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

% ***Date of Decision: 11.03.2025***

\+ RC.REV. 392/2024 & CM APPL. 75312/2024

PRAVESH SACHDEVA .....Petitioner

Through: Mr. Nagesh Kapoor, Mr. Karandeep Singh, Mr. Fauzan Abbasi and Mr. Ansh Sachdeva, Advocates.

versus

SARITA SINGH .....Respondent

Through: Mr. S.C. Singhal and Ms. Ramika Munjal, Advocates.

CORAM:
HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. This Court had examined the matter on the last date of hearing and passed the following directions:

> "4. The present Petition has been filed on behalf of the Petitioner/tenant impugning the order dated 09.09.2024 [hereinafter referred to as "Impugned Order"] passed by the learned Additional Rent Controller-02 (Central), Tis Hazari Courts, Delhi. By the Impugned Order, the Leave to Defend/Contest Application filed by the Petitioner/tenant has been dismissed with respect to the premises No.7055, Gali Tanki Wali, Ghas Mandi, Pahari Dhiraj, Delhi- 110006 [hereinafter referred to as "subject premises"].
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> 5. Learned Counsel for the Petitioner/tenant submits that so far as concerns the aspect of landlord-tenant relationship and ownership, there is no contest.
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> 6. On the aspect of bonafide need, the learned Trial Court has found that the bonafide need is for the son of the Respondent/landlord to set up a business of hardware since his consultancy/business was not doing well.

> 7. Learned Counsel for the Petitioner/tenant submits that in the Eviction Petition, as well as, in the Leave to Defend/Contest Application filed by the Petitioner/tenant, there were various alternate accommodations set out, however, the learned Trial Court has not adequately dealt with the same.
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> 7.1 Learned Counsel for the Respondent/landlord, who appears on advance notice, draws the attention of the Court to paragraph 11.5 of the Impugned Order to submit that the learned Trial Court has dealt with these contentions, made on behalf of the learned Counsel for the Petitioner/tenant, including in the aforesaid paragraph and has found that on the other floors, commercial use is not acceptable, and that the Impugned Order suffers from no infirmity."

2. The Petitioner/tenant has limited the challenge in the present Petition to the issue of availability of suitable alternate accommodation.

3. With the consent of the parties, the matter is taken up for hearing and final disposal today.

4. Learned Counsel for the Petitioner/tenant has submitted that the Eviction Petition in itself discloses the availability of alternate suitable accommodations with the Respondent/landlord and thus, a triable issue was raised. Learned Counsel for the Petitioner/tenant submits that the premises at 5031, Gali Daroga Chalu Singh, Pahari Dhiraj, Delhi-110006 [hereinafter referred to as "5031"] and premises at 7055, Gali Tanki Wali, Ghas Mandhi, Pahari Dhiraj, Delhi-110006 [hereinafter referred to as "7055"] are available with the Respondent/landlord.

5. Learned Counsel for the Petitioner/tenant submits that in view of the fact that these additional accommodations were not disclosed by the Respondent/landlord in his Eviction Petition, the Leave to Defend ought to be granted. Reliance is placed by the learned Counsel for the Petitioner/tenant on the proviso to Section 14(1)(e) of the DRC Act. In

addition, it is contended by the learned Counsel for the Petitioner that whether the alternate premises are dilapidated or not and whether these are habitable or not, requires full-fledged trial. Lastly, it is contended that the premises on the upper floors of the property at 7055 are also available with the Respondent/landlord. Hence, the leave to Defend/Contest Application should have been allowed.

6. Learned Counsel for the Respondent/landlord, on the other hand, submits that so far as concerns the issue raised by the Petitioner/tenant, the same has been adequately dealt with by the learned Trial Court. He seeks to rely upon paragraph 11.2 to 11.5 of the Impugned Order.

7. Learned Counsel for the Respondent/landlord further submits that the contention of the Petitioner/tenant that the alternate accommodations are available, is incorrect. It is contended that the Respondent/landlord had in its Eviction Petition set out these accommodations and explained that the accommodation at 5031 is dilapidated and it cannot be used for the purposes which have been set out by the Respondent/landlord and so far as concerns the premises at 7055, it is the admitted case of the both the parties that the Petitioner/tenant is only half owner of the undivided space of the property. In addition, the upper floor is non-commercial. It is further contended that it is settled law that a ground is most suitable for conducting of business.

8. Learned Counsel for the Respondent/landlord also seeks to rely upon a recent judgment of the Supreme Court in ***Kanhaiya Lal Arya v. Md. Ehshan & Ors.***[1] to submit that it is settled law which has been

[1] 2025 INSC 271

reiterated that the landlord is the best judge to decide which property should be vacated for satisfying his need and the tenant has no role in dictating the same.

9. Learned Counsel for the Respondent/landlord submits that the Respondent/landlord had in the Eviction Petition specifically set out his requirement for setting up a shop of hardware products which can be fulfilled after obtaining the vacant physical possession of the subject premises. It is thus, contended that the impugned order suffers from no infirmity.

10. Lastly, it is contended by the learned Counsel for the Respondent/landlord that a Leave to Defend/Contest cannot be granted for the mere asking. The law is settled that the tenant has to show that he has raised a triable issue and mere assertion of the same is not sufficient.

11. As stated above, this Court had examined the matter briefly on the last date of hearing as well. So far as concerns the aspect of the landlord-tenant relationship and ownership, there is no contest.

12. On the bonafide need, the need as set up by the Respondent/landlord is for setting up of the business of hardware by the Respondent/landlord. The need as set out by Respondent/landlord in paragraph 18(xi) of his Eviction Petition is that the Respondent/landlord wants to settle her son who is otherwise working in a bank but wishes to start up his own business of hardware and by amalgamating a shop and the rooms which are available on the ground floor, the Respondent/landlord wishes to set up a business of hardware and

sanitaryware alongwith a show room, display/sale counter, packaging place, godown etc. and a large space is required for this purpose, which would be available once the tenanted premises are available. The requirement is set out in paragraph 18(viii), (ix) and (xi) of the Eviction Petition which are reproduced below:

> *"18. (viii.)* ***That the petitioner want to settle her son and as the petitioner has commercial accommodation i.e. property in which the tenanted premises situated, therefore his son want to run the business of hardware and hence the petitioner is in bonafide requirement of the tenanted premises in question for his son so that the son of the petitioner can open the business of hardware & sanitary show room at ground floor for Display/sale Counter, Packaging Place, Godown etc and because for the said business a lot of place is required and hence the shop and room in question is required amalgamation.***
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> *(ix) Therefore the shop in question is a best place to fulfil the bonafide need of the son of the Petitioner as he has no other commercial space available better than the shop in question However it is submitted that the petitioner* ***is also the owner of the property bearing No 5031 Gali Daroga Chalu Singh, Pahari Dhiraj, Delhi 110006 and the said property is occupied by tenant as well as in dilapidated condition and not suitable for the hardware business as there are no shop. Moreover the aforesaid property is ancestral property and the same has also not divided yet.***
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> *xxx xxx xxx*
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> *(xi) That the tenanted premises is required for opening the hardware and sanitary shop, the petitioner has no other suitable accommodation to open up hardware & sanitary shop for her son anywhere at Delhi as the tenanted premises is commercial and is most suitable place to the son of the petitioner to open the hardware sanitary shop. The shop in question is required to merge the other adjacent shop for open the hardware sanitary shop. It is submitted that the petitioner is a widow lady and is suffering from arthritis and undergoing medical treatment in St. Stephen Hospital, Tis Hazari and wants to settle her son with his own business so that he can live decent and independent life. The petitioner and her son, both are residing in the same property and the son of the petitioner can also take care Of the petitioner during the day time also, therefore the tenanted premise*

is also suitable for open the hardware & sanitary shop. ***That there are 4 shops, two rooms, two Godowns at the ground floor in the property No. 7055, Gali Tanki wali Ghas Mandi, Pahari Dhiraj, Delhi - 110006 out of which two godowns, and two shops have been vacated out of which one shop has been evicted by the Hon'ble court and are in possession of the petitioner but still the space is not sufficient for hardware & sanitary shop and hence the tenanted shop is required for bonafide purpose so that petitioner can combine the same and convert into a suitable hardware shop/ showroom for her son.*** *"*

[Emphasis Supplied]

13. The Respondent has also disclosed that two shops mentioned by the Petitioner/tenant, 5031 and 7055, are not alternate suitable accommodations. It is stated by Respondent/landlord in the Eviction Petition that premises 5031 is not available since the same is in possession of a tenant as well as in dilapidated condition and not suitable for the need of the Respondent/landlord as there is no shop from which a business can be run. It has been further specified that premises 5031 is an ancestral property and the same has also not been partitioned yet. So far as concerns the premises at 7055, it has been clarified by the Respondent/landlord the space already available with the Respondent at premises 7055 is not sufficient for running hardware & sanitary shop and hence the subject premises is required by the Respondent/landlord to combine the subject premises with the space already available in the premises at 7055 and convert it into a suitable hardware shop/ showroom for her son.

14. 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***[2] 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]

14.1 It is also well-settled that the ground floor is more suitable for

[2] (1999) 6 SCC 222

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 take alternate premises or to operate out of the top floor. In ***Uday Shankar Upadhyay v. Naveen Maheshwari***[3], 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."*
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> [Emphasis Supplied]

14.2 Thus, the contention of the Petitioner/tenant that alternate suitable accommodation is available with the Respondent/landlord is without any merit.

15. 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***

[3] (2010) 1 SCC 503

Singh[4] which has also been relied upon in the case of ***Abid-ul-Islam v. Inder Sain Dua***[5] 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 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**...."*
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> [Emphasis supplied]

16. The examination by a Court in a Revision Petition is limited and circumspect. The Supreme Court in ***Abid-Ul-Islam case***, has held that

[4] (2001) 1 SCC 706
[5] (2022) 6 SCC 30

the jurisdiction of this Court is only revisionary in nature and limited in its scope. The Supreme Court while interpreting the intendment of the legislature in removing two stages of Appeal that were earlier provided in the said Act has held that this is a conscious omission. 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 fact of the record or absence of any adjudication by the learned Trial Court, and it is only then should the High Court interfere. The legislature has consciously removed the two stages Appeal which existed priorly. The Supreme Court has also cautioned from converting the power of superintendence into that of a regular first Appeal under revisionary jurisdiction. The relevant extract of the ***Abid-ul-Islam*** case is as follows:

> *"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.*
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> *xxx* *xxx* *xxx*
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> *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)*
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> > *'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.****'*
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> ***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****.*
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> [Emphasis supplied]

17. In view of the aforegoing discussions, this Court finds no infirmity with the Impugned Order. The Petition and pending Application is accordingly dismissed.

18. The parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

MARCH 11, 2025/pa/*ha*

Click here to check corrigendum, if any