

Delhi District Court

Smt. Ajit Kaur vs Service Be Also Affected At on 20 July, 2018

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

ARC No. 113/2017

Smt. Ajit Kaur  
W/o Late S. Gurdeep Singh  
R/o WZ-187-A, Lane No. 11,  
Shiv Nagar, New Delhi-110058.

....Petitioner

VERSUS

Sh. Rakesh Juneja @ Sonu Juneja  
S/o Late Sh. Rajinder Lal Juneja  
C/o Shop No. 2, Gali No. 7  
WZ-127, G Block, Shiv Nagar,  
Hari Nagar, New Delhi-110058.

Service be also affected at:

R/o A-46, Rajouri Garden,  
New Delhi.

....Respondent

Date of institution : 01.08.2017  
Date of order : 20.07.2018

ORDER ON LEAVE TO DEFEND

1. The present petition U/Sec. 14 (1) (e) of Delhi Rent Control Act, 1958 has been filed by the petitioner against the respondent for eviction ARC No. 113/17 Ajit Kaur & Ors. vs. Rakesh Juneja Page 1 / 25 from the tenanted shop i.e. Shop No. 2, Gali No. 7, WZ-217, G Block, Shiv Nagar, Hari Nagar, New Delhi-110058, as shown in red colour in site plan attached with the petition (hereinafter referred to as tenanted shop), on the ground of bonafide requirement of the family of the petitioner for running a Ladies Boutique.

2. The brief facts as stated by the petitioner in the petition are that two shops bearing Private No. 2 & 3 on the ground floor in property No. WZ- 217, G Block, Shiv Nagar, Hari Nagar, New Delhi was owned by S. Gurcharan Singh Bajwa S/o Late S. Jiwan Singh. It is further averred that after the death of S. Gurcharan Singh Bajwa, his grandsons namely S. Janjot Singh and S. Sondorjot Singh, both sons of Late S. Gurdeep Singh, inherited these two shops. It is further averred that both the grandsons namely S. Janjot Singh and S. Sondorjot Singh sold the said two shops vide registered Sale Deed dated 11.05.2009 as per the claim of petitioner, in favour of their mother Smt. Ajit Kaur

i.e. the petitioner. As such, the petitioner became the owner-landlady of these two shops.

It is further averred by the petitioner that Smt. Raj Kumari Juneja was a tenant in the shop No. 2 in property bearing No. WZ-217, G Block, Shiv Nagar, Hari Nagar, New Delhi and after her death, the respondent has inherited the tenancy rights by operation of law.

It is further averred that the petitioner was a Teacher with the Delhi Administration and got retired on 31.05.2002 and is presently surviving on pension only.

It is further averred that S. Janjot Singh, the younger son of the petitioner along with his wife Smt. Bineet Kaur and daughter aged one year is presently living in Canada. And the son of the petitioner S. Janjot Singh ARC No. 113/17 Ajit Kaur & Ors. vs. Rakesh Juneja Page 2 / 25 intends to come back to India along with his family and settle here permanently. Petitioner further claims that they want schooling of their daughter in India only. Furthermore, they want to stay with the petitioner in India as she too requires someone to give her family support at he age of 75 years. It is further averred that they intend to do the business of ready made garments and as such requires the tenanted shop to open a 'Ladies Boutique'.

It is further averred that neither the petitioner's son S. Janjot Singh nor his wife Smt. Bineet Kaur own any immovable property.

It is further averred that besides the ownership of two shops, the petitioner owns a residential property bearing No. 187-A, Lane No. 11, Shiv Nagar, Jail Road, New Delhi-110058 and no other property at all. Hence, the petitioner has filed the present petition for eviction of the respondent from the tenanted shop.

3. Notice of this eviction petition was sent to the respondent in the prescribed format which was duly served on the respondent. In response to which the respondent filed leave to defend application accompanied by affidavit.

4. Respondent in his leave to defend application states that the present petition is not maintainable because the petitioner's younger son along with his wife is permanently settled in Canada and the question of coming to India or doing any business in the tenanted shop does not arise at all and the petitioner has filed the present petition to harass the respondent and to increase the rent from Rs. 484/- to Rs. 10,000/-.

Respondent further states that the tenanted shop was taken by the ARC No. 113/17 Ajit Kaur & Ors. vs. Rakesh Juneja Page 3 / 25 respondent from Sh. G.S. Bajwa on 18.11.1996 at a monthly rent of Rs. 350/- excluding electricity charges for commercial purposes. Respondent alleges that at the time of inception of tenancy he paid a sum of Rs. 1,50,000/- as security/pagree with the condition that the landlord would not get the premises vacated from the respondent on any ground provided the respondent continued to pay the rent in respect of the said premises and thus the tenancy in respect of the tenanted shop was created in perpetuity and the petitioner is not competent to maintain the present eviction petition on the alleged ground of bonafide requirement.

Respondent contends that earlier an eviction petition was filed by the petitioner which was contested by the respondent and ultimately, the said eviction petition was dismissed on 09.04.2012 by the court of Sh. Amit Kumar, the then Ld. Rent Controller.

Respondent states that the son of the petitioner along with her wife has got his own business in Canada and the question of coming to India or carrying on any business in the small shop does not arise.

Respondent alleges that the petitioner also remains out of India and live with one son in Canada for 06 months and with another son in U.K. for 3-4 months in a year and the petitioner has got the retirement from the service only with the object to settle along with her sons in abroad. Respondent further states that the petitioner has no intention to stay in India as both the sons of the petitioners are permanently settled in abroad and the petitioner intends to get the respondent evicted from the tenanted shop and thereafter having disposed of the same, she also wants to settle in abroad with his sons. Therefore, the bonafide need of the petitioner does not arise.

It is alleged by the respondent that the fraudulent conduct of the ARC No. 113/17 Ajit Kaur & Ors. vs. Rakesh Juneja Page 4 / 25 petitioner is clear from the fact that the tenanted shop is a small shop measuring about 5.6 sq. meters and the said shop is so small as cannot be used for running a ladies boutique because the petitioner in the entire petition has not disclosed whether the son would run the boutique or his wife would run in the tenanted shop. As such, the respondent prayed for dismissal of the present petition.

5. The petitioner has filed her reply to the leave to defend application of the respondent. In nutshell, the petitioner has specifically denied the assertions made by the respondent in his leave to defend application. In her reply, the petitioner has reasserted her bonafide requirement of the tenanted shop. It is further stated that the respondent has failed to raise any triable issues.

6. In her reply, it is stated by the petitioner that the present application seeking leave to defend filed by the respondent is a gross abuse of process of law and the present application is liable to be dismissed, as the respondent has not approached the Court with clean hands and concealed the material facts from this Court. It is further submitted by the petitioner that the respondent instead of vacating the premises in question has chosen to file the application under reply just to delay the proceeding of the present case. The petitioner has submitted that she requires the property in question for bonafide requirement of her younger son.

Petitioner reiterates that the her son S. Janjot Singh along with his family is living in Canada, however, he is not permanently settled there or doing his own business in Canada, in fact, he is not doing any business or job and presently his wife is doing a private job. It is further vehemently ARC No. 113/17 Ajit Kaur & Ors. vs. Rakesh Juneja Page 5 / 25 denied that there is no question of his coming to India or carrying on any business in the small shop. Other allegations of the respondent are also denied by the petitioner.

7. 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 case law relied upon by the Ld. Counsel for the parties.

I have also heard the Ld. Counsels for both the parties carefully. Ld. Counsel for the respondent submits that the petitioner does not have any bonafide requirement and she has falsely filed the present eviction petition. Ld. Counsel further relies on "Annexure-A" of the eviction petition. He argues that both the sons of the petitioners are permanently settled abroad and there is no intention of both the sons to return to India. He also submits that petitioner also does not reside in India and she resides with one of the sons for six months and with another son for 3-4 months abroad. Ld. Counsels claims that the main triable issue in the present case is whether the son of the petitioner has the intention to settle in India or not.

On the contrary, the Ld. Counsel for the petitioner submits that the petitioner is landlady as well as the owner of the tenanted shop. He also submits that the petitioner has not concealed anything material on record and the petitioner has disclosed everything in the petition. It is claimed by the petitioner that no alternative reasonably suitable accommodation is available with the petitioner except the one which is already mentioned in the eviction petition.

The Ld. Counsel for the petitioner further submits that the petitioner ARC No. 113/17 Ajit Kaur & Ors. vs. Rakesh Juneja Page 6 / 25 has the bonafide requirement and consequently she has filed the eviction petition for the tenanted shop.

#### THE LAW:-

8. It is well settled that at a stage when 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. It would not be right approach to say that 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 Sec. 25-B(5).

However, 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-III A of the Act, leave to defend cannot be refused where an eviction petition is filed on a mere design or desire of a landlord to recover possession of the premises, tenant.

It is evident that refusing to grant leave in such a case leads to eviction of a tenant summarizely resulting in great hardship to him and his family members, although he could establish if only leave is granted that a landlord would be disentitle for an order of eviction. At the stage of granting leave to defend, parties rely on affidavits in support of their 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 where is a strong and acceptable evidence available to show that the facts disclosed in the application filed by the tenant seeking leave to defend were either frivolous, untenable or most unreasonable. When a possession is sought on the

ground of personal requirement, a landlord has to establish his need and not his ARC No. 113/17 Ajit Kaur & Ors. vs. Rakesh Juneja Page 7 / 25 mere desire.

It is also well settled at the stage of granting leave the real test should be whether the facts disclosed in the affidavit filed seeking leave to defend prima-facie show that the landlord would be disentitle from obtaining an order of eviction and not whether at the end defence may fail.

It is settled that 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 should be sufficient to grant leave. The test is a test of a triable issue and not the final success in the action.

It is also evident that if a tenant discloses grounds and pleads a cause which prima facie is not baseless, unreal and unfounded, the Controller is obliged to grant the leave to defend his case against the eviction sought by the landlord.

The enquiry envisaged for the purpose of a summary enquiry to prima facie find out the existence of reasonable grounds in favour of the tenant.

It is also well settled that the burden is on the landlord to prove his bonafide requirements.

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:

ARC No. 113/17 Ajit Kaur & Ors. vs. Rakesh Juneja Page 8 / 25 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."

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) 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:-

ARC No. 113/17

Ajit Kaur & Ors. vs. Rakesh Juneja

Page 9 / 25

10. Perusal of record reveals that the petitioner has claimed herself landlady as well as the owner of the tenanted shop on the basis of certain documents on record.

On the other hand, the respondent has not disputed the landladyship as well as ownership of the petitioner. In the paragraph no.2 of the affidavit accompanied by leave to application, the respondent has stated himself as tenant in respect of tenanted shop. Moreover, the respondent has not disputed the ownership of the petitioner in respect of tenanted shop. It is well settled that the admitted facts need not be proved. As such, it is proved that the petitioner is landlady as well as owner of the tenanted shop. In view of above, ingredients in respect of landlordship and ownership are satisfied in favour of petitioner.

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

11. Perusal of record reveals that the petitioner has sought the tenanted shop for bonafide requirement of herself as well as for her family members as the younger son of petitioner S. Janjot Singh wants to return to India from Canada along with his family and they want to start the business of Ladies Boutique in the tenanted shop for their livelihood. It is further claimed by the petitioner that S. Janjot Singh intends to return to India from Canada permanently to settle here as they want schooling of their daughter aged one year in India only. Moreover, as per the claim of the petitioner, they want to stay with the petitioner in India as petitioner also requires someone to give her family support at the age of 75 years.

ARC No. 113/17 Ajit Kaur & Ors. vs. Rakesh Juneja Page 10 / 25 On the other hand, respondent submits that the petitioner does not have any bonafide requirement as both the sons are permanently settled abroad and there is no intention of both the sons to return India. He also submits that petitioner also does not reside in India and she resides with one of the sons for six months and with another son for 3-4 months abroad.

Perusal of record shows that petitioner has not denied that both of her sons are residing abroad and she has also admitted that she stays with both of her sons. On the other hand, record clearly reveals that the respondent has claimed that the petitioner is staying with her sons most of the months in a year. In my considered view, this plea of the respondent does not have any force as it is the right of the petitioner to stay with her sons and the tenant has no authority to dictate the petitioner in this

regard. Moreover, it is admitted impliedly by the respondent that petitioner is residing at least 3 to 4 months in India. As such I am of the considered view that the petitioner is residing in India at least for 3 to 4 months and it is sufficient for the petitioner and the respondent/tenant can not dictate the petitioner to reside in India through out the year to claim the eviction order U/S 14(1)(e) of DRC Act.

12. In my considered view, it is absolutely justifiable for the petitioner to meet and to reside with their children specifically when they are senior citizens and have already carried on their profession for long time and now they are trying to have the company of their children. In my view, nothing wrong in that and every old parent deserves it.

In my considered view, the petitioner is not supposed to be remained ARC No. 113/17 Ajit Kaur & Ors. vs. Rakesh Juneja Page 11 / 25 in her own house to prove the bonafide requirement U/S 14 (1)(e) of DRC Act. In my view, even if, the petitioner is visiting her children in foreign country and stay there for a few weeks or even for a months, it does not disentitle her to get the premises evicted if the bonafide requirement is proved.

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 shop. 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 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 ARC No. 113/17 Ajit Kaur & Ors. vs. Rakesh Juneja Page 12 / 25 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 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 Sun N. Shade Opticians Vs Shyam Sunder Budhiraja 2018 SCC online DEL 6686, the Hon'ble High Court observed as under:-

"9. Having heard the learned counsel on both sides and having gone through the record, this court finds no substance in the revision petition. There cannot be any thumb or unexceptional rule that a person who is well settled abroad would never wish to come back to India.

The son of the respondent may have pursued the course of study leading to the degree of Bachelor of Law in United Kingdom and he may have set up practice and been there with his family for the last ten years. But, as the facts narrated in the eviction petition, and in the reply to the ARC No. 113/17 Ajit Kaur & Ors. vs. Rakesh Juneja Page 13 / 25 leave to defend application show, the circumstances have undergone change. Vineet Budhiraja is the only son of the respondent /landlord and his wife having died on 18.08.2016, it is quite natural that he needs the company of his child, the only son, alongwith his immediate family, to be beside him in the evening of his life. If the son is ready and willing to fulfil the desires and needs of his aged father at this stage of his life where he is without a companion, the same ought not be doubted. Obviously, in order to shift his base from United Kingdom to India, the son would need suitable commercial space for setting up his office as a legal practitioner. For meeting such needs of the son for his legal practice, it is the obligation of the landlord to provide the necessary space. After all, he holds the property for the benefit of self and the family. In these circumstances, the conclusion reached by the Additional Rent Controller that the respondent / landlord bonafide requires the demised premises cannot be faulted."

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 shop 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 shop. 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."

13. The another contention of the respondent is that the main motive of the petitioner is to enhance the rate of rent or to give the tenanted shop after eviction to another tenant at higher rate of rent.

In my view, this contention of the respondent does not have any force keeping in view Section 19 of D.R.C. Act which lays down as under:-

"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, 14D 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 ARC No. 113/17 Ajit Kaur & Ors. vs. Rakesh Juneja Page 15 / 25 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 shop 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."

In case of Dipika Arora vs S.N. Sehgal And Ors. 1995 IAD Delhi 1093; it was observed by the Hon'ble High Court that:-

ARC No. 113/17 Ajit Kaur & Ors. vs. Rakesh Juneja Page 16 / 25 "(30) In the facts and circumstances of the case it cannot be said that the petitioner was setting up a false case in order to throw out the tenant and get possession of the premises in suit. To allay any apprehension on the part of the tenant against the landlady in this behalf reference to Section 19 of the Delhi Rent Control Act is enough. The said provision takes care of such mala fide attempt on the part of owners/landlords. Therefore, law has not left the matter to the choice of the owner/landlord nor the tenant has been left at the mercy of the owner/landlord in such matters."

14. As such, statute clearly lays down that the petitioner/ landlord has to occupy the vacated tenanted shop 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. Furthermore, respondent has not placed any concrete document which reflects the contention of the petitioner to re-let the tenanted shop to another tenant at higher rate. As such, this contention of the respondent does not have any force and cannot be treated as triable issue.

In the case titled as Usha Sales Limited Vs Mohini Nayar 1985 (27) DLT 417 the Hon'ble High Court of Delhi observed as under:-

"(9) In my opinion the Additional Controller was right in refusing leave to the tenant. The only defense urged in 1980 when the petition was brought was that it was premature to order the eviction of the tenant when the landlady was due to retire in April 1982. Now from September 1980 to 1985 nearly five years have passed.

The landlady is in London. She cannot come to India as ARC No. 113/17 Ajit Kaur & Ors. vs. Rakesh Juneja Page 17 / 25 she has no other place. She did come to India in 1982 and made an affidavit to the court. But as the case was pending in this court and a stay of dispossession had been ordered she had no other option but to go back. This does not mean that the court ought to refuse eviction or grant leave to the tenant because physically she is not present in India. I see no reason to disbelieve the affidavit of the landlady. There is no denial to the fact of retirement. The Additional Controller said that the tenants' denial is "vague and negative" in character."

15. One of the contentions of the respondent is that the petitioner had filed one more eviction petition U/S 14(1)(e) of DRC Act for bonafide requirement which was dismissed by the Ld. ARC on merit.

On the other hand, petitioner has admitted that she had earlier filed such eviction petition but it was not contested and was dismissed as withdrawn.

I have perused the record and I am of the view that this plea of the respondent does not have any merit as it is the prerogative of the petitioner/landlord to file the eviction petition U/S 14(1)(e) provided bonafide requirement exists. Law does not prohibit the petitioner/landlord to file such eviction petition and the landlord can file any number of such eviction petition in change of circumstances. As such, it is not a triable issue.

16. Next plea of the respondent is that tenanted shop, ie. Shop is very small which can not be used for running Boutique. In my view, this plea of the respondent also does not have any merit as it is not the concern of ARC No. 113/17 Ajit Kaur & Ors. vs. Rakesh Juneja Page 18 / 25 the respondent to dictate the petitioner/landlady to use the tenanted shop in a particular manner.

17. Another contention of the respondent is that there is one more shop in the vicinity which has not been targeted by the petitioner for eviction.

On the other hand, petitioner has admitted that she is the owner of the aforesaid shop but she has submitted that the process in respect of eviction has already initiated regarding that shop also.

In case of Dipika Arora vs S.N. Sehgal And Ors. 1995 IAD Delhi 1093; it was observed by the Hon'ble High Court that:-

"(24) It is judiciously well recognised that the landlord is the best Judge about his requirements for residence for himself and his family and as to where he wants to reside. If a landlord is resident off a city other than the city in which the premises regarding which eviction is sought is situated, he can chose the city where he wants to reside. Likewise if he has more than one properties in the city it is ultimately his choice as to which property he wants to occupy for his and hisfamily's residence."

In my view, the tenant/respondent can not dictate or ask the petitioner/landlord to evict the other premises in place of tenanted shop. It is the prerogative of the landlord to choose the

accommodation which is most suitable for him/her.

ARC No. 113/17 Ajit Kaur & Ors. vs. Rakesh Juneja Page 19 / 25

18. Next contention of the respondent that he is paying conversion charges, electricity charges etc. and he is also filing the income tax return. It is manifestly clear that it is not a triable issue.

19. One of the pleas of the respondent is that petitioner deliberately cut off the electricity in the tenanted shop. On the other hand, petitioner has refuted this allegation.

In my view, this plea does not have any triable issue as in such situation respondent/tenant always has a remedy for redressal of such sort of grievances.

20. In the case titled as Dr. Jain Clinic Pvt. Ltd. vs Sudesh Kumar Jassal 2013 (137) DRJ 638 Hon'ble High Court of Delhi observed as under:-

"Section 14(1)(e) of the Act nowhere provides that the bonafide need of the landlord/owner should be in respect of residential premises for a permanent residence only. It is settled law that if the landlord/owner is settled outside India but his visit to India are frequent, his need even for temporary stay in his own premises has to be judged as bonafide need. Therefore, he inspite of having his own property in Delhi cannot be compelled to live in the places other than his own property and to face inconvenience. His lordship Hon'ble Mr. Justice B.N.

Kirpal (as his Lordship then was), in M/s Mehra & Mehra vs. Dr. (Mrs.) Sant Kaur Grewal, 21 (1982) DLT 196 upheld a claim under Section 14(1)(e) of the Act, by a landlord who was living at Srinagar and wanted her premises in Delhi only to pass winter months, holding that it was her bonafide need. It was held that since the landlady had no other alternative accommodation available to her in Delhi, her need was to be treated as ARC No. 113/17 Ajit Kaur & Ors. vs. Rakesh Juneja Page 20 / 25 bonafide. In the case of Saroj Khemka vs. Indu Sharma, reported in 1999 (49) DRJ 719, a Single Judge of this Court upheld an order of the Controller, rejecting leave to defend application, in case of a landlord/owner who was living abroad and wanted his premises at Delhi for stay in India for short durations. It was categorically observed that an owner cannot be compelled to stay at a Hotel or have an alternative accommodation."

Furthermore, 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 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 ARC No. 113/17 Ajit Kaur & Ors. vs. Rakesh Juneja Page 21 / 25 his life and to contribute his best to see him economically independent."

21. In view of the above case-law, the Court is of the opinion that there is nothing malafide if family members of the petitioner wants to start own business from the tenanted shop. Rather, the said requirement seems to be bonafide as they want to earn their 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 they want to run business for their livelihood. The consequent hardship to tenant from eviction order could also not convert otherwise bonafide requirement into malafide requirement. Furthermore, it is not the case of the respondent that the family members of the petitioner are already having the number of shops or business in Delhi. This is undisputed fact that family members are not running any other business or shop in Delhi. As such, it is not a triable issue.

22. Perusal of record reveals that the respondent has contended that the son of the petitioner does not have any intention to return India from Canada as he is well settled abroad. On the other hand, petitioner has sought the tenanted shop for herself and for her younger son S.Janjot Singh and his family. The case of the petitioner is that her younger son S.Janjot Singh is having a daughter aged one year and he wants to get her schooling in India.

In T.D. Dhingra vs Pritam Rai Khanna 48 (1992) DLT ARC No. 113/17 Ajit Kaur & Ors. vs. Rakesh Juneja Page 22 / 25 208; the Hon'ble High Court of Delhi observed as under:-

"Counsel has not been able to point out any provision of law whereby an Indian who had acquired foreign citizenship is disentitled to enjoy residence in his own property in India when he chooses to return to India."

In Sumitra Devi vs Raj Rani Sehdev 98 (2002) DLT 355, 2003 (66) DRJ 82; the Hon'ble High Court of Delhi observed as under:-

"7. The plea of the petitioner that the respondent and her family is settled in U.K. for the last about 35 years and have become citizens and green card holders and as such

have no intention to shift to India, requires consideration for the reason that the Courts exercising powers under Section 14(1)(e) read with Section 25-B of the Act have to ensure that no unscrupulous landlord is able to evict a tenant on a false and frivolous plea of bonafide requirement. However, the Courts also have to ensure that no landlord/owner is kept deprived of his property. in the hands of a tenant, inspite of the fact that he bonafide needs the same for his own residence and the residence of his family members."

The Hon'ble High Court further observed that:-

"it is not un-natural also for the reason that all those who move out of their own country for the sake of business or career, at one stage or the other feel like going back to their roots so that towards the end of their lives they are in their own country and with their own people. In such cases the desire to come back to one's own country gives rise to bonafide need and cannot be out right rejected as malafide unless there is some positive evidence to show that the desire is a hoax and real motive is something else."

ARC No. 113/17 Ajit Kaur & Ors. vs. Rakesh Juneja Page 23 / 25

23. It is well known that admission to the Nursery class in India is given to those children who are 3 to 4 years and admission to such classes or school is very cumbersome in Delhi and in the present case, it is undisputed fact that daughter of S. Janjot Singh is aged one year. It is not the case of the petitioner that the daughter of her son is already admitted in school in Canada and there are bleak chances of switching over from school in Canada to school in India. In my view, the requirement of S. Janjot Singh to get her daughter admitted to school appears to be genuine. Moreover, the petitioner has also stated that she wants support from her children and she is senior citizen at the age of 75 years. In my view, it is very common for the parents to seek the support of her/his children at this age and it is not unnatural at all particularly in India. Moreover, Section 19 of Delhi Rent Act is always there for the help of respondent in case son of the petitioner does not come back to India.

24. In the light of the aforesaid legal proposition, all the pleas taken by the respondent 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.

#### CONCLUSION:

25. 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 ARC No. 113/17 Ajit Kaur & Ors. vs. Rakesh Juneja Page 24 / 25 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.

26. 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 respondent in respect of Shop No. 2, Gali No. 7, WZ-217, G Block, Shiv Nagar, Hari Nagar, New Delhi-110058, as shown in red colour in site plan attached with the eviction petition marked as Mark 'P-1' (put by the court for the purpose of identification).

27. 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.

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

Announced in the open Court  
on 20th July, 2018

AJAY

Digitally signed  
by AJAY NAGAR

(This order contains 25 pages)

NAGAR

Date:

2018.07.20

17:44:06 +0530

(Ajay Nagar)

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