

Delhi District Court

Uid No. 02401C0117962013 vs Sh. Ram Lakhan Chouorasia on 5 October, 2015

Author: Sh. Sumedh Sethi

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IN THE COURT OF SH. SUMEDH KUMAR SETHI
ACJ-cum-ARC-cum-CCJ (WEST) THC, DELHI

UID No. 02401C0117962013

E No.28/2013 U/s 14(1)(e) of DRC Act

Date of institution: 13.03.2013

Date of Order: 05.10.2015

Smt. Santosh Kumari,
W/o Sh. Virender Singh Verma,
R/o BE-20A, Gali No. 6, Hari Nagar,
Delhi-110064

..... Petitioner

Versus

Sh. Ram Lakhan Chouorasia,
S/o Sh. Mahadev,
R/o C-150, Hari Nagar, Ghanta Ghar,
Delhi-110064
Also at Chaurasia Ban Bandar, shop no. 1,
Ground Floor, BE-355, Gali No. 6, Hari Nagar,
New Delhi-1100064

....Respondent

Order deciding Leave to Defend in Eviction petition
U/sec. 14(1)(e) r/w Section 25-B of DRC Act, 1958

1) Vide this order the Court shall dispose of the application U/s 25-B (4 & 5) of DRC Act of the respondent seeking leave to defend the eviction petition, filed on 20.04.2013.

2) The eviction petition U/sec. 14(1)(e) Section 25-B of the Delhi Rent Control Act, 1958 (hereinafter referred to as DRC Act) was filed by the petitioner against the respondent on 13.03.2013.

FACTS

3) The averments made in the petition are that:-

3.1 The tenanted premises comprises of one shop privately marked as shop no. 1 situated on the ground floor of property no. BE-355, Gali no. 6, Hari Nagar, New

Delhi-110064, as delineated red in the site plan.

3.2 The rate of rent was Rs. 176/- per month upto October, 2008, whereafter it stood increased by ten percent on expiry of three years, as per past practice E. No. 28/2013 Santosh Kumari Vs Ram Lakhan Chourasia Page no. 2 of 31 between the parties.

3.3 The premises was let out by the previous owner of the property, however, the tenancy is according to an English Calender month commencing from the first day of the month and ending on the last day of the same month.

3.4 The Respondent has sublet, assigned and parted with possession of the premises without the consent of the petitioning landlady.

3.5 The premises let for non residential purpose are required bonafide by the petitioning landlady for occupation as a non-residential premises for herself or for any member of her family dependent upon her, she being the owner thereof by virtue of its purchase vide sale deed dated 15-09-1998, or for any person for whose benefit the premises are held and that the landlady or such person has no other reasonably suitable non-residential accommodation.

3.6 The property no. BE-355, Gali no. 6, Hari Nagar, New Delhi-110064 consists of ground floor, first floor and second floor. There are three shops on the ground floor of the property, out of which shop no. 1 is with the respondent as a tenant, shop no. 2 is with the tenant Sh. S.P. Gulati and shop no. 3 is in occupation of the grandson of the petitioner Sh. Akshay Verma (S/o Sh. Rakesh Kumar Verma), who has been doing business in the same under the name and style of Verma Pneumatic. The first floor of the property is being used as a godown by M/s. Verma Mill Store, being run by the sons of the petitioner Sh. Rakesh Kumar Verma and Sh. Vinod Verma. The second floor of the property is being used for residence by the workers/employees of M/s Verma Mill Store and M/s G.D. Traders, being run by the sons of the petitioner, Sh. Rakesh Kumar Verma, Sh. Vinod Verma, Sh. Ashwani Verma and herself. There is one shop on the back of the said property also, which has been in use and occupation of the son of the petitioner Sh. Ashwani Verma for the purpose of his business, under the name of M/s G.D. Traders.

3.7 The petitioner also owns ground floor of property No. BE-204, Hari Nagar, New Delhi-110064, which is being used as a godown by M/s G.D. Traders being run by the son of the petitioner Sh. Ashwani Verma and herself. The first floor of the said property is owned by Smt. Seema Verma wife of Sh. Rakesh Kumar Verma, the second floor is owned by Smt. Anju Bala wife of E. No. 28/2013 Santosh Kumari Vs Ram Lakhan Chourasia Page no. 3 of 31 Sh. Ashwani Verma and third floor is owned by Smt. Seema Verma wife of Sh. Vinod Verma, and these floors are being used for residence by the three sons of the petitioner Sh. Rakesh Kumar Verma, Sh. Vinod Verma and Sh. Ashwani Verma.

3.8 The property No. BE-303, Hari Ngar, New Delhi-110064 is owned by the husband of the petitioner Sh. Virender Singh Verma, which consists of Shop No. 3 and its above, and the same has been in use as a godown by the sons of the petitioner Sh. Rakesh Kumar Verma and Sh. Vinod

Verma, having business of Hardwares and Tools.

3.9 There is another property bearing no. BE-204/1, Hari Nagar, New Delhi-110064, measuring 50 sq. yards, which is owned by Smt. Seema Verma wife of Sh. Rakesh Kumar Verma, the ground floor of which is having parking, and first floor and second floor has been with the tenant Sh. Prabhu Dayal for residence.

3.10 The sons of the petitioner Sh. Rakesh Kumar Verma and Sh. Vinod Verma have been running business jointly in partnership under the name and style of M/s Verma Mill Store and difference have arisen between them to such an extent that there is no possibility of their carrying on the business jointly in partnership. As such they have decided to separate from each other in the business and carry on their own separate and independent business, which is being deferred on account of non availability of non residential accommodation to them. The petitioner and her husband have decided to separate their said sons to enable them to do their independent business, and accommodate them one of them, preferably Sh. Vinod Verma, in the shop under the tenancy of the respondent. The petitioner as such require the shop under the tenancy of the respondent bonafide for occupation as a shop for one of his said sons Sh. Rakesh Kumar Verma and Sh. Vinod Kumar, and preferably Sh. Vinod Verma, to enable them to have their separate independent business to resolve the dispute between them, for which she has no other suitable non residential accommodation available to her in the nearby locality, Delhi or elsewhere.

3.11 The petitioner needs the shop under the tenancy of the respondent bonafide for occupation by one of her two above named sons for carrying out E. No. 28/2013 Santosh Kumari Vs Ram Lakhan Chourasia Page no. 4 of 31 separate independent business activity, and she has no intention to relet the same to any one after its vacation by the respondent.

3.12 An eviction petition is pending against the respondent on the ground of sub letting in the court.

4) The respondent has filed application for leave to defend along with affidavit wherein he admitted the following facts:

4.1 The respondent was earlier a tenant of Sh. Gurbachan Singh S/o Gopi Singh Vide a rent deed dated 1st October 1977 and at that time the rate of rent was Rs. 100/- per month which was later enhanced after the consent of previous land lord. Now the last payable rent is Rs. 176/- p.m. which the petitioner is not accepting after making many requests.¹

5) Respondent has raised certain defenses in the application for leave to defend and the same are as under:

5.1 The petitioner as well as her family members are having 7 residential properties in Delhi spread in an area of 50 to 300 square yards having a total area of nearly 4000 square yards of total area on the all floors and 12 Commercial shops of 20 X 30 feet to 10 X 20 feet within the vicinity of one KM and the petitioner is not in having any

bonafide need at all.

5.2 As per the own admission of the petitioner in the another case she is house hold lady and she is not doing any thing. In the entire petition there is no mention for what purpose the available accommodation available with the petitioner is insufficient.

5.3 The petitioner is demanding exuberant rent and inspite of the fact that the petitioner is already having two shops lying vacant and locked in the suit premises is BE-355, Hari Nagar, New Delhi-64 in an area of nearly 80 square yards. The third shop in the same suit premises is with Sh. SP Gulati and on the other side the respondent is in possession of a space of 8 feet X 10 feet in a total area of the property which is built up in an area of 120 square yards. The petitioner is also having the possession of first floor of the property as per her own admission in the petition is being used as a Godown by the sons of the petitioner. The petitioner has stated that she wants to settle her son Vinod 1 Para 4 of the affidavit under consideration.

E. No. 28/2013 Santosh Kumari Vs Ram Lakhan Chourasia Page no. 5 of 31 Verma who is already having 3 shops on the main Road prime location with area of 30 feet X 20 feet (photographs enclosed).

5.4 As per the own admission of the petitioner the property where the tenanted shop is situated in an area of 8 square yards the entire second floor is used as for residence for the workers of the sons of the petitioner. It is submitted the property is situated on the main road had it been the genuine case of the petitioner then she could have use the second floor of the property for the business of her sons but instead of shifting/vacating the space available with the workers the petitioner is having an eye on 9 square yards shop of the respondent.

5.5 The petitioner is also having a fourth shop on the BE-203, Hari Nagar, New Delhi-64 which as per her own admission is in the occupation/possession of Ashwani Verma who is doing the business in the name and style of M/s G.D. Traders.

5.6 The petitioner is having the residence at BE-203 and 204 Hari Nagar, New Delhi-64. Out of this BE-204 is built up in an area of 200 square yards in which parking space of 200 square yards is already used as storage/godown for the products/sold by the sons of the petitioner. Apart from this the petitioner and her family members are residing at this property BE-204, Hari Nagar, New Delhi-64 which is having four bed room plus a drawing room on each of other floors i.e. From upper ground floor till upper third floor which means the petitioner and her family members are already in possession of nearly 20 rooms on the above said property alone i.e. BE-204, Hari Nagar, New Delhi-64 which is built up in an area of 200 square yards and thus they are having a total available space of 800 squire yards on all the floors in this property i.e. BE-204, Hari Nagar, New Delhi-64.

5.7 The petitioner is also enjoying the roof of third floor of the said property ie. BE-204, Hari Nagar, New Delhi-64 which is having a lift in the said property for storing the goods of the shops of the sons

of the petitioner which are having an area of 200 square yards on roof of third floor of the BE-204, Hari Nagar, New Delhi-64 apart from this ground floor/parking space is used as godown/storage space which means that in this property a total area of 400 square yards is being used as for godown/storage space for the goods of E. No. 28/2013 Santosh Kumari Vs Ram Lakhan Chourasia Page no. 6 of 31 petitioner's other family members. This clearly highlights that neither the petitioner nor her family members have any paucity of any space so the question of arisen not any bonafide requirement does not arise.

5.8 The family members of the petitioner are having 3 shops on the main road of Mayapuri Metal Forging with the name of Verma Traders, Verma Steel and Verma Mill Store and each of three shop is having an area of 30 feet to 20 feet (photographs enclosed) the family members of the petitioner are well settled and having substantial property in their name and many of such property are lying vacant and locked so the question of having any bonafide requirement does not arise. The main purpose of filing the present petition is to harass a poor Paan Vendor who is just using 8 square yards of land out of 4000 square yards land owned by the petitioner and her family members.

5.9 The petitioner and her other family members are in the possession of two 100 square yards floors of the adjoining property i.e. BE-203, Hari Nagar, New Delhi-64. This is also an indication/reflection about the malafide intention of the petitioner who is adamant in throwing away the respondent from the tenanted premises at any cost ignoring the fact that she as well as her family members are having abundant space available with them without showing any documentary proof in order to substantiate the fact that she is the owner or landlord of the premises as claimed by her.

5.10 As per the own admission of the petitioner the property BE-204, Hari Nagar, New Delhi-64 is built in an area of 50 square yards upto third floor which means that one of the son of the petitioner i.e. Rakesh Verma and his other family members are having the accommodation of 200 square yards on this property alone.

5.11 As per the own admission, the husband of the petitioner Sh. Virender Singh Verma is having the property BE-203, Hari Nagar, New Delhi-64 and the said property is being used as Godown by the sons of the petitioner namely Rakesh Verma and Vinod Verma for storing the articles of hardware and sanitary items.

5.12 The family members of the petitioner are also having one plot of 100 square yards at BE-399, Hari Nagar, New Delhi-64 which they are using as E. No. 28/2013 Santosh Kumari Vs Ram Lakhan Chourasia Page no. 7 of 31 godown and two of the floors of that property are lying vacant which means that family members of the petitioner are having the accommodation of 300 square yards on this property alone.

5.13 The petitioner and her family members are having two industrial plots at Bawana Industrial Area out of which one plot is of 100 square yards and another plot is about an area of 200 square yards which they are using as for godown. As per the information received by the respondent the petitioner and her family members are having one plot at C Block Mayapuri, Industrial Area in an

area of 300 square yards which is lying vacant and locked from last so many years.

5.14 No detail of any type has been mentioned in the entire petition for what purpose the shops in question are required by the petitioner.

5.15 In order to create false ground for eviction the petitioner have tried to made false assertion regarding the so called family dispute which infact never existed or exist between the sons of the petitioner.

6) The petitioner has filed a reply to the application for Leave to Defend along with counter affidavit and in the counter affidavit the petitioner has denied the defences taken by the respondent. The petitioner further submitted as under:

6.1 It is not disputed that the respondent was a tenant at the time of purchase of the property by the petitioner on 15th September 1998.

6.2 The petitioner needs the shop under the tenancy of the respondent bonafide for occupation by one of his two sons Sh. Rakesh Kumar Verma and Sh. Vinod Kumar Verma for carrying out separate independent business activities by each of them and she has no intention either to re-let the premises in occupation of the respondent or enhance its rent.

6.3 It is denied that the petitioner is having two shops lying vacant and these are locked by her, as alleged. The petitioner has explained the availability of accommodation in property no. BE-355, Hari Nagar, New Delhi and its utilization by her and her family members. It has been specifically brought out in the eviction petition that there are three shops on the ground floor of the property out of which one shop is under the tenancy of the respondent and another shop is under the tenancy of Sh. S.P. Gulati and the third shop is in E. No. 28/2013 Santosh Kumari Vs Ram Lakhan Chourasia Page no. 8 of 31 occupation of her grandson Sh. Akshay Verma and there is no other shop available in the said property. The details of other properties and their utilization by the family members of the petitioner have also been given in the eviction petition and site plan of the properties are also placed on record, which are not disputed by the respondent.

6.4 The property no. BE-203, is not owned and possessed by the petitioner or any of her family members and in fact there is property no. BE-303, Hari Nagar, New Delhi which is owned by the husband of the petitioner and it consists of shop no. 3 and its above, and the same has been in use as a godown by the sons of the petitioner Sh. Rakesh Kumar Verma and Sh. Vinod Verma having business of hardware and tools. As regards availability of residential premises to the petitioner and her other family members these have been detailed in the eviction petition and site plan of the properties have also been filed, and as such it needs no further clarification.

6.5 It is specifically denied that the petitioner and her family members are in possession of nearly 20 rooms in property no. BE-203 and BE-204, as alleged. The total residential rooms available to the family members of the petitioner are 12 which fact has been detailed in the eviction petition. There

is no property available to the petitioner or any of her family members bearing no. BE-203 and it is owned and possessed by one Smt. Raj Rani. As already submitted in the eviction petition the petitioner owns ground floor of property no. BE-204, Hari Nagar, New Delhi in which part of BE-203 is included, which is used as a godown by M/s G.D. Traders, being run by the petitioner and her son Sh. Ashwani Verma. The first floor of the said property is owned by Smt. Seema Verma wife of Sh. Rakesh Verma the second floor of the said property is owned by Smt. Anju Bala wife of Sh. Ashwani Verma and third floor of the same is owned by Smt. Seema Verma wife of Sh. Vinod Kumar Verma and these floors are being used as residence by the three sons of the petitioner namely Sh. Rakesh Kumar Verma, Sh. Vinod Kumar Verma and Sh. Ashwani Verma. The property bearing no. BE-204, Hari Nagar, New Delhi measuring 50 square yards is owned by Smt. Seema Verma wife of Sh. Rakesh Kumar Verma, the ground floor of which is having a parking and first floor land second floor has been with the tenant Sh. Prabhu Dayal being used E. No. 28/2013 Santosh Kumari Vs Ram Lakhan Chourasia Page no. 9 of 31 by him for residence.

6.6 The contents of para no. 11 of the application are absolutely false and these are specifically denied. The petitioner and her other family members have no concern with the properties alleged in this para of the application. The alleged properties are belonging to Sh. Pratap Singh verma and Sh. Jai Bhagwan Verma, brothers of husband of the petitioner.

6.7 Property no. BE-399, Hari Nagar, New Delhi, it is owned by Smt. Seema Verma wife of Sh. Vinod Verma and it consists of only one hall on the ground floor and it is situated on the backside and it is being used as a godown by M/s G.D. Traders and the same is not suitable for carrying out any business or commercial activity.

6.8 The contents of para no. 16 of the application are admitted to the extent that an industrial plot at Bawana Industrial area is owned by the son of the petitioner Sh. Rakesh Verma which is neither suitable for carrying out separate independent business activity by the sons of the petitioner nor is it available for the same, being in occupation of the tenant. There is no other industrial plot with the petitioner or any member of her family. The petitioner and her family members have no concern with any plot in C Block Mayapuri Industrial Area or in any other block of the said area.

7) Rejoinder to the reply to the application was filed by the respondent wherein respondent denied all the contents of the reply and reiterated the defenses taken in application for leave to defend. He further submitted as:-

7.1 The petitioner and her family members are having property at plot no. 279 of 200 square yards at Bawana Industrial Area, sector 3, New Delhi area and also at shop no. 162 A.S.K. Sector Noida Uttar Pradesh and also at shop no. 199 A, S.K. Sector Noida.

8) Arguments were heard on the application under consideration on behalf of both the parties. Material on record has been perused. Submissions considered.

REQUIRMENTS

9) In order to succeed in a petition for eviction filed under section 14(1)(e) of the Delhi Rent Control Act the petitioner must establish that:

E. No. 28/2013 Santosh Kumari Vs Ram Lakhan Chourasia Page no. 10 of 31 i. He is the owner and landlord in respect of the tenanted premises.

ii. That he requires the premises bonafide for himself or for any member of his family dependent upon him.

iii. That he has no other reasonably suitable accommodation

10) The scope of the section has been enlarged in view of the judgment of the Hon'ble Supreme Court titled as Satyawati Sharma v. Union of India: AIR 2008 SUPREME COURT 3148 so as to include premises let out for commercial purposes also within the scope and ambit of a petition under section 14(1)(e) of DRC Act. The defences which are taken by respondent are discussed below and the same are as under:-

DEFENCES

11) Petitioner has ample residential properties; Petitioner is not doing anything; and details of requirement not mentioned:

11.1 The respondent has contended that the petitioner as well as her family members are having 7 residential properties in Delhi spread in an area of 50 to 300 square yards having a total area of nearly 4000 square yards of total area on the all floors and 12 Commercial shops of 20 X 30 feet to 10 X 20 feet within the vicinity of one KM and the petitioner is not in having any bonafide need at all.

11.2 He further contended that as per the own admission of the petitioner in the another case she is house hold lady and she is not doing any thing. In the entire petition there is no mention for what purpose the available accommodation available with the petitioner is insufficient.

11.3 It was further contended that no detail of any type has been mentioned in the entire petition for what purpose the shops in question are required by the petitioner.

11.4 The petitioner countered that she needs the shop under the tenancy of the respondent bonafide for occupation by one of his two sons Sh. Rakesh Kumar Verma and Sh. Vinod Kumar Verma for carrying out separate independent business activities by each of them and she has no intention either to re-let the premises in occupation of the respondent or enhance its E. No. 28/2013 Santosh Kumari Vs Ram Lakhan Chourasia Page no. 11 of 31 rent.

11.5 At the very outset, it is noteworthy that the extent of the petitioner's residential properties are wholly irrelevant for considering her requirement of non-residential property. Therefore, it does not

matter how much residential property the petitioner or her family owns.

11.6 Even otherwise, it has been held in the case of Krishan Lal vs R N Bakshi decided by our own Hon'ble High Court on 19 May, 2010 that:

"8. It is settled law that it is not for a tenant to dictate the terms to the landlord as to how and in what manner he should adjust himself, without calling upon the tenant to vacate a tenanted premises. While deciding the question of bonafides of requirement of landlord, it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted. When the landlord shows a prima facie case, a presumption that the requirement of the landlord is bonafide, is available to be drawn. It is also settled position of law that the landlord is the best judge of his requirement for residential or business purpose and he has got complete freedom in the matter and it is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own. The tenant cannot compel a landlord to live in a particular fashion and method until and unless the requirement shown is totally mala fide or not genuine."

11.7 Thus, the respondent cannot dictate what income would be sufficient for the petitioner and what would not or whether two sons of the petitioner should conduct business jointly or separately. The same has to be judged solely by the petitioner as per her family's subjective living standard and the respondent cannot dictate such living standard to the petitioner and tell her how her sons should squeeze their requirement for conducting separate business.

11.8 Further, in the case of Aero Traders Pvt. Ltd. vs Mohan Singh And Anr. Decided by Hon'ble High Court of Delhi on 2 January, 2014 in RC. Rev. No.391/2011 it was observed:

"13. Financial status of the landlord not relevant. In Shamshed E. No. 28/2013 Santosh Kumari Vs Ram Lakhan Chourasia Page no. 12 of 31 Ahmad & Ors. vs. Tilak Raj Bajaj (deceased), 152 (2008) DLT 301 (SC), the Supreme Court affirmed the order of the trial court which was reversed by the HC, that "The requirement of section 14(1)(e) is 'bonafide requirement' and it has to be seen as per the requirement of the petitioner(landlord) , even if the petitioner is very rich and having other properties at different places that does not affect his requirement of the premises, as alleged in the petition." And the leave to defend application was dismissed."

11.9 It has also been held in the case of Raj Kumar Khanna vs. Parduman Singh: 204 (2013) DLT 312 that:

"8. It has rightly been decided by the Apex Court in the case of Shamshed Ahmad & Ors. Vs. Tilak Raj Bajaj (deceased) 152 (2008) DLT 301 (SC), wherein the Apex Court affirmed the order of the trial court which was reversed by the HC, that the requirement of section 14(1)(e) is "bonafide requirement and it has to be seen as per the requirement of the petitioner(landlord), even if the petitioner is very rich and having other properties at different places that does not affect his requirement of the

premises, as alleged in the petition. And the leave to defend application was dismissed."

11.10 Thus, even a rich landlady having numerous properties can have bonafide requirement and merely because she is rich and having numerous properties is not a reason to doubt her requirement.

11.11 The respondent has contended that the petitioner is a simple house lady and doesn't know anything. This submission is wholly irrelevant for the reason that the petitioner has already stated that the requirement of the tenanted premises is for her sons. However, assuming for a moment that she requires a premises for her own use, then also this defence, though as it is misconceived, is not tenable as it has been held in the case of Manika Rani Ghosh & Ors. vs Dharwinder Kaur: 197 (2013) DLT 18 that:

"8. I subscribe to the view taken by the Ld. RC in deciding the eviction petition. It is often contended by the tenants that the landlord has no prior business experience, capacity or that the suit premises are not E. No. 28/2013 Santosh Kumari Vs Ram Lakhan Chourasia Page no. 13 of 31 suitable for the business proposed by the landlord. For instance, similar contentions were raised by the tenants before this Court in the case of Shashi Kant Jain v. Tilak Raj Salooja & Anr., R. C. Rev. 167/2010 and have been refuted. Such allegations whereby the tenant tries to raise questions regarding the age of the landlord or lack of business experience or suitability of the suit shop for the business proposed by the landlord and which are invariably vague do not consist a triable issue. The tenants/petitioners made assertions before the Ld. RC regarding the landlady possessing alternative properties, but were unable to furnish sufficient documentary evidence to substantiate the allegations. There is no dispute that the business cannot be profitably carried from the residential premises and thus, the plea that the landlady could start the business from her residence is untenable. Moreover, it is not for this Court to examine the viability of the business at the suit premises or assess if it may be a profitable venture for the landlady."

11.12 As far as the allegations regarding the sons of the petitioner already working are concerned, it is to be noted that in a recent judgment it has been observed by our own High Court that it is the moral duty of a father to help establish his son. The relevant portion of the judgment titled Pawan Kumar Vs Sant Lal R.C.Rev 303/2012 decided on 6.8.2012 by Honorable Mr Justice M.L.Mehta is as under:-

"16. Further, submissions of learned counsel for the petitioner that Dr. Ankit was not financially dependent upon his father and so the tenanted premises could not be got vacated for his requirement, is also only noted for rejection. It is trite that the landlord is entitled to help his son, establish his business. In Labhu Lal Vs. Sandhya Gupta 2011(1) RCR,(Rent) 231 (Delhi), it has been held by this Court that the children are very much dependant on the landlord for the purpose of setting up their business and such a requirement is a bonafide one. The right of the landlord for possession of

his property for setting up a business for his son has been also recognized by the Apex Court in Ram Babu Aggarwal Vs. Jay Kishan Das 2009(2) RCR E. No. 28/2013 Santosh Kumari Vs Ram Lakhan Chourasia Page no. 14 of 31

455. The moral duty of a father to help establish his son was also recognized by the Apex Court in Joginder Pal Singh Vs. Naval Kishore Behal AIR 2002 SC 2256 in the following words:

"24.....Keeping in view the social or socio-religious milieu and practices prevalent in a particular section of society or a particular region, to which the landlord belongs, it may be obligation of the landlord to settle a person closely connected with him to make him economically independent so as to support himself and/or the landlord. To discharge such obligation the landlord may require the tenancy premises and such requirement would be the requirement of the landlord. If the requirement is of actual user of the premises by a person other than the landlord himself the Court shall with circumspection inquire: (i) whether the requirement of such person can be considered to be the requirement of the landlord, and (ii) whether there is a close inter-relation or identify nexus between such person and the landlord so as to satisfy the requirement of the first query. Applying the overlaid tests to the facts of the present case it is clear that the tenancy premises are required for the office of the landlord's son who is a chartered accountant. It is the moral obligation of the landlord to settle his son well in his life and to contribute his best to see him economically independent."

11.13 In the present case, it has been clearly stated by the petitioner in her petition that the sons of the petitioner are not on good terms and want to conduct business independently from each other. Moreover, even if it is assumed for a moment that the sons of the petitioner do not have any disputes, then also there is no malafide in their requirement for conducting business separately because in Joginder Pal Singh Vs. Naval Kishore Behal: AIR 2002 SC 2256 (as referred to in aforesaid judgment) the situation was similar to the present case, as in the said case before the Apex Court the landlord had filed eviction petition for the office of his son who was a chartered accountant who was residing with him. Honorable Mr. Justice R.C. Lahoti observed in the said judgment that such a requirement of the landlord is a genuine requirement. In the said case the Apex Court evicted the tenant from the premises for the said requirement of the landlord.

11.14 Assuming the aforesaid averment of the respondent to be true would make the present case similar to the case of Joginder Singh (supra) as in the present case the tenanted premises is required by the landlady petitioner for E. No. 28/2013 Santosh Kumari Vs Ram Lakhan Chourasia Page no. 15 of 31 separating the business conducted by her sons. Thus, this defence of the respondent does not raise any triable issue.

11.15 Every parent wants to settle his/her children in the best possible manner and if the petitioner has found it proper to help her son to do his business independently at the tenanted premises, then it would not be proper for the Court to interfere in such decision of the petitioner, as the petitioner is the best judge of her own requirements and that of the requirements of her family.

11.16 In the opinion of the Court it is the right of every person to excel in life. If the son of the petitioner and the petitioner is of the opinion that it would be better in life to separate the business conducted by both brothers and do business independently from the tenanted premises than doing it jointly, then it would not be just for this Court to direct the petitioner otherwise and thereby stop the financial growth of the family of the petitioner. The Court cannot ask the son of the petitioner to give up his dreams of excelling in life and to establish his own business from a premises owned by his mother. Though the success of the independent business to be established by the son of the petitioner is not guaranteed, but, at the same time the Court cannot predict the failure of the same and thereby decline the petitioner and her family an opportunity to establish independent business for one of her sons from a premises owned by them. The respondent has no business to tell the petitioner's sons to continue their business jointly and not do independent business. Even if there are no disputes between the two sons, then also neither the Court nor the tenant can stop them from doing business independent of each other especially when they would have the growing needs of their families to cater to. The sons of petitioner cannot be expected to wait till serious disputes arise between them and only then be allowed to separate their business just to accomodate the tenant. Thus, the requirement of the petitioner is a bona fide requirement and there is no reason for the Court to find any malafide intention behind the same.

12) Alternative accommodation:

12.1 The respondent has vehemently repeated, in almost every paragraph of his application for leave to defend, his plea to the effect that the petitioner has E. No. 28/2013 Santosh Kumari Vs Ram Lakhan Chourasia Page no. 16 of 31 various alternative accommodations available with her. However, she still wants to evict the small tenanted premises possessed by the respondent. The various alternative accommodations referred to by the respondent are given below along with the explanations given regarding each by the petitioner.

12.2 Property no. BE - 355: The respondent contended that the petitioner is already having two shops lying vacant and locked in the suit premises is BE-355, Hari Nagar, New Delhi-64 in an area of nearly 80 square yards. The third shop in the same suit premises is with Sh. SP Gulati and on the other side the respondent is in possession of a space of 8 feet X 10 feet in a total area of the property which is built up in an area of 120 square yards. The petitioner is also having the possession of first floor of the property as per her own admission in the petition is being used as a Godown by the sons of the petitioner. The petitioner has stated that she wants to settle her son Vinod Verma who is already having 3 shops on the main Road prime location with area of 30 feet X 20 feet (photographs enclosed). As per the own admission of the petitioner the property where the tenanted shop is situated in an area of 8 square yards the entire second floor is used as for residence for the workers of the sons of the petitioner. The property is situated on the main road had it been the genuine case of the petitioner then she could have used the second floor of the property for the business of her

sons but instead of shifting/vacating the space available with the workers the petitioner is having an eye on 8 square yards shop of the respondent.

12.3 The petitioner has countered that it is denied that she is having two shops lying vacant and these are locked by her, as alleged. The petitioner has explained the availability of accommodation in property no. BE-355, Hari Nagar, New Delhi and its utilization by her and her family members. It has been specifically brought out in the eviction petition that there are three shops on the ground floor of the property out of which one shop is under the tenancy of the respondent and another shop is under the tenancy of Sh. S.P. Gulati and the third shop is in occupation of her grandson Sh. Akshay Verma and there is no other shop available in the said property. The details of other properties and their utilization by the family members of the petitioner have also been given in the eviction petition and site plan of the properties are also placed on E. No. 28/2013 Santosh Kumari Vs Ram Lakhan Chourasia Page no. 17 of 31 record, which are not disputed by the respondent.

12.4 Analysis: The plea taken by the respondent is of little relevance for the reason that the respondent has made a mere bald averment regarding the shops lying locked and the petitioner has come out clean with the number of shops in the property and usage thereof. Surely the petitioner cannot be expected to change the usage of the first or second floor of the property just for the convenience of the tenant, especially when it is a matter of common knowledge that ground floor of a property is much more lucrative for business than other floors. Further, even if the petitioner's son is having three other shops, there is nothing on record to counter the submission that he is running his business jointly with his brother. His requirement for the tenanted shop once he starts his own business cannot be disregarded.

12.5 Property no. BE-303: The respondent contended that petitioner is also having a fourth shop on the BE-203, Hari Nagar, New Delhi-64 which as per her own admission is in the occupation/possession of Ashwani Verma who is doing the business in the name and style of M/s G.D. Traders. As per the own admission, the husband of the petitioner Sh. Virender Singh Verma is having the property BE-203, Hari Nagar, New Delhi-64 and the said property is being used as Godown by the sons of the petitioner namely Rakesh Verma and Vinod Verma for storing the articles of hardware and sanitary items.

12.6 The petitioner countered that property no. BE-203, is not owned and possessed by the petitioner or any of her family members and in fact there is property no. BE-303, Hari Nagar, New Delhi which is owned by the husband of the petitioner and it consists of shop no. 3 and its above, and the same has been in use as a godown by the sons of the petitioner Sh. Rakesh Kumar Verma and Sh. Vinod Verma having business of hardware and tools. As regards availability of residential premises to the petitioner and her other family members these have been detailed in the eviction petition and site plan of the properties have also been filed, and as such it needs no further clarification.

12.7 Analysis: Detailed deliberation is not required as the respondent is himself stating that the said property is being used as a godown. Thus, the question of it being vacant alternative accommodation does not arise. Moreover, E. No. 28/2013 Santosh Kumari Vs Ram Lakhan Chourasia Page no. 18 of 31 the petitioner has denied having anything to do with any property no. 203 and stated that the

property no. Is 303. Surely, the petitioner would not disown an entire property on oath just for getting the tenanted premises vacated.

12.8 Property no. BE-204: The respondent has stated that petitioner is having the residence at BE-203 and 204 Hari Nagar, New Delhi-64. Out of this BE-204 is built up in an area of 200 square yards in which parking space of 200 square yards is already used as storage/godown for the products/sold by the sons of the petitioner. Apart from this the petitioner and her family members are residing at this property BE-204, Hari Nagar, New Delhi-64 which is having four bed room plus a drawing room on each of other floors i.e. From upper ground floor till upper third floor which means the petitioner and her family members are already in possession of nearly 20 rooms on the above said property alone i.e. BE-204, Hari Nagar, New Delhi-64 which is built up in an area of 200 square yards and thus they are having a total available space of 800 square yards on all the floors in this property i.e. BE-204, Hari Nagar, New Delhi-64. The petitioner is also enjoying the roof of third floor of the said property ie. BE-204, Hari Nagar, New Delhi-64 which is having a lift in the said property for storing the goods of the shops of the sons of the petitioner which are having an area of 200 square yards on roof of third floor of the BE-204, Hari Nagar, New Delhi-64 apart from this ground floor/parking space is used as godown/storage space which means that in this property a total area of 400 square yards is being used as for godown/storage space for the goods of petitioner's other family members. This clearly highlights that neither the petitioner nor her family members have any paucity of any space so the question of arisen not any bonafide requirement does not arise.

12.9 The petitioner counters that it is specifically denied that the petitioner and her family members are in possession of nearly 20 rooms in property no. BE-203 and BE-204, as alleged. The total residential rooms available to the family members of the petitioner are 12 which fact has been detailed in the eviction petition. There is no property available to the petitioner or any of her family members bearing no. BE-203 and it is owned and possessed by one Smt. Raj Rani. As already submitted in the eviction petition the petitioner E. No. 28/2013 Santosh Kumari Vs Ram Lakhan Chourasia Page no. 19 of 31 owns ground floor of property no. BE-204, Hari Nagar, New Delhi in which part of BE-203 is included, which is used as a godown by M/s G.D. Traders, being run by the petitioner and her son Sh. Ashwani Verma. The first floor of the said property is owned by Smt. Seema Verma wife of Sh. Rakesh Verma the second floor of the said property is owned by Smt. Anju Bala wife of Sh. Ashwani Verma and third floor of the same is owned by Smt. Seema Verma wife of Sh. Vinod Kumar Verma and these floors are being used as residence by the three sons of the petitioner namely Sh. Rakesh Kumar Verma, Sh. Vinod Kumar Verma and Sh. Ashwani Verma. The property bearing no. BE-204, Hari Nagar, New Delhi measuring 50 square yards is owned by Smt. Seema Verma wife of Sh. Rakesh Kumar Verma, the ground floor of which is having a parking and first floor land second floor has been with the tenant Sh. Prabhu Dayal being used by him for residence.

12.10 Analysis: The respondent has himself stated that part of the property is being already used for storage of article and the rest of it is residential property. This Court has already observed that the residential property of the petitioner, no matter how extensive, cannot be looked into for deciding this case for non-residential requirement. Further, the parts which are already being used for storage cannot be expected to be converted into a shop and then the petitioner be expected to make

other arrangements for storage.

12.11 Property no. BE-204/1: The respondent has stated that as per the own admission of the petitioner the property BE-204/1, Hari Nagar, New Delhi-64 is built in an area of 50 square yards upto third floor which means that one of the son of the petitioner i.e. Rakesh Verma and his other family members are having the accommodation of 200 square yards on this property alone.

12.12 The petitioner has stated in her petition itself that there is another property bearing no. BE-204/1, Hari Nagar, New Delhi-110064, measuring 50 sq. yards, which is owned by Smt. Seema Verma wife of Sh. Rakesh Kumar Verma, the ground floor of which is having parking, and first floor and second floor has been with the tenant Sh. Prabhu Dayal for residence.

12.13 Analysis: The respondent has merely stated that the property is owned by the family of the petitioner but has not stated that the same is vacant. On the other hand, the petitioner has stated in the petition itself that the said E. No. 28/2013 Santosh Kumari Vs Ram Lakhan Chourasia Page no. 20 of 31 property has parking on the ground floor and the upper floors are being used by a tenant for residence. Without anything to the contrary, except for bald averments, no useful purpose would be served by allowing the respondent to lead evidence on this point.

12.14 Mayapuri Metal Forging: The respondent has stated that family members of the petitioner are having 3 shops on the main road of Mayapuri Metal Forging with the name of Verma Traders, Verma Steel and Verma Mill Store and each of three shop is having an area of 30 feet to 20 feet (photographs enclosed) the family members of the petitioner are well settled and having substantial property in their name and many of such property are lying vacant and locked so the question of having any bonafide requirement does not arise. The main purpose of filing the present petition is to harass a poor Paan Vendor who is just using 8 square yards of land out of 4000 square yards land owned by the petitioner and her family members.

12.15 The petitioner has countered by saying that contents of para no. 11 of the application are absolutely false and these are specifically denied. The petitioner and her other family members have no concern with the properties alleged in this para of the application. The alleged properties are belonging to Sh. Pratap Singh verma and Sh. Jai Bhagwan Verma, brothers of husband of the petitioner.

12.16 Analysis: Interestingly, the respondent has himself stated that these shops belong to the 'family members' of the petitioner and not to the petitioner or her husband or sons. The petitioner has stated likewise. She has stated that these shops belong to her husband's brothers. Surely, the petitioner would not disown so many shops on oath just for getting the tenanted premises vacated.

12.17 Property no. BE-399: The respondent has stated that family members of the petitioner are also having one plot of 100 square yards at BE-399, Hari Nagar, New Delhi-64 which they are using as godown and two of the floors of that property are lying vacant which means that family members of the petitioner are having the accommodation of 300 square yards on this property alone.

12.18 Property no. BE-399, Hari Nagar, New Delhi, it is owned by Smt. E. No. 28/2013 Santosh Kumari Vs Ram Lakhan Chourasia Page no. 21 of 31 Seema Verma wife of Sh. Vinod Verma and it consists of only one hall on the ground floor and it is situated on the backside and it is being used as a godown by M/s G.D. Traders and the same is not suitable for carrying out any business or commercial activity.

12.19 Analysis: The respondent has stated that the petitioner's family is using this property as godown and two floors are lying vacant. The petitioner has stated that the property consists of only a hall on the ground floor being used as godown. Even if the upper floors exist and are vacant the same do not have comparable suitability for business as the ground floor has. Even otherwise, the petitioner has clarified that the same is on the back side and thus not suitable for business, in contrast to the tenanted premises.

12.20 Industrial plots: The respondent stated that petitioner and her family members are having two industrial plots at Bawana Industrial Area out of which one plot is of 100 square yards and another plot is about an area of 200 square yards which they are using as for godown. As per the information received by the respondent the petitioner and her family members are having one plot at C Block Mayapuri, Industrial Area in an area of 300 square yards which is lying vacant and locked from last so many years.

12.21 The petitioner has countered that contents of para no. 16 of the application are admitted to the extent that an industrial plot at Bawana Industrial area is owned by the son of the petitioner Sh. Rakesh Verma which is neither suitable for carrying out separate independent business activity by the sons of the petitioner nor is it available for the same, being in occupation of the tenant. There is no other industrial plot with the petitioner or any member of her family. The petitioner and her family members have no concern with any plot in C Block Mayapuri Industrial Area or in any other block of the said area.

12.22 Analysis: The petitioner has admitted one industrial plot being owned by her son. It is a matter of common knowledge that an industrial plot as far as Bawana cannot serve the same purpose as a shop in a commercial area like Hari Nagar. Even otherwise, the petitioner has already stated that the same is in possession of a tenant. The petitioner has denied having anything to do with any other industrial plot. Surely, the petitioner would not disown any E. No. 28/2013 Santosh Kumari Vs Ram Lakhan Chourasia Page no. 22 of 31 industrial plots on oath just for getting the tenanted premises vacated.

12.23 Other Property at Bawana and Noida: In his rejoinder, the respondent has stated that the petitioner and her family members are having property at plot no. 279 of 200 square yards at Bawana Industrial Area, sector 3, New Delhi area and also at shop no. 162 A.S.K. Sector Noida Uttar Pradesh and also at shop no. 199 A, S.K. Sector Noida.

12.24 Analysis: No detailed analysis is required as a 'plot' in Bawana cannot serve the same purpose as a shop in a commercial area like Hari Nagar. Shops in Noida can hardly be called suitable alternatives to shops in Hari Nagar and the petitioner's son cannot be expected to shift his entire

business to Noida just for the convenience of the respondent.

12.25 Even otherwise, irrespective of whatever has been discussed above, it is noteworthy that it has been held in the case of Sohan Lal Gupta Vs. Sh. Nand Kishore: 219 (2015) DLT 9B (CN) that:

"5. So far as the shop existing in the residence of the respondent is concerned, it could not be disputed before this Court that it is not the case of the petitioner/tenant before the Additional Rent Controller that the residential premises where the alleged shop is available to the respondent/landlord is situated in a busy market like the tenanted shop. I may also note that the respondent/landlord has disputed the aspect that at all there is any shop which is available in his residence from where the son of the respondent/landlord can carry on business.

In any case, taking the case of the petitioner at best that would mean that there is one shop at a premises which is not in the main market and in law it is not open to a tenant to dictate to the landlord which premises are more suitable for carrying on the business and in the present case undoubtedly the tenanted premises in the market is more suitable than another premises which is away from the market and not in the middle of the market. This has been held by the Supreme Court in the case of Anil Bajaj and Anr. Vs. Vinod Ahuja in Civil Appeal No. 5513/2014 decided on 8.5.2014:2014. (210) DLT58(SC). Therefore, though the so called shop in the tenanted premises is actually not existing, but even if it is existing, the same is not an alternative E. No. 28/2013 Santosh Kumari Vs Ram Lakhan Chourasia Page no. 23 of 31 suitable premises."

[....] "6. The second aspect urged was that there was a shop to the adjoining tenanted premises which has been sold by the respondent. On the first blush this argument seemed to have merit, however, the Additional Rent Controller notes that the petitioner did not file any document and this was only a bald plea. The petitioner has thereafter filed a document in this Court to show that the adjacent shop was sold about six years prior to filing of the eviction petition, and though I cannot look this document in view of the judgment of the Supreme Court in the case of Prithipal Singh Vs. Satpal Singh (dead) through LRs (2010) 2 SCC15 which requires that all grounds, all facts and all documents have to be stated and filed within the inflexible statutory period of 15 days for filing of the leave to defend application, and beyond which period there cannot be condonation of delay particularly even one day, yet if the document is looked into it is clear that the transfer of the shop by means of the general power of attorney is around more than six years prior to filing of the eviction petition and therefore it cannot be stated that the shop which was sold six years prior to filing of the eviction petition would amount to an alternative premises because Courts cannot dictate as to how the landlord wants to utilize his property including by selling of the same and getting moneys from the same because moneys would be required by any person for myriad reasons. And even which has happened more than six years prior to filing of the eviction petition, in my opinion, cannot raise a bonafide triable issue."

12.26 It has also been held in the case of Royal Nepal Airlines Corporation vs Shrishti Properties Pvt Ltd: 2012 RLR 28 that:

"19. The Apex Court has time and again noted that it is prerogative of the landlord to decide whether the premises are required for expansion of his business or not; in this context the observations of the Apex Court in the case of Sait Nagjee Purushotam & Co. Ltd. Vs. Vimalbai Prabhulal and Others (2005) 8 SCC 252 is relevant; it reads as E. No. 28/2013 Santosh Kumari Vs Ram Lakhan Chourasia Page no. 24 of 31 under:-

"It is always the prerogative of the landlord that if he requires the premises in question for his bona fide use for expansion of business this is no ground to say that the landlords are already having their business at Chennai and Hyderabad therefore, it is not genuine need. It is not the tenant who can dictate the terms to the landlord and advise him what he should do and what he should not. It is always the privilege of the landlord to choose the nature of the business and the place of business."

20. Sarla Ahuja Vs. United Insurance Company Limited VIII (1998) SLT 374, the Apex Court had observed as under:-

"The crux of the ground envisaged in Clause (e) of Section 14(1) of the Act is that the requirement of the landlord for occupation of the tenanted premises must be bona fide. When a landlord asserts that he requires his building for his own occupation the Rent Controller shall not proceed on the presumption that the requirement is not bona fide.

When other conditions of the clause are satisfied and when the landlord shows a prima facie case it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bona fide. It is often said by Courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself."

12.27 It has been observed in judgment titled as Rajender Kumar Sharma & Ors. Vs. Leela Wati & Ors.: 155 (2008) DLT 383 by Hon'ble Delhi High Court as under:

"11)....Thus, the affidavit filed by the tenant was shown to be false by the landlady on the basis of documents placed by it. No Rent Con-

E. No. 28/2013 Santosh Kumari Vs Ram Lakhan Chourasia Page no. 25 of 31 troller is supposed to grant leave to the tenant on the basis of a false affidavit and false averments and assertions. Such affidavit should be outrightly rejected by the Rent Controller. Only those averments in the affidavit are to be considered by the Rent Controller which have same substance in it and are supported by some material. Mere as- sertions made by a tenant in respect of landlord's ownership of other buildings and in respect of alternate accommodation are not to be considered sufficient for grant of leave to defend."

12.28 In his application, the respondent has made various bald averments regarding other properties allegedly owned by the petitioner and her families supported by little more than just photographs. These averments cannot be relied upon for reasons already stated above. Moreover, even if it is assumed for a moment that such properties are there and available, then also leave cannot be granted to the respondent in view of the legal position stated above, as per which, the landlord has complete freedom in deciding which premises are most suitable for his requirement and the tenant cannot interfere in this decision.

12.29 Accordingly, this defence raised by the respondent as regards bonafide requirement and as regards alternate accommodation is a sham defence and it does not raise any triable issue 12.30 In the judgment titled as Ragavendra Kumar v. Firm Prem Machinery: AIR 2000 SUPREME COURT 534 the Hon'ble Supreme Court held that it is settled position of law that the landlord is best judge of his requirement for residential or business purpose and he has got complete freedom in the matter. Moreover, as has been held in a plethora of cases, neither the Court nor the tenant cannot dictate terms to the landlord regarding the suitability of the premises or even the extent of the business proposed to be carried out.

12.31 In the present case, it is not for the respondent to judge the suitability of the shop in question with respect to the requirement of the petitioner for her son's independent business and it is hereby held that the defence being deliberated upon does not raise any triable issue.

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13) The petitioner is not the owner of the premises:

13.1 The respondent has stated that the petitioner and her other family members are in the possession of two 100 square yards floors of the adjoining property i.e. BE-203, Hari Nagar, New Delhi-64. This is also an indication/reflection about the malafide intention of the petitioner who is adamant in throwing away the respondent from the tenanted premises at any cost ignoring the fact that she as well as her family members are having abundant space available with them without showing any documentary proof in order to substantiate the fact that she is the owner or landlord of the premises as claimed by her.

13.2 The present litigation is for eviction of an admitted tenant and as such the Court is not required to give a finding as regards absolute ownership of the property. In rent control legislation, the landlord can be said to be owner, if he is entitled in his own legal right, as distinguished from for and on behalf of someone else, to evict the tenant and then to retain, control, hold and use the premises for himself.

13.3 In M.M.Quasim Vs Manohar Lal Sharma: (1981) 3 SCC 36 it was observed by the Apex Court that an "owner-landlord" can seek eviction on the ground of his personal requirement is one who has a right against the whole world to occupy the building in his own right and exclude anyone holding a title lesser than his own.

13.4 It was observed in *Shanti Sharma Vs Smt Ved Prabha*: AIR 1987 SC 2028 that the term "owner" has to be understood in the context of the background of the law and what is contemplated in the scheme of the Act. The Act has been enacted for protection of the tenants. But, at the same time, it has provided that the landlord under certain circumstances will be entitled to eviction and bona fide requirement is one of such grounds. Ordinarily, the concept of the ownership may be absolute ownership in the land as well as of the structure standing thereon. But in the modern context, where all lands belong to the State, the persons who hold properties will only be lessees or the persons holding the land on some term from the Government or the authorities constituted by the State. The legislature, when it used the term "owner" in s. 14(1)(e), did not think of ownership as absolute ownership. The E. No. 28/2013 *Santosh Kumari Vs Ram Lakhan Chourasia* Page no. 27 of 31 meaning of the term "owner" is vis-a-vis the tenant i.e. the owner should be something more than the tenant. In cases where the plot of land is taken on lease, the structure is built by the landlord and he is the owner of the structure.

13.5 In the present case the defence raised by the respondent as regards ownership is not tenable even prima facie for the simple reasons that the respondent has admitted that he was inducted as tenant by the previous owner. He also requested the petitioner to accept payment of rent for the premises², by virtue of which, the respondent admitted the petitioner as landlady and now when eviction petition has been filed by petitioner, he cannot challenge/deny the relationship between the parties. Provisions of Section 116 of the Evidence Act are also attracted; the tenant is stopped from questioning the ownership or title of the landlord. The respondent has not stated that if the petitioner landlord is not the owner of the tenanted premises, then, who is.

13.6 Thus, the petitioner is having a right against the whole world to occupy the tenanted premises in her own right and exclude anyone holding a title lesser than her own. Consequently, she is entitled to file the present petition. The tenant is estopped from questioning her title documents.

13.7 Thus, this defence raised by the respondent is a vague and sham defence and it does not raise any triable issue.

14) False requirement created and exuberant rent demanded:

14.1 The respondent has stated that the petitioner is demanding exuberant rent. In order to create false ground for eviction the petitioner has tried to make false assertion regarding the so called family dispute which infact never existed or exist between the sons of the petitioner.

14.2 Both these defences are being taken up together as they seek to cast doubt over the bonafide of the petitioner's requirement. It has already been observed by this Court that the requirement of the premises for independent business for one of the petitioner's sons is justified even if they are not in dispute with each other. As far as the allegation regarding demand of excessive rent is concerned, it is noteworthy that in *Rajender Kumar Sharma & Ors. Vs. Leela Wati & Ors.*: 155 (2008) DLT 383 it has been held by 2 Para 6 of the application under consideration.

E. No. 28/2013 Santosh Kumari Vs Ram Lakhan Chourasia Page no. 28 of 31 Hon'ble Delhi High Court as under:

"11)...Thus, the affidavit filed by the tenant was shown to be false by the landlady on the basis of documents placed by it. No Rent Controller is supposed to grant leave to the tenant on the basis of a false affidavit and false averments and assertions. Such affidavit should be outrightly rejected by the Rent Controller. Only those averments in the affidavit are to be considered by the Rent Controller which have same substance in it and are supported by some material. Mere assertions made by a tenant in respect of landlord's ownership of other buildings and in respect of alternate accommodation are not to be considered sufficient for grant of leave to defend."

14.3 It is settled law that not just any dispute raised can be made a ground for granting leave to defend. In *Nem Chand Daga Vs. Inder Mohan Singh Rana*: 94 (2001) Delhi Law Times 683; it was held:

"That before leave to defend is granted, the respondent must show that some triable issues which disentitled the applicant from getting the order of eviction against the respondent and at the same time entitled the respondent to leave to defend existed. The onus is prima facie on the respondent and if he fails, the eviction follows."

14.4 In the judgment titled as *Sarwan Dass Bange Vs. Ram Prakash*: 167 (2010) DLT 80 the Hon'ble High Court of Delhi referring to the judgment of *Baldev Singh Bajwa v. Monish Saini*: (2005) 12 SCC 778 observed in para 17 as under:

"..It was held that the legislative intent is of expeditious disposal of the application for ejectment of tenant filed on the ground of requirement by the landlord of the premises for his own occupation; a special category of landlords requiring the premises for their own use has been created; if there is any breach by the landlord, the tenant is given a right of restoration of possession; the landlord who evicts a tenant on the ground of own requirement is not only prohibited from letting out the premises or disposing of the same but also required to use the same for his own residence only..."

E. No. 28/2013 Santosh Kumari Vs Ram Lakhan Chourasia Page no. 29 of 31 14.5 Thus, it is clear that the special summary procedure provided for u/s 25B of the DRC Act is an exception to the general intent to the Act. The intention of the legislature is to provide an expeditious remedy to landlords who seek eviction on the ground of bonafide requirement under the stringent conditions imposed in the special procedure. Thus, the mere bald averment of the respondent to the effect that the petitioner wants exuberant rent cannot disentitle the petitioner from relief that she is entitled to get after fulfilling the stringent requirements provided for in the special procedure. The Court has already observed that the sons of petitioner cannot be expected to wait till serious disputes arise between them and only then be allowed to separate their business just to accommodate the

tenant. Thus, this submission of the respondent is found to be untenable.

14.6 Moreover, it is held by the Hon'ble High Court of Delhi in a case titled as Hari Shanker Vs. Madan Mohan Gupta: 111 (2004) DLT 534 that:

"Summary procedure in Section 25-B of Delhi Rent Control Act, 1958 cannot be defeated by merely making frivolous and vague allegations which can never be substantiated."

14.7 It is also held by Hon'ble High Court of Delhi in Vinod Kumar Bhalla Vs. Sh. Nanak Singh: 1982 (2) RCR (Rent) 715 that in all applications for leave to defend the common defence raised by almost all the tenants, is that the landlord wanted to enhance the rent or to sell the property after getting it vacated. It was observed by the High Court that such types of allegations are without any foundation and that after an order of eviction is passed under section 14 (1)(e), the tenant is granted six months time to vacate the premises and the landlord is required to occupy the same within two months and the landlord is further dis-entitled from re-letting or alienating the whole or any part of the premises within three years from the date of obtaining possession from the tenant. Thus, the landlord is not in a position either to sell or re-let the tenanted premises for a period of three years and if a landlord does sell or re-let the premises within the said period then the tenant may proceed against the landlord for restoration of the possession under section 19 of the Act.

14.8 A similar observation was made in judgment titled Krishna Chopra & Anr. Vs. Smt. Raksha: 2000 Rajdhani Law Reporter 83.

E. No. 28/2013 Santosh Kumari Vs Ram Lakhan Chourasia Page no. 30 of 31 14.9 Thus, on the basis of the aforesaid legal propositions the contention of the respondent is rejected as the same is a mere assertion without any substance. Moreover, the contention of the respondent is not tenable because in such kind of cases protection/remedy available/provided for such tenants under the DRC Act itself as they can file petition for repossession if the premises are re-let or transferred by the landlord after evicting the tenant, but certainly the leave cannot be granted solely on this ground.

14.10 Thus, this defence raised by the respondent is a sham defense and it does not raise any triable issue.

CONCLUSION

15) It is well settled that leave to defend is granted to the tenant in case any triable issue is raised by him, which can be adjudicated by consideration of additional evidence. The mere existence of any triable issue is not sufficient. The nature of the triable issue raised by the tenant must be such that it will disentitle the landlord from obtaining the eviction order.

16) In the judgment titled as Sarwan Dass Bange Vs. Ram Prakash (supra) the Hon'ble High Court of Delhi referring to the judgment of Baldev Singh Bajwa v. Monish Saini (2005) 12 SCC 778 observed in para 17 as under:

"...the landlord who evicts a tenant on the ground of own requirement is not only prohibited from letting out the premises or disposing of the same but also required to use the same for his own residence only. It was held that these restrictions and conditions inculcate in built strong presumption that the need of the landlord is genuine; the conditions and restrictions imposed on the landlord make it virtually improbable for the landlord to approach the Court for ejectment of tenant unless his need is bona fide - no unscrupulous landlord in all probability, under this Section, would approach the Court for ejectment of the tenant considering the onerous conditions imposed on him. It was further held that this inbuilt protection in the Act for the tenants implies that whenever the landlord would approach the Court his requirement shall be presumed to be genuine and bona fide. It was further held that a heavy burden lies on the tenant to prove that the requirement is not genuine.." (emphasis supplied) E. No. 28/2013 Santosh Kumari Vs Ram Lakhan Chourasia Page no. 31 of 31

17) The whole purpose and import of summary procedure under Section 25B of the Act would otherwise be defeated. The prayer for leave to contest should be granted to the tenant only where a prima facie case has been disclosed by him. In the absence of the tenant having disclosed a prima facie case i.e. such facts which disentitles the landlord from obtaining an order of eviction, the Court cannot mechanically and in routine manner grant leave to defend. In the light of the aforesaid facts, circumstances and legal propositions, all the pleas taken by the respondent has failed to raise any triable issues regarding the ownership of the petitioner or the land lord-

tenant relationship; the bonafide requirement of the landlord; or the availability of any alternative suitable accommodation. The contents of the application for leave to defend have failed to rebut the presumption of bonafide qua the requirement of the petitioner. The application for leave to defend filed by the respondent is thus rejected.

18) As a consequence thereof, an eviction order is passed U/s. 14 (1) (e), DRC Act against the respondent regarding the tenanted premises i.e shop no. 1 situated on the ground floor of property no. BE-355, Gali no. 6, Hari Nagar, New Delhi-110064, as shown in red colour in the site plan

19) However, in light of Section 14 (7) DRCA, the aforesaid eviction order shall not be executable for a period of six months from today.

20) The parties are left to bear their own costs.

21) File be consigned to Record Room after due compliance.

Announced in the open Court

UId No. 02401C0117962013 vs Sh. Ram Lakhan Chouorasia on 5 October, 2015
on 05th day of October, 2015 (SUMEDH KUMAR SETHI)
ACJ/ARC/CCJ(West)/05.10.2015

E. No. 28/2013

Santosh Kumari Vs Ram Lakhan Chourasia