

Delhi District Court

In The Matter Of : □vs Smt. Saroj Aggarwal on 26 November, 2014

Author: Ms. Namrita Aggarwal

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In the Court of Ms. Namrita Aggarwal  
CCJ Cum Additional Rent Controller-1 (Central)  
Tis Hazari Courts, Delhi.

Case No. E-16/12

Unique I.D. No. 02401C0034672012

In the matter of :-  
Nimish Singhania HUF  
through its Karta Sh. Nimish Singhania  
S/o Sh. Suresh Singhania,  
R/o 10, Alipur Road, Civil Lines,  
Delhi.

.....Petitioner

Versus

Smt. Saroj Aggarwal,  
A-14/3, Ground Floor,  
Jamna Bhawan, Asif Ali Road,  
New Delhi.

.....Respondent

#### ORDER

26.11.2014

1. Vide this order, I shall dispose off the application moved by respondent for grant of leave to defend the eviction petition filed by the petitioner u/s 14(1)(e) Delhi Rent Control Act, 1956 [in short, 'the Act']. Page 1 of 35 Nimesh Singhanai Vs. Smt Saroj Aggarwal E-16/12

2. Eviction petition has been filed by the petitioner Sh. Nimish Singhania, Karta of the HUF against the tenant/respondent Smt. Saroj Aggarwal for vacation of the tenanted premises, i.e., one showroom with bathroom bearing private no. 1B situated on ground floor of property no. A□4/3, Jamna Bhawan, Asif Ali Road, New Delhi, as shown in colour red in the site plan annexed alongwith the petition on the ground of bonafide requirement under Section 14 (1) (e) of the DRC Act.

3. The case of the petitioner is that the petitioner is the owner of the suit premises and the same was let out to the respondent w.e.f. 15.01.1974 for running business by way of Lease Deed executed between Sh. Baij Nath Singhania, grandfather of the Karta of the petitioner and the respondent. It is averred that the suit premises is bonafidely required by the petitioner for running business and the petitioner does not have any other alternative suitable accommodation available in Delhi for the said purpose. It is stated by the petitioner that karta of the petitioner, at present, is running business of Human Resources Services alongwith his wife at 516, Udyog Vihar Industrial Area, Phase□II,

Gurgaon and the said property has been taken on rent by the petitioner at the rate of Rs. 1,00,000/□ per month and the area of the said property is 2000 sq. ft. and 12 employees are also working for the petitioner in the said premises. That the petitioner has been living with his family members at 10, Alipur Page 2 of 35 Nimesh Singhanai Vs. Smt Saroj Aggarwal E-16/12 Road, Civil Lines, Delhi which is more than 40 Kms from property no. 516, Udyog Vihar Industrial Area, Phase□III, Gurgaon and it takes almost two hours for the petitioner and his wife for reaching the place of his business from Alipur Road, Civil Lines, Delhi to Udyog Vihar, Gurgaon and similarly at least two hours are spent by them to reach their residence from Gurgaon and as such the petitioner is facing great difficulty in continuing with the said business. In view of the said difficulty, the petitioner wants to shift the aforesaid business from Gurgaon to suit premises as the suit premises is most suitable to the petitioner for running the aforesaid business as the same would also save huge amount which the petitioner is paying for the accommodation in Gurgaon and suit premises is also very convenient for the petitioner for running and expansion of his business as the same is also very near to the residence of karta of the petitioner in comparison to the property situated at Gurgaon. It is also averred that the karta of the petitioner is also owner of two other portions of the property no. A14/3, Jamna Bhawan, Asif Ali Road, New Delhi and the same are in occupation of two other tenants and petitioner is also contemplating to file eviction petitions against them so that the petitioner may run his business in the suit premises as well as in the other portions of the property which are in occupation of other tenants. It is further averred that the petitioner after getting the suit premises and other portions of the suit property from Page 3 of 35 Nimesh Singhanai Vs. Smt Saroj Aggarwal E-16/12 other tenants would convert the same into a full fledged office alongwith Director's Room, Manager's Room, Conference Room, Pantry/Lunch Room, Entertainment Room and Visitors Room, etc.. That the petitioner is also planning to employ more than 12 persons to run the said business and therefore, a bigger space is required for that purpose as well. It is submitted by the petitioner that he alongwith his father Sh. Suresh Singhanai and his brother Ashish Singhanai are also tenants in respect of one room measuring 6' x 7' in property bearing no. 680/10, Katra Hira Lal, Chandni Chowk, Delhi and the said room cannot be used by the karta of the petitioner for starting his business as the said room is in tenancy of petitioner alongwith his father and brother and space available is also very less as compared to actual space required by the petitioner for starting his business in Delhi.

4. Summons were served upon the respondent who filed his leave to defend application through its authorized representative on following grounds:□

a) That the petitioner has filed the present petition claiming himself to be Karta of Nimesh Singhanai (HUF), whereas, the petitioner has failed to disclose the names of the members of HUF and therefore, the present petitioner cannot get the property evicted for his individual need and requirement since there must be several Page 4 of 35 Nimesh Singhanai Vs. Smt Saroj Aggarwal E-16/12 members of HUF and must be owning several properties in their name and in their possession and without disclosing their names and properties, the present petition is liable to be dismissed.

b) That the HUF has been formed and the division has been created just to create a ground of eviction, whereas, Nimesh Singhanai, his father Suresh Singhanai and his brother Ashish Singhanai

and mother and their children are residing jointly in a single house and no official and actual partition has taken place between the family till date and hence, the present petition is liable to be dismissed.

c) That the petitioner has got more than sufficient accommodation available with him and therefore, the petitioner does not require premises in question bonafidely. The details of other properties in his name and in his possession and in the name of his family members are: i. A factory in the name and style of M/s Auratex Pvt. Ltd., Plot No 67, Sector 27C, Faridabad, Haryana, in which the petitioner and other family members are the directors. The said property is in possession of the petitioner. The area of the plot is more than 1000 sq. yds..

ii. One plot bearing no. 50/A 73, situated in Noida. iii. The entire property bearing no. 10, Alipur Road, Civil Lines, Delhi, in which the entire second floor portion of the building is Page 5 of 35 Nimesh Singhanai Vs. Smt Saroj Aggarwal E-16/12 lying vacant consisting of rooms, toilets, kitchen, etc, having a total area of 550 sq. yds..

iv. The firms M/s Singhania Synthetics and M/s Singhania International are being run from 661, Katra Heera Lal, Chandni Chowk, Delhi and presently as claimed by the petitioner himself the said business is being run from 680/10, Katra Heera Lal, Chandni Chowk, Delhi.

v. The petitioner is the owner of the entire property bearing no.

A 4/3, Jamuna Bhawan, Asaf Ali Road, New Delhi alongwith his family members.

vi. A plot in Sector 51, Gurgaon, Haryana ad measuring 263 sq. yds. and a plot no. 80C, Sector 05, Noida, U.P., ad measuring 250 sq. yds.

vii. Another plot in Delta II, Greater Noida, U.P., bearing no. 204L, ad measuring 200 sq. yds.

viii. Another property, i.e., basement in property bearing no. 2199, Gali no. 64, Karol Bagh, New Delhi.

ix. Another plot in Sector 15, bearing Plot no. 338B, ad measuring 162 sq. yds.

x. A flat in Rajasthan Cooperative Group Housing Society, Sector 4, Dwarka, New Delhi.

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d) That the present petition has been filed by the petitioner only to fetch more amount of rent as the rents in the vicinity have gone very high and the petitioner has sent a notice dated 10.06.2011 to the applicant/respondent through his counsel demanding the enhanced rent @ Rs. 80,000/ per month.

e) That the site plan of the property in question filed by the petitioner is absolutely false, wrong and incorrect.

f) That the property was under the ownership of Sh. Baij Nath Singhanian, grandfather of the petitioner, which was inherited by Sh. Suresh Singhanian, father of the petitioner and petitioner is residing in a Joint Hindu Family along with his father, mother and brother and possess number of properties in their names and partition made in the family is just to create false grounds for eviction.

g) That the petitioner is gainfully employed and is getting a very handsome income from his business and is very well settled in his business.

h) That the petitioner is residing with his family at 10, Alipur Road, Civil Lines, Delhi which is a three storey building and the second floor of the said building is lying vacant. Further, it is submitted that Civil Lines area is the central point of Delhi and Gurgaon is not far away from this point. Most of the people serving in the Page 7 of 35 Nimesh Singhanian Vs. Smt Saroj Aggarwal E-16/12 NCR are residing in Delhi and it hardly takes one hour to reach Gurgaon at the place of his employment from his house. It is further averred that in Delhi itself if a person, has to go 10-15 Km, it takes minimum two hours to reach there. Hence, the present petition is not maintainable.

i) That the petitioner is presently doing his business at Gurgaon and has not closed down the same. Even the type of business carried on by the petitioner is such that major clientage for said business is situated in Gurgaon area only.

j) That the petitioner and his family members have sold the 4th Floor, front portion to Smt. Rita Somani 2-3 years ago and they are willing to sell the present property also to a builder after getting the same vacated from various tenants/occupants by filing false and frivolous petitions.

k) That various dues are pending on the top floor of the building where Ms. Aruna Asaf Ali used to live and government is contemplating the attachment of the property for recovery of the outstanding dues, hence, the petitioner wants to sell the property.

l) That the petitioner has also got vacated the basement from one company M/s Tyre Corporation of India and thereafter, further let it out to third party on a higher rate of rent.

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5. Reply to application for leave to defend has been filed wherein petitioner has denied all the averments made by respondents in leave to defend application stating that the petitioner is not bound to disclose the names of all the members of HUF. It is denied that the HUF has been formed and grounds of eviction have been created with a view to evict the respondent from the suit premises. The petitioner has admitted that he along with his family members are residing at 10, Alipur Road, Civil Lines, Delhi but it is denied that all of them are living jointly at the said residence. Further, petitioner has placed on record Partition Deed dated 16.04.2003 executed amongst the coparceners of the property, according to which, the suit property has fallen to the share of the karta

of the petitioner. As far as alternative accommodation alleged by the respondent is concerned, it is contended by the karta of the petitioner that :  
i. Plot No 67, Sector 27C, Faridabad, Haryana  
The said property was a factory in the name and style of M/s Auratex Pvt. Ltd., in which the petitioner and other family members were directors and the same is lying locked for 23 years. The said property has no bearing to the bonafide requirement of the petitioner as the same is situated at Faridabad, Haryana.

ii. Plot bearing no. 50/A 73, Noida  
The same belongs to Sh.

Suresh Singhanai, father of karta of the petitioner and has been Page 9 of 35 Nimesh Singhanai Vs. Smt Saroj Aggarwal E-16/12 sold by him about 15 years back.

iii. Property bearing no. 10, Alipur Road, Civil Lines, Delhi  
The said property is a residential accommodation of the family members of the petitioner and karta of the petitioner alongwith his family members are living on the second floor of the said property and therefore, the said property cannot be used for commercial purposes and even otherwise, the petitioner is not the owner of the said property.

iv. Property bearing no. 680/10, Katra Heera Lal, Chandni Chowk, Delhi  
The size of the said property is very small, i.e., 6' x 7' and the said accommodation is in tenancy of the father, brother and karta of the petitioner and karta of the petitioner is not the sole owner of the said property.

v. Property bearing no. A 4/3, Jamuna Bhawan, Asaf Ali Road, New Delhi  
The petitioner is not the owner of the entire portion of the property and the portions which are under ownership of the karta of the petitioner are genuinely required by the karta of the petitioner for starting his business and therefore, evictions petitions have been filed against all the tenants of the said property.

vi. A plot in Sector 51, Gurgaon, Haryana ad measuring 263 sq. yds.

and a plot no. 80C, Sector 05, Noida, U.P., ad measuring 250 Page 10 of 35 Nimesh Singhanai Vs. Smt Saroj Aggarwal E-16/12 sq. yds.  
The said properties belongs to Sh. Suresh Singhanai, father of karta of the petitioner and plot in Gurgaon, Haryana was sold by father of karta of petitioner in 2009 to Smt. Neetu Sapra. Further, the said plots are situated in Haryana and U.P and cannot serve the bonafide requirement of the petitioner. vii. Plot in Delta I, Greater Noida, U.P., bearing no. 204, ad measuring 200 sq. yds.  
The said property also belongs to Sh. Suresh Singhanai and since it is situated in Greater Noida, it does not have any bearing on the bonafide requirement of the petitioner.

viii. Basement in property bearing no. 2199, Gali no. 64, Karol Bagh, New Delhi  
The said property has been let out by Sh. Suresh Singhanai, father of karta of the petitioner.

ix. Plot in Sector 15, bearing Plot no. 338B, ad measuring 162 sq. yds.  
The said property belonged to Sh. Kesh Ram who had agreed to sell the same to Smt. Shashi Bala and had appointed Sh. Nimesh Singhanai, karta of the petitioner as his attorney, who has sold the said plot as attorney

of Sh. Kesh Ram and on behalf of Smt. Shashi Bala to Smt. Abha Gupta in 2009. Even otherwise, the said plot is situated in Noida and is not suitable for the business of the petitioner.

x. Flat in Rajasthan Cooperative Group Housing Society, Sector 4, Page 11 of 35 Nimesh Singhanai Vs. Smt Saroj Aggarwal E-16/12 Dwarka, New Delhi. The same is a residential flat and has been allotted to Sh. Ashish Singhanai, brother of karta of the petitioner which had been sold by him in the year 2006 by means of registered Sale Deed dated 01.11.2006.

6. It is further averred that the contention of the respondent that the petitioner would sell the suit property after getting the same vacated is also baseless since there is ample provisions in Delhi Rent Control Act for protecting rights of the evicting tenant. The petitioner further submits that merely because notice of enhancement of rent was sent to several tenants or various occupants of the building does not in any way mean that the suit premises is not bonafidely required by the petitioner and his family members. Further, it is averred that portion under tenancy of M/s Tyre Corporation of India was owned by Sh. Ashish Singhanai, brother of karta of the petitioner and he had got vacated the said portion and relet the same to M/s UNI Agencies in 2006. The petitioner has nothing to do with the said portion of the property. Further, the petitioner has admitted that the Karta of the petitioner has sold portion of the property to Smt. Neetu Sapra but the said property was in tenancy of M/s UNI Agencies at the time of its sale. The karta of the petitioner has denied that any false ground for eviction has been created and it is stated that partition took place between the family is genuine partition but at that time ground of Page 12 of 35 Nimesh Singhanai Vs. Smt Saroj Aggarwal E-16/12 bonafide requirement for eviction of the tenant in respect of commercial premises was not available and so the said portion was sold to Smt. Neetu Sapra without getting it vacated from the tenants. Further, it is denied by the petitioner that to cover a distance of 10-15 km in Delhi, it takes two hours and further, stated that no purpose would be served if the petitioner opens his business in NCR and the said business of the petitioner can be carried on very well from Delhi itself. It is further averred that the distance between Civil Lines and Asif Ali Road is much less as compared to distance between Civil Lines and Gurgaon. It is further denied by the petitioner that the 4th floor, half front portion of the suit property was sold to Smt. Rita Somani by father of karta of the petitioner Sh. Suresh Singhanai, who is owner of that portion and the karta of the petitioner is nothing to do with it. It is further averred that portion in which Ms. Aruna Asif Ali used to live now belongs to Sh. Krishan Kumar Singhanai and therefore, no ground is made for the karta of the petitioner to sell the top floor of the building on the ground that government is contemplating attachment of the portion where Ms. Aruna Asif Ali used to live.

7. Rejoinder has been filed wherein respondent has reiterated what was averred by him in leave to defend application and has denied all the contentions made by the petitioner in reply to leave to defend application. Page 13 of 35 Nimesh Singhanai Vs. Smt Saroj Aggarwal E-16/12

8. During the pendency of the present petition, an application was filed by the respondent to file additional documents on record, i.e., Sale Deed dated 02.02.2013 and 11.02.2005, by virtue of which, father of karta of petitioner and mother of karta of petitioner had sold the portions under their ownership to various other persons.

9. I have heard the arguments of both the parties and perused the material available on record.

10. Before appreciating the affidavits and counter affidavits pertaining to application for leave to defend to contest present eviction petition, I must mention here the law of appreciating application/affidavit for leave to defend.

11. Proviso(e) to Section 14(1) is a special provision which has been enacted by the legislature for the class of landlords who require the premises genuinely and their requirements is bonafide and they do not have any suitable accommodation. The essential ingredients for attracting the proviso(e) of the section 14(1) are:

(a) The said premises are bona fide required by the landlord either for himself off or his family member.

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(b) The landlord or the family member has no other reasonable suitable accommodation.

These twin thresholds are to be satisfied conjunctively in order to attract the provisions of section 14(1)(e) and the absence of even one of the said ingredients clearly makes the said provision inapplicable.

The Satisfaction of the two requirements bonafide need and no reasonably suitable accommodation has been time and again emphasized by the Supreme Court of India in several cases and more recently in the case Deena Nath Vs. Pooram Lal, V(2001) SLT 195=(2001)5 SSC705, wherein the Supreme Court observed thus:

"The legislature in enacting the provision has taken ample care to avoid any arbitrary or whimsical action of a landlord to evict his tenant. The statutory mandate is that there must be first a requirement by the landlord which means that it is not a mere whim or a fanciful desire by him; further, such requirement must be bonafide which is intended to avoid the mere whim or desire.

The 'bonafide requirement' must be in Page 15 of 35 Nimesh Singhanai Vs. Smt Saroj Aggarwal E-16/12 praesenti and must be manifested in actual need which would evidence the Court that it is not a mere fanciful or whimsical desire. the legislative intent is made further clear by making the provision that the landlord has not other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned. This requirement lays stress that the need is pressing and there is no reasonably suitable alternative for the landlord but to get the tenant evicted from the accommodation .

Similar statutory provision is made in Sub-section(e) of Section 12(1) of the Act in respect of accommodation let unambiguous, the Court is duty-bound to examine not merely the requirement of the landlord as pleaded in the eviction petition but also whether any other reasonably suitable

non-residential accommodation in his occupation in the city/town is available. The judgment/order of the Court/authority for eviction of a tenant Page 16 of 35 Nimesh Singhanai Vs. Smt Saroj Aggarwal E-16/12 which does not show that the Court/authority has applied its mind to these statutory requirements cannot be sustained and the superior Court will be justified in upsetting such judgment/order in appeal/second appeal/revision. Bonafide requirement, on a first look, appears to be a question of fact. But in recording a finding on the question the Court has to bear in mind the statutory mandate incorporated in Section 12(1)(f). If it is found that the Court has not applied the statutory provisions to the evidence on record in its proper perspective then the finding regarding bonafide requirement would cease to be a mere finding of fact, for such erroneous findings illegally arrived at would vitiate the entire judgment".

12. The principles requiring considerations for grant of leave to defend application in the eviction petition have been laid down by the Hon'ble Supreme Court way back in the year 1982 in the case of Charan Dass Page 17 of 35 Nimesh Singhanai Vs. Smt Saroj Aggarwal E-16/12 Duggal v. Brahma Nand, 21 (1982) DLT 378 and which have been reiterated in various judicial pronouncements and can be noted thus:

"What should be the approach when leave to defend is sought for? There appears to be a mistaken belief that unless the tenant at that stage makes out such a strong case as would not suit the landlord, 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(see Santosh Kumar V. Bhai Mool Singh). At that stage of granting the leave parties rely in support of their rival contentions on affidavits and assertions and counter-assertions on affidavits may not afford such incontrovertible evidence to lead to an affirmative conclusion one way or the other. Conceding that when possession is sought for on the ground of personal requirement, an absolute need is not Page 18 of 35 Nimesh Singhanai Vs. Smt Saroj Aggarwal E-16/12 to be satisfied but a mere desire equally is not sufficient. It has to be something more than a mere desire. And being an enabling provision, the burden is on the landlord to establish his case affirmatively."

It is also settled that at the stage of granting leave to defend, the test that is applied is whether in the facts disclosed in the affidavit, filed seeking leave to defend, prima facie shows that the landlord would be disentitled to obtain an eviction order and not, where at the end, the defence taken by the tenant may fail. If the application filed under Section 25B disclosed some substantial triable issues, then it would be grave injustice to brush them outrightly, without testing the veracity of the claims made by the tenant/applicant. The law in this regard is well settled in various pronouncements and reference can also be made to Inderjeet Kaur V. Nirpal Singh, VII(2001) SLT 602=(2001) 1 SCC 706, wherein it was held as under:

" A landlord, who bona fide requires a premises for his residence and occupation should not suffer for long waiting for eviction of a tenant. At the same time, a tenant cannot be thrown out from a premises summarily Page 19 of 35 Nimesh Singhanai



Vs. Smt Saroj Aggarwal E-16/12 even though prima facie he is able to say that the claim of the landlord is not bona fide or untenable and as such not entitled to obtain an order of eviction. Hence the approach has to be cautious and judicious in granting or refusing leave to defend to a tenant to contest an eviction petition within the board scheme of Chapter IIIA and in particular having regard to the clear terms and language of Section 25B(5)".

Further, there is also no dispute with regard to legal proposition that if the tenant bring up some well founded and worth considering subsequent events to the notice of the Court, these need to be considered, and not ignored, for the purpose of examining and evaluating the bona fide requirements of the tenanted premises of the landlord. Reference can be made here to the decision of the Supreme Court in the case of Hasmat Rai V. Raghunath Prasad, (1981) 3 SCR 605, wherein it was held that:

"If the tenant is in a position to show that the need or requirement no more exists because of subsequent events, it would be open to him Page 20 of 35 Nimesh Singhanai Vs. Smt Saroj Aggarwal E-16/12 to point out such events and the Court including the appellate Court has to examine, evaluate and adjudicate the same. Otherwise the landlord would derive an unfair advantage.

An illustration would clarify what we want to convey. A landlord was in a position to show he needed possession of demised premises on the date of the suit as well as on the date of the decree of the trial Court. When the matter was pending in appeal at the instance of the tenant, the landlord built a house or bungalow which would fully satisfy his requirement. If this subsequent event is taken into consideration, the landlord would have to be non-suit. Can the Court shut its eyes and evict the tenant? Such is neither the spirit nor intendment of Rent Restriction Act which was enacted to fetter the unfettered right of re-entry. Therefore when an action is brought by the landlord under Rent Restriction Act for eviction on the ground of personal requirement, his need must not only be shown Page 21 of 35 Nimesh Singhanai Vs. Smt Saroj Aggarwal E-16/12 to exist at the date of the suit, but must exist on the date of the appellate decree, or the date when a higher Court deals with the matter. During the progress and passage of proceeding from Court to Court if subsequent events occur, which if noticed would non suit the plaintiff, the Court has to examine and evaluate the same and mould the decree accordingly".

13. Though, I am conscious of the fact and to which, there is no dispute that the landlord is the best judge of his affairs and also choices, and the tenant cannot dictate as to how the landlord has to live and utilize his premise; but, at the same time, it is also settled principles of law in such cases that the mere wish or desire of the landlord or his decision to get the tenanted premises vacated is not the decisive factor. It is not that whatever he would say, in every case, would be taken to be a gospel truth. If that was so, then, on the mere asking of every landlord that he needs the premises for setting up an office for his or his family member's business and he is the judge and master of his decisions and choices, the statutory protection afforded to the tenant, would become meaningless. That is not the intent of the legislation. The applicability of Page 22 of 35 Nimesh Singhanai Vs. Smt Saroj Aggarwal E-16/12 above proposition is only after the landlord is able to demonstrate that his

assertion of requirement of the tenanted premises is authentic and genuine. If he is able to show and demonstrate so, then certainly neither the tenant nor this Court could dictate terms upon him as to how and in what manner he should utilize his premises. The projected requirement of the tenanted premises, based on his subjective decision, is required to be tested by the Court.

14. In the present case, the ownership as well as landlord-tenant relationship between the petitioner and the respondent is not disputed by the respondent. The only contention raised by the respondent is with respect to bonafide requirement of the karta of the petitioner and also with respect to availability of alternative suitable accommodation with the petitioner to fulfill his requirements.

15. The first contention raised by the respondent is that the Karta of the petitioner has not mentioned the names of all the other members of HUF and also has not stated the properties which are in their possession and therefore, the present petition is liable to be dismissed as rejected. Further, it is contended that the alleged partition has been made just to create a ground for eviction, whereas, Sh. Nimesh Singhanai, his father, Page 23 of 35 Nimesh Singhanai Vs. Smt Saroj Aggarwal E-16/12 Sh. Suresh Singhanai and his brother Sh. Ashish Singhanai alongwith their mother and children are residing jointly in a single house and carrying on business in different names and no partition has actually taken place between family till date. It is averred that the present petition has been filed for individual need and requirement of the karta of the petitioner. The present petition has been filed by karta of the petitioner Sh. Nimesh Singhanai for vacation of the tenanted premises to enable him to start his business from the tenanted premises alongwith his wife. In any such case, since the petition has been filed for the requirement of karta of the petitioner, there is no requirement of mentioning the names of all the other HUF members. Moreover, none of the HUF members have filed any objection to the present petition having been filed for bonafide requirement of the petitioner. Had any objections would have been filed by any member of the HUF, the situation would have been different. But here even if the tenanted premises is required by the karta of the petitioner for his individual need but in absence of no objections by other members of the HUF, there is no need to state names of all other members of HUF or the properties in their possession.

16. Further, as far as contention of the respondent regarding creating false grounds is concerned, the karta of the petitioner has placed on Page 24 of 35 Nimesh Singhanai Vs. Smt Saroj Aggarwal E-16/12 record the copy of Partition Deed dated 16.04.2003 alongwith the present petition, according to which, the suit property sought to be evicted by karta of the petitioner has fallen to his share.

17. As far as residential accommodation of the karta is concerned, it is not denied that karta of the petitioner is residing at 10, Alipur Road, Civil Lines, Delhi alongwith his father, brother and mother but it is denied that they are residing jointly. It is not necessary that if a partition has taken place between members of HUF, then they should reside at different addresses. It is very much possible that one property is divided between various members of HUF in which members occupy the portion which came to their respective share by the said partition. In the present case as well, even though partition took place between the family but still, all the members are residing at 10, Alipur Road, Civil Lines, Delhi in their respective shares and it cannot be said that since they are residing in one property only, no real partition has taken place between them.

18. The other contention raised by the respondent is that the petitioner has more than sufficient accommodation available with him to meet his bonafide requirement and therefore, he does not need to suit premises. In this regard, it is held that : Page 25 of 35 Nimesh Singhanai Vs. Smt Saroj Aggarwal E-16/12 i. Plot No 67, Sector 27C, Faridabad, Haryana It is stated by the respondent that the petitioner and his family members are directors in the said factory M/s Auratex Pvt. Ltd. and the said property is in possession of the petitioner. The area of the plot is more than 1000 sq. yds.. Per contra, the petitioner has averred that the said factory is lying locked for the last 2 3 years. Even otherwise, the space of the factory is not what is required by the petitioner to start his business and the said factory is situated at Gurgaon, Haryana, whereas, the petitioner is seeking a place in Delhi itself so that he can save his travelling time from home and back. Therefore, this premises is not suitable for the petitioner to start his business as the petitioner has specifically stated in his petition that he needs space in Delhi to start his business which would be most convenient to him keeping in view the fact that he is resident of Delhi.

ii. One plot bearing no. 50/A 73, situated in Noida As far as this plot is concerned, it is stated by the petitioner that the same belongs to Sh. Suresh Singhanai, father of karta of the petitioner and had been sold by him 15 years back. Even otherwise, the said plot is situated in Noida which would not be suitable for the petitioner to start his business as he is seeking Page 26 of 35 Nimesh Singhanai Vs. Smt Saroj Aggarwal E-16/12 space in Delhi and moreover, the said plot has been sold by father of karta of the petitioner 15 years back and hence, the petitioner cannot utilize the said space.

iii. Property bearing no. 10, Alipur Road, Civil Lines, Delhi The said property has been admitted by the respondent also as residential accommodation of the petitioner and other family members. It is averred by the respondent that the 2nd floor is vacant. Per contra, it is averred by the petitioner that Sh. Nimesh Singhanai alongwith his family members are residing on the second floor of the property. Even otherwise, karta of the petitioner cannot be expected to run his business from 2nd floor of the property where he has an option to start his business from the ground floor.

iv. Property bearing no. 680/10, Katra Heera Lal, Chandni Chowk, Delhi It is admitted proposition that this property is a rented accommodation in the name of karta of the petitioner, his father and brother and even otherwise, size of this premises is 6' x 7' which is very small as compared to the need of karta of the petitioner.

v. Property bearing no. A 4/3, Jamuna Bhawan, Asaf Ali Road, New Delhi In this property, the karta of the petitioner is only owner of front half portion of the ground floor which is under Page 27 of 35 Nimesh Singhanai Vs. Smt Saroj Aggarwal E-16/12 tenancy of Smt. Saroj Aggarwal. Back half portion of the first floor is in tenancy of the respondent and one room situated on the 5th floor is in tenancy of M/s I.K. M. Holding Pvt. Ltd. and petitioner is also contemplating to file eviction petitions against them so that the petitioner may run his business in the suit premises as well as in the other portions of the property which are in occupation of other tenants. It is further averred that the petitioner after getting the suit premises and other portions of the suit property from other tenants would convert the same in full fledged office alongwith Director's Room, Manager's Room, Conference Room, Pantry/Lunch Room, Entertainment Room and Visitors Room, etc.. Further, as

per the partition deed, karta of the petitioner does not have any other portion in his possession in the said property.

vi. Plot in Sector 51, Gurgaon, Haryana admeasuring 263 sq. yds. and a plot no. 80C, Sector 05, Noida, U.P., admeasuring 250 sq. yds. It is clearly stated by the petitioner that the said properties belongs to Sh. Suresh Singhania father of karta of the petitioner and are not under ownership of karta of the petitioner. Plot in Gurgaon, Haryana was sold by Sh. Suresh Singhania, father of karta of petitioner in 2009 to Smt. Neetu Sapra. Further, the said plots are situated in Page 28 of 35 Nimesh Singhanai Vs. Smt Saroj Aggarwal E-16/12 Haryana and U.P and cannot serve the bonafide requirement of the petitioner.

vii. Plot in Delta I, Greater Noida, U.P., bearing no. 204L, admeasuring 200 sq. yds. It is clearly stated by the petitioner that the said property also belongs to Sh. Suresh Singhania and the said plot also cannot be used by the petitioner for his bonafide requirement since it is situated in Greater Noida, it does not have any bearing on the bonafide requirement of the petitioner.

viii. Basement in property bearing no. 2199, Gali no. 64, Karol Bagh, New Delhi The said property has already been let out by Sh. Suresh Singhania, father of karta of the petitioner since he is owner of the said property and therefore, cannot be used by the karta of the petitioner.

ix. Plot in Sector 15, bearing Plot no. 338B, admeasuring 162 sq. yds. It is contended that the said property belonged to Sh. Kesh Ram who had agreed to sell the same to Smt. Shashi Bala and had appointed Sh. Nimesh Singhania, karta of the petitioner as his attorney, who has sold the said plot as attorney of Sh. Kesh Ram and on behalf of Smt. Shashi Bala to Smt. Abha Gupta in 2009. Even otherwise, the said plot is situated in Noida and this plot was never in ownership of the Page 29 of 35 Nimesh Singhanai Vs. Smt Saroj Aggarwal E-16/12 karta of the petitioner and therefore, cannot be used by karta of the petitioner to meet his bonafide requirement. x. Flat in Rajasthan Cooperative Group Housing Society, Sector 4, Dwarka, New Delhi It is contended that the same is a residential flat and has been allotted to Sh. Ashish Singhania, brother of karta of the petitioner which had been sold by him in the year 2006 by means of registered Sale Deed dated 01.11.2006. Thus, this flat also cannot be used by the karta of the petitioner to meet out his bonafide requirement.

19. It is averred by the respondent that the petitioner is contemplating to sell the tenanted premises after getting the same evicted but this contention also does not hold any ground as there is ample provisions in Delhi Rent Control Act for protecting rights of the tenants. It is not disputed that the partition had taken place between the family members of the petitioner in 2003 and till 2008, there was no provisions under DRC Act to seek eviction of the tenants from the commercial premises on the ground of bonafide requirement and therefore, it does not lie in the mouth of the respondent to state that even after partition, no petition was filed by the karta of the petitioner and therefore, show malafide of the petitioner. Page 30 of 35 Nimesh Singhanai Vs. Smt Saroj Aggarwal E-16/12

20. The other contention raised by the respondent is that the petitioner had got evicted the basement of the suit property from one company M/s Tyre Corporation of India and thereafter,

relet the same to third party and petitioner had also sold one portion to Smt. Neetu Sapra and therefore, there is no bonafide requirement of the petitioner. Per contra, it is averred by the petitioner that the said basement was in ownership of brother of karta of the petitioner Sh. Ashish Singhanai, who got it vacated in the year 2006 and relet the same to M/s UNI Agencies by way of registered lease agreement dated 31.03.2006 and to prove the said fact that this portion does not belong of karta of the petitioner and he had no right over it, the karta of the petitioner has placed on record partition deed alongwith the petition. It is admitted by karta of the petitioner that he has sold one portion of the property to Smt. Neeta Sapra, however, it is averred that the said portion was not got vacated by the tenant and was under possession of tenant M/s UNI Agencies when it was sold to Smt. Neeta Sapra since at that time, there was no provision for getting the eviction of commercial accommodation from the tenants.

21. From the above stated facts, it is proved by the petitioner that he does not have any other alternative suitable accommodation under Page 31 of 35 Nimesh Singhanai Vs. Smt Saroj Aggarwal E-16/12 his ownership to start his business in Delhi and that the most suitable accommodation available with the karta of the petitioner is the suit premises only. Further, it is a settled law that property which is not under ownership of karta of the petitioner cannot be used by karta of the petitioner to meet out his bonafide requirement and if any property is sold by father or mother of karta of the petitioner, the said contention cannot be used as a ground to allow leave to defend application as karta of the petitioner has no control over the property under ownership of his father and mother and he cannot stop them from selling the same.

22. The other contention raised by the respondent is that the petitioner has been carrying on business of human resource/suppling of human power, etc. from Gurgaon and the maximum requirement of said kind of business in in NCR area only and no purpose would be served by opening such office at Asif Ali Road. It is also contended that the petitioner has admitted that he is residing at 10, Alipur Road, Civil Lines, Delhi which is adjacent to ISBT and is central point of Delhi from where Gurgaon is not very far away and even most of the people serving in NCR have to cover distance which takes hardly an hour to reach Gurgaon and therefore, the karta of the petitioner can Page 32 of 35 Nimesh Singhanai Vs. Smt Saroj Aggarwal E-16/12 also carry on his business from Gurgaon only. Per contra, it is averred by the petitioner that the petitioner is engaged in the business of human resource and supplying of man power and if the karta of the petitioner shift his office in Delhi, not much difference would be caused to him with respect to his clientage. The contention of the respondent that not much difference would be caused to the petitioner even if he continues his business from Gurgaon as even Asif Ali Road is far away from their place of residence does not hold any ground as obviously, it takes more time for petitioner and his wife to cover distance till Gurgaon as compared to travelling distance from Civil Lines to Asif Ali Road. Further, petitioner cannot be forced to carry on his business from a particular place just because at a particular point of time the premises was let out to the tenant and further, it is a settled law that a tenant cannot dictate terms upon the landlord as to from which space he should run his business. Even otherwise, there seems to be no reason to force the karta of the petitioner to run his business from the place in Gurgaon which is far away from his residence. Further, the place at Gurgaon from where the petitioner is running his business is a tenanted premises, for which the petitioner has to pay huge amount of rent of Rs. 1,00,000/- per month and if, the petitioner shifts his business in the

suit premises, that would also help Page 33 of 35 Nimesh Singhanai Vs. Smt Saroj Aggarwal E-16/12 him to save huge amount of rent paid by him towards rent. Thus, it cannot be denied that the suit premises is much more suitable for the petitioner and his wife for their business and therefore, they cannot be denied of their right to start their business from the suit premises.

23. Thus, in view of the above discussed facts, the respondent has failed to raise any triable issue, which requires evidence to be proved. Petitioner, on the other hand, has clearly established her bonafide requirement qua the tenanted premises and also non-availability of any other alternative suitable accommodation in his possession to start his business. The karta of the petitioner cannot be denied of his right to expand his business and cannot be forced to continue his business from Gurgaon itself which is not suitable for him in the present circumstances. Hence, the application for leave to defend filed by respondent is ordered to be dismissed. Consequently, eviction order is liable to be passed against the respondent u/s 25 B (4) of the Act. In view of above, petitioner is held entitled for recovery of the tenanted premises, i.e., one showroom with bathroom bearing private no. 1B situated on ground floor of property no. A-4/3, Jamna Bhawan, Asif Ali Road, New Delhi, as shown in red colour in the site plan annexed with the petition. However, the petitioner would not be Page 34 of 35 Nimesh Singhanai Vs. Smt Saroj Aggarwal E-16/12 entitled to initiate execution proceedings for recovery of possession of the tenanted premises before expiration of six months from today in view of provisions given in Section 14 (7) of the Act.

Announced in open Court (Namrita Aggarwal) on 26 Day of November, 2014. CCJ cum ARC (Central) th [This order contains 35 pages .] Tis Hazari Courts, Delhi.

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