

Smt. Nipun Kochhar vs Sh. Balkishan on 25 February, 2022

IN THE COURT OF MS. SNIGDHA SARVARIA,
ACJ-cum-CCJ-cum-ARC, SHAHDARA DISTRICT,
KARKARDOOMA COURTS, DELHI.

RC ARC No : 237/2019

Smt. Nipun Kochhar
W/o late Sh. Tushar Kochhar
R/o H. No. 2/76,
Arjun Gali, Karkari Road,
Vishwas Nagar, Shahdara,
Delhi-32

..... Petitioner

Versus.

Sh. Balkishan
Service to be effected through
Raj Medical Shop
at : Ground Floor, H. No. 2/76,
Arjun Gali, Karkari Road,
Vishwas Nagar, Shahdara,
Delhi-32

..... Respondent

Order on application under S. 25-B of The Delhi Rent Control Act, 1958 seeking leave to defend

1. Vide this order I shall decide the application under S. 25-B of The Delhi Rent Control Act (DRC Act) seeking leave to defend filed by the respondent.

2. The brief facts of the case are that the late Smt. Maya Devi created the tenancy in the shop at the ground floor of property bearing no. 2/76, Arjun Gali, 60ft Road, Vishwas Nagar, Shahdara, Delhi-32 in favour of the respondent in the year 1982, who is running a medical shop under the name and title Raj Medcal in the premises. After the death of Smt. Maya Devi, her son Sh. Madan Lal Kochhar became the owner of the premises by operation of law and continued the tenancy. After the death of Sh. Madan Lal Kochhar in 2016, the petitioner along with her sister-in-law became owner of the premises by operation of law and is continuing the tenancy of the respondent since then. The petitioner has been attorned as the landlords/owners and the rent was being paid to them. It is stated that there are two shops on the ground floor of the suit property and one of them is in the possession of the respondent. The other shop has been let out to Imran Salamani in the year 2019 by the petitioner who is running his business therein and petitioner is deriving RC ARC No : 237/2019 Smt. Nipun Kochhar Vs. Sh. Bal Kishan 1 of 16 an amount of Rs.12,500/- as monthly rent from the said tenancy. The remaining portion of the suit property is being used by the petitioner as her residence wherein she resides with her two sons. It is stated that at present the petitioner is not doing any business or job and has to depend upon the rental income and the interest accrued in the banks against the FDs. The petitioner has a family consisting of her two sons namely Master Tarun Kochhar (aged about 17 years) and Master Bhumit Kochhar (aged about 13 years) who are studying. It is stated that the income received via rent and interest from the FDs is approximately Rs.17,000/- which is not sufficient for managing the household expenses and ensuring proper upbringing of

children of the petitioner. It is stated that including the school fee, the other major expenses of the petitioner namely electricity, water, telephone and general household expenses are amounting to Rs.41,750/- approximately. The petitioner and her family are surviving with great difficulties and are unable to manage their expenses with current income. Considering the above and the hardship faced by the petitioner on daily basis, the petitioner plans to open a grocery shop for her elder son i.e. Mr. Tarun Kochhar in the premises with sole purpose to ensure regular income for the survival of the petitioner and her family and to ensure appropriate upbringing of her children. The premises is situated in the market and is suitable for running the grocery shop as at present the petitioner has not been able to start an independent business for her son due to paucity of commercial space. It is stated that the petitioner many times requested the respondent to vacate and hand over the peaceful and vacant possession of the tenanted shop as they bonafidely require the same for the purpose of starting a business for her son but the respondent flatly declined the request of petitioner. The petitioner does not own any other space/property of whatsoever in Delhi/NCR and bonafidely requires the shop in question. It is prayed that eviction order may be passed in favour of the petitioner and against the respondent qua the aforesaid shop.

3. The respondent was summoned vide order dated 01.06.2019 and was served with the summons of this petition on 11.07.2019, thereafter, affidavit seeking leave to defend under S. 25 B of the DRC Act was filed by the respondent on 23.07.2019.

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4. In the affidavit seeking leave to defend under S. 25 B of the DRC Act, the respondent has stated that the petitioner has not filed the original documents in support of her petition, the documents filed by the petitioner being photocopies are required to be proved in accordance with law and as such evidence is required to be recorded in the present matter. It is stated that the petitioner has falsely stated that there are two shops on the ground floor of the suit property, whereas there are three shops on the same along with a separate vacant portion i.e. two rooms which are lying vacant and surplus and the petitioner has intentionally and deliberately not disclosed about one big shop and two rooms as aforesaid which is lying vacant and has been in possession of the petitioner under her own lock and key. The eviction petition of petitioner is not maintainable in law and facts as she has filed incorrect site plan which is even otherwise not legible by not disclosing/showing one vacant shop as aforesaid. It is stated that the said son of the petitioner is still continuing his study and it is not understood as to how the petitioner can open the shop for her said son who has still not attained his age of majority and is still pursuing his study. The minor child, who is still studying, has no experience to do any work what to say of running a grocery shop, cannot do any alleged business. The petitioner has not disclosed anything about the past working experience of her said son. The petitioner has handsome and sufficient income by way of rental income and interest derived from the FDRs and she has been receiving interest of more than Rs.50,000/- per month and has been leading a luxurious life. She is also maintaining car, scooty etc. It is stated that the petitioner has falsely stated that she has been deriving monthly rent of Rs.12,500/- from her tenant, whereas she has been getting monthly rent of Rs.16,500/-. The petitioner has inducted a tenant in one of her shops (out of three) in the month of January, 2019. It is not understood as to why she inducted a tenant that too in the month of January, 2019 if she has any alleged bonafide requirement of the

shop under the occupation of respondent. The main intention behind filing the present petition is only to get the premises vacated so that she may be able to induct other tenant on higher rate of rent. The respondent has no other place to run his business. The suit premises is only source of his livelihood.

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5. I have heard counsel for the parties, perused the record and have gone through the relevant provisions of the law.

6. The Supreme Court had in "Inderjeet Kaur Vs.Nirpal Singh", [2000]Supp 5 SCR 707, laid down the following guidelines to be followed by the Courts while deciding the applications for leave to contest filed by the tenants under Section 25(4) of the Delhi Rent Control Act,1958:-

"11. As is evident from Section 25B(4) & (5) of the Act, burden placed on a tenant is light and limited in that if the affidavit filed by him discloses such facts as would disentitle the landlord from obtaining an order for the recovery of the possession of the premises on the ground specified in Clause (e) of the proviso to Section 14(1) of the Act, with which we are concerned in this case, are good enough to grant leave to defend.

12....."

13. We are of the considered view that at a stage when the tenant seeks leave to defend, it is enough if he prima facie makes out a case by disclosing such facts as would disentitle the landlord from obtaining an order of eviction. It would not be right approach to say that unless the tenant at that stage itself establishes a strong case as would non-suit the landlord leave to defend should not be granted when it is not the requirement of Section 25B(5). A leave to defend sought for cannot also be granted for mere asking or in a routine manner which will defeat the very object of the special provisions contained in Chapter IIIA of the Act, Leave to defend cannot be refused where an eviction petition is filed on a mere design or desire of a landlord to recover possession of the premises from a tenant under Clause (e) of the proviso to Sub- section (1) of Section 14, when as a matter of fact the requirement may not be bona fide. Refusing to grant leave in such a case leads to eviction of a tenant summarily resulting in great hardship to him and his family members, if any, although he could establish if only leave is granted that a landlord would be disentitled for an order of eviction. At the stage of granting leave to defend, parties rely on affidavits in support of the rival contentions. Assertions and counter-assertions made in affidavits may not afford safe and acceptable evidence so as to arrive at an affirmative conclusion one way or the other unless there is a strong and acceptable evidence available to show that the facts disclosed in the application filed by the tenant seeking leave to defend were either frivolous, untenable or most unreasonable. Take a case when a possession is sought on the ground of personal requirement, a landlord has to establish his need and not his mere desire. The ground under Clause (e) of the proviso to Sub- section (1) of Section 14 enables a landlord to recover possession of the tenanted premises on the ground of his bona fide requirement. This being an enabling provision, essentially the burden is on the landlord to establish his case

affirmatively. In short and substance wholly frivolous and totally untenable defence may not entitle a tenant to leave to defend but when a triable issue is raised a duty is placed on the Rent Controller by the statute itself to grant leave. At the stage of granting leave the real test should be whether facts disclosed in the affidavit filed seeking leave to defend prima facie show that the landlord would be disentitled from obtaining an order of eviction and not whether at the end defence may fail. It is well to remember that when a leave to defend is refused, serious consequences of eviction shall follow and the party seeking leave is denied an opportunity to test the truth of the averments made in the eviction petition by cross-examination. It may also be noted that even in cases where leave is granted provisions are made in this very Chapter for expeditious disposal of eviction petitions. Section 25B(6) states that where leave is granted to a tenant to contest the eviction application, the Controller shall commence the hearing of the application as early as practicable. Section 25B(7) speaks of the procedure to be followed in such cases. Section 25B(8) bars the appeals against an order of recovery of possession except a provision of revision to the High Court. Thus a combined effect of Section 25B(6), (7) RC ARC No : 237/2019 Smt. Nipun Kochhar Vs. Sh. Bal Kishan 4 of 16 and (8) would lead to expeditious disposal of eviction petitions so that a landlord need not wait and suffer for long time. On the other hand, when a tenant is denied leave to defend although he had fair chance to prove his defence, will suffer great hardship. In this view a balanced view is to be taken having regard to competing claims. "14. This Court in Charan Dass Duggal v. Brahma Nand (1983)1SCC301 while dealing with the question in the matter of granting leave to defend to contest the eviction petition filed on the ground of personal requirement, in para 5 has stated thus:

"5. 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 non-suit the landlord, leave to defend cannot be granted. This approach is wholly improper. When leave to defend is sought for, the tenant must make out such a prima facie case raising such pleas that a triable issue would emerge and that in our opinion should be sufficient to grant leave. The test is the test of a triable issue and not the final success in the action (see Santosh Kumar v. Bhai Mool Singh). At the 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 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. If as it appears in this case, the landlord is staying at Pathankot, that a house is purchased, may be in the name of his sons and daughters, but there may not be an apparent need to return to Delhi in his old age, a triable issue would come into existence and that was sufficient in our opinion to grant leave to defend in this case."

15. In the same judgment, in para 7 it is further observed:

"7. The genesis of our procedural laws is to be traced to principles of natural justice, the principal amongst them being that no one shall suffer civil or evil or pecuniary

consequence at his back without giving him an adequate and effective opportunity to participate to disprove the case against him and provide his own case. Summary procedure does not clothe an authority with power to enjoy summary dismissal. Undoubtedly wholly frivolous defence may not entitle a person leave to defend. But equally a triable issue raised, enjoins a duty to grant leave: May be in the end the defence may fail. It is necessary to bear in mind that when leave to defend is refused the party seeking leave is denied an opportunity to test the truth of the averments of the opposite party by cross-examination and rival affidavits may not furnish reliable evidence for concluding the point one way or the other. It is not for a moment suggested that leave to defend must be granted on mere asking but it is equally improper to refuse to grant leave though triable issues are raised and the controversy can be properly adjudicated after ascertainment of truth through cross-examination of witnesses who have filed their affidavits....."

7. Same view has been reiterated by the Supreme Court in a judgment in "Rachpal Singh and Ors.Vs. Gurmit Kaur and Ors.", (2009)15 SCC 88, in para no.12 which is re-produced below:-

"12. If some triable issues are raised then the controversy can be properly adjudicated after ascertainment of truth through cross-examination of witnesses who have filed their affidavits and other material documents. Burden is on the landlord to prove his requirements and his assertion is required....."

8. 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 requirement is bona-fide and they do not have any suitable accommodation. The essential ingredients for attracting the proviso (e) of the Section 14(1) are : -

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- a) there exists landlord tenant relationship;
- b) the premises were let out for residential or commercial purpose;
- c)The said premises are bona-fide required by the landlord either for himself or for his dependant family member.
- d) The landlord or the dependant family member has no other reasonable suitable accommodation.

9. The thresholds hereinabove 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.

10. For the purposes of leave to defend, the respondent had to show some defence which would disentitle the petitioner of the relief claimed.

11. The petitioner is claiming his ownership and thus landlordship of the tenanted premises in question by virtue of the fact that Smt Maya Devi, Mather-in-law of the petitioner inducted respondent as a tenant to run a medical shop in the name and style of Raj Medical and after the death of Smt. Maya Devi, Sh. Madan Lal Kochhar, the father- in-law of the petitioner became owner of the the property being legal heir of Smt. Maya Devi and after the death of Sh. Madan Lal Kochhar and Sh. Tushar Kochhar, husband of the petitioner, the petitioner and her sister-in-law have inherited the tenanted premises i.e. the shop on the ground floor of property no. 2/76, Arjun Gali, 60 ft road, Vishwas Nagar, Shahdara, Delhi and the petitioner was paid rent by the respondent and thus tenancy has been attorned. The respondent has not disputed any of this but has merely stated that the petitioner has not filed the original documents in support of her ownership/landlordship and same is required to be proved as per law. In view of the aforesaid clearly, the landlord tenant relationship between the petitioner and the respondent exists. Considering that the respondent has not specifically denied the above submissions of the petitioner and also the fact of payment of rent by him to the petitioner, therefore, the respondent is estopped under S. 116 of the Indian Evidence Act from assailing the title of the landlord.

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12. In Ramesh Chand vs. Uganti Devi reported as 157 (2009) DLT 450 the Hon'ble High Court of Delhi held:

"..... The imperfectness of the title of the premises cannot stand in the way an eviction petition under section 14 (1) (e) of the DRC Act, neither the tenant can be allowed to raise the plea of imperect title or title not vesting in the landlord and that too when the tenant has been paying rent to the landlord. Section 116 of the Evidence Act creates estoppels against such a tenant. A tenant can challenge the title of landlord only after vacating the premises and not when he is occupying the premises. In fact, such a tenant who denies the title of the landlord, qua the premises, to whom he is paying rent acts dishonestly....."

13. The Hon'ble Supreme Court in the case of Bansraj Laltaprasad Mishra v. Stanley Parker Jones (2006) 3 SCC 91 held that:

".....13. The underlying policy of section 116 is that where a person has been brought into possession as a tenant by the landlord and if that tenant is permitted to question the title of the landlord at the time of the settlement, then that will give rise to extreme confusion in the matter of relationship of the landlord and tenant and so the equitable principle of estoppel has been incorporated by the legislature in the said section.

14. The principle of estoppel arising from the contract of tenancy is based upon a healthy and salutary principle of law and justice that a tenant who could not have got possession but for his contract of tenancy admitting the right of the landlord situation taking undue advantage of the possession that he got and any probable defect in the title of his landlord. It is on account of such a contract of tenancy and as a result of the tenant's entry into possession on the admission of the landlord's title that the principle of estoppel is attracted.

15. Section 116 enumerates the principle of estoppel which is merely an extension of the principle that no person is allowed to approbate and reprobate at the same time....."

14. In another case titled as *Atyam Veerraju v. Pechetti Venkanna* (1996) 1 SCR 831, the Hon'ble Supreme Court quoted with approval the judgment of the Privy Counsel in *Bilas Kunwar v. Desraj Ranjit Singh*, wherein it was observed as follows:

" A tenant who has been let into possession cannot deny his landlords title, however defective it may be, so long as he has not openly restored possession by surrender to his landlord."

15. The principle attracted herein is once a tenant always a tenant. The tenant cannot dispute the title of his landlord or his successor-in-interest. Since the predecessor-in-interest of the petitioner had inducted the respondent as a tenant, the respondent is estopped from challenging the title of the petitioner, in view of the provisions of section 116 of the Evidence Act. Further, if the transfer of the landlord's title is valid, and even if the tenancy is not attorned in favour of the transferee, the lease continues. Thus, a transferee of the landlord's rights, steps into the shoes of the landlord with all the rights and liabilities of the transferor landlord in respect of the subsisting tenancy. The possession of a tenant cannot be adverse to his landlord. The petitioner is therefore, the landlord and owner of the tenanted premises.

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16. Thus, the petitioner is the owner of the tenanted premises and that there is a relationship of landlord and tenant between the petitioner and the respondent herein in respect of the tenanted premises for the purpose of section 14 (1) (e) of Delhi Rent Control Act.

17. The petitioner landlord states that she requires the tenanted premises comprising of one shop for the bonafide need of his son Sh. Tarun Kochhar who is 17 years of age (at the time of filing of the case) for running a grocery shop.

18. As regards the plea of dependency of the son of the petitioner, it is worthwhile to consider that in *Anil Kumar Gupta V Deepika Verma*, 14.10.2015, Hon'ble Delhi High Court, while dealing with revision petition with respect to eviction petition on the aspect of 'dependent' member, held:

In order to lay to rest, the ambiguity attached with the word 'dependent' it is critical to appreciate the intent of the legislature behind the design of section 14 of the Act.

From perusal of the Act itself it is evident that the aforesaid was not intended to be against the requirement of a landlord or to act in any way as an antilandlord provision but was designed to protect the interest of the tenant that is to provide him with a safety net in case an eviction was sought either out of sheer mischief or in hope of higher monetary gains. It is trite law that the rent control law does not envisage or confer a better right than the landlord, on the tenant with respect to the bonafide enjoyment of the tenanted premises. The same is reflected from the judgment of this Court in Punjab State Cooperative Supply and Marketing Federation Limited Vs. Amit Goel and Another; 204(2013)DLT63 wherein it was held that "the law is settled that unless shown to the contrary, the presumption would be in favour of the landlord's need".

..... "Customarily or in common parlance a dependent would be defined as any person who is reliant on another either for financial or physical support for sustenance of life. It is pertinent to note that the word dependent or as to what constitutes a family has nowhere been defined in the Delhi Rent Control Act. Rather, the legislator consciously and deliberately have used the words "any member of family dependent on the landlord" instead of defining a clear degree of relations so as to construe a wider meaning to the aforesaid words as man is a social creature and part of a complex societal system involving myriad of relations from which he cannot be isolated. It is significant to understand that the dependency is not restricted to financial or physical but will also include emotional reliance on another person. The Hon'ble Supreme Court in Corporation of the City of Nagpur Vs. The Nagpur Handloom Cloth Market Co. Ltd., AIR (1963) SC 1192 while interpreting the word "Family" observed as under : "But the expression "family" has according to the context in which it occurs a variable connotation, It does not in the setting of the rules postulate the existence of relationship either of blood or by marriage between the persons residing in the tenement even a single person may be regarded as a family, and a master and servant would also be so regarded.

19. As it crystalizes from the aforesaid the word dependent cannot be constructed in a narrow and literal manner. The same have to be interpreted judiciously keeping in mind RC ARC No : 237/2019 Smt. Nipun Kochhar Vs. Sh. Bal Kishan 8 of 16 the intent of the legislators.

20. Parents and children are considered to be a part of the family and dependent on each other for the need of the property. Admittedly, Tarun, son of the petitioner was a minor at the time of filing of the present petition and also studying and is definitely dependant upon the petitioner mother for his needs. Hence, the defence taken by the respondent that the son of the petitioner is not dependent upon her is rejected.

21. The fact that the rate of rent are high in Delhi is not disputed. Obviously, when the petitioner has a space/accommodation/premises available with her in the form of shop in question then it cannot be expected out of the petitioner landlord that she will rent a shop or buy new premises and so it cannot be said that the requirement of the petitioner is not bona fide. (Tarseem Singh vs Gurvinder

Singh - 2010 SCC online Del 3537)

22. It is also settled principle of law that the landlord is entitled to seek eviction of tenanted premises not only for himself/herself, but for other dependant family members. There is no dispute that the parents are under moral obligation to help establish their son in business and can seek eviction of the tenanted premises for them. Reference in this regard can be made to the case of *Joginder Pal v. Naval Kishore Behal*, (2002) 5 SCC 397, where the Supreme Court held that:

"The requirement is not the requirement of the landlord alone in the sense that the landlord must for himself require the accommodation and to fulfill the requirement he must himself physically occupy the premises. The requirement of a member of the family or of a person on whom the landlord is dependent or who is dependent on the landlord can be considered to be the requirement of the landlord for his own use..... 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 the 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."

23. In *Kharati Ram Khanna & Sons. vs. Krishna Luthra*, 2010 (172) DLT 551, it was observed that the requirement of the landlord to settle down her two sons separately and independently was found to be genuine and bonafide. In *Labhu Lal vs. Sandhya Gupta*, 2010 (173) DLT 318, it was observed that the landlord's son and daughter in law are dependent for accommodation on respondent the requirement of the landlord's son RC ARC No : 237/2019 Smt. Nipun Kochhar Vs. Sh. Bal Kishan 9 of 16 and daughter in law for expanding clinic being run in premises in question is genuine. In *Sh. Ravinder Singh v Sh. Deepesh Khorana* (RC. Rev. No.3/2011, Date of decision:

10th December, 2012), it was observed that the son of the respondent is unemployed and is dependent on respondent for his livelihood. It is nothing but bona fide for the respondent to require the suit shop to set up a computer business for his son and to help him find a source of income and subsequently settle down in life. In *Brij Mohan vs. Shri Pal Jain*, 49 (1993) DLT 543, it was observed that it is settled law that grown up children require separate rooms to live in a manner he or she likes. In *Ram Babu Aggarwal v. Jay Kishan Das*, 2009 (2) RCR 455, the court recognized the right of the landlord for possession of his property for setting up a business for his son.

24. The contention of the respondent is that Tarun, son of the petitioner being of 17 years of age is studying then how can he run a shop being underage and without any experience. The petitioner in this regard has stated that the said son was to turn 18 in October 2019. The contention of the respondent in this regard is without any merits as there is no embargo that a 17-year-old cannot run a grocery store and also merely because one does not possess any qualification to start a business does not mean that his requirement is not bona fide. Furthermore, what kind of experience, if any, is required for running a grocery store is not mentioned by the respondent. (*Ram Babu Aggarwal vs*

Jay Kishan Das - (2010) 1 SCC 164)

25. In order to evaluate whether the need of the petitioner is bonafide or not, let us understand the legislative and judicial connotation of the term, ' bonafide'. In landmark case Deena Nath v. Pooran Lal, (2001) 5 SCC 705 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 presenti 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 no 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 subsection (e) of Section 12(1) of the Act in respect of accommodation let for residential purposes. Thus, the legislative mandate being clear and unambiguous, the Court is dutybound to RC ARC No : 237/2019 Smt. Nipun Kochhar Vs. Sh. Bal Kishan 10 of 16 examine not merely the requirement of the landlord as pleaded in the eviction petition but also whether any other reasonably suitable nonresidential accommodation in his occupation in the city/town is available. The judgment/order of the court/authority for eviction of a tenant 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 that 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 finding illegally arrived at would vitiate the entire judgment."

Chambers 20th Century Dictionary defines bona fide to mean "in good faith and genuine". Requirement is not a mere desire. The degree of intensity contemplated by "requires" is much more higher than in mere desire. The phrase "required bonafide" is suggestive of legislative intent that a mere desire which is the outcome of whim or fancy is not taken note of by the rent control legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejection of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of the landlord and its bonafides would be capable of successfully withstanding the test of objective determination by the court. In short, the concept of bonafide need or genuine

requirement needs a practical approach instructed by the realities of life. 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 meaning of "bonafide" in the context appears to be in two folds. (a) the need of the landlord must be a genuine one and not a frivolous one. (b) landlord is not motivated by extraneous considerations in trying to recover the possession from the tenant with a view to let it out again to another tenant at a higher rent.

26. The Apex Court in the case of Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta reported in SCFBRC 1999 Page 330, has observed as under:

"In Prativa Devi (Smt.) v. T.V. Krishnan, 1996 (5) SCC 353, this Court has held that in considering the availability of alternative accommodation, not availability merely but also whether the landlord has the legal right to such accommodation has to be considered.

Reverting back to the case at hand, the landlord has been living on the ground floor of the Defence Colony house. It was conceded at the Bar that as on the day the family of the landlord consists of the landlord himself (a practicing doctor), his son (again a practicing doctor), the daughter-in-law and two grand children who are gradually growing in their age. Looking at the size of the family, available of three bed rooms in the premises in which the landlord may live, is a requirement which is natural and consistent with the sense of decency-not to talk of comfort and convenience. There is nothing unreasonable in a family with two practicing doctors as members thereof needing a room or two or a room with a verandah to be used as a residential-clinic divided into a consultation room and a waiting place for the patients. A drawing room, a kitchen, a living room and a garage are bare necessities for a comfortable living. The landlord has been living in Defence Colony locality for more than 35 years. The first floor which was let out to the tenant in the year 1978 as being an accommodation surplus with the landlord has with the lapse of time become a necessity for occupation by the landlord and his family members. More than ten years by now have been lost in litigation. The death of the wife of the landlord and the death of landlord's mother-in-law, are events which have hardly any bearing on the case of felt need of the landlord, The need as pleaded and proved by the landlord is undoubtedly natural sincere and honest and hence a bona fide need.

RC ARC No : 237/2019 Smt. Nipun Kochhar Vs. Sh. Bal Kishan 11 of 16 There is no material available on record to doubt the genuineness of such need. It continues to subsist inspite of the two deaths. It is not the case of the tenant- appellant that while seeking eviction of the tenant the landlord is moved by any ulterior motive or is guided by some other thing in his mind. It will be most unreasonable to suggest that the landlord may continue to live on the ground floor of the Defence Colony house and some members of the family may move to Sarvodaya Enclave House if the whole family cannot be conveniently and comfortably accommodated as one unit in the Defence Colony house. It would be equally unreasonable to suggest that the entire

family must shift to Sarvodaya Enclave House which is admittedly situated at a distance of about 7-8 kms. from Defence Colony. The landlord and his family are used to living in Defence Colony where they have developed friends and acquaintances, also familiarity with the neighbourhood and the environment. The patients usually visiting or likely to visit the residential clinic know where their doctor would be available. Shri Arun Jaitley, learned Senior Counsel for the respondent, has very rightly submitted that it could not have been the intendment of the Rent Control Law to compel the landlord in such facts and circumstances to shift to a different house and locality so to permit the tenant to continue to live in the tenanted premises. If the landlord wishes to live with comfort in a house of his own, the law does not command or compel him to squeeze himself rightly into lesser premises protecting the tenant's occupancy."

27. Further, in another landmark case of "Sarla Ahuja v. United India Insurance Co. Ltd., reported as AIR 1999 SUPREME COURT 100", whereby it was held that :

".....The crux of the ground envisaged in clause (e) of Section 14(1) of the Act is that the requirement of the landlord for occupation of the tenanted premises must be bona fide. When a landlord asserts that he requires his building for his own occupation the Rent Controller shall not proceed on the presumption that the requirement is not bona fide. When other conditions of the clause are satisfied and when the landlord shows a prima facie case it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bona fide. It is often said by Courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bonafides of the requirement of the landlord it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself....".

28. The plea of the respondent that the petitioner has no paucity of funds and is living a luxurious life and is earning Rs. 16,500/- pm as rent from the saloon shop instead of Rs. 12,500/- pm and that it is not believable that she is having a monthly income of about Rs. 17,000/- only is without any merits in the absence of any cogent evidence having been brought on record by the respondent. Mere averments in this regard are not sufficient to counter the case of the petitioner.

29. The contention of the respondent that the petitioner has not disclosed that when she has income of Rs. 17,000/- per month then how she is bearing monthly expense to the tune of Rs. 41,750/- is without any merits as the petitioner has RC ARC No : 237/2019 Smt. Nipun Kochhar Vs. Sh. Bal Kishan 12 of 16 explained that she has certain savings which are also getting exhausted and thus is in a grave need of money. There is nothing cogent on record to disbelieve the petitioner. Even if the petitioner was not able to explain her income and bearing of expenses still same is nowhere a criteria for allowing or dismissing an application under S. 14 (1) (e) DRC Act. (Shamshad Ahmad vs Tilak Raj Bajaj - (2008) 9 SCC 1)

30. Another averment of the respondent is that the petitioner inducted a new tenant in the adjacent shop to that of the respondent in January 2019 and filed the present case for eviction on 31.05.2019 and thus has ulterior motive and has no bona fide requirement. On the other hand, during the course of the arguments the contention of the counsel for the petitioner was that at that time she had sufficient funds but gradually she realised that her savings are getting depleted and expenses are more than the earnings so it is only then she filed this application. Clearly, there is no legal impediment in filing the present case after letting another adjacent shop for a saloon especially when there is nothing cogent on record to disbelieve the case of the petitioner. thus, this averment of the petitioner is without any merits.

31. The respondent has submitted that earlier the petitioner had filed an application for eviction under S. 14 (1) (a) of the DRC Act and after order in that case filed the present application under S. 14 (1) (e) of the DRC Act which shows the malafide of the petitioner. The grounds for eviction under S. 14 (1) (a) of the DRC Act and S. 14 (1) (e) of the DRC Act being different and filing of petition under the said provisions simultaneously or one after the other does not mean that the requirement of the petitioner is not bonafide. Thus, this submission of the respondent is without any merits.

32. It is stated by the petitioner that there are two shops in the property 2/76, Arjun Gali, 60 ft road, Vishwas Nagar, Shahdara, Delhi out of which one is in possession of the respondent and the other is under the tenancy of tenant Imran RC ARC No : 237/2019 Smt. Nipun Kochhar Vs. Sh. Bal Kishan 13 of 16 Salmani since 2019 who runs a gents saloon 'New Look Saloon'. she stated that remaining portion of the property is residential used by the petitioner and her family. She stated that after the death of her husband and her father-in-law she is running her house and also bearing expenses of his 2 minor sons out of the rental income and interest from money in the bank and savings. On the other hand, the respondent stated that the petitioner has concealed 1 shop and 2 rooms with vacant portion and in reality there are 3 shops in the premises in question and even the site plan filed by the petitioner is wrong. The respondent stated that the present application may be dismissed for concealment of facts.

33. It is well settled that that once the facts which are alleged to have been concealed have come before the Court and the Court has had occasion to consider the same and after considering the same finds in favour of the landlord, the petition for eviction cannot be dismissed on the ground of concealment. The Hon'ble High court of Delhi in Sunil Kumar Goyal vs Harbans Singh decided on 18 July, 2017 in RC.REV. 300/2017 it was held as under:

It cannot be lost sight of that according to the tenant also, on the date of institution of the petition for eviction, the other shop was in occupation of another tenant. It is thus not as if the other shop already stood vacated and was concealed from the petition for eviction. The question for adjudication is whether in such facts, the concealment was such so as to warrant dismissal of the petition for eviction or grant of leave to defend to the petitioner. Supreme Court in Bhairab Chandra Nandan Vs Ranadhir Chandra Dutta (1988) 1 SCC 383 held that once the facts which are alleged to have been concealed have come before the Court and the Court has had occasion to consider the same and after considering the same finds in favour of the landlord, the petition for

eviction cannot be dismissed on the ground of concealment. Similarly, in *M.L. Prabhakar Vs. Rajiv Singhal* (2001) 2 SCC 355, qua the plea of concealment / suppression, it was held that the fact that the landlord has another accommodation would not be fatal to the eviction proceedings if both the parties understood the case and placed materials before the Court and case of neither party was prejudiced. Accordingly, it was held that though the landlord in that case had not mentioned about the other premises but the material in respect of the other two premises had come before the Rent Controller as well as before the High Court and no prejudice had been caused and the parties had squarely dealt with the question. Hon'ble High Court of Delhi also in *Harbant Singh Vs. Vinod Sikari* 189 (2012) DLT 215 held that unless there is concealment of fact which is so vital to the bearing of the petition in issue, it would not amount to concealment. It was reiterated that concealment of accommodation which was not available or suitable cannot be a ground for non-suiting the landlord or granting leave to defend.

34. In the case at hand, in the site plan filed by the petitioner with the petition 3 shops are mentioned, 2 shops are in the front on 60 ft road and one shop is in the back gali. The shop in the back gali cannot be stated to be an alternative accommodation as is not similarly situated as the shop in question. As regards RC ARC No : 237/2019 Smt. Nipun Kochhar Vs. Sh. Bal Kishan 14 of 16 change of tenancy from saloon shop to Singh's food joint same is not pleaded in the application for leave to defend and cannot be considered at this stage. The respondent has not shown how the site plan filed on record by the petitioner is wrong in the light of the above discussion. This submission of the respondent is also without any merits and is dismissed.

35. Landlord is the best judge of his needs. It is well settled 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. From the aforesaid submissions of the petitioners, clearly, their need is bona fide.

36. As regards alternate accommodation in *Sarwan Dass Bange vs Ram Prakash* 2010 IV AD (Delhi) 252, observations made by Supreme Court in *Baldev Singh Bajwa V Monish Saini* MANU/SC/1239/2005 (2005) 12SCC 778, have been quoted 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 right of restoration of possession; the landlord who evicts the tenant on the ground of his 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 inbuilt strong presumption that the need of the landlord is genuine; the restrictions and conditions imposed on the landlord make it virtually improbable for the landlord to approach the court for ejectment of tenant unless his need is bonafide 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 his 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 bonafide. It was further held that a heavy burden lies on the tenant to prove that the requirement is not genuine. The tenant is required to give all necessary facts and particulars supported by documentary evidence if available to prove his plea in the affidavit itself so that the controller will be in a position to adjudicate and decide the question of genuine or bonafide requirement of the landlord; a mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlord's favour that his requirement of occupation of the premises is real and genuine.

37. In Adarsh Electricals and others vs Dinesh Dayal -

MANU/DE/2782/2010, it was held that " the concept of alternate accommodation means that accommodation which is reasonably suitable for the landlord, and the court would not expect the landlord to sacrifice on his own comforts and requirements merely on the ground that the premises is with a tenant . The problem had to be approached from the point of view RC ARC No : 237/2019 Smt. Nipun Kochhar Vs. Sh. Bal Kishan 15 of 16 of a reasonable man and not that of a whimsical landlord. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his such need."

38. The decisions Inderjeet Kaur Vs. Nirpal Singh (2000) (4) & (5) SC; Charan Dass Duggal Vs. Brahma Nand (1983) 1 SCC 301 and Rachpal Singh and Ors. Vs. Gurmit Kaur and Ors. (2009) 15 SCC 88 relied upon by the respondent is of no assistance to the respondents as it has been decided on different fact situation and cannot be applied like a Euclid's theorem.

39. In view of the above discussion and the documents filed by the parties, there is no triable issue between the parties which entitles the respondent for leave to contest the present application for eviction. The application for leave to contest is without merits.

40. Conclusion:

In these circumstances, the application for leave to defend filed by the respondent is dismissed and the respondent Bal Kishan is liable to be evicted from the tenanted premises i.e. one shop at the ground floor of property bearing no. 2/76, Arjun Gali, 60ft Road, Vishwas Nagar, Shahdara, Delhi-32 as shown in red colour in the site plan (now exhibited as Ex P1) filed with the present petition. Accordingly, the petition filed by the petitioner u/s 14 (1) (e) r/w S. 25B of the DRC Act is allowed, subject to provisions u/s 19 of the DRC Act. . However, the petitioner would not be 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. No orders as to costs. Digitally signed by SNIGDHA SARVARIA SARVARIA Date: 2022.02.25 04:47:22 +0530 Announced in the open Court (SNIGDHA SARVARIA) on 25th Day of February, 2022. ACJ/ARC/CCJ [This judgment contains 16 pages.] (SHAH DARA) KKD, DELHI.

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