

Delhi District Court

Sh. Krishan Pal Singh vs Smt. Leela Devi on 16 July, 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- 25776/2016

Sh. Krishan Pal Singh
S/o Late Sh. Jai Lal,
R/o WZ-199, Village Khampur,
New Delhi-110008.

....Petitioner

VERSUS

1. Smt. Leela Devi
W/o Late Sh. Har Kishore
2. Sh. Virender Kumar.
S/o Late Sh. Har Kishore,
3. Smt. Anju
W/o Sh. Deepak Tanwar,
4. Ms. Anita
D/o Late Sh. Har Kishore,

All R/o WZ-92, Village Shadipur
Khampur, West Patel Nagar,
New Delhi-110008.

.... Respondents

Date of institution : 28.05.2014 Date of order : 16.07.2018 ORDER ON LEAVE TO DEFEND

1. The present petition U/Sec. 14 (1) (e) of Delhi Rent Control Act, 1958 ARC No. 25776/16 Krishan Pal Singh vs. Smt. Leela Devi & Ors.

is filed by the petitioner against the respondents for their eviction from the portion consisting of one shop measuring about 30 feet x 12 feet (about 40 sq. yards) on ground floor of property bearing no. WZ-199, Village Khampur, New Delhi-110008 on the ground of bonafide requirement of petitioner and his youngest son for commercial use.

2. It is averred by the petitioner that petitioner is the owner of property no. WZ-199, Village Khampur, New Delhi-110008 measuring 150 sq. yards, by virtue of a family partition dated 14.04.1992 and living therein with his family and mother Smt. Prakash Devi.

It is further averred that the tenanted premises is required by the petitioner for his own use as well as for the use of his youngest son, namely, Sh. Nikhil Chauhan for the need of the business for having his office in the tenanted premises.

It is also averred that petitioner is 56 years old (at the time of filing the petition) and having wife, two sons and their respective wives.

It is further submitted by that son of petitioner, namely, Sh. Nikhil Chauhan along with the petitioner is doing the business of manufacturing car accessories, i.e., car seat covers in the name and style of M/s N.N. Enterprises at Ground Floor of the property in question, i.e. WZ-199. And the area occupies for said business is measuring 24.8 feet x 21.2 feet (about 57 sq. yards) for the purpose of manufacturing of car seat cover where stitching machines were installed and about 19.6 feet x 10.6 feet (20 sq. yards) at the back of tenanted premises for the purpose of storing raw material and finished material.

It is further averred that petitioner and his son need more space for ARC No. 25776/16 Krishan Pal Singh vs. Smt. Leela Devi & Ors.

having his office and for the purpose of display of his finished goods as presently no space is available for this. Moreover, the tenanted premises is adjoining space to the business of the petitioner and his son on the ground floor and it is most suitable for the use of the office, business, display the items and for attending the customers.

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 respondents No. 1 to 4 filed leave to defend application along with accompanied affidavit on 16.07.2014.

4. Respondents in their leave to defend application have inter-alia contended that the respondents/applicants are entitled to unconditional leave to contest the present proceedings as the petitioners have no bonafide requirement of the tenanted premises or any part thereof.

It is further contended that leave to defend has been filed within the stipulated period of time, i.e., 15 days of date of service of summons.

Respondent no.1 submits that respondent no. 2 to 4 are his wards and the present affidavit be also read on their behalf.

It is contended that petitioner is not the owner of the property and the same is owned by Gaon Sabha. Furthermore, father of the petitioner let out premises to various tenants and the petitioner is making money from the land which does not belong to him.

It is further contended that the present petition is filed on the ground ARC No. 25776/16 Krishan Pal Singh vs. Smt. Leela Devi & Ors.

of additional requirement without any formal proof or document and there is no bonafide requirement and it is mere a desire.

It is further contended that petitioner has himself admitted that he acquired the property by virtue of a partition deed which suggest that the title is derivative and petitioner is required to prove his right qua property by leading cogent evidence and the respondent has very right to challenge and cross-examine the same for which the respondent is entitled to contest the petition.

The respondent has also contended that the petitioner has not impleaded other co-owner in the present proceedings.

The another contention is that a right or title can not be transferred without registered deed in violation of Section 17 of Indian Registration Act.

It is further contended that respondents filed the petition U/S 44 of DRC Act and in a counter blast the present eviction petition has been filed without having any bonafide.

It is further contended that petitioner did not file on record any documents in respect of alleged business. Moreover, the petitioner does not have any liability towards his son who is married and living separately and financially not dependent upon the petitioner.

It is further contended that petitioner and his family are already in possession of sufficient property and the entire property bearing WZ-199 is occupied by the petitioner except the tenanted portion of the respondents and the petitioner did not mention three rooms and lobby which are at the disposal of the petitioner. It is further claimed that the first floor, second floor and terrace are at the disposal of the petitioner which is sufficient for the alleged business of petitioner.

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It is further contended that petitioner concealed details of property No. H-276, Vikaspuri, DDA Colony, measuring 160 sq. meters which is more suitable to the business as it is in a big market in West Delhi for the consumption of the alleged product of the petitioner. Such property is situated at the road of 60 feet wide and consisting of ground floor, 1 st floor and 2nd floor and being used by the petitioner.

It is further contended that MCD mentioned the road which is more than 18 meters as commercial and present lane where the property is situated is hardly 13 ft. wide and no commercial activity is permitted on this road.

It is also contended that alleged business is dangerous and highly fire prone. It is further contended that petitioner is also having the property at Village Khampur and they want to dispose of the present property to property dealers.

It is further contended that shop of the respondents is on a narrow gali, in front of the Mandir Wali Gali which is only 5 feet and having no market potential.

5. Reply to leave to defend filed by the petitioners on 26.11.2014 taking the preliminary objections that the affidavit of the respondents 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 defendant is moon shine and bogus which requires no trial in the matter. It is further contended that leave to contest/defend has not been filed within stipulated period of time.

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On merits, it is contended that respondent no.2 to 4 failed to file proper application with affidavit as prescribed in the law. It is reiterated that petitioner is the owner/landlord of the property in question and the respondent does not have the right to challenge the title of the petitioner and partition deed. It is further contended that there is no requirement to implead other family members as party to the present proceedings and the oral family partition deed is sufficient and eligible document to create right, title and interest of family members in the family property and it does not require compulsory registration. It is further contended that petition filed by the respondent U/S 44 of DRC Act is on a false and frivolous grounds. It is further reiterated that the tenanted premises is required bonafide as mentioned in the eviction petition. It is further contended that the petitioner has not concealed the accommodation available with the petitioner and the family members. Moreover, the 1st floor, 2nd floor and terrace floor is not proper to run the business. It is further contended that the petitioner in no way connected to the property bearing no. H-276, Vikaspuri, DDA colony as alleged. Therefore, question of mentioning the same does not arise at all. It is further contended that the petitioner also denied that he has property at Vikaspuri and Khampur as alleged.

It is further stated that the stand of the respondent is self contradictory because in para 17, the respondent has stated that the suit property is on 13 feet road and in this para the respondent is alleging it on five feet gali.

It is lastly prayed that application for leave to defend be dismissed and an eviction order may be passed against the respondents.

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6. Thereafter, rejoinder was filed by the respondents to the reply filed by the petitioner wherein respondents reiterated their earlier stand as 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 records. It is submitted by the Ld. Counsel for the respondents that additional accommodation is required as mentioned in the petition. As such, there is no bonafide requirement and the yardstick is different in such cases. He further submits that petitioner has nowhere mentioned that his son Sh. Nikhil is dependent upon him and he also claims that the title of the petitioner is derivative only. He also argues that memo of partition relied upon by the petitioner is not a registered document. As such, it cannot be

relied upon. He also relies upon order passed U/Sec. 14(2) D.R.C. Act in another case. He also submits that no record or document has been produced by the petitioner in respect of technical verification of his son. He also submits that judgment titled as Mittar sain vs. Rajesh Kumar passed in RC. REV. 196/2013 and C.M. No. 8331/2013 by the Hon'ble High Court of Delhi is not applicable to the facts of the present case.

On the other hand, Ld. Counsel for the petitioner submits that tenant cannot challenge the title of the petitioner as rent receipts are already on record. Furthermore, memo of partition is permissible in India and can be relied upon. In respect of additional accommodation, Ld. Counsel for the petitioner submits that he needs ground floor of the property as he wants to display his goods, which is not possible on the first floor.

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He further argues that even if the petitioner is having other properties which is not suitable for him, the petitioner need not to disclose the details of those properties. He further claims that the petitioner has not concealed anything material on record. Lastly, he claims that the respondents have been unable to raise any triable issue in their leave to defend and prays to dismiss the leave to defend application.

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 family members, if any, although he could establish if only leave is granted ARC No. 25776/16 Krishan Pal Singh vs. Smt. Leela Devi & Ors.

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 were 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 expedite 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.

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8. I have carefully and minutely gone through petition, leave to defend application accompanied by affidavit, reply, rejoinder, documents and material on record.

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 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:-

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- (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:-

10. Perusal of record reveals that the petitioner has claimed himself landlord as well as the owner of the tenanted premises on the basis of memorandum of partition dated 14.04.1992. On the other hand, respondent has contended that the petitioner is not the owner of the tenanted premises and the suit property falls in the revenue estate of Village Shadipur, Khampur, Delhi and the same is owned by gaon-sabha. Perusal of record further reveals that the respondent has not specifically disputed the landlordship of the petitioner. Moreover, in the para 3 of affidavit of the leave to defend, the respondent has himself stated that the father of the petitioner let out the premises to various tenants and he is making money from the land which did not belong to him. As such, the respondent has impliedly admitted that the father of petitioner is the ARC No. 25776/16 Krishan Pal Singh vs. Smt. Leela Devi & Ors.

landlord of the tenanted premises. But he has disputed the ownership of the petitioner on the ground that gaon-sabha is the owner of the tenanted premises but record reveals that no document has been placed on record by the respondent showing the ownership of the gaon-sabha. On the contrary, petitioner has placed the memorandum of partition on record to prove the ownership of the petitioner. It is contended by the respondent that such memorandum of partition can not be relied upon for the purpose of ownership as it is not registered document U/S 17 of Indian Registration Act. Moreover, title of the petitioner is derivative only.

11. One of the contentions of the respondents is that petitioner and his family members are owners of the property but the other co-owners have not been impleaded in the present petition by the petitioner and he has further claimed that the right in the property cannot be transferred without registered Sale Deed and paying the Court fee and the petitioner has violated Sec. 17 of Indian Registration Act.

12. I have carefully and minutely gone through the documents and material on record and specifically the memorandum of partition relied upon by the petitioner in respect of ownership which shows the petitioner Sh. Krishan Pal Singh as owner of property bearing no. WZ-199.

In the case titled as "Bipin Behari Tawakley Vs Kishori Lal Mehra & Ors. 1981 (2) DRJ 60 Hon'ble High Court of Delhi observed as under:

"The other question is whether there was oral partition in 1961 as alleged by the appellant on the basis of the family settlement. It is in evidence of the appellant ARC No. 25776/16 Krishan Pal Singh vs. Smt. Leela Devi & Ors.

and his brothers that there was oral partition and that the premises under the tenancy of respondent No. 1 only were allotted to the appellant in that family settlement besides providing for their mother. In *Kale and others v. Deputy Director of Consolidation and others*, it has been held that the family arrangement may be oral in which case no registration is necessary. In the instant case there is no writing of the family arrangement. It is alleged to be oral only. No writing is necessary and no registration is necessary. I, therefore, hold that the Additional Controller and the Tribunal have concurrently and rightly held that there was family settlement in 1961 and that the suit premises were allotted to the appellant. It further appears to me that the dispute regarding family settlement is, an internal matter between the appellant and his brothers and that the respondent No. 1 who was tenant has no right to challenge the family settlement. The appellant and his brothers admit the oral family settlement of 1961 and they admit that the premises in suit were allotted to the appellant. "

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 ARC No. 25776/16 Krishan Pal Singh vs. Smt. Leela Devi & Ors.

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 : -

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

In the case titled as *M/S. India Umbrella Manufacturing Co. & Ors.*

vs Bhagabandei Agarwalla (Dead) By LRs Smt. Savitri Aggarwala & Ors. AIR 2004 1321, Hon'ble Apex Court observed as under:-

"It is well settled that one of the co- owners can file a suit for eviction of a tenant in the property generally owned by the co-owners. (See: Sri Ram Pasricha Vs. Jagannath & Ors., (1976) 4 SCC 184; Dhannalal Vs. Kalawatibai & Ors., (2002) 6 SCC 16, para 25). This principle is based on the doctrine of agency. One co-

owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the ARC No. 25776/16 Krishan Pal Singh vs. Smt. Leela Devi & Ors.

other co-owners. The consent of other co- owners is assumed as taken unless it is shown that the other co- owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement".

In case titled as Pal Singh vs Sunder Singh (Dead) By Lrs. & Ors, 1989 AIR 758, 1989 SCR (1) 67, it is observed by Hon'ble Supreme Court as under:-

"This in our opinion falls within the ratio of Kanta Goel v. B.P. Pathak (supra) where this Court clearly held that when the other co-owner did not object to the eviction one co-owner could maintain an action for eviction even in the absence of other co-owner".

13. As such, in view of the observations made by the Hon'ble High Court of Delhi, it is manifestly clear that the tenant has no right to challenge the memorandum of partition or family settlement.

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 petitioner has been able to prove that he is something more than the respondent.

In view of the settled proposition of law, this contention of the respondent that co-owner has not been pleaded does not have any force. As such, it cannot be considered as triable issue.

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As such, this contention of the respondents 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:-

14. Perusal of record reveals that petitioner has filed the eviction petition for bonafide requirement of tenanted premises for his own use as well as for the use of his youngest son namely Sh. Nikhil

Chauhan for the need of business. He submits that son of the petitioner along with petitioner is doing the business of manufacturing car accessories at the ground floor of the property bearing no. WZ-199, Khampur. He along with his son need more space for having his office and for the purpose of display of his finished goods as no space is available for this. He further submits that the tenanted premises is adjoining space to the business from which the petitioner and his son are doing business and the tenanted premises is more suitable for the use of office, business, displaying the items and for attending the customers. He further submits that no such space is available on the ground floor for fulfilling the urgent requirement of the petitioner. As such, petitioner has sought the tenanted premises on the ground that it is available on the ground floor of the building and it is more suitable shop for the business of the petitioner and his son.

On the other hand, respondent has claimed that the present petition is filed on the ground of additional requirement without any formal proof or document. It is the claim of the respondent that in every case where the ARC No. 25776/16 Krishan Pal Singh vs. Smt. Leela Devi & Ors.

eviction is sought U/S 14 (1) (e) of DRC Act for additional requirement, it is the duty of the Rent Controller to grant the leave to defend to the respondent and he is relying upon the certain judgments of this Hon'ble superior court.

On the other hand, Ld. Counsel for the petitioner has argued that it is not mandatory to grant the leave to defend in every case where the additional accommodation is required by the petitioner/landlord.

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 (Relied upon by the petitioner), 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 ARC No. 25776/16 Krishan Pal Singh vs. Smt. Leela Devi & Ors.

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 been passed by this court."

15. 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.

16. One of the contentions of the respondent is that the petitioner is having a number of properties which have not been disclosed by him in his eviction petition and as such he has concealed the facts from the court. He has specifically alleged that the petitioner/landlord is having the additional property No. H-276, Vikaspuri, DDA Colony measuring 160 sq. meters which is more suitable to the business requirement of the petitioner and his son as this property is having a good market for the consumption of goods by the petitioner and his son.

17. I have gone through the material on record which reveals that the ARC No. 25776/16 Krishan Pal Singh vs. Smt. Leela Devi & Ors.

respondent has not placed on record any document in respect of ownership of the petitioner in respect of property no. H-276, Vikaspuri. He has merely made the bald averments. On the other hand, the petitioner has stated that he is not connected with the aforesaid property due to which he has not mentioned the same in his eviction petition.

Moreover, the contention of respondent does not have any merit in stating that the aforesaid property is more suitable for the petitioner and his son as the landlord is the best judge of his requirement and the tenant can not dictate the terms to the petitioner to use a particular property and in a particular manner.

Perusal of record reveals that the petitioner has sought the tenanted premises for bonafide requirement for himself as well as for his son Sh. Nikhil Chauhan for use of tenanted premises as office as well as for displaying of goods on the ground floor in the tenanted premises. It is well known that there is always chances of more footfall on the ground floor than on the first floor or subsequent floors. Furthermore, displaying of goods are generally done on the ground floor rather than on the first or second floor. Furthermore, it is undisputed fact that the petitioner as well as his son is already carrying out the aforesaid business from the same property on the ground floor and seeking the inclusion of tenanted premises to expand the business of car accessories. As discussed earlier, the respondents have not produced any record in respect of ownership of petitioner pertaining to Vikas Puri property. Furthermore, the respondents have been unable to show that this property has the ground, first and second floor on it as record reveals that it is mere a plot and not a building. But even if it is presumed for sake of arguments that the petitioner is ARC No. 25776/16 Krishan Pal Singh vs. Smt. Leela Devi & Ors.

having the property at H-276, Vikas Puri, in my view it would not be suitable and convenient for the petitioner to carry out the business from that property which is far away from the tenanted premises.

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 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 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 ARC No. 25776/16 Krishan Pal Singh vs. Smt. Leela Devi & Ors.

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 or vocation of the landlord and his family members, their ARC No. 25776/16 Krishan Pal Singh vs. Smt. Leela Devi & Ors.

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."

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. 25776/16 Krishan Pal Singh vs. Smt. Leela Devi & Ors.

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."

18. One of the contentions of the Ld. Counsel for the respondents is that no record or document has been produced by the petitioner in respect of technical qualification and experience of his son.

19. I have carefully gone through the material on record and settled proposition of law on this point. In the case titled as Ram Babu Agarwal vs. Jay kishan Das 2009(2) RCR 455, the Apex Court observed as under:-

"However, as regards the question of bonafide need, we find that the main ground for rejecting the landlord's petition for eviction was that in the petition the landlord had alleged that he required the premises for his son ARC No. 25776/16 Krishan Pal Singh vs. Smt. Leela Devi & Ors.

Giriraj who wanted to do footwear business in the premises in question. The High Court has held that since Giriraj has no experience in the footwear business and was only helping his father in the cloth business, hence there was no bonafide need. We are of the opinion that a person can start a new business even if he has no experience in the new business. That does not mean that his claim for starting the new business must be rejected on the ground that it is a false claim. Many people start new businesses even if they do not have experience in the new business, and sometimes they are successful in the new business also."

In the case titled as Lajpat Rai Vs Raman Jain 2012 Law suit (Del) 1439, it was observed by Hon'ble High Court as under:-

"The facts have been disclosed by the petitioner himself in the eviction petition; the petitioner also being a commerce graduate from the Shri Ram College of Commerce seeks an independent business of his own;

thus this need to set up a business of his own cannot be in any manner be said to be imaginative or a need which is moonshine; it is a genuine need; the present petitioner having inherited this shop from his grandmother by virtue of the aforementioned Will wishes to set up his own business of rubber and latex which he was earlier carrying on with his father and in which he has gained expertise and knowledge. Thus in no manner can it be said that this ARC No. 25776/16 Krishan Pal Singh vs. Smt. Leela Devi & Ors.

need of the landlord is not a bonafide need.

10. The landlord is the best judge of his requirement; it is not for the tenant to dictate terms to him; neither the Court tell him the manner he wishes to set up his business."

20. As such in view of observations made by the Hon'ble High Court of Delhi, the contention of respondent/ tenant does not have any force and cannot be treated as triable issue.

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 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 ARC No. 25776/16 Krishan Pal Singh vs. Smt. Leela Devi & Ors.

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".

21. In view of the observations made by the Hon'ble Supreme Court, it is manifestly clear that the landlord or his family members are not under compulsion to have technical qualifications or experience in the business which they are going to start from the tenanted premises. Moreover, it is on the record that the petitioner as well as his son is already doing the business of car accessories on the ground floor of the suit property. As such, the petitioner as well as his son is already having sufficient experience in the field. Moreover, such kind of businesses in India are carried out on the basis of experience and not on the basis of technical qualifications.

22. The other contention of the respondent is that petitioner earlier filed petition No. 185/2007 U/Sec. 14(1)(a)(c) & (j) of D.R.C. Act, but he did not ARC No. 25776/16 Krishan Pal Singh vs. Smt. Leela Devi & Ors.

mention this requirement in that petition.

In my view it does not have any merit as eviction petition for bonafide requirement U/Sec. 14(1)(e) D.R.C. Act can be filed any point of time in case such bonafide requirement arises.

23. One of the contentions of the respondent is that the son of the petitioner is not dependent upon the petitioner.

In fact, it is the right of every person to excel in life. If the son of the petitioner and the petitioner are of the opinion that it would be better in life to start a business from the tenanted premises, then it would not be just for this court to direct the petitioner otherwise and thereby stop the financial growth of the petitioner and his son. The court cannot ask the petitioner or his son to give up his intentions of excelling in life and to establish their business which also requires the tenanted suit premises. Though the success of the business to be established by the petitioner and his son is not guaranteed, but, at the same time, the court cannot predict the failure of the same and thereby

decline the petitioner and his son an opportunity to establish their own business from a premises owned by the petitioner.

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 ARC No. 25776/16 Krishan Pal Singh vs. Smt. Leela Devi & Ors.

Behal" [AIR 2002 SC 2256] in the following words:

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

24. In view of the above case-law, the Court is of the opinion that there is nothing malafide if petitioner and his son wants to start their own business from the tenanted suit property, rather, the said requirement seems to be bonafide as they want to increase their financial status and standard of living and the tenant cannot stop the landlord/family member of landlord from starting any business for augmenting income. The bonafide ARC No. 25776/16 Krishan Pal Singh vs. Smt. Leela Devi & Ors.

requirement of a landlord does not become malafide just because they want to run business for augmenting their income. The consequent hardship to tenant from eviction order could also not convert otherwise bonafide requirement into malafide requirement.

25. One of the contentions of the respondent that tenanted property cannot be used in violation of sanction of DDA and Notification as the said locality is residential one and no commercial activity can be carried out in the premises. Record reveals that in the eviction petition, the petitioner has mentioned that respondent no.2 is occupying the tenanted premises and doing the business of

restaurant/dhaba whereas the shop was given for running sweet shop and five to six employees working therein. As such, record manifestly shows that the respondent himself is doing the commercial activity in the tenanted premises. And the record also reveals that such averment in respect of commercial activity has not been denied by the respondents in their leave to defend. As such, this contention of the respondents do not have any force.

26. One of the arguments of the respondent is that the petitioner wants to sell 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 clause (c) of the proviso to sub-section (1) of section 14 [or under sections 14A, 14B, 14C, 148 and 21], the ARC No. 25776/16 Krishan Pal Singh vs. Smt. Leela Devi & Ors.

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:-

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"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."

27. 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 respondent does not have any force and cannot be treated as triable issue.

28. 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.

THE CONCLUSION:

29. 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 ARC No. 25776/16 Krishan Pal Singh vs. Smt. Leela Devi & Ors.

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

30. 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 one shop measuring about 30 feet x 12 feet (about 40 sq. yards) on ground floor of property bearing no. WZ-199, Village Khampur, New Delhi-110008.

31. However, in light of Section 14 (7) DRC Act, the aforesaid eviction order shall not be executable for a period of six months from the date of this order. The parties are left to bear their own costs.

File be consigned to the Record Room after due compliance.

Announced in the open Court
on 16th July, 2017

AJAY

(This order contains 32 pages)

NAGAR

Digitally signed
by AJAY NAGAR
Date:
2018.07.16
17:33:05 +0530

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

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