$~68

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: 07.03.2025***

\+ **RC.REV. 360/2015 & CM APPL. 12831/2015**

M/S FINE BOOT HOUSE & ORS .....Petitioners

Through: Mr. Amreek Singh, Advocate with Petitioners in person.

versus

BISHAN NARAIN MEHRA .....Respondent

Through: Mr. Kanwal Chaudhary and Mr. Ankit Kumar, Advocates.

CORAM:
HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. The present Petition seeks to challenge an order dated 27.01.2015 passed by the learned ACJ/RC Karkardooma Court, Delhi [hereinafter referred to as "Impugned Order"]. By the Impugned Order, the Application for Leave to Defend/Contest filed by the Petitioners/tenants has been dismissed by the learned Trial Court.

1.1 The premises in issue are shop bearing No.94/5, 2 & 3, left side situated in the premises known as Shankar Market bearing No.94/1-94/6 Rly. Road, Shahdara, Delhi [hereinafter referred to as "subject premises"].

2. This Court had previously heard this matter on 10.12.2024 when it was pointed out by the learned Counsel for the Petitioners/tenants that an inadvertent typographical error had crept into the Impugned Order which was overlooked by the learned Counsel for the Respondent/landlord.

3. Learned Counsel for the Respondent/landlord submit that pursuant

thereto, the Respondent/landlord had filed an Application before the learned Trial Court under Section 152 read with Section 151 of the Code of Civil Procedure, 1908 for correction of the typographical error as appearing in the Impugned Order. The Application was taken up for hearing by the learned Trial Court and by a consent order on 27.02.2025, the following directions were passed:

> *"Ld. Counsel for respondent No. 1 and 2 submits that respondent No. 3 has already passed away. Further, reply to application u/o 152 r/w Section 151 CPC has been filed by respondent No. 1 and 2. Copy supplied.*
>
> *Ld. Counsel for the applicant submits that the present application has been filed in pursuance of order dated 10.12.2024 of the Hon'ble High Court of Delhi and that instant application only seek to rectify clerical errors in judgment and order dated 27.01.2015 in E-119/13 titled Bishan Narain Mehra Vs. M/s Fine Boot House & Ors.*
>
> *After brief arguments, Ld. Counsel for the **respondent No. 1 and 2 has conceded that typographical error has crept into paragraph 3 and paragraph 26 of order/ judgment dated 27.01.2015 and also in the short order of the same date pertaining to the number/ description of the tenanted premises which is 94/1 to 94/6, Shankar Market, Railway Road, Shahdara**.*
>
> *Arguments heard. Record perused.*
>
> *On perusal of judgment and order dated 27.01.2015, it is found that the tenanted premises has been described as 94/1094/6, Shankar Market, Railway Road, Shahdara in paragraph 3 page No. 3, paragraph 26 page No. 19 of the judgment and in paragraph 1 of order dated 27.01.2015. **However, the correct address of the tenanted premises is 94/1 to 94/6, Shankar Market, Railway Road, Shahdara as accepted by both the sides and also reflecting in line 2 paragraph 3 of judgment dated 27.01.2015**.*
>
> *In view of the same, while exercising jurisdiction U/s 152 of CPC, the judgment and **order dated 27.01.2015 is corrected to the extent that the address of the tenanted premises be read as 94/1 to 94/6, Shankar Market, Railway Road, Shahdara in paragraph 3 page No. 3, paragraph 26 page No. 19 of the judgment dated 27.01.2015 and in paragraph 1 of order dated 27.01.2015**.*
>
> *Rest of the judgment and order remains the same…"*
>
> [Emphasis supplied]

4. Learned Counsel for the Respondent/landlord addressed his arguments on the last date of hearing. The matter was adjourned to today for arguments on behalf of learned Counsel for the Petitioners/tenants, since he was unprepared on the last date of hearing.

5. Learned Counsel for the Petitioners/tenants has made two submissions. He once again states that the address as set out in the Impugned Order is incorrect. Secondly, it is contended that in view of the fact that the site plan was not filed by the learned Counsel for the Respondent/landlord before the learned Trial Court, the Impugned Order suffers from an infirmity. No other submissions are made by the learned Counsel for the Petitioners/tenants.

6. Learned Counsel for the Respondent/landlord submits that the issue *qua* site plan was also raised by the learned Counsel for the Petitioners/ tenants before the learned Trial Court and has been dealt with in Paragraph 11 of the Impugned Order, once again based on a concession by the Petitioners/tenants.

7. It is a settled law that the examination by this Court in a Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 is limited and circumspect. An examination by the Court has shown that so far as concerns the landlord-tenant relationship and ownership of the subject premises, the same was not disputed by the learned Counsel for the Petitioners/tenants before the learned Trial Court. There is no dispute raised before this Court either.

8. On the aspect of bona fide need and availability of alternate suitable accommodation, the challenge as raised by the learned Counsel for the

Petitioners/tenants was that Respondent/landlord does not have a son and that the daughters of the Respondent/landlord are well-settled, thus the need of the Respondent/landlord is not bona fide.

8.1 The submission of learned Counsel for the Petitioners/tenants is without merit. The need as set out in the Eviction Petition by the Respondent/ landlord is for himself and the members of his family. It is stated that the Respondent/landlord is the only earning member of his family and he requires a suitable place to open a commercial venture of a jewellery shop in the subject premises. The commercial venture would require the Petitioners/tenants to shift from the subject property and the Respondent/landlord would shift his own premises to the subject premises as the shops that are under the occupation of the Petitioners/tenants are more suitable for the said commercial venture.

9. The only challenge that has been set out by the Petitioners/tenants has been examined by the learned Trial Court in the Impugned Order. The learned Trial Court has found that the *bona fide* need of a landlord has to be seen on the basis of the convenience of the Respondent/landlord giving the totality of the circumstances and not based on the convenience of the tenant.

10. On the aspect of availability of alternate suitable accommodation, the record reflects that the learned Counsel for the Respondent/landlord had explained in detail about each of the premises that are stated to have been additionally available. It is apposite to set out the relevant paragraphs of the Reply to Leave to Defend/Contest in this behalf:

> *"**It is submitted that in fact there exists 20 shops on the ground floor and out of those 20 shops the Petitioner is the owner of only 10 shops. Out of the 10 shops the Petitioner is not in possession of any shop whatsoever except one shop which the Petitioner get recently***

vacated from his *Tenant Smt. Shakuntala Devi and Shri Pawan Kumar marked 'A' in the site plan annexed. In fact the aforesaid shop has got been vacated by the* ***Petitioner only with a view that the said shop is adjacent to the shop No.94/5 which is situated on the main road side and if the Petitioner gets vacation of the shop Bearing No. 94/5*** *the Petitioner will be able to open a good show room for Jewellery articles* ***so that the same may meet the financial requirements of the Petitioner.*** *The hall on the first floor was occupied by Syndicate Bank, however because of the conduct of the Respondent the Bank has been forced to vacate the same, however the* ***said hall is not in the exclusive ownership of the Petitioner rather the Petitioner is the owner of undivided half portion which is not at all suitable for his bonafide needs and requirements for opening a shop. It is wrong to allege that the Petitioner has any malafide intention behind that. In respect of the allegations*** *regarding the occupancy of the shops by the respective tenant the allegations in the Affidavit and in the paras under reply are incorrect, wrong and denied. It is* ***submitted that the Syndicate Bank is in the process of vacating not only the first floor but also the Shop No. 94/6 wherein the ATM was installed. In fact the Shop No. 94/6 was in the tenancy of Smt. Shakuntala Devi and Pawan Kumar and they had let out the same Syndicate Bank and Syndicate in turn had been using the same for their ATM facilities****. Since the Bank is in the process of vacating the aforesaid branch at first floor as such are in the process of vacating the shop No. 94/6. The said Smt. Shakuntala and Pawan Kumar at the request of the Petitioner have surrendered their tenancy rights to the Petitioner landlord only in the month of August 2011 because of the one simple reason that the Petitioner will join Shop No. 94/5 and 94/6 to open respectable Jewellery Show Room so that the said show room may meet the financial requirements of the Petitioner and his family members.* ***The other shop No.2 and 3 would be used by the Petitioner for manufacturing activities of Jewellery articles wherein various machines and the expert labour would sit and create Jewellery articles for the Show Room. This way the Petitioner will be in a better position to run his upcoming Jewellery business. Shop No. 1 is in the occupation of Shri Munender Kumar and Brij Pal and the same is not available to the Petitioner for any purpose. The Shop No. 4 is in the occupation of Dev Opticals and Eye Care Centre and the same is also not available for the Petitioner at all. Shop No.5 and 6 is in the occupation of Gaurav Sethi and Veena Sethi who are running a Grocery shop in the same as such even the said shops are not available to the Petitioner. The shop No.7 is in the occupation of Shri Bhushan Thakkar a tenant and the same is also not available to the Petitioner for any purposes and is using the same for storing his goods. Shop No.8 is in the occupation of Jainender Kumar Jain who is running a business of selling toys and***

> ***the same is also not available to the Petitioner. The other 10 shops in the said building does not come under the*** *ownership of the Petitioner and are not available to the petitioner. The shops mentioned by the Respondents in their Affidavit in para No.9* ***from Serial Nos.8 to 14 are the said shops who are under the ownership of other undivided share holders of the property as such the Petitioner*** *has no concern with the same and the said shops are not available to the Petitioner. The basement is incomplete and unfinished basement and undivided half portion and the same belongs to the Petitioner, however the Petitioner is no position to use the same for his said business as the same is basement and the basement cannot be used for the purpose of opening a Jewellery Showroom. Hence even the basement is not suitable for the bonafide needs and requirements of the Petitioner. As such the allegations of the Respondent in the paras under reply are baseless having no basis at all as such Respondents are not at all entitled to any Leave to Contest, as such the Affidavit of the Respondent is liable to be rejected."*
>
> [Emphasis supplied]

11. The learned Trial Court has examined the objections taken by the learned Counsel for the Petitioners/tenants in his Leave to Defend/Contest and has dealt with the same in Paragraphs 14 and 15 of the Impugned Order. It is stated therein that so far as concerns the shops which are stated to be available on the ground floor of the properties bearing no.94/1 to 94/6 Railway Road, Shahdara, Delhi-32 [hereinafter referred to as "Shop No.94/1 to 94/6"], the Respondent/landlord is only the owner of the undivided half portion of the property and also the property cannot be used for commercial purposes since those properties are not situated on the main road. The remaining properties are either not available with the Respondent/landlord or are tenanted. The learned Trial Court thus in examination found that no suitable alternate accommodation was available.

12. The provisions of Section 14(1)(e) of the Act have been provided with care by the legislature, not only is the accommodation to be 'alternate', but it is also required to be suitable. The Supreme Court in the ***Shiv Sarup Gupta***

v. ***Mahesh Chand Gupta***[1] has held that for an Eviction Petition to fail on the ground of availability of alternate suitable accommodation, the availability of another accommodation must be suitable and convenient in all respects as the tenanted accommodation from which the landlord seeks eviction of the tenant. It was held that:

> *"14. The availability of an alternative accommodation with the landlord i.e. an accommodation other than the one in occupation of the tenant wherefrom he is sought to be evicted has a dual relevancy.* ***Firstly, the availability of another accommodation, suitable and convenient in all respects as the suit accommodation****, may have an adverse bearing on the finding as to the bona fides of the landlord if he unreasonably refuses to occupy the available premises to satisfy his alleged need. Availability of such circumstance would enable the court drawing an inference that the need of the landlord was not a felt need or the state of mind of the landlord was not honest, sincere, and natural.* ***Secondly, another principal ingredient of clause (e) of sub-section (1) of Section 14, which speaks of non-availability of any other reasonably suitable residential accommodation to the landlord, would not be satisfied. Wherever another residential accommodation is shown to exist as available then the court has to ask the landlord why he is not occupying such other available accommodation to satisfy his need. The landlord may convince the court that the alternative residential accommodation though available is still of no consequence as the same is not reasonably suitable to satisfy the felt need which the landlord has succeeded in demonstrating objectively to exist. Needless to say that an alternative accommodation, to entail denial of the claim of the landlord, must be reasonably suitable, obviously in comparison with the suit accommodation wherefrom the landlord is seeking eviction****. Convenience and safety of the landlord and his family members would be relevant factors. While considering the totality of the circumstances, the court may keep in view the profession or vocation of the landlord and his family members, their style of living, their habits and the background wherefrom they come."*
>
> [Emphasis Supplied]

12.1 It is well-settled that the ground floor is more suitable for commercial purposes and businesses. If there is availability of space on the ground floor with the landlord, there is no question of the tenant asking the landlord to

[1] (1999) 6 SCC 222

take alternate premises or to operate out of the top floor. In ***Uday Shankar Upadhyay v. Naveen Maheshwari***[2], the Supreme Court has held that the Court cannot dictate to the landlord as to the extent which floor he must use for his business. Besides shops and businesses are usually set up on the ground floor. The relevant extract of the ***Uday Shankar Upadhyay*** case is reproduced below:

> *"7.* ***In our opinion, once it is not disputed that the landlord is in bona fide need of the premises, it is not for the courts to say that he should shift to the first floor or any higher floor. It is well known that shops and businesses are usually (though not invariably) conducted on the ground floor, because the customers can reach there easily. The court cannot dictate to the landlord which floor he should use for his business; that is for the landlord himself to decide.*** *Hence, the view of the courts below that the sons of Plaintiff 1 should do business on the first floor in the hall which is being used for residential purpose was, in our opinion, wholly arbitrary, and hence cannot be sustained. As regards the finding that the sons of Plaintiff 1 are getting a salary of Rs 1500 from the firm, in our opinion, this is wholly irrelevant and was wrongly taken into consideration by the High Court."*
>
> [Emphasis Supplied]

13. In any event, it is settled law that neither the Court nor the tenants can dictate the landlord as to how to use his premises. This Court in the case of ***Swaranjit Singh v. Saroj Kapoor***[3], while relying on the judgement of the Supreme Court in the case of ***Sait Nagjee Purushotham & Co. Ltd. v. Vimalabai Prabhulal***[4] and in ***Anil Bajaj* v. *Vinod Ahuja***[5], has held that the tenant cannot dictate to the landlord as to which premises is more suitable for the landlord to run the business. The relevant extract of the ***Swaranjit Singh case*** is reproduced below:

> *"46. The law is well settled that a tenant cannot dictate to the Respondent/Landlady as to which premises is more suitable to satisfy the bona*

[2] (2010) 1 SCC 503
[3] 2023 SCC OnLine Del 7396
[4] (2005) 8 SCC 252
[5] (2014) 15 SCC 610

fide requirement under the DRC Act. Reference in this regard may be made to the decision of the Supreme Court in Sait Nagjee Purushotham & Co. Ltd. v. Vimalabai Prabhulal[(2005) 8 SCC 252] and in Anil Bajaj v. Vinod Ahuja[(2014) 15 SCC 610], wherein the Supreme Court has reiterated this principle in the following words:

> *"6. ……What the tenant contends is that the Landlady has several other shop houses from which he is carrying on different businesses and further that the Landlady has other premises from where the business proposed from the tenanted premises can be effectively carried out.* ***It would hardly require any reiteration of the settled principle of law that it is not for the tenant to dictate to the Landlady as to how the property belonging to the Landlady should be utilized by him for the purpose of his business****. …."*
>
> *[Emphasis supplied]"*

14. The only challenge before this Court was with respect to the address being incorrect which has already been corrected by the learned Trial Court. In any event, it is clear that the same was a typographical error in the Eviction Petition which set out the correct address of the tenanted premises in Paragraph 1 read with Paragraph 8 of the Eviction Petition and reads as follows:

1.	Municipal No. of the premises and name if any.	Shop bearing private No. 94/5, 2 & 3 Left side Situated in the Premises known as Shankar Market bearing No.94/1-94/6 Rly. Road, Shahdara, Delhi.
xxx	xxx	xxx
8.	Details of accommodation available together with particulars as regards ground area garden and out houses if any, (plan to be attached)	Three shops bearing private No.94/5, 2 and 3 situated on the left side forming part of property bearing No.94/1 to 94/6, Old Rly. Road, Ram Nagar, Shahdara Delhi situated on the left side of the shopping complex admeasuring 6.3x20x13ft., 9x12 Feet and 9x13 respectively, approximately.

15. Thus, there can be no further dispute that the error in the Impugned Order was a typographical error.

16. The order dated 05.01.2015 passed by the learned Trial Court sets out that the objection on site plan is withdrawn based on statements made by the learned Counsel for the Petitioners/tenants. Thus, there is no challenge on this aspect of the matter.

17. It is a settled law that in order for the leave to defend Application to be allowed, what a tenant must show is a triable issue and only if the tenant can show material on record in support of its averments that the Court is required to examine the same. The Supreme Court in ***Inderjeet Kaur v. Nirpal Singh***[6] which has also been relied upon in the case of ***Abid-Ul-Islam v. Inder Sain Dua***[7] has held as follows:

> *"13. ... **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 III-A 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 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*

[6] (2001) 1 SCC 706
[7] (2022) 6 SCC 30

enabling provision, essentially the burden is on the landlord to establish his case affirmatively. ***In short and substance, a 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****....”*

[Emphasis supplied]

18. The jurisdiction of this Court is only revisionary in nature and limited in scope. The Supreme Court in ***Abid-Ul-Islam case*** while interpreting the intendment of the legislature in removing two stages of Appeal that were earlier provided in the Act has held that this is a conscious omission. It was held that the High Court is not expected to substitute and supplant its view with that of the learned Trial Court, its only role is to satisfy itself on the process adopted. Thus, the scope of revisionary jurisdiction of this Court has been limited to examine if there is an error apparent on the face of the record or absence of any adjudication by the learned Trial Court, and it is only then should the High Court interfere. The Supreme Court has also cautioned from converting the power of superintendence into that of a regular first Appeal under revisionary jurisdiction. This has been elucidated at length by Supreme Court in ***Abid-Ul-Islam*** case in the following manner***:***

“23. The proviso to Section 25-B(8) ***gives the High Court exclusive power of revision against*** *an order of the learned Rent Controller, being in the nature of superintendence over an inferior court on the decision-making process, inclusive of procedural compliance.* ***Thus, the High Court is not expected to substitute and supplant its views with that of the trial court by exercising the appellate jurisdiction. Its role is to satisfy itself on the process adopted. The scope of interference by the High Court is very restrictive and except in cases where there is an error apparent on the face of the record****, which would only mean that in the absence of any adjudication per se, the High Court should not venture to disturb such a decision. There is no need for holding a roving inquiry in such matters which would otherwise* ***amount to converting the***

power of superintendence into that of a regular first appeal, an act, totally forbidden by the legislature.

xxx

25. The aforesaid decision has been recently considered and approved by this Court in Mohd. Inam v. Sanjay Kumar Singhal [Mohd. Inam v. Sanjay Kumar Singhal, (2020) 7 SCC 327 : (2020) 4 SCC (Civ) 107] : (SCC pp. 340-41, paras 22-23)

> *"22. This Court in Sarla Ahuja v. United India Insurance Co. Ltd. [Sarla Ahuja v. United India Insurance Co. Ltd., (1998) 8 SCC 119] had an occasion to consider the scope of proviso to Section 25-B(8) of the Delhi Rent Control Act, 1958. This Court found, that though the word "revision" was not employed in the said proviso, from the language used therein, the legislative intent was clear that the power conferred was revisional power. This Court observed thus : (SCC p. 124, para 11)*
>
> > *'11. The learned Single Judge of the High Court in the present case has reassessed and reappraised the evidence afresh to reach a different finding as though it was exercising appellate jurisdiction. No doubt even while exercising revisional jurisdiction, a reappraisal of evidence can be made, but that should be for the limited purpose to ascertain whether the conclusion arrived at by the fact-finding court is wholly unreasonable.'*
>
> ***It could thus be seen, that this Court has held, that the High Court while exercising the revisional powers under the Delhi Rent Control Act, 1958 though could not reassess and reappraise the evidence, as if it was exercising appellate jurisdiction, however, it was empowered to reappraise the evidence for the limited purpose so as to ascertain whether the conclusion arrived at by the fact-finding court is wholly unreasonable.***
>
> [Emphasis supplied]

19. The Petitioners/tenants has failed to raise any triable issue and thus, the Application for leave to defend was dismissed. The examination by this Court does not reflect either an error apparent or absence of adjudication by the learned Trial Court.

20. The Petition is accordingly dismissed. Pending Application shall

stand closed.

21. The Petitioners shall pay litigation costs to the Respondent. The Registry is directed to take appropriate steps in this behalf.

22. The parties shall act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

MARCH 7, 2025/pa/ *ha*

Click here to check corrigendum, if any