

Delhi District Court

UId No. 02401C0555692012 vs Iind Add.: Shop No on 23 December, 2015

Author: Sh. Sumedh Sethi

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IN THE COURT OF SH. SUMEDH KUMAR SETHI  
ACJ-cum-ARC-cum-CCJ (WEST) THC, DELHI

UID No. 02401C0555692012

E No.150/2012 U/s 14(1)(e) of DRC Act

Date of institution: 27.11.2012

Date of Order: 23.12.2015

Suraj Prakash Wahi  
S/o Sh. Chaman Lal Wahi  
R/o WZ-297, G Block, Hari Nagar  
New Delhi-110058.

..... Petitioner

Versus

Sh. Purshottam Anand  
S/o Sh. Roshan Lal  
R/o WZ-175, Gali No.1  
Shiv Nagar, New Delhi.

IIND ADD.: Shop No.1  
GL/8, WZ-297, G Block  
Jail Road, Hari Nagar,  
New Delhi

....Respondent

Order deciding Leave to Defend in Eviction petition  
U/sec. 14(1)(e) r/w Section 25-B of DRC Act, 1958

1) Vide this order the Court shall dispose of the application U/s 25-B (4 & 5) of DRC Act of the respondent seeking leave to defend the eviction petition, filed on 04.02.2013.

2) The eviction petition U/sec. 14(1)(e) Section 25-B of the Delhi Rent Control Act, 1958 (hereinafter referred to as DRC Act) was filed by the petitioner against the respondent on 27.11.2012.

FACTS

3) The averments made in the petition are that:-

E. No. 150/2012 Suraj Prakash Wahi Vs. Purshottam Anand Page no. 2 of 27 3.1 Private property shop no. 1 at ground floor, carved out of house property no. GL/8, Municipal No. WZ-297 situated at G Block, Jail Road, Hari Nagar, New Delhi, (herein after called tenanted shop in question), as shown in red colour in the site plan is occupied by respondent. The monthly rent of the shop in question was initially Rs. 150/- per month exclusive of all other charges but later on it was enhanced to Rs. 2,000/- pm in the year 2007 and later on it was increased to Rs. 2,200/-. Respondent had deposited the rent till February, 2012. The premises in question was let out to the respondent in the year 1978 by the petitioner vide rent agreement dated 03.07.1978. The premises in question was given for commercial purpose for carrying on business of plywood and glass work.

3.2 In the year 2002, the respondent has removed the wall existed between the tenanted shop and the shop no.2 (which was rented to respondent Smt. Usha Anand by the petitioner as shown as mark as X in site plan) and hence compelled the petitioner to file petition U/s. 14 (1)(j) of Delhi Rent Control Act, 1958 against the respondent and his wife. During the proceedings compromise took place among petitioner, respondent and Smt. Usha Anand thereby increasing the rent from Rs. 2,000/- per month of tenanted premises which was later enhanced to Rs. 2,200/- and hence at present rent is Rs. 2,200/-. The respondent has paid the rent upto February 2012 and thereafter failed to make payment of rent to the petitioner despite various requests and reminders. Respondent has caused substantial damage to the tenanted premises and removed all the walls between tenanted premises and shop of Smt. Usha as mentioned in 'X' in site plan as shown in portion from X1 to X2 in site plan. Respondent has also changed his business to Real Estate Property in contravention of the business mentioned and admitted in the rent agreement dated 03.07.1998.

3.3 Respondent is a habitual defaulter regarding payment of rent and he paid the rent till Feb, 2012. The petitioner also served the respondent the legal notice dated 14.09.2012 for termination of tenancy and payment of arrears of E. No. 150/2012 Suraj Prakash Wahi Vs. Purshottam Anand Page no. 3 of 27 rent but the respondent neither tendered the arrears of rent nor sent reply to the said notice. Petitioner reserves his right to file separate petition U/s. 14 (1)

(a) of DRC Act.

3.4 The petitioner is the owner of the property bearing no. WZ-297, G Block, Jail Road, Hari Nagar, New Delhi-110058 as shown in green color, yellow color, blue color and red color.

3.5 The petitioner purchased the said property in the year 1965 vide sale deed bearing no. 117, Addl. Book No.1, Vol. No. 358 on pages 172 to 173 dated 14.01.1965 from Vishwa Nath and Smt. Swarn Lata.

3.6 The petitioner is ex-serviceman and retired from Ministry of Power as a Principal Private Secretary in the year 1994 and having three sons namely Vikas Wahi, Vivek Wahi and Sandeep Wahi. Vivek Wahi and Sandeep Wahi are married and they are living with their family at property bearing no. WZ-297, G Block, Jail Road, Hari Nagar, New Delhi-110058.

3.7 Vikas Wahi is 46 years old and single person living with the petitioner. Vikas Wahi has studied upto 9th standard and is unemployed person and is totally dependent upon the petitioner for the purpose of employment accommodation. Vikas Wahi wants to start his own business of photostat, PCO etc. from the tenanted shop for his livelihood and to bear his day to day expenses with the help of petitioner. Petitioner is presently at around 73 years old man and diabetic patient and now he wants to make arrangement for his son for his livelihood and regular source of income so that he leads his life and not burden on his any relatives/brother in future.

3.8 Apart from the tenanted premises, petitioner is also having shops/accommodations which are under the use and occupation of different tenants/family persons which are as under:-

(a) Shop no.2 situated at WZ-297, G Block, Jail Road, Hari Nagar, New Delhi is occupied by tenant Smt. Usha Anand since 1995 which is marked 'x' in the site plan and collectively shown in blue colour.

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(b) Shop no.3 situated at WZ-297, G Block, Jail Road, Hari Nagar, New Delhi is occupied by tenant Amarjeet Singh Kohli from last 14-15 years which is marked 'y' in the site plan and collectively shown in blue colour.

(c) Shop no.4 situated at WZ-297, G Block, Jail Road, Hari Nagar, New Delhi is occupied by tenant Bupender Kalra from last 3-4 years which is marked 'z' in the site plan and collectively shown in blue colour.

(d) Shop no.A-2 situated at WZ-297, G Block, Jail Road, Hari Nagar, New Delhi is occupied by joint tenancy of RL Malik and Geeta Malik from last 20 years which is marked 'a' in the site plan and collectively shown in blue colour.

(e) Shop no.A-2/1 situated at WZ-297, G Block, Jail Road, Hari Nagar, New Delhi is occupied by daughter in law of petitioner namely Ms. Meenu and running tailoring business/shop under the name and style of "Fashion Point" which is marked 'b' in the site plan and collectively shown in blue colour.

(f) Shop no.A-3 situated at WZ-297, G Block, Jail Road, Hari Nagar, New Delhi is occupied by petitioner's son Sandeep Wahi and running business of property dealing under the name and style of "Shrey Properties" which is marked 'c' in the site plan and collectively shown in blue colour.

(g) Shop no.A-8 situated at WZ-297, G Block, Jail Road, Hari Nagar, New Delhi is occupied by petitioner's son Vivek Wahi and running business of property dealing which is marked 'd' in the site plan and collectively shown in blue colour.

3.9 The petitioner is 73 years old person and retired from services and he is also interested in starting his own shop as he is also having responsibility of his unemployed son namely Vikas Wahi

to bear his expenses and hence he also wants to start his own business from the tenanted premises.

3.10 That the portion situated at the first floor as shown in yellow colour is E. No. 150/2012 Suraj Prakash Wahi Vs. Purshottam Anand Page no. 5 of 27 being used by Vivek Wahi for his residential purpose where he resided with his family consisting of wife and two children namely Master Anmol and Baby Priyanka age 15 years and 9 years who are studying in 10th and 4th standard hence they occupy the respective portions/rooms as per their needs.

3.11 The portion situated at second floor as shown in green color is being used by Sandeep Wahi for his residential purpose where he resided with his family consisting of wife and two children namely Baby Surbhi and Master Shrey aged about 14 and 12 studying in 9th and 8th standard and they occupy the respective portions/rooms as per their needs.

3.12 The petitioner has no other reasonably suitable commercial accommodation for making any alternative arrangement of doing shop for Vikas Wahi aged about 46 years.

4) The respondent has filed application for leave to defend along with affidavit wherein he has raised certain defenses in the application for leave to defend and the same are as under:

4.1 That the petitioner by filing the present eviction petition wants to get the tenanted premises evicted from the respondent/applicant herein, in order to sell the tenanted shop property with malafide intentions and ulterior motives, since with the passage of times the rates of the shop in question has increased manifold.

4.2 That the petitioner has already sufficient accommodation and the alleged requirement of the petitioner for his son namely Vikas Wahi is fanciful, concocted and fabricated.

4.3 That the petitioner and his any other family members including his son Vikas Wahi, as alleged in the petition, do not need the tenanted premises at all, as he has miserably failed to show his bonafide requirement.

4.4 That the sons and other family members of the petitioner are well settled and are also having separate properties in Delhi and are not dependent for any E. No. 150/2012 Suraj Prakash Wahi Vs. Purshottam Anand Page no. 6 of 27 purpose including residential as well as commercial on the petitioner.

4.5 That the petitioner herein had filed a petition under Section 14(1)(j) of the Delhi Rent Control Act, against the respondent and his wife who is also a tenant under the petitioner in respect of shop no.2 as marked 'X' in the site plan, which shows the malafide intention of the petitioner thereby taking the ground that the respondent in the year 2002 has removed the wall existed between the shop no.2 and 1 as shown in the site plan filed by the petitioner alongwith the petition. Thereafter a compromise took place between the petitioner, respondent and wife of respondent herein according to which the rent of the tenanted shop/premise was enhanced to Rs. 2,200/- per month from the

existing rent of Rs. 150/- per month with mutual consent of the parties, accordingly the statement of the parties were recorded on 11.05.2007 in case titled as "Suraj Prakash Wahi Vs. Purshottam Anand & Anr.", before the Court of Ms. Kaveri Baweja, the then ARC, Rohini, Delhi and in view of the compromise, the petitioner had withdrawn the said petition. Consequent upon the compromise, the petitioner has forgone his claim under Section 14 (1)(j) under DRC Act in lieu of the enhancement of the rent of the said shop bearing no.1 and 2 as shown in the site plan. As of now the position is that both the said shops in possession of the respondent and his wife stand mingled and there is no partition wall between both the shops and cannot be identified/ascertained.

4.6 That the petitioner has not made the respondent no.2 as party to the present petition and her presence is necessary to decide the controversy between the parties so as to effectively and efficaciously decide the issue involved in the present petition by this Court.

4.7 That in the petition itself, the age of the said son of the petitioner is stated to be 46 years and his status is single, however the petition is silent on the fact that as to what he was doing till the date of filing the petition and what he has been doing for his survival till the date of filing of the present petition. The said fact creates the grave suspicion on his alleged bonafide requirement. It is E. No. 150/2012 Suraj Prakash Wahi Vs. Purshottam Anand Page no. 7 of 27 imperative to state that as per the knowledge of the respondent/deponent, the said son of the petitioner - Vikas Wahi is not having the sound disposing mind and he is in the habit of roaming around the area aimlessly like a lunatic person, as such he is not capable of doing any business whatsoever in nature i.e. why he could not be married as no prudent person even with least wisdom would like to marry her daughter to a person of not having unsoundness mind.

4.8 That the petitioner had let out the shop no.4 as shown in the site plan to one Bhupinder Kalra from last three to four years marked "Z" and he has been getting handsome rent from the said tenant running atleast a lac per month, had the need of the petitioner been genuine he could not have let out the said shop to the said tenant, keeping aside the interest of his son Vikas Wahi.

4.9 That the other shops in the property admeasuring about 400 sq. yards is also occupied by other tenants the possession of the said shops was earlier available with the petitioner but let out to other tenants in different years, whether the possession of the said shops in the possession of the said tenants, as alleged in the petition or not or whether the same are with the petitioner or not is a tribal issue.

4.10 That the shop no. A-2/1, as shown in the site plan is lying locked and the same is vacant and the same is not in possession of Smt. Meenu, as alleged, the daughter in law the petitioner, the same has been shown in possession of said Smt. Meenu in order to show paucity of accommodation.

4.11 That the shop no. A-8 as shown in the site plan is also lying vacant and the same is not in possession of Vivek Wahi, as alleged since, he has been running his business of builder in the area of Rajouri Garden, New Delhi, by doing the collaboration with the other builders/owners for last 4-5 years and he is well settled therein.

4.12 That the portions shown in green colour on the second floor of the property, as shown in the site plan is also lying vacant, as said Sandeep Wahi is not in possession of the same, as said Sandeep Wahi has acquired/occupied E. No. 150/2012 Suraj Prakash Wahi Vs. Purshottam Anand Page no. 8 of 27 different properties in Shiv Nagar and Rajouri Garden, Delhi.

4.13 That the notice dated 14.09.2012 is silent on the alleged bonafide requirement of the petitioner and therefore there is no content in the same about the ground of bonafide requirement.

5) The petitioner has filed a reply to the application for Leave to Defend along with counter affidavit and in the counter affidavit, the petitioner has denied the defences taken by the respondent. The petitioner further submitted as under:

5.1 Para 10 (a) of the affidavit is admitted upto the extent of filing and settlement of rent etc. in the said proceedings. Rest of the para is denied accordingly. It is denied that as of now the position is that both the said shops in possession of the respondent and his wife stand mingled and there is no partition wall between both the shops and cannot be identified /ascertained as to its measurement since the petition is silent on that aspect and in the absence of the actual measurement of the shop in question or that the said development requires parties to the present petition to lead their respective evidence in order to ascertain and identify the shop no.1 as distinguished from shop no.2. It is submitted that only the wall were removed between these shops and even in the settlement the separate rent of both the shops were fixed mutually then how such objections be raised by the petitioner.

5.2 It is denied that the presence of respondent wife is necessary to decide the controversy between the parties so as to effectively and efficaciously decide the issue involved in the present petition.

5.3 The petitioner is not a lunatic person moreover he is qualified in repairing radio and transistor servicing, assembling from Television Training Institute situated at Delhi in the year 1986 and for some period he worked with one person at his shop of PCO/photostat.

5.4 It is submitted that the particulars of the shop as marked "Z" in the site plan is mentioned by the petitioner in his petition correctly. It is denied that E. No. 150/2012 Suraj Prakash Wahi Vs. Purshottam Anand Page no. 9 of 27 the petitioner deliberately not come out with accurate and exact date on which the said shop let out by him to Bhupender Kalra. It is submitted that the size of the said shop is approximately much larger as compared to tenanted premises and the petitioner does not require such large shop for purpose of running PCO/ photostat shop for his son Vikas Wahi.

5.5 It is denied that the act and conduct of the petitioner herein that he is motivated to get the higher rent from the said shops or to sell the same on high price by getting evicting the same from the respondent.

5.6 It is denied that the shop no. A-2/1, as shown in the site plan is lying locked and the same is vacant and the same is not in possession of Smt. Meenu, the daughter in law the petitioner, the same has been shown in possession of said Smt. Meenu in order to show paucity of accommodation. It is submitted that the said shop is being run by Smt. Meenu and the petitioner has filed the copy of electricity bill alongwith the present counter affidavit to show that the said shop is in running condition.

5.7 It is denied that the shop no. A-8, as shown in site plan is also lying vacant. Petitioner has filed the copy of electricity bill which clearly shows that electricity is consumed in the present shop.

5.8 It is denied that the portions shown in green colour on the second floor of the property, as shown in the site plan is also lying vacant. Copy of electricity bill of the said premises is enclosed to support the contention that Sandeep Wahi and his family members are residing in the said portion.

5.9 It is submitted that the notice dated 14.09.2012 was sent for the purpose of recovery of rent and not otherwise.

6) No rejoinder to the reply to the application was filed by the respondent.

7) During the course of proceedings of this case, the respondent moved an application on 20.11.2013 for referring the matter to Lok Adalat to be held on 23.11.2013 for settlement. However, on 23.11.2013 none had appeared on behalf of petitioner for E. No. 150/2012 Suraj Prakash Wahi Vs. Purshottam Anand Page no. 10 of 27 settlement. Respondent and his counsel were present for settlement. The matter was sent back to the trial Court for further proceedings.

8) Arguments were heard on the application under consideration on behalf of both the parties. Material on record has been perused. Submissions considered.

## REQUIRMENTS

9) In order to succeed in a petition for eviction filed under section 14(1)(e) of the Delhi Rent Control Act the petitioners must establish that:

i. He is the owner and landlord in respect of the tenanted premises.

ii. That he requires the premises bonafide for himself or for any member of his family dependent upon him.

iii. That he has no other reasonably suitable accommodation

10) The scope of the section has been enlarged in view of the judgment of the Hon'ble Supreme Court titled as Satyawati Sharma v. Union of India: AIR 2008 SUPREME COURT 3148 so as to include premises let out for commercial purposes also within the scope and ambit of a petition under section 14(1)(e) of DRC Act.

11) The present case is that of an admitted tenant and the respondent has not denied the landlord tenant relationship and the ownership of the petitioner. Thus, the first requirement given above stands established.

12) The defences which are taken by respondent are discussed below and the same are as under:-

#### DEFENCES

13) That the wife of the respondent has not been made a party and the shops have been merged:

13.1 The respondent has contended that the petitioner herein had filed a petition under Section 14(1)(j) of the Delhi Rent Control Act, against the respondent and his wife who is also a tenant under the petitioner in respect of E. No. 150/2012 Suraj Prakash Wahi Vs. Purshottam Anand Page no. 11 of 27 shop no.2 as marked 'X' in the site plan, which shows the malafide intention of the petitioner thereby taking the ground that the respondent in the year 2002 has removed the wall existed between the shop no.2 and 1 as shown in the site plan filed by the petitioner alongwith the petition. Thereafter a compromise took place between the petitioner, respondent and wife of respondent herein according to which the rent of the tenanted shop/premise was enhanced to Rs. 2,200/- per month from the existing rent of Rs. 150/- per month with mutual consent of the parties, accordingly the statement of the parties were recorded on 11.05.2007 in case titled as "Suraj Prakash Wahi Vs. Purshottam Anand & Anr.", before the Court of Ms. Kaveri Baweja, the then ARC, Rohini, Delhi and in view of the compromise, the petitioner had withdrawn the said petition. Consequent upon the compromise, the petitioner has forgone his claim under Section 14 (1)(j) under DRC Act in lieu of the enhancement of the rent of the said shop bearing no.1 and 2 as shown in the site plan. As of now the position is that both the said shops in possession of the respondent and his wife stand mingled and there is no partition wall between both the shops and cannot be identified/ ascertained.

13.2 He also contended that the petitioner has not made the respondent no.2 as party to the present petition and her presence is necessary to decide the controversy between the parties so as to effectively and efficaciously decide the issue involved in the present petition by this Court.

13.3 The petitioner has countered that Para 10 (a) of the affidavit is admitted upto the extent of filing and settlement of rent etc. in the said proceedings. Rest of the para is denied accordingly. It is denied that as of now the position is that both the said shops in possession of the respondent and his wife stand mingled and there is no partition wall between both the shops and cannot be identified /ascertained as to its measurement since the petition is silent on that aspect and in the absence of the actual measurement of the shop in question or that the said development requires parties to the present petition to lead their respective evidence in order to ascertain and identify the E. No. 150/2012 Suraj Prakash Wahi Vs. Purshottam Anand Page no. 12 of 27 shop no.1 as distinguished from shop no.2. It is submitted that only the wall were removed between these shops and even in the



settlement the separate rent of both the shops were fixed mutually then how such objections be raised by the petitioner.

13.4 He also denied that the presence of respondent wife is necessary to decide the controversy between the parties so as to effectively and efficaciously decide the issue involved in the present petition.

13.5 It is noteworthy here that the statement of Smt. Usha Anand recorded in E. NO. 337/06 at Rohini Courts on 11.05.2007 is on record and it clearly mentions that the rent of shop no. 2 is enhanced to Rs. 2500/-. This has no mention of Shop no. 1 of which eviction is being sought in the present case. Therefore, there is nothing on record to show that the tenancies of the respondent and his wife have been merged as alleged by the respondent.

13.6 Thus, the wife of the respondent is not a necessary party to the present case. Even otherwise, the petition has been pending for a long time now and the wife of the respondent has not sought to be impleaded in this case. It's not as if the respondent and his wife are suffering from any discord amongst each other and if the wife of the respondent found it important to be a party in the present case, then surely she would have made efforts towards the same.

13.7 Hence, these defences are sham defences and do not raise any triable issue.

14) The son of the petitioner is not competent to run a business 14.1 The respondent has contended that in the petition itself, the age of the said son of the petitioner is stated to be 46 years and his status is single, however the petition is silent on the fact that as to what he was doing till the date of filing the petition and what he has been doing for his survival till the date of filing of the present petition. The said fact creates the grave suspicion on his alleged bonafide requirement. It is imperative to state that as per the E. No. 150/2012 Suraj Prakash Wahi Vs. Purshottam Anand Page no. 13 of 27 knowledge of the respondent/deponent, the said son of the petitioner - Vikas Wahi is not having the sound disposing mind and he is in the habit of roaming around the area aimlessly like a lunatic person, as such he is not capable of doing any business whatsoever in nature i.e. why he could not be married as no prudent person even with least wisdom would like to marry her daughter to a person of not having unsoundness mind.

14.2 The petitioner has countered that his son is not a lunatic person moreover he is qualified in repairing radio and transistor servicing, assembling from Television Training Institute situated at Delhi in the year 1986 and for some period he worked with one person at his shop of PCO/photostat.

14.3 In the judgment titled as Ragavendra Kumar v. Firm Prem Machinery: AIR 2000 SUPREME COURT 534 the Hon'ble Supreme Court held that 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. Moreover, as has been held in a plethora of cases, neither the Court nor the tenant cannot dictate terms to the landlord regarding the suitability of the premises or even the extent of the business proposed to be carried out.

14.4 In the present case, it is not for the respondent to judge the suitability of the shop in question with respect to the requirement of the petitioner for his son's business and it is hereby held that the defence being deliberated upon does not raise any triable issue.

14.5 Further, in a recent judgment it has been observed by our own High Court that it is the moral duty of a father to help establish his son. The relevant portion of the judgment titled Pawan Kumar Vs Sant Lal R.C.Rev 303/2012 decided on 6.8.2012 by Honorable Mr Justice M.L.Mehta is as under:-

"16. Further, submissions of learned counsel for the petitioner that Dr. E. No. 150/2012 Suraj Prakash Wahi Vs. Purshottam Anand Page no. 14 of 27 Ankit was not financially dependent upon his father and so the tenanted premises could not be got vacated for his requirement, is also only noted for rejection. It is trite that the landlord is entitled to help his son, establish his business. 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 right of the landlord for possession of his property for setting up a business for his son has been also recognized by the Apex Court in Ram Babu Aggarwal Vs. Jay Kishan Das 2009(2) RCR

455. The moral duty of a father to help establish his son was also recognized by the Apex Court in Joginder Pal Singh Vs. Naval Kishore Behal AIR 2002 SC 2256 in the following words:

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

14.6 In the present case, it has been clearly stated by the petitioner in his petition that his son is not employed due to paucity of space. It may be noted that in Joginder Pal Singh Vs. Naval Kishore Behal: AIR 2002 SC 2256 (as referred to in aforesaid judgment) the situation was similar to the present case, E. No. 150/2012 Suraj Prakash Wahi Vs. Purshottam Anand Page no. 15 of 27 as in the said case before the Apex Court the landlord had filed eviction petition for the office of his son who was a chartered accountant who was residing with him. Honorable Mr. Justice R.C. Lahoti observed

in the said judgment that such a requirement of the landlord is a genuine requirement. In the said case the Apex Court evicted the tenant from the premises for the said requirement of the landlord.

14.7 This would make the present case similar to the case of Joginder Singh (supra) as in the present case the tenanted premises is required by the landlord petitioners for business of his son. Thus, this defence of the respondent does not raise any triable issue.

14.8 Every parent wants to settle his/ her children in the best possible manner and if the petitioner has found it proper to help his unmarried son to start his business at the tenanted premises, then it would not be proper for the Court to interfere in such decision of the petitioner, as the petitioner is the best judge of his own requirements and that of the requirements of his family.

14.9 In the opinion of the Court 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 than what they are already doing then it would not be just for this Court to direct the petitioner otherwise and thereby stop the financial growth of the family of the petitioner. The Court cannot ask one of the sons of the petitioner to give up his dreams of excelling in life and to establish his business from a premises owned by his father. Though the success of the business of the son of the petitioner 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 business from a premises owned by them.

14.10 Even otherwise, the petitioner has already stated that his son is qualified in repairing devices and the petitioner would also be helping his son. The certificates regarding his son's qualifications are already on record. Thus, E. No. 150/2012 Suraj Prakash Wahi Vs. Purshottam Anand Page no. 16 of 27 the requirement of the petitioner is a bona fide requirement and there is no reason for the Court to find any malafide intention behind the same.

15) The petitioner has other vacant accommodation 15.1 The respondent has contended that the petitioner has already sufficient accommodation and the alleged requirement of the petitioner for his son namely Vikas Wahi is fanciful, concocted and fabricated.

15.2 The respondent has also contended that the petitioner and his any other family members including his son Vikas Wahi, as alleged in the petition, do not need the tenanted premises at all, as he has miserably failed to show his bonafide requirement.

15.3 He has further contended that the sons and other family members of the petitioner are well settled and are also having separate properties in Delhi and are not dependent for any purpose including residential as well as commercial on the petitioner.

15.4 He has also contended that the petitioner had let out the shop no.4 as shown in the site plan to one Bhupinder Kalra from last three to four years marked "Z" and he has been getting handsome rent from the said tenant running atleast a lac per month, had the need of the petitioner been genuine he could not have let out the said shop to the said tenant, keeping aside the interest of his

son Vikas Wahi.

15.5 The petitioner has countered that the particulars of the shop as marked "Z" in the site plan is mentioned by the petitioner in his petition correctly. It is denied that the petitioner deliberately not come out with accurate and exact date on which the said shop let out by him to Bhupender Kalra. It is submitted that the size of the said shop is approximately much larger as compared to tenanted premises and the petitioner does not require such large shop for purpose of running PCO/ photostat shop for his son Vikas Wahi.

E. No. 150/2012 Suraj Prakash Wahi Vs. Purshottam Anand Page no. 17 of 27 15.6 The respondent contended that the other shops in the property admeasuring about 400 sq. yards is also occupied by other tenants the possession of the said shops was earlier available with the petitioner but let out to other tenants in different years, whether the possession of the said shops in the possession of the said tenants, as alleged in the petition or not or whether the same are with the petitioner or not is a tribal issue.

15.7 He also contended that the shop no. A-2/1, as shown in the site plan is lying locked and the same is vacant and the same is not in possession of Smt. Meenu, as alleged, the daughter in law the petitioner, the same has been shown in possession of said Smt. Meenu in order to show paucity of accommodation.

15.8 The petitioner denied that the shop no. A-2/1, as shown in the site plan is lying locked and the same is vacant and the same is not in possession of Smt. Meenu, the daughter in law the petitioner, the same has been shown in possession of said Smt. Meenu in order to show paucity of accommodation. It is submitted that the said shop is being run by Smt. Meenu and the petitioner has filed the copy of electricity bill alongwith the present counter affidavit to show that the said shop is in running condition.

15.9 The respondent contended that the shop no. A-8 as shown in the site plan is also lying vacant and the same is not in possession of Vivek Wahi, as alleged since, he has been running his business of builder in the area of Rajouri Garden, New Delhi, by doing the collaboration with the other builders/owners for last 4-5 years and he is well settled therein.

15.10 The petitioner denied that the shop no. A-8, as shown in site plan is also lying vacant. Petitioner has filed the copy of electricity bill which clearly shows that electricity is consumed in the present shop.

15.11 The respondent has alleged that the portions shown in green colour on the second floor of the property, as shown in the site plan is also lying vacant, as said Sandeep Wahi is not in possession of the same, as said Sandeep E. No. 150/2012 Suraj Prakash Wahi Vs. Purshottam Anand Page no. 18 of 27 Wahi has acquired/occupied different properties in Shiv Nagar and Rajouri Garden, Delhi.

15.12 The petitioner denied that the portions shown in green colour on the second floor of the property, as shown in the site plan is also lying vacant. Copy of electricity bill of the said premises is

enclosed to support the contention that Sandeep Wahi and his family members are residing in the said portion.

15.13 In this regard, it has been held in the case of Sohan Lal Gupta Vs. Sh. Nand Kishore: 219 (2015) DLT 9B (CN) that:

"5. So far as the shop existing in the residence of the respondent is concerned, it could not be disputed before this Court that it is not the case of the petitioner/tenant before the Additional Rent Controller that the residential premises where the alleged shop is available to the respondent/landlord is situated in a busy market like the tenanted shop. I may also note that the respondent/landlord has disputed the aspect that at all there is any shop which is available in his residence from where the son of the respondent/landlord can carry on business. In any case, taking the case of the petitioner at best that would mean that there is one shop at a premises which is not in the main market and in law it is not open to a tenant to dictate to the landlord which premises are more suitable for carrying on the business and in the present case undoubtedly the tenanted premises in the market is more suitable than another premises which is away from the market and not in the middle of the market. This has been held by the Supreme Court in the case of Anil Bajaj and Anr. Vs. Vinod Ahuja in Civil Appeal No. 5513/2014 decided on 8.5.2014:2014. (210) DLT58(SC). Therefore, though the so called shop in the tenanted premises is actually not existing, but even if it is existing, the same is not an alternative suitable premises."

E. No. 150/2012 Suraj Prakash Wahi Vs. Purshottam Anand Page no. 19 of 27 [...] "6. The second aspect urged was that there was a shop to the adjoining tenanted premises which has been sold by the respondent. On the first blush this argument seemed to have merit, however, the Additional Rent Controller notes that the petitioner did not file any document and this was only a bald plea. The petitioner has thereafter filed a document in this Court to show that the adjacent shop was sold about six years prior to filing of the eviction petition, and though I cannot look this document in view of the judgment of the Supreme Court in the case of Prithipal Singh Vs. Satpal Singh (dead) through LR's (2010) 2 SCC 15 which requires that all grounds, all facts and all documents have to be stated and filed within the inflexible statutory period of 15 days for filing of the leave to defend application, and beyond which period there cannot be condonation of delay particularly even one day, yet if the document is looked into it is clear that the transfer of the shop by means of the general power of attorney is around more than six years prior to filing of the eviction petition and therefore it cannot be stated that the shop which was sold six years prior to filing of the eviction petition would amount to an alternative premises because Courts cannot dictate as to how the landlord wants to utilize his property including by selling of the same and getting moneys from the same because moneys would be required by any person for myriad reasons. And even which has happened more than six years prior to filing of the eviction petition, in my opinion, cannot raise a bonafide triable issue."

15.14 It has also been held in the case of Royal Nepal Airlines Corporation vs Shrishti Properties Pvt Ltd: 2012 RLR 28 that:

"19. The Apex Court has time and again noted that it is prerogative of the landlord to decide whether the premises are required for expansion of his business or not; in this context the observations of the Apex E. No. 150/2012 Suraj Prakash Wahi Vs. Purshottam Anand Page no. 20 of 27 Court in the case of Sait Nagjee Purushotam & Co. Ltd. Vs. Vimalbai Prabhulal and Others (2005) 8 SCC 252 is relevant; it reads as under:-

"It is always the prerogative of the landlord that if he requires the premises in question for his bona fide use for expansion of business this is no ground to say that the landlords are already having their business at Chennai and Hyderabad therefore, it is not genuine need. It is not the tenant who can dictate the terms to the landlord and advise him what he should do and what he should not. It is always the privilege of the landlord to choose the nature of the business and the place of business."

20. Sarla Ahuja Vs. United Insurance Company Limited VIII (1998) SLT 374, the Apex Court had observed as under:- "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."

15.15 In Krishan Lal vs R N Bakshi decided by our own Hon'ble High Court on 19 May, 2010 that:

E. No. 150/2012 Suraj Prakash Wahi Vs. Purshottam Anand Page no. 21 of 27 "8. It is settled law that it is not for a tenant to dictate the terms to the landlord as to how and in what manner he should adjust himself, without calling upon the tenant to vacate a tenanted premises. While deciding the question of bonafides of requirement of landlord, it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted. When the landlord shows a prima facie case, a presumption that the requirement of the landlord is bonafide, is available to be drawn. It is also settled position of law that the landlord is the best judge of his requirement for residential or business purpose and he has got complete freedom in the matter and it is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own. The tenant cannot compel a landlord to live in a particular fashion and method until and unless the requirement shown is totally mala fide or not genuine."

15.16 It has also been held in the case of Raj Kumar Khanna vs. Parduman Singh: 204 (2013) DLT 312 that:

"8. It has rightly been decided by the Apex Court in the case of Shamshed Ahmad & Ors. Vs. Tilak Raj Bajaj (deceased) 152 (2008) DLT 301 (SC), wherein the Apex Court affirmed the order of the trial court which was reversed by the HC, that the requirement of section 14(1)(e) is "bonafide requirement and it has to be seen as per the requirement of the petitioner(landlord), even if the petitioner is very rich and having other properties at different places that does not affect his requirement of the premises, as alleged in the petition. And the leave to defend application was dismissed."

15.17 In the judgment titled as Ragavendra Kumar v. Firm Prem Machinery: AIR 2000 SUPREME COURT 534 the Hon'ble Supreme Court held that 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 E. No. 150/2012 Suraj Prakash Wahi Vs. Purshottam Anand Page no. 22 of 27 freedom in the matter. Moreover, as has been held in a plethora of cases, neither the Court nor the tenant cannot dictate terms to the landlord regarding the suitability of the premises or even the extent of the business proposed to be carried out.

15.18 In the present case, it is not for the respondent to judge the suitability of the shop in question with respect to the requirement of the petitioner for his own and his son's business and it is hereby held that the defence being deliberated upon does not raise any triable issue.

15.19 Moreover, if the petitioner deems it fit for one shop to be occupied by his daughter in law and another one by his other son as well as the other ones being on rent, then the Court cannot interfere with the planning of the petitioner regarding utilization of his own property. Further, it is settled law that the upper floors of a property are obviously less lucrative for business as compared to the ground floor. The petitioner can also not be expected to use his residential space for his son's commercial requirement. The petitioner has also clarified that he deems it better to give a smaller shop for Photostat business to his son as compared to bigger shops. Therefore, the fact that the petitioner let out certain shops is of no relevance as it is the prerogative of the petitioner to decide which portion of his property is best suitable for which purpose. Hence, the defence does not raise any triable issue.

16) The petitioner wants to enhance the rent or sell the tenanted shop:

16.1 The respondent contended that the petitioner by filing the present eviction petition wants to get the tenanted premises evicted from the respondent/applicant herein, in order to sell the tenanted shop property with malafide intentions and ulterior motives, since with the passage of times the rates of the shop in question has increased manifold.

16.2 The petitioner denied that the act and conduct of the petitioner herein that he is motivated to get the higher rent from the said shops or to sell the same on high price by getting evicting the same from the respondent.

E. No. 150/2012 Suraj Prakash Wahi Vs. Purshottam Anand Page no. 23 of 27 16.3 The respondent stated that the notice dated 14.09.2012 is silent on the alleged bonafide requirement of the petitioner and therefore there is no content in the same about the ground of bonafide requirement.

16.4 The petitioner submitted that the notice dated 14.09.2012 was sent for the purpose of recovery of rent and not otherwise 16.5 These defences are being taken up together as they are all interconnected and seek to raise doubt against the bonafide of the landlord's requirement. In the judgment titled as Sarwan Dass Bange Vs. Ram Prakash: 167 (2010) DLT 80 the Hon'ble High Court of Delhi referring to the judgment of Baldev Singh Bajwa v. Monish Saini: (2005) 12 SCC 778 observed in para 17 as under:

"..It was held that the legislative intent is of expeditious disposal of the application for ejectment of tenant filed on the ground of requirement by the landlord of the premises for his own occupation; a special category of landlords requiring the premises for their own use has been created; if there is any breach by the landlord, the tenant is given a right of restoration of possession; the landlord who evicts a tenant on the ground of own requirement is not only prohibited from letting out the premises or disposing of the same but also required to use the same for his own residence only..."

16.6 Thus, it is clear that the special summary procedure provided for u/s 25B of the DRC Act is an exception to the general intent to the Act. The intention of the legislature is to provide an expeditious remedy to landlords who seek eviction on the ground of bonafide requirement under the stringent conditions imposed in the special procedure. Thus, the mere bald averment of the respondent to the effect that the petitioner wants to sell the shop or enhance rent cannot disentitle the petitioner from relief that he is entitled to get after fulfilling the stringent requirements provided for in the special procedure. Thus, this submission of the respondent is found to be untenable.

E. No. 150/2012 Suraj Prakash Wahi Vs. Purshottam Anand Page no. 24 of 27 16.7 It is well settled law that bald allegation without any material on record to substantiate the same could not be looked into as the mere bald allegations are not enough for grant of leave to defend. It has been observed in judgment titled as Rajender Kumar Sharma & Ors. Vs. Leela Wati & Ors.: 155 (2008) DLT 383 by Hon'ble Delhi High Court as under:

"11)....Thus, the affidavit filed by the tenant was shown to be false by the landlady on the basis of documents placed by it. No Rent Controller is supposed to grant leave to the tenant on the basis of a false affidavit and false averments and assertions. Such affidavit should be outrightly rejected by the Rent Controller. Only those averments in the affidavit are to be considered by the Rent Controller which have same substance in it and are supported by some material. Mere assertions made by a



tenant in respect of landlord's ownership of other buildings and in respect of alternate accommodation are not to be considered sufficient for grant of leave to defend."

16.8 Moreover, it is held by the Hon'ble High Court of Delhi in a case titled as Hari Shanker Vs. Madan Mohan Gupta: 111 (2004) DLT 534 that:

"Summary procedure in Section 25-B of Delhi Rent Control Act, 1958 cannot be defeated by merely making frivolous and vague allegations which can never be substantiated."

16.9 It is also held by Hon'ble High Court of Delhi in Vinod Kumar Bhalla Vs. Sh. Nanak Singh: 1982 (2) RCR (Rent) 715 that in all applications for leave to defend the common defence raised by almost all the tenants, is that the landlord wanted to enhance the rent or to sell the property after getting it vacated. It was observed by the High Court that such types of allegations are without any foundation and that after an order of eviction is passed under section 14 (1)(e), the tenant is granted six months time to vacate the premises and the landlord is required to occupy the same within two months and the landlord is further dis-entitled for re-letting or alienating the whole or any part E. No. 150/2012 Suraj Prakash Wahi Vs. Purshottam Anand Page no. 25 of 27 of the premises within three years from the date of obtaining possession from the tenant. Thus, the landlord is not in a position either to sell or re-let the tenanted premises for a period of three years and if a landlord does sell or re- let the premises within the said period then the tenant may proceed against the landlord for restoration of the possession under section 19 of the Act.

16.10 A similar observation was made in judgment titled Krishna Chopra & Anr. Vs. Smt. Raksha: 2000 Rajdhani Law Reporter 83.

16.11 Thus, on the basis of the aforesaid legal propositions the contention of the respondent is rejected as the same is a mere assertion without any substance. Moreover, the contention of the respondent is not tenable because in such kind of cases protection/remedy available/provided for such tenants under the DRC Act itself as they can file petition for repossession if the premises are re-let or transferred by the landlord after evicting the tenant, but certainly the leave cannot be granted solely on this ground.

16.12 Further, the fact that the petitioner did not mention his requirement in his legal notice has already been explained by the petitioner to the effect that the said notice was sent only for alleged non-payment of rent and the said defence does not disentitle the petitioner from the relief of eviction.

16.13 Thus, this defence raised by the respondent is a sham defense and it does not raise any triable issue.

## CONCLUSION

17) It is well settled that leave to defend is granted to the tenant in case any triable issue is raised by him, which can be adjudicated by consideration of additional evidence. The mere existence of any triable issue is not sufficient. The nature of the triable issue raised by the tenant must be such that it will disentitle the landlord from obtaining the eviction order.

18) In the judgment titled as Sarwan Dass Bange Vs. Ram Prakash (supra) the Hon'ble High Court of Delhi referring to the judgment of Baldev Singh Bajwa v.

E. No. 150/2012 Suraj Prakash Wahi Vs. Purshottam Anand Page no. 26 of 27 Monish Saini (2005) 12 SCC 778 observed in para 17 as under:

"...the landlord who evicts a tenant on the ground of own requirement is not only prohibited from letting out the premises or disposing of the same but also required to use the same for his own residence only. It was held that these restrictions and conditions inculcate in built strong presumption that the need of the landlord is genuine; the conditions and restrictions imposed on the landlord make it virtually improbable for the landlord to approach the Court for ejectment of tenant unless his need is bona fide - no unscrupulous landlord in all probability, under this Section, would approach the Court for ejectment of the tenant considering the onerous conditions imposed on him. It was further held that this inbuilt protection in the Act for the tenants implies that whenever the landlord would approach the Court his requirement shall be presumed to be genuine and bona fide. It was further held that a heavy burden lies on the tenant to prove that the requirement is not genuine.." (emphasis supplied)

19) The whole purpose and import of summary procedure under Section 25B of the Act would otherwise be defeated. The prayer for leave to contest should be granted to the tenant only where a prima facie case has been disclosed by him. In the absence of the tenant having disclosed a prima facie case i.e. such facts which disentitles the landlord from obtaining an order of eviction, the Court cannot mechanically and in routine manner grant leave to defend. In the light of the aforesaid facts, circumstances and legal propositions, all the pleas taken by the respondent have failed to raise any triable issues regarding the ownership of the petitioner or the landlord-tenant relationship; the bonafide requirement of the landlord; or the availability of any alternative suitable accommodation. The contents of the application for leave to defend have failed to rebut the presumption of bonafide qua the requirement of the petitioner. The application for leave to defend filed by the respondent is thus rejected.

20) As a consequence thereof, an eviction order is passed U/s. 14 (1) (e), DRC Act against the respondent regarding the tenanted premises i.e Private property E. No. 150/2012 Suraj Prakash Wahi Vs. Purshottam Anand Page no. 27 of 27 shop no. 1 at ground floor, carved out of house property no. GL/8, Municipal No. WZ-297 situated at G Block, Jail Road, Hari Nagar, New Delhi, as shown in red colour in the site plan

21) However in light of Section 14 (7) DRCA, the aforesaid eviction order shall not be executable for a period of six months from today.

22) The parties are left to bear their own costs.

23) File be consigned to Record Room after due compliance.

Announced in the open Court

On 23rd day of December, 2015

(SUMEDH KUMAR SETHI)  
ACJ/ARC/CCJ(West)/23.12.2015

E. No. 150/2012

Suraj Prakash Wahi Vs. Purshottam Anand