

Delhi District Court

Smt. Prem Lata vs Sh. Aman Grover on 21 July, 2018

IN THE COURT OF SH. AJAY NAGAR, COMMERCIAL CIVIL
JUDGE-CUM-ADDITIONAL RENT CONTROLLER (WEST),
TIS HAZARI COURTS, DELHI.

ARC No- 25885/2016

Smt. Prem Lata
W/o Late Sh. Jugal Kishore Arora
R/o A-2/14, Moti Nagar,
New Delhi-110015.

....Petitioner

VERSUS

1. Sh. Aman Grover
S/o Late Sh. Gopal Kishan
R/o B-509, Sudershan Park,
Near Moti Nagar,
New Delhi-110015.

Also at:-
Sh. Aman Grover
S/o Late Sh. Gopal Kishan
C/o Grover Bag House
Shop No. 5, A-2/13, Moti Nagar,
Near Moti Nagar Metro Station
New Delhi-110015.

2. Sh. Yogesh Grover
S/o Late Sh. Gopal Kishan
R/o B-509, Sudershan Park,
Near Moti Nagar,
New Delhi-110015.

Also at:-
Sh. Yogesh Grover
S/o Late Sh. Gopal Kishan

ARC No. 25885/16 Prem Lata vs. Aman Grover & Anr.
C/o Grover Bag House
Shop No. 5, A-2/13,
Moti Nagar Metro Station
New Delhi-110015.

Page 1 /23

.... Respondents

Date of institution : 13.05.2014
Date of order : 21.07.2018

ORDER ON LEAVE TO DEFEND

1. The present petition U/Sec. 14 (1) (e) of Delhi Rent Control Act, 1958 (hereinafter referred to as 'DRC Act') has been filed by the petitioner against the respondents for their eviction from the shop admeasuring about 7' X 7 1/2, bearing private No. 5, situated in premises No. A-2/13, Moti Nagar, New Delhi-110015, more specifically shown as red in the site plan attached with the petition on the ground of bonafide requirement of the eldest grandson of the petitioner namely Sh. Deepak Arora for commercial purposes.

2. It is averred by the petitioner that the petitioner is a senior citizen presently aged about 85 years and is widow of Late Sh. Jugal Kishore Arora. The petitioner is suffering from various old aged ailments. Petitioner further submits that she is the owner of the tenanted shop and she has acquired it vide Lease deed dated 30.12.1960 as executed between the President of India and the petitioner.

It is further averred that her family is comprising of four married sons, three grandson and six granddaughter and all the grandson are major and of marriageable age. The petitioner further clarifies that suit property bearing No. A-2/13, Moti Nagar, New Delhi (hereinafter referred to as 'suit ARC No. 25885/16 Prem Lata vs. Aman Grover & Anr. Page 2 /23 property') was originally owned by the husband of the petitioner and it was inherited by the petitioner along with her four sons and all these four sons executed the Relinquishment Deed in favour of petitioner and by virtue of this Relinquishment Deed, the petitioner became sole and absolute owner of the suit property including tenanted shop. Petitioner further submits that first floor and second floor of the suit property are being used for residential purposes by her family members.

Petitioner further submits that in the built up property admeasuring 75.9 sq. yards bearing No. 13, Block 2A, Moti Nagar, New Delhi, there are small shops bearing No. 1 to 8 and out of these shops, shop no. 2,4, 6 & 7 have already been sold out by the petitioner to third parties for the welfare of the family members.

Petitioner further discloses that shop no. 8 is with the youngest son Sh. Raman Arora, who along with his son namely Sh. Dipen Arora is doing the business of ready made garments at the above mentioned shop.

Petitioner further avers that the shop no. 1 is with her son Sh. Vinay Arora, who along with his son Sh. Rakesh Arora doing the same kind of business.

Petitioner further submits that shop no. 2A was also sold out by the petitioner for requirement of the family to the eldest son of the petitioner namely Sh. Rajan Arora and after selling the said shop, the petitioner left with no ownership in the said shop and her eldest son is in occupation of aforesaid shop.

Petitioner further discloses that shop bearing no. 2B with Sh. Sunil Arora was given by the petitioner for his livelihood and occupation. And the aforesaid son Sh. Sunil Arora is having no source of income except aforesaid shop from which he is meeting the day to day expenses of his ARC No. 25885/16 Prem Lata vs. Aman Grover & Anr. Page 3 /23 family consisting of three daughters, out of which two are married and one daughter is of marriageable age.

Petitioner further submits that other shop bearing No. 3 is occupied by M/s Kohli Footwear with whom the petitioner is having some disputes. It is further submitted that the shop no. 5 is the tenanted shop. It is further averred by the petitioner that said shops are the only source of livelihood of her sons and grandsons of the petitioner except her grandson Sh. Deepak Arora, son of Sh. Rajan Arora, aged about 28 years who is presently unemployed.

It is further submitted that family of the elder son consists of himself, his wife, one son and two married daughters but the whole family is dependent only on the elder son of the petitioner as he is the only earning member of the family. The income of elder son of the petitioner is not sufficient to maintain his family.

It is further submitted that grandson of the petitioner Sh. Deepak Arora is eager to start his own business to lessen the burden of his father to maintain the family.

Petitioner further submits that her eldest grandson Sh. Deepak Arora who is presently unemployed is of marriageable age and the petitioner wants to get him married during her lifetime but unable to do so due to unemployment. That the petitioner wants her grandson to start business of ready made garments in the tenanted premises. Moreover, eldest grandson of the petitioner is not interested in private job and wants to start the same business as the other family members are doing.

Petitioner further submits that petitioner has no other alternative suitable accommodation for her eldest grandson to run an independent business and she bonafidely requires the tenanted premises. She further ARC No. 25885/16 Prem Lata vs. Aman Grover & Anr. Page 4 /23 submits that other shops of the property are already occupied and used by other family members for their own business. As such, the petitioner does not have any suitable accommodation to give her grandson to start a business.

It is further submitted that all the sons and grandsons of the petitioner are in business and well settled excepting Sh. Deepak Arora.

Lastly, it is prayed by the petitioner to pass an eviction order in respect of tenanted premises.

3. Notice of this eviction petition was sent to the respondents in the prescribed format which was duly served on the respondents. In response to which the respondent No. 1/tenant filed leave to defend application accompanied by affidavit but respondent no. 2 did not file the leave to defend.

4. Respondent No. 1 in his leave to defend application has inter-alia contended that the respondent no.1/tenant is continuously running business at the tenanted shop and paying the rent regularly to the petitioner.

The next contention of the respondent no.1/tenant is that no material has been brought on record by the petitioner proving or showing her ownership.

One of the grounds of the respondent no.1 is that respondent no.2 who inherited the tenancy right after the death of his father has already left the tenanted shop and running his own business nearby tenanted shop and the respondent no.1 is the sole tenant of the tenanted shop no.5.

ARC No. 25885/16 Prem Lata vs. Aman Grover & Anr. Page 5 /23 The another ground raised by respondent no.1/tenant is that the petitioner has not disclosed in her petition that they do not have any other reasonably suitable accommodation for herself. The next contention of the respondent no.1/tenant is that the petitioner has falsely and frivolously claimed in her petition that the tenanted shop is bonafidely required for her grandson for his business but the objective of the petitioner is to achieve illegal targets. The next plea of the respondent no.1/tenant is that petitioner has given the wrong and false information regarding bonafide requirement of the tenanted shop measuring 7 x 7 ½ feet for her son. He further submits that there is no requirement of the petitioner in the present petition for herself or her grandson. He further submits that there is malafide and not bonafide in filing such eviction petition as the intention of the petitioner is to fetch the huge sale consideration after selling of the entire suit property on vacating the tenanted shop.

Next plea of the respondent no.1/tenant is that petitioner has not disclosed the actual details of the properties under her ownership situated in the area of Delhi/New Delhi.

5. Reply to leave to defend filed by the petitioner stating that the affidavit of the respondent does not disclose any defence or triable issue which entitle him to contest the eviction petition and disentitle the petitioner for obtaining an order for eviction. It is also submitted that the defence taken by the respondent No. 1 is moon shine and bogus which requires no trial in the matter.

6. Thereafter, rejoinder was filed by the respondent No. 1 to the reply filed by the petitioner wherein respondent reiterated his earlier stand as ARC No. 25885/16 Prem Lata vs. Aman Grover & Anr. Page 6 /23 mentioned in leave to defend application and also made clarification in respect of reply filed by the petitioner.

7. I have heard Ld. Counsels for the parties at length and gone through the record. Learned counsel for the respondent inter-alia submits that petitioner is not the owner of the tenanted premises. Learned counsel for respondent submits that the grandson of the petitioner for whom the tenanted premises is being sought by the petitioner is not dependent upon the petitioner. Learned counsel also submits that the grandson of the petitioner is working with his father and he is also doing the business independently. He further submits that the petitioner has not disclosed all the properties in his possession. He also claims that petitioner does not have any bonafide requirement and the motive of petitioner is to re-let or and to sell it out at higher rates.

On the other hand, Ld. Counsel for the petitioner inter-alia submits that she is the owner as well as landlady of the tenanted premises. Learned counsel further submits that the petitioner has bonafide requirement for her grandson as he is unemployed. He further submits that the petitioner does not have any alternative reasonable suitable accommodation in Delhi.

THE LAW:

It is well settled that burden placed on a tenant is light and limited in that if the affidavit filed by him discloses such facts as would disentitle the landlord from obtaining an order for the recovery of the possession of the premises on the ground specified in clause (e) are good enough to grant leave to defend.

ARC No. 25885/16 Prem Lata vs. Aman Grover & Anr. Page 7 /23 It is further well settled that at a stage when the tenant seeks leave to defend, it is enough if he prima-facie makes out a case by disclosing such facts as would disentitle the landlord from obtaining an order of eviction. Unless the tenant at that stage itself establishes a strong case as would non-suit the landlord leave to defend should not be granted when it is not the requirement of Section 25 B(5). A leave to defend sought for cannot also be granted for mere asking or in a routine manner which will defeat the very object of the special provisions contained in Chapter IIIA of the Act, leave to defend cannot be refused where an eviction petition is filed on a mere design or desire of landlord to recover possession of the premises from a tenant. Refusing to grant leave in such a case leads to eviction of a tenant summarily resulting in great hardship to him and his family members, if any, although he could establish if only leave is granted that a landlord would be disentitled for an order of eviction.

It is also well settled at the stage of granting leave to defend, parties rely on affidavits in support of the rival contentions. Assertions and counter assertions made in affidavits may not afford safe and acceptable evidence so as to arrive at an affirmative conclusion one way or the other unless there is a strong and acceptable evidence available to show that the facts disclosed in the application filed by the tenant seeking leave to defend where either frivolous, untenable or most unreasonable.

It is also well settled that when a possession is sought on the ground of personal requirement, a landlord has to establish his need and not his mere desire.

In short and substance wholly frivolous and totally untenable defence may not entitle a tenant to leave to defend but when a triable issue is raised a duty is placed on the rent controller by the statute itself to grant ARC No. 25885/16 Prem Lata vs. Aman Grover & Anr. Page 8 /23 leave. It would expeditious disposal of eviction petition so that a landlord need not wait and suffer for long time. On the other hand, when a tenant is denied leave to defend although he had fair chance to prove his defence, will suffer great hardship. In this view a balanced view is to be taken having regard to competing claims.

There appears to be a mistaken belief that unless the tenant at that stage makes out such a strong case as would non-suit the landlord, leave to defend cannot be granted. This approach is wholly improper. When leave to defend is sought for, the tenant must make out such a prima facie case raising such pleas that a triable issue would emerge and that in our opinion should be sufficient to grant leave. The test is the test of a triable issue and not the final success in the action.

8. I have carefully and minutely gone through petition, leave to defend application accompanied by affidavit, reply, rejoinder, documents and material on record as well as the written submissions and case law filed by both the Ld. Counsels for the parties.

9. It is expedient to reproduce the Section 14 (1)(e) of DRC Act which is as under:

"Section-14. Protection of tenant against eviction- (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by court or any controller in favour of the landlord against a tenant:

Provided that the controller may, on an application made to him in ARC No. 25885/16 Prem Lata vs. Aman Grover & Anr. Page 9 /23 the prescribed manner, make an order for recovery of possession of the premises on one or more of the following grounds only, namely:-

"That the premises are required bonafide by the landlord for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable accommodation."

As such, followings are the ingredients of Section 14 (1)(e) of D.R.C.

Act:-

(i) There should be relationship of landlord and tenant between the petitioner and respondent.

(ii) Landlord should be the owner of the tenanted premises.

- (iii) That the premises are required bonafide by the landlord for himself/herself or for any member of his/her family dependent upon him/her.
- (iv) Landlord should not have other reasonable suitable accommodation.

10. Let us discuss the ingredients of Sec. 14(1)(e) of D.R.C. Act:-

(i) & (ii). LANDLORDSHIP AND OWNERSHIP:-

11. The plea of the respondent no.1/tenant is that no material has been brought on record by the petitioner proving or showing her ownership.

ARC No. 25885/16 Prem Lata vs. Aman Grover & Anr. Page 10 /23 Petitioner submits that she is the owner of the tenanted shop and she has acquired it vide Lease Deed dated 30.12.1960 as executed between the President of India and the petitioner.

Perusal of record reveals that petitioner is claiming the landladyship as well as ownership in respect of tenanted shop and it is claimed by the petitioner that she is the owner of the suit property including tenanted premises by way of lease deed dated 30.12.1960 as executed between President of India and petitioner. Moreover, he has also filed the copy of the aforesaid lease deed dated 30.12.1960 which reflects the name of the petitioner.

On the other hand, material on record reveals that the respondent has failed to show who is the owner of the tenanted premises if the petitioner is not the owner of the tenanted shop. It is well settled that it is the duty of the respondent/tenant to show who is the owner of the tenanted shop in case he is denying the ownership of petitioner/landlord. Furthermore, it is also well settled that the petitioner/landlord need not prove his/her ownership in absolute terms. As such, this plea of the respondent no.1/tenant does not have any force.

In case titled as Jiwan Lal Vs. Gurdial Kaur & Ors. 1995 RLR 162 a Bench of Hon'ble High Court of Delhi while dealing with the concept of ownership in a pending eviction petition under Section 14(1)(e) of the DRC Act had noted as follows:

"There is a tendency on the part of tenants to deny ownership in cases under Section 14(1)(e). To test the substance of such a plea on the part of the tenants the Courts have insisted that they should state who else is the owner of the premises if not the petitioner. In the present case it is not said as to who else is the owner. Further these cases under Section 14(1)(e) are not title cases ARC No. 25885/16 Prem Lata vs. Aman Grover & Anr. Page 11 /23 involving disputes of title to the property. Ownership is not to be proved in absolute terms. The respondent does not claim the owner of the premises."

Further, in the case titled as Smt. Shanti Sharma & Ors. Vs Smt Ved Prabha & ors 1987 AIR 2028, the Hon'ble Supreme Court observed : -

"That the meaning of term 'owner' is vis a vis the tenant i.e. the owner should be something more than the tenant."

12. It is also well settled that the petitioner should be something more than the tenant and the petitioner need not prove her ownership in absolute terms. It is sufficient for the petitioner to prove or to show that she is something more than a tenant. In my view, the petitioner has been able to prove that she is something more than the respondent.

As such, this contention of the respondent in respect of ownership of the petitioner does not raise any triable issue which disentitle the petitioner to obtain the eviction order.

(iii) & (iv). BONAFIDE REQUIREMENT AND ALTERNATIVE ACCOMMODATION:-

13. The other issue raised by the respondent no.1/tenant is that the petitioner is falsely and frivolously claimed in her petition that the tenanted shop is bonafidely required for her grandson for his business.

The next plea of the respondent no.1/tenant is that petitioner has given the wrong and false information regarding bonafide requirement of the tenanted shop measuring 7 x 7 1/2 feet for her grandson. He further ARC No. 25885/16 Prem Lata vs. Aman Grover & Anr. Page 12 /23 submits that there is no requirement by the petitioner in the present petition for herself and her grandson.

On the other hand, it is further submitted by the petitioner that grandson of the petitioner Sh. Deepak Arora is eager to start his own business to lessen the burden of his father to maintain the family.

Petitioner further submits that her eldest grandson who is presently unemployed is of marriageable age and the petitioner wants to get him married during her lifetime but unable to do so due to unemployment. That the petitioner wants her grandson to start business of ready made garments in the tenanted shop. Moreover, eldest grandson of the petitioner is not interested in private job and wants to start the same business as the other family members are doing.

In the case titled as Ragavendra Kumar Vs Firm Prem Machinery AIR 2000 SC 534, it was observed as under:-

"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, (See: Prativa Devi (Smt.) v. T.K Krishnan, [1996] 5 SCC

353. In the case in hand the plaintiff-landlord wanted eviction of the tenant from the suit premises for starting his business as it was suitable and it cannot be faulted."

In the case titled as Sarla Ahuja Vs United India Insurance Co.

Ltd. AIR 1999 SC 100 , the Hon'ble Supreme Court has held that:-

"The crux of the ground envisaged in clause (e) of Section 14(1) of the Act is that the requirement of the ARC No. 25885/16 Prem Lata vs. Aman Grover & Anr. Page 13 /23 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."

I have carefully perused the material on record which reveals that the respondent no.1/tenant has not placed on record any cogent and convincing material which reveals the malafide of the petitioner/landlady. As such, in my view and well settled proposition of law, this is not triable issue.

14. Next contention of the respondent no.1/tenant is that there is malafide and not bonafide in filing such eviction petition. That respondent no.1/tenant further claims that the intention of the petitioner is to fetch the huge sale consideration after sale of entire suit property on vacating the tenanted shop.

On the other hand, petitioner has submitted that there is no malafide on the part of petitioner in respect of eviction from the tenanted shop and the petitioner needs this tenanted shop bonafide for the bonafide requirement of her grandson Sh. Deepak Arora. The petitioner also submits that the apprehension of the respondent no. 1 is baseless as there is always Sec. 19 on the statue for the rescue of respondent no. 1 in case ARC No. 25885/16 Prem Lata vs. Aman Grover & Anr. Page 14 /23 petitioner or her grandson does not occupy the tenanted shop after eviction.

"19. Recovery of possession for occupation and re-entry. -

(1) Where a landlord recovers possession of any premises from the tenant in pursuance of an order made under clause (c) of the proviso to sub-section (1) of section 14 [or under sections 14A, 14B, 14C, 148 and 21], the landlord shall not, except with the permission of the Controller, obtained in the prescribed manner, re-let the whole or any part of the premises within three years from the date of obtaining such possession, and in granting such permission, the Controller may direct the landlord to put such evicted tenant in possession of the premises. (2) Where a landlord recovers possession of any premises as aforesaid and the premises are not occupied by the landlord or by the person for whose benefit the premises are held, within two months of obtaining such possession, or the premises having been so occupied are, at any time within three years from the date of obtaining possession, re-let to any person other than the evicted tenant without obtaining the permission of the Controller under sub- section (1) or the possession of such premises is transferred to another person for reasons which do not appear to the Controller to be bona fide, the Controller may, on an application made on him in this behalf by such evicted tenant within such time as may be prescribed, direct the landlord to put the tenant in possession of the premises or to pay him such compensation as the Controller thinks fit."

In the case titled as Ramesh Kumar & Ors. vs. Smt. Neelam Dawar & Ors. Passed in RC (Rev.) 44/2014, C.M. Application 1313- 14/2014, the Hon'ble High Court of Delhi inter-alia observed as under:-

"The tenant's apprehension that upon eviction the tenanted premises would be let out at a higher rent was found to be baseless and prematured since such contingency has been taken care of U/Sec. 19 of the Act."

ARC No. 25885/16 Prem Lata vs. Aman Grover & Anr. Page 15 /23 As such, statute clearly lays down that the petitioner/ landlord has to occupy the vacated tenanted premises within two months and the landlord cannot re-let to any person other than the evicted tenant within three years from the date of obtaining possession and in case he does so, the evicted tenant may approach the Rent Controller seeking direction to the landlord to put the tenant in possession of the premises.

In my considered view, the apprehension of the respondent no.1/tenant does not have any merit at all as such Section 19 of DRC Act is always there for rescue of respondent no.1/tenant in case petitioner does not occupy the tenanted shop within two months and in case petitioner re- let it to another tenant within three years. As such, this issue also can not be treated as triable issue.

15. One of the pleas of the respondent is that the grandson of the petitioner Sh. Deepak Arora for whom the petitioner is seeking tenanted premises is not unemployed and he is working with his father in the business of construction. Moreover, respondent No.1 has also claimed that Sh. Deepak Arora is also doing his business in the name of S.S. Construction and Interior and he came to know about the said fact from the website of Sh. Deepak Arora.

On the other hand, petitioner has relied upon the judgment of Hon'ble Supreme Court in case titled as Raghunath G. Panhale (dead) through L.Rs. Vs. Chagan Lal Sundarji & Co. (1999) 8 SCC 1 wherein it was held that:-

"It will be seen that the trial court and the appellate court had clearly erred in law. They practically equated the test of "need or requirement" to be equivalent to "dire or ARC No. 25885/16 Prem Lata vs. Aman Grover & Anr. Page 16 /23 absolute or compelling necessity". According to them, if the plaintiff had not permanently lost his job on account of the lockout or if he had not resigned his job, he could not be treated as a person without any means of livelihood, as contended by him and hence not entitled to an order for possession of the shop. This test, in our view, is not the proper test. A landlord need not lose his existing job nor resign it nor reach a level of starvation to contemplate that he must get possession of his premises for establishing a business. The manner in which the courts have gone into the meaning of "lockout" in the Industrial Disputes Act, 1947 appears to us to be nothing but a perverse approach to the problem. One cannot imagine that a landlord who is in service should first resign his job and wait for the unknown and uncertain result of a long-drawn litigation. If he resigned his job, he might indeed end up in utter poverty. Joblessness is not a condition precedent for seeking to get back one's premises. For that matter assuming the landlord was in a job and had not resigned it or assuming that pending the long-drawn litigation he started some other temporary water business to sustain himself, that would not be an indication that the need for establishing a grocery shop was not a bona fide or a reasonable requirement or that it was motivated or was a mere design to evict the tenant".

In view of observations made by Hon'ble Supreme Court; it is well settled that a person is not supposed to remain unemployed till the disposal of the eviction petition. Furthermore, this Court is

of the opinion that there is nothing malafide if grandson of the petitioner wants to start his own business from the tenanted shop. Rather, the said requirement seems to be bonafide as he wants to earn his livelihood and the tenant cannot stop the landlord/family member of landlord from starting any business for livelihood. The bonafide requirement of a landlord does not become malafide just because he wants to run business for his livelihood. The consequent hardship to tenant from eviction order could also not convert otherwise bonafide requirement into malafide requirement. It is the case of ARC No. 25885/16 Prem Lata vs. Aman Grover & Anr. Page 17 /23 the petitioner that the other family members of the petitioner are already having the same kind of business in their respective shops i.e. ready made garments. In my view, it is generally the habit of the child to follow the footprints of his parents and elders and if the grandson of the petitioner wants to start the same business in the tenanted premises, it does not seem to be unnatural and the requirement of the petitioner and her grandson in respect of tenanted premises appears to be bonafide. Furthermore, even it is presumed for the sake of arguments that grandson of the petitioner is already working somewhere either with his father or independently, it does not show the malafide on the part of petitioner or her grandson as it is a right of every person to excel in his/her life and a person is not supposed to be remained unemployed till the disposal of the eviction petition. As such, it is not a triable issue.

16. One of the pleas of the respondent No. 1 is that Sh. Deepak Arora is not dependent upon the petitioner. Rather, he is dependent upon his father.

On the other hand, petitioner has relied upon the judgment titled as Rishal Singh vs Bohat Ram & Ors. (2014) 144 DRJ 633; wherein the Hon'ble High Court of Delhi observed as under:-

"It was vehemently argued by Mr. K. Sunil, counsel for the tenant that the grandson of the landlord, who is said to be living separately from the landlord, is not a dependent and hence an eviction petition cannot be sought for him. However, Mr. J.K. Jain counsel for the respondent submitted that the son and the grandson of the landlord with their family are living with the landlord and it would be incorrect to state that the landlord has no concern with the grandson. Counsel for the respondent further submitted that an unemployed grandson of the landlord is wholly dependent upon him, therefore, he falls within the ambit of Section 14(1)(e) of the Act. The grandson is currently unemployed. Learned counsel Mr. ARC No. 25885/16 Prem Lata vs. Aman Grover & Anr. Page 18 /23 Sunil denied the scope of the section to be as wide as to include grandson in an eviction petition for bona fide requirement and relies upon Delhi Cloth and General Mills Co. Ltd v. Sri. T. S. Bhatia 1977 AIRCJ (Delhi) 902 to state that questions of whether son of any member of the family of the landlord is a dependent is a question of fact which would require evidence to be lead which in conclusion would mean that the leave to defend application must be allowed. The counsel relied on the abovementioned judgment to further state that such controversies cannot be decided by virtual findings and that they necessarily need to be out to trial. However, counsel for the respondent relied on another judgment of this Court in Om Prakash Bajaj v. Chander Shekhar (2003)1 RCR 332 wherein the Court included sons family of the landlord in the meaning of dependent.

The Court held that the need of any member including the son; the wife, sons wife and children are to be treated as the need for the landlord. The impugned order also relied on the same judicial pronouncement to arrive at a conclusion. This Court finds such a decision to be more at par with the intent of the Act that the judicial precedent mentioned by the counsel for the tenant. The law, on this point, has evolved to extent where it is accepted position that a grandson is included in dependents of the landlord."

As such keeping in view the observations made by the Hon'ble High Court of Delhi, this plea of the respondent that Sh. Deepak Arora is not dependent upon the petitioner does not have any force.

17. The another ground raised by respondent no.1/tenant is that the petitioner has not disclosed in her petition that they do not have any other reasonably suitable accommodation for herself and her grandson.

18. Next plea of the respondent no.1/tenant is that petitioner has not disclosed the actual details of the properties under her ownership situated ARC No. 25885/16 Prem Lata vs. Aman Grover & Anr. Page 19 /23 in the area of Delhi/New Delhi.

On the other hand, petitioner has submitted that she has disclosed details of all the properties in her possession and she has not concealed any material fact from the court.

In Shiv Sarup Gupta Vs Dr. Mahesh Chand Gupta AIR 1999 SC 2507, at pg-2512 in para 14 & 15, Supreme Court held that:-

"14. The availability of an alternate accommodation with the landlord i.e. an accommodation other than the one in occupation of the tenant wherefrom he is sought to be evicted has a dual relevancy. Firstly, the availability of another accommodation, suitable and convenient in all respects as the suit accommodation, may have an adverse bearing on the finding as to bonafides of the landlord if he unreasonably refuses to occupy the available premises to satisfy his alleged need. Availability of such circumstance would enable the Court drawing an inference that the need of the landlord was not a felt need or the state of mind of the landlord was not honest, sincere, and natural. Secondly, another principal ingredient of Clause (e) of Sub-section (1) of Section 14 which speaks of non- availability of any other reasonably suitable residential accommodation to the landlord, would not be satisfied. Wherever another residential accommodation is shown to exist as available than the court has to ask the landlord why he is not occupying such other available accommodation to satisfy his need. The landlord may convince the court that the alternate residential accommodation though available is still of no consequence as the same is not reasonably suitable to satisfy the felt need which the landlord has succeeded in demonstrating objectively to exist. Needless to say that an alternate accommodation, to entail denial of the claim of the landlord, must be reasonably suitable, obviously in comparison with the suit accommodation wherefrom the

landlord is seeking eviction. Convenience and safety of the landlord and his family members would be relevant fact Ors. While considering the totality of the circumstances, the court may keep in view the profession ARC No. 25885/16 Prem Lata vs. Aman Grover & Anr. Page 20 /23 or vocation of the landlord and his family members, their style of living, their habits and the background wherefrom they come."

In my view, this contention also does not have any merit as it is not the requirement of the law to mandatorily use such words in the eviction petition. Moreover, the eviction petition manifestly shows that the petitioner has exhaustively mentioned each and every accommodation available with her and being used by her family members.

In my view, this plea of the respondent no.1 does not have any force as it was the duty of the respondent no.1/tenant to give the details of such properties in case petitioner is having ownership in these properties but no details thereof has been provided on record by the respondent and only bald averments have been made.

19. One of the pleas of the respondent No. 1 is that the petitioner has not disclosed shop no. 2A and 2B. As such, the petitioner has concealed the material facts from the court. On the other hand, the petitioner submits that she has disclosed the details of such shops i.e. 2A and 2B in the eviction petition itself.

Perusal of record reveals that in the eviction petition itself the petitioner has given the details of such shops i.e. 2A and 2B and even mentioned in whose possession these shops are. As such, this plea is also does not have any merit.

20. One of the pleas of the respondent is that the respondent no.1/tenant is continuously running business at the tenanted shop and paying the rent ARC No. 25885/16 Prem Lata vs. Aman Grover & Anr. Page 21 /23 regularly to the petitioner.

In my view, this is not a triable issue and this plea of respondent/tenant is not sustainable as the petitioner can file the eviction petition U/S 14(1) (e) of DRC Act even when the rent is regularly paid by the respondent/tenant provided bonafide requirement exists.

21. One of the grounds of the respondent no.1 is that respondent no.2 who inherited the tenancy right after the death of his father has already left the tenanted shop and running his own business from nearby tenanted shop and the respondent no.1 is the sole tenant of the tenanted shop no.5.

In my view, this ground also does not have any merit and it is not a triable issue as the case is U/S 14(1)(e) for bonafide requirement and not U/S 14(1)(b) for subletting.

THE CONCLUSION:

22. In view of the above discussion, I am of the considered opinion that no purpose would be served, even if, the petitioner is compelled to appear in the witness box the position would be no different than it is today. For this reason also, I find no triable issue in the leave to defend application of the respondent. The application for leave to defend filed by the respondent is thus, dismissed.

23. Hence, as a consequence thereof, an eviction order is passed U/s. 14 (1) (e) of DRC Act in favour of petitioner and against the respondents in respect of the shop admeasuring about 7' X 7 1/2, bearing private No. ARC No. 25885/16 Prem Lata vs. Aman Grover & Anr. Page 22 /23 5, situated in premises No. A-2/13, Moti Nagar, New Delhi-110015, more specifically shown as red in the site plan attached with the petition which is marked as Mark- P1 (Put by the court for the purpose of identification).

24. However, this order shall not be operative before the expiry of six months from today keeping in view Sec. 14(7) of D.R.C. Act.

File be consigned to the Record Room after due compliance.

Announced in the open Court

on 21st July, 2017

(This order contains 23 pages)

AJAY

NAGAR

Digitally signed
by AJAY

NAGAR

Date:

2018.07.21

18:23:52 +0530

(Ajay Nagar)

Commercial Civil Judge-Cum
Additional Rent Controller,
West District, THC, Delhi.