirement of the landlord as pleaded in the eviction petition but also whether any other reasonably suitable non-residential accommodation in his occupation in the city/town is available. The judgment/order of the Court/authority for eviction of a tenant which does not show that the Court/authority has applied its mind to these statutory requirements cannot be sustained and the superior Court will be justified in upsetting such judgment/order in appeal/second appeal/revision. Bona fide requirement, on a first look, appears to be a question of fact. But in recording a finding on the question the Court has to bear in mind the statutory mandate incorporated in Section 12(1)(f). If it is found that the Court has not applied the statutory provisions to the evidence on record in its proper perspective then the finding regarding bona fide requirement would cease to be a mere finding of fact, for such erroneous finding illegally arrived at would vitiate the entire judgment."

23. Now the question arises what constitutes a "reasonably suitable accommodation". The wordings reasonably suitable accommodation are to be interpreted by looking at from the common man's perspective as to what in the E. No.□07/2010 Page..... 11/25 given circumstances can be said a reasonably suitable accommodation. It is essentially a question of fact.

24. In the present eviction petition, the case projected by the petitioner/landlord is that he along with his father had been doing the business of selling marbles and other stones from the shop no.4, 5, 6 & 7 of property bearing no.C-21, Sharda Puri, Delhi. In the past years, the son of the petitioner S. Beant Singh had also joined the petitioner in the business and thus there was an urgent need for more space and the available space was extremely insufficient. The premises from where he was running his business is not adequate for the growing needs of the petitioner as the petitioner intends to expand his business and needs more space for storage and display particularly since the son of the petitioner has recently joined the petitioner in the business. The said son of the petitioner is dependent upon the petitioner for providing space for running the business and due to inadequate space, the petitioner cannot expand his business. Presently due to paucity of storage space, the

petitioner was constrained to store his goods on the pavement due to which the petitioner was challaned by MCD and Delhi Police several times. Further, he wanted to beautify his shop and make the area for sitting of the customers of the shop. The petitioner, his son and aged father and other minor children were surviving solely on the income earned by the petitioner and the petitioner had no other suitable premises in Delhi.

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25. The case of the landlord is based upon his bonafide requirement for the reason that he was lacking storage space and wanted to expand business and wanted to beautify the shop. However in reply to leave to defend application, it was admitted by the petitioner that he was having property bearing shops no.C-17 and C-18 ad-measuring 133 Sq. Yards and 150 Sq. Yards. This fact was not disclosed at all in the eviction petition. The main thrust of the petitioner was that he had inadequate space for storage and he wanted space for storing the marbles but very cleverly he tried to hide the premises available to him being used by him for storage of marbles. It was not the case in the eviction petition that despite availability of the premises bearing Shops no.C-17 and C-18, he was lacking of space for storage of goods. Not only this, he was already having 120 Sq. Yards area under him and area of the tenanted premises is 10 Sq. Yards. I fail to understand that how could such a small area would help him solving his problem of storage of marbles which requires bigger space. Even otherwise, by not disclosing the premises bearing shops no.C-17 and C-18 currently being used by him as godown for storage of marbles in the eviction petition, an adverse inference can be drawn against the landlord/petitioner.

26. The petitioner clearly admitted in his cross examination that he was using the basement and ground floor of C-17 and basement of C-18. In the rejoinder, it was submitted that he was using ground floor of C-18 and basement and ground floor of C-17. Be that as it may, two premises ad-

E. No.□07/2010 Page..... 13/25 measuring 133 Sq. Yards and 150 Sq. Yards were being used by him for the purpose of storage of marbles and in the eviction petition, it was projected that he was lacking storage space and having no other suitable premises.

27. The petitioner has relied upon the judgment cited as (2005) 8 SCC 252 wherein it was held that if the son of the landlord wants to expand the business then it cannot be said that need is sham one. It was also held in that case that normal rules of rights and obligation of the parties are to be determined from the date of the petition and subsequent event can be taken into consideration provided the events are of such a nature and dimension as to completely eclipse the need and make it loose significance altogether.

28. The petitioner has further relied upon the judgment cited as AIR 2002 SC 2256 wherein requirement of landlord of the tenanted premises for user as office of his Chartered Account's son was held to be bonafide requirement for his own use.

29. The petitioner has further relied upon the judgment cited as AIR 2000 SC 534 wherein it was held that when the landlord stated in evidence that he owned many shops and houses but none was

vacant and the suit premises was most suitable for his business, his requirement was bonafide.

30. He further relied upon the case titled as Labhu Lal Vs. Sandhya E. No.□07/2010 Page..... 14/25 Gupta decided by Hon'ble Delhi High Court in RCR No.205 of 2010 on 28.09.2010 wherein it was held that even if the children of landlord were running clinic in the rear portion of the suit premises and having independent source of income but they were dependent upon the landlord for requirement of premises for the purpose of expansion of clinic.

31. The petitioner has further relied upon the judgment cited as AIR 1999 SC 100 wherein it was held that when the other contentions of clause of section 14(1)(e) of DRC Act are specified and the landlord shows a prima facie, it is upon the Rent Controller to draw the presumption that the requirement of the landlord is bonafide.

32. I have perused all judgments as mentioned above and relied upon by the petitioner. I am not in disagreement with the case laws relied upon by the petitioner. Hence, position therefore emerges is that there must be a bonafide need of the landlord for occupation of the tenanted premises for himself or his family members and further it must be shown that landlord has no other reasonable suitable accommodation.

33. In the present case in hand, the tenant had pointed out that the landlord had three other reasonable suitable premises which were not disclosed by the landlord. In the petition, the petitioner had mentioned that he has no other reasonably suitable accommodation in Delhi. But in the replication to the E. No.□07/2010 Page..... 15/25 written statement, the landlord admitted having availability of plots at Nilothi and premises at C-17 and C-18. From the photographs Ex.PW-1/13 (Colly) it is apparent that property available at Nilothi are plots and landlord is running his business at Rajouri Garden which is a marble market and it will be very inconvenient to him to store his marbles at a far away place. Hence, the premises at Nilothi is not reasonable suitable accommodation. But, as far as premises available to him at C-17 and C-18 are concerned, it was the case of the landlord that he was using that for residential purpose not for commercial use. But, interestingly, side by side he admitted in sub para (i) of para 17 of his replication that he was using basement and ground floor of C-17 and basement of property no.C-18 as godown which is his residence, due to lack of space, causing inconvenience to his family members as part of space of his residence has been used as godown. He admitted in his cross examination that on one entire floor of the property he has built up a Gurudwara, that itself signifies that he was not lacking space for residence of his family members.

34. In his cross examination, he clearly admitted that he was using ground floor and basement for storing of marbles as godown that itself shows that he had reasonable suitable accommodation available with him which was not disclosed by him in the eviction petition. In the replication, he admitted the use of part of C-17-18 as godown for storing marbles submitting that the same is not reasonably suitable area.

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35. In any particular case, some premises may not be a reasonably suitable accommodation as the same may be inconvenient for the landlord to adjust or fit or put him to hardship but in another case it may act as a reasonable suitable accommodation. But one thing is certain which is that the mere denial by the landlord of a particular premise to be categorized as existing accommodation as not reasonably suitable accommodation cannot be said to be a sole ground to determine a reasonably suitable accommodation. It is equally true that the tenant cannot insist that the particular place/premise can be reasonably suitable accommodation when as a matter of fact it is not.

36. It has to be seen from the eyes of common person's prudence and a question should be asked as to whether in the particular case a person has a reasonably suitable accommodation or not to reside or to carry on business. If the answer comes in affirmative, then no matter what the landlord says in order to evict the tenant that the provisions of Section 14(1)(e) of the Act does not get attracted. If the answer comes in negative, then no matter what the tenant states to refute the reasonableness and suitability of the accommodation, the eviction has to follow.

37. There are collective factors which aids to the determination of the reasonableness and suitability of the accommodation include the financial status of the landlord which will help in understanding what can be his reasonable requirement, proximity of the required premises with the existing E. No.□07/2010 Page..... 17/25 accommodation, whether, it is required by the landlord or his family members, the availability of the other properties with the landlord within the same location or equivalent place, in the case of commercial premises the operation of the business by the other persons in the similar area or premises of measurement of the tenanted premises. All these factors are merely inclusive and not exhaustive which may enable to Court to arrive at the finding as to what can constitute the reasonably suitable accommodation.

38. In view of the above discussion, it is clear that there cannot be any straitjacket formula to determine what can be reasonably accommodation available with the landlord and it cannot certainly depend upon the demands of the landlord only. Therefore, one cannot really say that one proposition which may hold good in one case can be equally applied to another case with equal strength without seeing the difference in the facts of the case.

39. As I have discussed above that the reasonableness and suitability of the accommodation is a question of fact and has to be seen on case to case basis, therefore, the proposition that the ground floor is always a reasonable accommodation than the first floor or the basement or main road is, cannot be an absolute proposition. This has to be seen on case to case basis as to in which case a basement is not reasonable accommodation available with the landlord and thus ground floor is required and in which case the bigger space can act as a reasonable accommodation.

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40. Coming back to the facts of the present case in the eviction petition, it was projected by the landlord that due to paucity of storage space, he was constrained to store his marbles on pavement and due to which the petitioner has been challaned by MCD and Delhi Police several times. From the concealment of landlord about space for storage available to him, this ground of storing goods at

pavement does not at all seems to be bonafide.

41. Further, from the evidences of the parties, it is evident that there is history of litigations between the parties and admittedly in the case bearing no. 122/2009, Ex.RW-1/4, the suit was decreed in favour of the tenant and the petitioner's father was directed to remove the marbles and goods put in front of the tenanted premises. A bare perusal of Ex.RW-1/3, Ex.RW-1/4 and Ex.RW-1/5 shows a history of filing cases, complaints against each other. This series of history of previous litigations also casts some doubt upon the bonafide requirement of space for storing the goods. It was not the case of the petitioner that despite having availability of the space of shops no.C-17 and C-18, he was still facing insufficiency of the space.

42. I am not in disagreement with the proposition of law that a tenant cannot dictate his own terms regarding the needs of the landlord but the question is not merely of the tenant dictating the terms to the landlord. The question is of the availability of the alternative reasonable and suitable E. No.□07/2010 Page..... 19/25 accommodation. If the tenant is successful in demonstrating that there exists an alternative reasonably suitable accommodation available with the landlord, then it cannot be termed as the tenant dictating the need of the landlord. This is due to the reason if there is a requirement in law that the landlord should not have the other reasonable accommodation for the purpose of attracting Section 14(1)(e) of the Act, the tenant is bound to take the plea that there exists an alternative reasonable accommodation. It is upon the Court to accept the plea or reject the same. But the same cannot be brushed aside by stating that the tenant cannot dictate the need unless the stand of the tenant is highly unreasonable.

43. It is not the thumb rule that in every case the landlord always is the best judge and the Court is helpless by not scrutinizing the stand of the tenant while testing the reasonableness and suitability of the alternative accommodation. Actually it depends upon the case to case basis. The Courts have otherwise also held consistently that even though the landlord is the best judge to decide his needs and he cannot be compelled by the tenant to accommodate at the place which is lesser in any way than the place which is sought to be evicted, still the Court would examine the reasonableness and suitability of the existing accommodation by weighing what is available with the landlord vis a vis the plea of the tenant. The landlord cannot urge that he is an arbiter of his needs. The required satisfaction must be done objectively and cannot be left entirely to the subjective will or mind of the landlord.

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44. In view of the above, in the present case the landlord has not disputed the site plan filed by the respondent, in fact upon relying on this site plan, he has cross examined the tenant as well. Hence, the site plan Ex.RW-2/12 shows that property bearing no. C-17 and C-18 are in the adjacent Gali that is not far off from their showroom, so it cannot be at all called that it was not reasonable suitable accommodation for storing the marbles and goods. Thus, in the event of evicting a tenant who is earning his livelihood from a commercial place, upon the basis of personal requirement such as beautifying or storing i.e. on the ground of bona fide personal requirement, the Court must take a precautions approach. While deciding the question of genuineness of the need or availability of

alternative accommodation, the Court must apply its judicial mind rather than merely reiterating the theorem based principle that the landlord is the best judge to decide his need. In that way, the test for evaluating the eviction of commercial properties on account of bona fide need is slightly distinct and more stringent than that of the one relating to residential premises. The Court should weigh the competing rights to livelihood of both the landlord and tenant and adopt a balanced approach. Where genuineness of the need or availability of the alternative commercial premises is doubtful, evicting the tenant would be whittling down the entire policy being the rent control legislation, which is still the law for the time being in force.

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45. In this case, although premises bearing shops no.C-17 and C-18 are in the adjacent streets and not on the main Ring Road but the said fact has to be seen in the light of prevailing circumstances, position existing in the market, measurement of available space & the tenanted premises, prominence of the area coupled with legal permissibility to carry on the business at the other premises. It is not the case of the landlord that use of godown is not permissible in property no. C-17 and C-18 and nowhere it has been so projected by the landlord.

46. Further, in his case, the petitioner has deposed in the affidavit that it was a matter of record that basement and the ground floor of C-17 and basement of C-18 were being used as godown for storing his stocks of marbles and stones and the same was necessitated due to lack of accommodation available with the petitioner at C-21, which is causing inconvenience to the petitioner and his family members as the residential premises of the petitioner is being partly used as godown and he is having less space for his residence. I find no force in this plea of the petitioner that as the residential premises is being used for godown purpose, it is causing inconvenience to his family members because of the reason that it is an admitted fact of the landlord that at one entire floor of his residential premises, he has built up a Gurudwara. That indicates that he was not lacking space for residence of his family members. Further, the petitioner did not mention the availability of godown at his other premises in the eviction petition and such a big concealment cannot be E. No.□07/2010 Page..... 22/25 brushed aside just by submitting in the replication, being matter of record that the properties are being used as godown.

47. Further, the measurements of C-17 and C-18 are 133 Sq. Yards and 150 Sq. Yards and the same are being used for storing marbles and it is beyond my comprehension that how the tenanted premises having 10 Sq. Yards would help in storing marbles in place of space having an area of about 283 Sq. Yards. Hence, the circumstances discussed above indicate that requirement of the landlord is not bonafide & he had reasonably suitable accommodation available with him.

48. Further, as far as question of expansion of business by expanding the shop is concerned, landlord himself admitted that after filing of this eviction petition, he closed down his three other firms namely Inder Marbles, Beyant Marbles, Swarn Marbles vide application no.22.02.2010. In such circumstances, I fail to understand that how could he take this plea that he was expanding the business when he was already closing his other firms.

49. In his affidavit of evidence, the petitioner has deposed that the purpose of the petitioner to close down the independent small firms operating from the separate portions at C-21, Sharda Puri, was to open a bigger showroom and expand the business. Three firms operating in three separate shops were combined into one project for a big showroom and the purpose of the E. No.□07/2010 Page..... 23/25 petitioner was to project one of the biggest showroom in the area if the tenanted premises is also given in his possession. He showed all the four shops as one showroom in his site plan Ex.PW-1/1. In his cross examination, on 08.08.2013 he deposed that he is in possession of two shops and he is doing the marble business from his two shops and the shops bearing no.4, 5, 6 & 7 are in his possession. Conjoint reading of the depositions of the petitioner indicates that he has joined the four shops and at present there are two shops instead of one big shop as deposed in his affidavit of evidence. Hence, his plea that he wants to expand his business by making it a big shop is not true when he himself admitted that there are two shops operating at the premises, directly opposite to his stand of running one showroom by joining four shops (as shown in site plan Ex.PW-1/1), as projected by him.

50. Further, on the one hand he deposed that he was closing down his independent small firms to open a bigger showroom and expanding the business but again on the other hand he deposed in his affidavit that his son subsequently on April, 2012 had started his own firm in the name and style of M/s. Beyant Marbles at the same address. This again comes of to show that his son had started doing his separate business from the petitioner and this fact is further strengthened from the fact that business is being run from two shops not from a combined shop, opposite to his stand as projected by him.

51. Hence, I am of the considered opinion that landlord has failed to make E. No.□07/2010 Page..... 24/25 out the case of the bonafide requirement by concealing reasonably suitable accommodation available to him for the purpose of storage & expansion for which the present eviction petition has been filed for.

52. Hence, I am of the considered opinion that the eviction petition filed by the petitioner is without any merits and same is hereby dismissed. However, no order as to costs.

File be consigned to Record Room after necessary compliance.

Announced in the open court  
on 16.05.2014

(RACHNA TIWARI  
SCJ/RC (WES

E. No.- 07/2010