

Delhi District Court

Smt. Mamta Gupta vs Ms. Anita Rani on 4 August, 2018

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

ARC No. 25572/2016

1. Smt. Mamta Gupta
Wd./o Late Sh. Rakesh Gupta,
D/o Late Sh. Brij Lal Gupta,
R/o 89, Hospital Road, Banglore City,
Karnataka-560003.
2. Sh. Dinesh Gupta,
S/o Late Sh. Brij Lal Gupta,
R/o 407/1, Gali No. 1, Than Singh Nagar,
Anand Parbat, New Delhi-110005.
3. Smt. Madhuri Gupta
W/o Sh. Vipin Gupta,
D/o Late Sh. Brij Lal Gupta,
R/o Yamuna 310, Aggarsen Awas,
Patparganj, I.P. Extension,
Delhi-110092.
4. Sh. Ajay Gupta
S/o Late Shg. Brij Lal Gupta,
R/o 407/1, Gali No. 1, Than Singh Nagar,
Anand Parbat, New Delhi-110005.
5. Smt. Babita Gupta
W/o Sh. Deepak Gupta,
D/o Late Sh. Brij Lal Gupta,
R/o 1/5492-E, Gali No. 16-C,
Balbir Nagar Extension,
Shahdara, Delhi-110032.

...Petitioners

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VERSUS

1. Ms. Anita Rani
W/o Sh. Rajeev Sarpal
2. Sh. Sanjeev Sarpal
S/o Late Sh. Sardari Lal
3. M/s Shiva Enterprises

Through its Partner

All at 407/I, Gali No. 1,
Than Singh Nagar,
Anand Parbat,
New Delhi-110005.

.... Respondents

Date of institution : 16.01.2014
Date of order : 04.08.2018

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 petitioners against the respondents for their eviction from one office room on property bearing No. 407/I, Gali No. 1, Than Singh Nagar, Anand Parbat, New Delhi-110005, as specifically shown in red colour in site plan attached with the petition (hereinafter referred to as tenanted premises), on the ground of bonafide requirement of the petitioners for commercial purpose.

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2. The brief facts as stated by the petitioners in the petition are that late Sh. Brij Lal Gupta, S/o Late Sh. Banwari Lal Gupta, R/o 407/I, Gali No. 1, Than Singh Nagar, Anand Parbat, New Delhi-110005 (hereinafter referred to as "suit property") was the owner of the suit property. Sh. Brij Lal Gupta expired on 12.01.2003, leaving behind the petitioners as his only legal heirs. All the legal heirs (Petitioners) became the owners by way of law of succession. Petitioners no. 1, 2, 3 & 5 have executed Special Power of Attorney in favour of petitioner No. 4 and authorised him to file the present case on their behalf.

Petitioners submit that during the life time Sh. Brij Lal Gupta let out an office room and a hall at the ground floor in the above mentioned property to the respondents @ Rs. 1,000/- per month which was increased from time to time and lastly it was Rs. 1800/- per month. The respondents paid the rent upto July 2006 only and thereafter stopped to make the payment. It is further averred that respondents filed a suit for injunction against the petitioners no. 2 & 4 which is still pending in the court of Ms. Anjani Mahajan, Ld. Civil Judge, Delhi.

It is further averred by the petitioners that the tenants/respondents were earlier running a small factory in the tenanted premises and thereafter a factory was allotted to them in Bawana and they shifted their factory from tenanted premises to Bawana, Delhi. The respondents handed over the possession of the all to the petitioners by keeping only the office room in Delhi, 2006 with the assurance to remove the unutilized waste material from the all and hand over the possession of the office room by Holi of 2007 but since then they are not using the same and put a

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lock in one office room merely to establish their claim over the same.

It is averred that petitioner no. 4 Sh. Ajay Gupta is running his business in the name and style of Dinesh Metals in a rented accommodation at Shahdara, Delhi-110032. Sh. Ajay Gupta has to spare one hour a day to reach his office which is very inconvenient to the petitioner no. 4 being at a distant place and his landlord is also insisting him to vacate the said premises. Petitioner no. 4 further submits that he wants to expand his business and shift the same to the entire ground floor of the tenanted premises for using the same for storage purpose additionally. Hence, the petitioner filed the present petition for eviction of the respondent.

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 respondents filed leave to defend application accompanied by affidavit.

4. Respondents in their leave to defend application submit that the site plan filed by the petitioner is false and incorrect. Respondent claims that the petitioners have not come to this court with clean hands and have concealed true, actual and material facts from this Court.

Respondents allege that the present petition for partial tenancy is not maintainable. Respondents were tenants in the entire ground floor. However, the petitioners illegally, forcibly and without due process of law broke opened the locks of the tenanted premises and have taken illegal possession of almost 3/4th of the tenanted premises and only about 1/4th

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of the tenanted premises is in possession of the respondents.

Respondent further submits that the rent of the tenanted premises was Rs. 1,000/- per month and an amount of Rs. 30,000/- was also received by Late Sh. Brij Lal Gupta as security. At present the rate of rent is Rs. 1800/- per month.

It is alleged by the respondents that they had great apprehension that they would be dispossessed illegally, forcibly and without due process of law and as such, they filed a suit for permanent injunction which is still pending in the court of Ms. Anjani Mahajan, Ld. Civil Judge, Delhi.

Respondents submit that petitioner No. 4 Sh. Ajay Gupta is running his own business in his own property which is exclusively owned and possessed by the petitioners and the same is not a rented accommodation. And the petitioners have not filed any documents on record to show that the premises where the petitioner No. 4 is doing his business is rented accommodation. Respondents further claim that shifting of business from Shahdara to tenanted premises is a false plea taken by the petitioners. Respondents submit that the petitioners are confused as on the one hand, petitioners claim that they want to shift their business to the tenanted premises and on the other hand, they claim that they want to use the tenanted premises for storage purpose additionally.

So far as alternative accommodation available with the petitioners is concerned, the respondents allege that the petitioners have several other

properties at Shahadara, Wazirpur Industrial area and Naraina Industrial area but they did not disclose the same and concealed this fact.

Respondents further allege that the petitioners do not require the tenanted premises bonafide as the petitioners have created a false ground for

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eviction of the respondents because they want to let out the tenanted premises further on higher rate of rent. As such, the respondents pray for dismissal of the present petition.

5. The petitioners have filed their reply to the leave to defend application of the respondents. In nutshell, the petitioners have specifically denied the assertions made by the respondents in their leave to defend application. In their reply, the petitioners have reasserted their bonafide requirement of the tenanted premises. It is further stated that the respondents have failed to raise any triable issue.

Petitioners vehemently deny that the petitioner No. 4 Sh. Ajay Gupta is running the business in his own property. It is also denied that the averments made by the petitioners are self contradictory and self destructive or the petitioners have no requirement of the tenanted premises.

6. In the reply, it is stated by the petitioners that the present application seeking leave to defend filed by the respondents is a gross abuse of process of law and the present application is liable to be dismissed, as the respondents have not approached the Court with clean hands and concealed the material facts from this Court. It is further submitted by the petitioners that the respondents instead of vacating the premises in question have chosen to file the application under reply just to delay the proceedings of the present case. The petitioners have submitted that they require the property in question for bonafide.

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7. Respondents also filed rejoinder to the reply to leave to defend and reiterated same facts as raised in the leave to defend.

8. Ld. Counsel for the petitioners submits that they are owners as well as landlords of the tenanted premises and respondents are their tenants. He also submits that the father of the petitioners Sh. Brij Lal Gupta let out one hall and one office room in the ground floor in suit property to respondents and after the death of their father and mother, they are only legal heirs. Ld. Counsel for petitioners further submits that petitioners have the bonafide requirement of the tenanted premises for petitioner no. 4 Sh. Ajay Gupta and he is running business in the name and style of Dinesh Metals in a rented accommodation at Shahdara and he has to face a lot of inconvenience while traveling to such a distance place and his landlord is

also insisting upon to vacate the said premises. He further claims that petitioner no. 4 wants to expand the business and shift the same to the entire ground floor of the tenanted premises and for using it for storage purpose additionally. Ld. Counsel for petitioners further submits that the petitioners do not have any alternative reasonably suitable accommodation. Lastly, Ld. Counsel for petitioners submit that the respondents have not been able to raise any triable issue in leave to defend.

On the other hand, Ld. Counsel for respondents submits that petitioner has sought ejectment of office area which is a small portion of the total tenanted premises. He also submits that there is a concealment regarding his business from the hall at ground floor at 407/1, Gali No. 1, Than Singh Nagar. He also relies upon the testimony of petitioner no. 4

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recorded in some other civil suit. He also submits that petitioners have admitted the running of business in the said hall which itself shows their malafide and there is no bonafide requirement of petitioner no. 4. He also submits that present petition is liable to be stayed U/Sec. 10 CPC as a Suit for Permanent and Mandatory Injunction regarding the suit property is already pending in the Ld. Civil Court. Lastly, he prays to the court to allow the leave to defend.

9. 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.

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

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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 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

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issue and not the final success in the action.

10. I have carefully and minutely gone through petition, leave to defend application accompanied by affidavit, reply, rejoinder, documents and material on record. I have also gone through the written submissions and entire case law relied upon by the Ld. Counsels for the parties.

11. 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 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."

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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.

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

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

12. Perusal of record reveals that the petitioners have claimed themselves landlords as well as the owners of the tenanted premises. On the other hand, respondents have admitted that the petitioners are owners and landlords of the tenanted premises.

13. 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:

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"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 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 :

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

14. It is also well settled that the petitioner should be something more than the tenant and the petitioner need not prove his ownership in absolute terms. It is sufficient for the petitioner to prove or to show that he is something more than a tenant. In my view, the petitioners have been able to prove that they are something more than the respondents.

Moreover, admitted facts need not be proved. As such, in view of settled proposition of law, the ingredients in respect of landlordship and ownership are proved.

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

15. It is averred that petitioner no. 4 Sh. Ajay Gupta is running his ARC No. 25572/16 Mamta Gupta & Ors. vs. Anita Rani & Ors.

business in the name and style of Dinesh Metals in a rented accommodation at Shahdara, Delhi-110032. Sh. Ajay Gupta has to spare one hour a day to reach his office which is very inconvenient to the petitioner no. 4 being at a distant place and his landlord is also insisting him to vacate the said premises. Petitioner no. 4 further submits that he wants to expand his business and shift the same to the entire ground floor of the suit property for using the same for storage purpose additionally.

On the other hand, the respondents submit that petitioner No. 4 Sh. Ajay Gupta is running his own business in his own property which is exclusively owned and possessed by the petitioners and the same is not a rented accommodation. And the petitioners have not filed any documents on record to show that the premises where the petitioner is doing his business is rented accommodation. Respondents further claim that shifting of business from Shahdara to tenanted premises is a false plea taken by the petitioners. Respondents submit that the petitioners are confused as on the one hand, petitioners allege that they want to shift their business to the tenanted premises and on the other hand, they allege that they want to use the tenanted premises for storage purpose additionally.

In their reply to the leave to defend, the petitioners have reiterated their stand as taken in their eviction petition.

16. In the case titled as Sudesh Kumar Soni & Ors. Vs. Prabha Khanna & Ors. 153 (2008) DLT 652 it was observed that:-

"24. 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 ARC No. 25572/16 Mamta Gupta & Ors. vs. Anita Rani & Ors.

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.

25. Suitability has to be seen from the convenience of the landlord and his family members and on the basis of the circumstances including their profession, vocation, style of living, habits and background. Landlord is the best judge of his residential requirement".

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 landlord for occupation of the tenanted premises must be bona fide. When a landlord asserts that he requires his ARC No. 25572/16 Mamta Gupta & Ors. vs. Anita Rani & Ors.

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 in 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."

Hon'ble Supreme Court in Raghunath G. Panhale (dead) through L.Rs.

Vs. Chagan Lal Sundarji & Co. (1999) 8 SCC 1 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 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 ARC No. 25572/16 Mamta Gupta & Ors. vs. Anita Rani & Ors.

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".

17. 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 the petitioner wants to restart his own business from the tenanted premises. 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 from his own property. The consequent hardship to tenant from eviction order could ARC No. 25572/16 Mamta Gupta & Ors. vs. Anita Rani & Ors.

also not convert otherwise bonafide requirement into malafide requirement. In my view, it is a right of every person to excel in his/her life and a person is not supposed to be remained in same position. As such, it is not a triable issue.

18. One of the pleas of the respondents is that Sh. Ajay Gupta, petitioner no. 4 is running his own property or the property exclusively owned by the petitioners and the same is not a rented accommodation. Respondents also claim that petitioners have several other properties at Shadara, Wazir Pur Industrial area and Naraina Industrial area, but they have not disclosed it.

I have perused the leave to defend application and the material on record. In my view, this contention does not have any merit as respondents have not placed any document in respect of ownership of the premises where petitioner no. 4 Sh. Ajay Gupta is running his business. Moreover, respondents have not given addresses or any details of the alternative properties i.e. at Shadara, Wazir Pur Industrial area etc. Respondents have merely made the bald and vague averment in their leave to defend.

19. One of the arguments of the respondents is that the petitioners want to re-let the property in question after getting it vacated from the respondent.

"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 ARC No. 25572/16 Mamta Gupta & Ors. vs. Anita Rani & Ors.

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."

20. 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:- ARC No. 25572/16 Mamta Gupta & Ors. vs. Anita Rani & Ors.

"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."

21. 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. As such, this contention of the respondents does not have any force and cannot be treated as triable issue.

22. It is submitted by the petitioners that they do not have any alternative reasonably suitable accommodation.

On the other hand, respondents submit that so far as alternative accommodation available with the petitioners is concerned, the respondents allege that the petitioners have several other properties at

Shahadara, Wazirpur Industrial area and Naraina Industrial area but they did not disclose the same and concealed this fact. Ld. Counsel for the respondents has heavily relied upon the judgment titled as Santosh Devi Soni vs. Chand Kiran 2000 LAW SUIT (SC) 106.

In reply to the leave to defend application, the petitioners reiterated that they do not have any alternative reasonably suitable accommodation.

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23. In the case titled as "Mittar Sain Vs Rajesh Kumar" passed in RC Revision 196/2013 and CM 8431/2013 passed by the Hon'ble High Court of Delhi, the relevant portion is as under:-

"14. On the issue of alternate accommodation, this court is of the view that the reliance by the tenant on the cases of S.M. Mehra, Santosh Devi Soni and Liaq Ahmad (Supra) are misplaced. This court is of the view that decision in the said cases were given in the peculiar set of facts and such decisions would not be applicable to the present case as the facts are entirely different. Moreover, as has been relied upon by the Ld. Counsel for the landlord, in the case of Madan Lal Gupta (Supra) the Hon'ble Supreme Court has held that neither Santosh Devi Soni (Supra) nor Liaq Ahmad (Supra) laid down any principle of law, it was further observed in these cases, certain orders were passed on the facts arising in them."

In the case titled as Madan Lal Gupta Vs Ravinder Kumar passed in SLP (Civil) 10729/2000 passed by the Hon'ble Apex Court, the Hon'ble Apex Court inter-alia observed as under:-

"However, the learned Counsel for the petitioner sought to rely upon two decisions of this court in Santosh Devi Soni Vs Chand Kiran, J.T 2000 (3) SC 397, and Liaq Ahmad ORS Vs Shri Habeeb Ur Rehman, JT 2000 (5) SC 611.

Neither on these two decisions set down any principle of law so as to all fourth interference by us. In these two cases on the facts arising in the case certain orders have ARC No. 25572/16 Mamta Gupta & Ors. vs. Anita Rani & Ors.

been passed by this court."

As such, in view of the observations made by the Hon'ble Superior Courts, it is not mandatory for the Rent Controller to grant the leave to defend in each and every case where additional accommodation is sought by the petitioner/landlord.

24. In Shiv Sarup Gupta Vs Dr. Mahesh Chand Gupta AIR 1999 SC 2507, at pg-2512 in para 14 & 15, the Hon'ble 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 ARC No. 25572/16 Mamta Gupta & Ors. vs. Anita Rani & Ors.

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 or vocation of the landlord and his family members, their style of living, their habits and the background wherefrom they come."

In the case titled as Metropolitan Book Company Ltd. vs. Ajay Rastogi & Ors. Passed in RC. Rev. No. 484/2013, the Hon'ble High Court of Delhi observed as under:-

"Even assuming the other properties available, and which actually they are not as stated below, these other properties situated far from the present residence of respondent no. 1 and his family members cannot be considered as alternative suitable accommodation."

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In 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 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".

25. Respondents in their leave to defend application submit that the site plan filed by the petitioners is false and incorrect. Respondents claim that the petitioners have not come to this court with clean hands and have concealed true, actual and material facts from this Court. Respondents ARC No. 25572/16 Mamta Gupta & Ors. vs. Anita Rani & Ors.

allege that the present petition for partial tenancy is not maintainable. Respondents were tenants on the entire ground floor. However, the petitioners illegally, forcibly and without due process of law broke opened the locks of the tenanted premises and have taken illegal possession of almost 3/4th of the tenanted premises and only about 1/4th of the tenanted premises is in possession of the respondents. Respondents filed site plan to substantiate their claim. They further submit that the present petition is liable to be stayed U/Sec. 10 CPC as a Suit for Permanent and Mandatory Injunction regarding the suit property is already pending in the Ld. Civil Court.

On the other hand, petitioners submit that petitioners have filed the correct site plan and the site plan of the property in which petitioner no. 4 is running his business in a rented accommodation is not required. Moreover, petitioners also deny to have illegally broken the locks of tenanted premises and taken illegal possession of 3/4th portion of tenanted premises.

26. I have perused the material on record and heard the arguments of Ld. Counsels on this point and I have also perused minutely both the site plans filed by both the parties which show that the petitioners are seeking the eviction of the respondents from a portion shown in red in the site plan of ground floor and other portion of the ground floor has not been shown as tenanted premises. But the case of the respondents is that other portion which was not shown as the tenanted premises is also tenanted premises given to respondents but the petitioners illegally occupied it by breaking the locks. It is also on record that a suit for Permanent and Mandatory ARC No. 25572/16 Mamta Gupta & Ors. vs. Anita Rani & Ors.

injunction was also filed by the respondents herein against the petitioners No. 2 & 4 herein in the court of Ld. Civil Judge which has already been disposed of on 27.03.2018 in favour of

respondents/tenants herein and an appeal against that order was filed and the order of the Ld. Civil Judge is stayed by the Ld. Appellate Court. In my view, it is not a triable issue as the petitioners herein have filed an eviction petition only against the portion which is in possession of respondents herein and not against the portion which is in the possession of petitioners. Moreover, respondents herein always have the remedy against the illegal dispossession by the petitioners which has already been applied for by the respondents/tenants herein and the matter is at appellate stage. As such, this plea of pendency of other suit in the court of Ld. Civil Judge does not raise any triable issue which disentitle the petitioners to obtain the eviction order against the respondents.

27. One of the issues raised by the respondents is that an amount of Rs. 30,000/- was also received by Late Sh. Brij Lal Gupta as security. On the other hand, petitioners denied the same.

Sec. 5(2) of the D.R.C. Act reads as under:-

No person shall, in consideration of the grant, renewal or continuance of a tenancy or sub-tenancy of any premises-

(a) claim or receive the payment of any sum as premium or pugree or claim or receive any consideration whatsoever, in cash or in kind, in addition to the rent.

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28. Thus, in view of Section 5(2)(a), even if there is a voluntary agreement between the landlord and the tenant for payment of any rent in excess of the standard rent, it can not be enforced in law. The well known legal maxim "Ex turpi causa non oritur actio" which means that "No right of action can spring out of an illegal contract" would at this stage apply to such a case and the court can not enforce any such stipulation or condition which is contrary to law.

29. Perusal of leave to defend reveals that the respondents have stated number of incidents in respect of criminal offences and complaints and also threatening by the petitioners to the respondents.

30. In my view, these issues cannot be triable issues as all these kind of issues are to be decided by the court having criminal jurisdiction and this court does not have any jurisdiction to deal with those issues and certainly they are not triable issues which disentitle the petitioners from obtaining the eviction order.

31. In the light of the aforesaid legal propositions, the respondents have failed to raise any triable issues. The contents of the application for leave to defend have failed to rebut the presumption of bonafide qua the requirement of the petitioner.

THE CONCLUSION:

32. In view of the above discussions and well settled propositions of law, ARC No. 25572/16 Mamta Gupta & Ors. vs. Anita Rani & Ors.

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 respondents. The application for leave to defend filed by the respondents is thus, dismissed.

33. Hence, an eviction order is passed U/s. 14 (1) (e) of DRC Act in favour of petitioners and against the respondents in respect of one office room on property bearing No. 407/I, Gali No. 1, Than Singh Nagar, Anand Parbat, New Delhi-110005 specifically shown in red colour in the site plan marked as Mark P-1 (put by the court for the purpose of identification).

34. 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.

35. File be consigned to the Record Room after due compliance.

Announced in the open Court
on 4th August, 2018.

(This order contains 27 pages)

AJAY

NAGAR

Digitally signed
by AJAY NAGAR

Date:
2018.08.04
17:13:30 +0530

(Ajay Nagar)
Commercial Civil Judge-Cum
Additional Rent Controller,
West District, THC, Delhi.

ARC No. 25572/16

Mamta Gupta & Ors. vs. Anita Rani & Ors.