

Delhi District Court

Sh. Anoop Sharma vs Mohd. Yaqoob on 26 November, 2018

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

ARC No- 25912/2016

Sh. Anoop Sharma,
S/o Sh. Amar Nath Sharma,
R/o 40/1-3, Yusuf Sarai,
Green Park,
New Delhi.

.... Petitioner

VERSUS

Mohd. Yaqoob,
S/o Sh. Mohd. Ali,
private shop no. 3 to 5 in the
Property bearing no.24,
Najafgarh Road,
New Delhi.

.... Respondent

Date of filing : 25.10.2012
Date of order : 26.11.2018

ORDER ON LEAVE TO DEFEND

1. The present petition U/Sec. 14 (1) (e) of Delhi Rent Control Act, 1958 (hereinafter referred to as 'DRC Act') has been filed by the petitioner against the respondent for his eviction from the shop bearing private shop no. 3 to 5 along with other shops in the property bearing no. 24, Najafgarh Road, New Delhi as shown in red color in the site plan (hereinafter referred to as 'tenanted premises') on the ground of bonafide requirement.

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2. It is averred by the petitioner that petitioner is the owner and landlord of the shop bearing private shop no. 3 to 5 along with other shop, in the property bearing no. 24, Najafgarh Road, New Delhi.

It is further stated that Sh. Kishore Kumar Sharma, Sh. Ashok Kumar Sharma, Sh. Anoop Kumar Sharma and their mother Smt. Shashi Bala purchased the property bearing no.24, Najafgarh Road, New Delhi vide sale deed dated 30.05.1975 and they became joint owners of the said property having $\frac{1}{4}$ joint share of the property.

It is further averred that Smt. Shashi Bala, during her life time had executed a Will dated 15.10.1984 registered as document no.4516, additional book no.3, Vol. No.329, page no.17-19 thereby bequeathing her $\frac{1}{4}$ share in the name of Sh. Vinod Kumar Sharma. Smt. Shashi Bala died on 13.02.1992 and by virtue of the said Will Sh. Vinod Sharma became the owner of the said $\frac{1}{4}$ share.

Petitioner further submits that the said four brothers executed a partition deed dated 31.10.1995 and the same was duly registered before the registrar vide registration no.1999 and by virtue of the said partition deed, the property was partitioned and the petitioner became sole and absolute owner of the property which is the part of the tenanted premises. The property under the tenancy of the respondent came into the share of the petitioner and the petitioner became the sole and absolute owner of the property.

It is further stated that the family of the petitioner consists of his wife, himself and one daughter. The petitioner and his family members have no occupation and they are hardly running their livelihood from meager rental income. That neither the petitioner nor his family members have any ARC No. 25912/16 Anoop Sharma Vs Mohd. Yaqoob 2 /26 commercial property to run their business.

It is submitted that petitioner requires two shops for opening a dhaba and another for his wife for running a boutique.

It is further claimed that petitioner has also filed other petitions against the other tenants for bonafide requirements.

Lastly, it is prayed by the petitioner that he has no other commercial accommodation in Delhi and anywhere else what to say of reasonably suitable alternative accommodation in Delhi.

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 has inter-alia contended that the respondent/applicant is entitled to unconditional leave to contest the present proceedings as the petitioner has no bonafide requirement of the tenanted premises or any part thereof.

It is further contended by the respondent that it was let out on receipt/deposit of handsome amount of "Pugree/Premium" from the tenant.

It is further claimed by the respondent that the shops in tenancy of M/s Speaker Industries, M/s Speaker India and Ajay Metals were sold by the petitioner and his brothers. Shop/godown in possession of tenant M/s Regaince Films has been got vacated and the said shop as well as the roof thereon is still lying vacant. Shop no.1 which was in possession of Mrs. Varsha Sakuja has been got vacated and relet to another tenant and now the same is in possession of Mr. Shyam Swaroop Mahajan who is running ARC No. 25912/16 Anoop Sharma Vs Mohd. Yaqoob 3 /26 property dealing

business.

It is further contended that petitioner has miserably failed to show as to what type of business he intends to carry on in the tenanted premises. The petitioner has no experience to run any business as in his whole life he has not done any business. The wife of the petitioner is a house wife and has no experience of any kind whatsoever.

It is further claimed that deponent is going to file the correct site plan of the property in question which show that the petitioner has more than sufficient accommodation available with him.

It is further contended that petitioner is the owner of the following immovable properties:-

i) Property no.40/11-3, Yusuf Sarai, New Delhi-110016 which is being used for residential cum commercial purpose.

ii) Shop No.1, 24, Najafgarh Road, New Delhi which has been recently let out by him to one Mr. Shyam Sunder Mahajan. The said property is a spacious property and various other portions of the said property have been used and is in possession of the petitioner and his family members and they are running their business of Romeo Call Center. One of the brothers of petitioner is also running a hotel in the said property. A shop forming part of said property has also been let out by the petitioner and his brothers to one car service/center.

iii) Shop No.2064/7, Aggarwal Market, Tilak Bazar, Delhi-110006 in which the petitioner and his brothers have been running their business.

iv) Property no.19/2-B, Shakti Nagar, Delhi-110007 is being used as residential cum commercial purposes in which the petitioner and his parents are living and carrying on business.

v) Property No.WZ-17A, Khasra No.31/16 Western Avenue Sainik ARC No. 25912/16 Anoop Sharma Vs Mohd. Yaqoob 4 /26 Farm, New Delhi.

It is further contended that the petitioner is having joint business with his brothers and earning lot of amount therefrom. The wife of the petitioner is a house wife and the daughter of the petitioner is a qualified teacher and is of marriageable age. The petitioner has been repeatedly offering to sell the tenanted premises to the tenants/occupants in the building at exorbitant price. The provisions of Section 14(1)(e) of DRC Act are not made applicable to the commercial tenancies as there is no provision under the Delhi Rent Control Act in this regard.

It is further contended that the petitioner has recently got enhanced the rate of rent of the demised shop. The petitioner in fact wants to construct a multi-storeyed building after getting it vacated from the deponent and other tenants and want to sell the same to different persons thereby to earn huge profits. The construction of the shop in question of the respondent's son named Abrar Ahmed was made by him at his own cost after paying a huge amount of pugree/premium to the petitioner.

It is further contended that the petitioner and his brothers have been making payment of house tax/desealing of the property in their joint names. As per the guidelines of MCD, the property in question can not be partitioned. The respondent is also making his efforts to trace out the other properties owned by the petitioner in Delhi.

5. Reply to leave to defend filed by the petitioner wherein it is denied that there are any other tenant of the petitioner except three. There are only three tenants in the premises owned by the petitioner. It is stated that the petitioner had sold the property under the tenancy of Speaker Industries vide Sale Deed dated 16.03.2000, the portion under the tenancy ARC No. 25912/16 Anoop Sharma Vs Mohd. Yaqoob 5 /26 of M/s Speaker India vide Sale Deed dated 21.05.2001 and under the tenancy of M/s Ajay Metal Vide Sale Deed dated 20.04.1999 and after selling the same, the petitioner has nothing to do with the said portion. It is further contended by the petitioner that the petitioner has nothing to do with the portion under the tenancy of M/s Regaince Films as the said person is a tenant of the brother of the petitioner. It is further claimed that shop no. 1 is under the tenancy of Sh. Shyam Swaroop Mahajan. Moreover, he has nothing to do with portion under possession of M/s Perfect Pipe Industries. It is further stated that portion under the tenancy of Yaqoob is required by the petitioner for opening a Dhaba as mentioned in the petition.

It is further stated that there is no property bearing No. 40/11-3 and the correct number is 40/1-3 which belongs to father in law of the petitioner and petitioner and his wife has not got any legal right, title and interest in the said property. Moreover, the aforesaid property is residential property.

It is further stated by the petitioner with reference to para-2 of the affidavit that said property was let out to the said tenant about 03 years back and the petitioner has nothing to do with the aforesaid property and the same is in possession of brother of petitioner who is running hotel.

It is further stated that property mentioned in para-3 of the affidavit was a tenanted shop of the father of petitioner which was vacated in 2001.

In respect of property mentioned in para-4 of the affidavit, it is submitted by the petitioner that it belongs to three brothers of the petitioner and they are in occupation of the said property.

With reference to para-5 of the affidavit, it is stated that it is a residential lawn and not suitable for commercial purpose. It is further stated that petitioner is not interested to sell the property to respondent or any one else. It is further stated that the rent of the premises was enhanced in ARC No. 25912/16 Anoop Sharma Vs Mohd. Yaqoob 6 /26 accordance with the law and enhancement of the rate of rent has no relevance with the present eviction petition.

It is lastly prayed that an eviction order may be passed against the respondent.

6. Rejoinder was also filed by the respondent reiterating the same facts as stated in the leave to defend application.

7. I have heard the arguments advanced by both the Ld. Counsels and perused the record very carefully.

It is submitted by the Ld. Counsel for the respondent that the respondent/applicant is entitled to unconditional leave to contest the present proceedings as the petitioner has no bonafide requirement of the tenanted premises or any part thereof.

He further submits that the tenanted premises was let out on receipt/deposit of handsome amount of "Pugree/Premium" from the tenant.

Ld. Counsel for the respondent argues that the shops in tenancy of M/s Speaker Industries, M/s Speaker India and Ajay Metals were sold by the petitioner and his brothers. Shop/godown in possession of tenant M/s Regaince Films has been got vacated and the said shop as well as the roof thereon is still lying vacant. Shop no.1 which was in possession of Mrs. Varsha Sakuja has been got vacated and re-let to another tenant and now the same is in possession of Mr. Shyam Swaroop Mahajan, who is running property dealing business. It is further contended that the petitioner has miserably failed to show as to what type of business he intends to carry on in the tenanted premises. The petitioner has no experience to run any business as in his whole life he has not done any business. The wife of the petitioner is a house wife and has no experience of any kind whatsoever. ARC No. 25912/16 Anoop Sharma Vs Mohd. Yaqoob 7 /26 Respondent has filed the correct site plan of the property in question which shows that the petitioner has more than sufficient accommodation available with him. It is also submitted that the petitioner is the owner of many properties.

That the petitioner is having joint business with his brothers and earning lot of amount therefrom and the wife of the petitioner is a house wife and the daughter of the petitioner is a qualified teacher and is of marriageable age. The petitioner has been repeatedly offering to sell the tenanted shops to the tenants/occupants in the building at exorbitant price. Furthermore, the provisions of Section 14(1)(e) of DRC Act are not made applicable to the commercial tenancies as there is no provision under the Delhi Rent Control Act in this regard. It is further submitted that the petitioner wants to construct a multi storeyed building after getting it vacated from the respondent and other tenants and want to sell the same to different persons thereby to earn huge profits.

It is also submitted that as per the guidelines of MCD, the property in question can not be partitioned.

Lastly, it is prayed that leave to defend may be granted to the respondent to contest the present petition.

On the other hand, Ld. Counsel for the petitioner argues that petitioner is the owner and landlord of the shop bearing private shop no.3 to 5 in the suit property. It is further claimed that four brothers executed a partition deed dated 31.10.1995 and by virtue of the said partition deed, the property was partitioned and the petitioner became sole and absolute owner of the property which is the part of the tenanted premises. The property under the tenancy of the respondent came into the share of the ARC No. 25912/16 Anoop Sharma Vs Mohd. Yaqoob 8 /26 petitioner and the petitioner became the

sole and absolute owner of the property. He further asserts that the family of the petitioner consists of his wife, himself and one daughter. The petitioner and his family members have no occupation and they are hardly running their livelihood from meager rental income. And neither the petitioner nor his family members have any commercial property to run their business. Ld. Counsel for petitioner further claims that the petitioner requires two shops for opening a dhaba and another for his wife for running a boutique and three rooms at the 1st floor for establishing stitching machines for boutique.

It is also submitted that there are only three tenants in the premises owned by the petitioner. That the petitioner had sold the property under the tenancy of Speaker Industries vide Sale Deed. It is further contended by the petitioner that the petitioner has nothing to do with the portion under the tenancy of M/s Regaince Films as the said person is a tenant of the brother of the petitioner. It is further argued that shop no. 1 is under the tenancy of Sh. Shyam Swaroop Mahajan. Moreover, he has nothing to do with portion under possession of M/s Perfect Pipe Industries. It is further argued that the portion under the tenancy of respondent Mohd. Yaqoob is required by the petitioner for opening a Dhaba.

It is further stated that there is no alternative reasonably suitable accommodation available to the petitioner.

It is further submitted that the petitioner is not interested to sell the property to respondent or anyone else. It is further submitted that the rent of the premises was enhanced in accordance with the law and enhancement of the rate of rent has no relevance with the present eviction petition.

Lastly, it is prayed by the petitioner that he has no other commercial ARC No. 25912/16 Anoop Sharma Vs Mohd. Yaqoob 9 /26 accommodation in Delhi and anywhere else. Hence, an order for eviction may be passed in favour of petitioner and against the respondent.

THE LAW:-

8. 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 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 ARC No. 25912/16 Anoop Sharma Vs Mohd. Yaqoob 10 /26 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 issue and not the final success in the action.

9. I have carefully and minutely gone through the petition, leave to defend application accompanied by affidavit, reply, documents, written arguments, case law relied upon.

10. It is expedient to reproduce the Section 14 (1)(e) of DRC Act which is ARC No. 25912/16 Anoop Sharma Vs Mohd. Yaqoob 11 /26 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:-

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

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(iv) Landlord should not have other reasonable suitable accommodation.

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

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

12. Perusal of the record shows that the respondent has claimed that the tenanted premises was let out on receipt/deposit of handsome amount of "Pugree/Premium" from the tenant.

On the other hand, the petitioner has denied that tenanted premises was let out to respondent on the basis of perpetual lease and it is also denied that any premium of pugree was paid by the respondent to the petitioner at the time of letting out the premises.

Perusal of record shows that the respondent has not denied the landlordship of petitioner and in the paragraph 2(a), he has himself stated that he was let out on receipt/deposit of pugree/premium. As such, in view of material on record, relationship of landlord-tenant between the petitioner and respondent is proved.

In respect of ownership, the respondent has claimed that the petitioner is alleging that the property in question has been allegedly partitioned amongst the family members on 31.10.1995, but on the other hand, petitioner and his brothers have been making payment of house tax / de-sealing of property in their joint names and as per the guidelines of the MCD, the property in question cannot be partitioned.

On the other hand, the petitioner has replied that the payment of house tax does not have any relevance and the payment of house tax ARC No. 25912/16 Anoop Sharma Vs Mohd. Yaqoob 13 /26 jointly does not make any difference. Moreover, the respondent has no right to raise any question against the ownership of the petitioner.

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 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 Courts have insisted that they should state who else is the ARC No. 25912/16 Anoop Sharma Vs Mohd. Yaqoob 14 /26 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 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 ARC No. 25912/16 Anoop Sharma Vs Mohd. Yaqoob 15 /26 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 and Hon'ble Apex Court, 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 considered 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 contentions of the respondent do not have any force. As such, these cannot be considered as triable issue.

As such, these contentions of the respondent in respect of ownership of the petitioner do not raise any triable issue which disentitle the petitioner to obtain the eviction order.

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

14. It is expedient to discuss some case laws before deciding the leave to defend which are as under:-

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 ARC No. 25912/16 Anoop Sharma Vs Mohd. Yaqoob 16 /26 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 petitioners 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 of these two decisions set down any principle of law so as to call for interference by us. In these two cases on the facts arising in the case certain orders have been passed by this court."

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.

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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 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."

ARC No. 25912/16 Anoop Sharma Vs Mohd. Yaqoob 18 /26 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 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 ARC No. 25912/16 Anoop Sharma Vs Mohd. Yaqoob 19 /26 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."

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. Moreover, the contention of respondent does not have any merit in stating that the aforesaid properties are more suitable for the petitioner 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.

17. Perusal of record shows that the respondent has alleged a number of properties available with the petitioner. On the other hand, petitioner has given details of such properties alleged to be owned by the petitioner but the perusal of record clearly shows that those properties either already sold out or in the possession of tenants or other family members. It is well settled that the properties should be available with the landlord/petitioner to be used and if the property even if, it is owned by the landlord/petitioner but not available with the petitioner/landlord for any reasons cannot be said to be available with the petitioners/landlords for fulfillment of bonafide requirement.

As such it is proved in the present case that the petitioner is not ARC No. 25912/16 Anoop Sharma Vs Mohd. Yaqoob 20 /26 having alternative reasonably suitable commercial accommodation.

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

the Controller may, on an application made on him in this behalf by such evicted tenant within such time as may be prescribed, direct the landlord to put the tenant in possession of the premises or to pay him such compensation as the Controller thinks fit."

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

ARC No. 25912/16 Anoop Sharma Vs Mohd. Yaqoob 21 /26 "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."

19. 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.

20. One of the contentions of the respondent is that Sec. 14(1)(e) of the D.R.C. Act is not applicable to the commercial tenancy as there is no provision under D.R.C. Act in this regard.

It is well settled that 14(1)(e) of D.R.C. Act is applicable to the commercial tenancy also in view of the landmark Judgment of "Satyawati Sharma v. Union of India" [AIR 2008 SC 3148].

As such, this contention of the respondent does not have any force.

21. One of the issues raised by the respondent is that site plan of the property in question as filed by the petitioner is wrong and the same is not according to the existing position and the site.

In the case titled as R.K. Bhatnagar vs. Sushila Bhargava AIR 1987 Delhi 363; the Hon'ble High Court of Delhi observed as under:-

ARC No. 25912/16 Anoop Sharma Vs Mohd. Yaqoob 22 /26 "He has not filed any site plan wither to show that the site plan filed by the respondent- landlady is incorrect in any way. Hence, I see no reasons to doubt the veracity of the facts stated by the respondent in her affidavit. Likewise, I assume that the site plan filed by her showing the entire accommodation in her occupation is correct."

22. In my view, it is not a triable issue as the respondent has already filed his own site plan in the present case.

23. The respondent has further contended that the petitioner has no experience to run any business as in his whole life he has not done any business. Furthermore, the wife of the petitioner is a house wife and has no experience of any kind whatsoever so the question of her carrying on any boutique shop did not arise at all.

Keeping in view the well settled proposition of law, this plea does not have any force. In my view, every person has a right to stand on his own legs and he has every right to run his own business independently and it is not indispensable to have experience.

24. In view of settled proposition of law, the Court is of the opinion that there is nothing malafide on the part of the petitioner and his family if they want to start their own business in the tenanted premises. Rather, the said requirement seems to be bonafide as the the petitioner and his family members want to earn their livelihood independently and wants to stand on their own legs independently and the tenant cannot stop the landlord/family member of landlord from starting any business for livelihood. The consequent hardship to tenant from eviction order could also not convert otherwise bonafide requirement into malafide requirement.

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25. In my view, every one has a right to excel in the world and start his own business to earn his livelihood and this plea of respondent does not have any force as a person is not supposed to be in same positions for a number of years.

The Hon'ble Supreme Court has also held that a person is not supposed to be remained unemployed till the disposal of eviction petition.

26. I have carefully gone through the material on record and settled proposition of law. 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 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 ARC No. 25912/16 Anoop Sharma Vs Mohd. Yaqoob 24 /26 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 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."

27. As such, this contention of respondent does not have any force in view of law as mentioned earlier.

28. The respondent has also contended that petitioner has not even stated as to what business he wants to start. In my view, this contention of the respondent does not have any force as it is well settled proposition of the law that the petitioner is not required to give the details of business to be started in the tenanted premises after eviction of the respondent. It is also settled that the petitioner may start even the different sort of business in the tenanted premises after eviction of the respondent.

As such, this contention of the respondent does not have any merits.

29. In the light of the aforesaid legal proposition, all the pleas taken by the respondent has 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:-

30. In view of the above discussion, I am of the considered opinion that ARC No. 25912/16 Anoop Sharma Vs Mohd. Yaqoob 25 /26 no purpose would be served, even if, the petitioner is compelled to appear in the witness box and position would not be different than it is today. For this reason also, I find no triable issue in the leave to defend application of the respondent. The application for leave to defend filed by the respondent is thus, dismissed.

31. 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 the shop bearing private shop no. 3 to 5 in the property bearing no. 24, Najafgarh, New Delhi as shown in red color in the site plan which is marked as Mark- P1 (Put by the court for the purpose of identification).

32. 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.

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

Announced in the open Court on 26th November, 2018 Digitally signed (This order contains 26 pages) AJAY by AJAY NAGAR Date:

NAGAR 2018.11.26
16:08:57 +0530

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

ARC No. 25912/16

Anoop Sharma Vs Mohd. Yaqoob

26 /26