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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 12.02.2025*+ **RC.REV. 332/2024 & CM Appls.66830/2024, 8473/2025**

ANWAR KAMAL .....Petitioner

Through: Ms. Azka Ahmed, Adv.

versus

SUBHAN AHMED .....Respondent

Through: Mr. Sanjeev Rajpal, Adv.

**CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The grievance of the Petitioner/tenant as articulated in the present Petition is that the order dated 23.07.2024 [hereinafter referred to as "Impugned Order"] passed by the learned ACJ-cum-ARC, Central, Tis Hazari Courts, Delhi with respect to the premises i.e., ground floor of property bearing no. 2162, Rodgran, Lal Kuan, Delhi – 110006 [hereinafter referred to as "subject premises"] has wrongly dismissed the Application for leave to defend in view of the fact that that no triable issues have been raised by the Petitioner/tenant.

2. This Court had heard both the parties in the matter on the last date of hearing and passed a detailed order. It is apposite to set out the relevant part of the order dated 18.11.2024:

"4. Learned Counsel for the Petitioner/tenant submits that there is no relationship of landlord-tenant between the parties since the Respondent/landlord is not the owner of the subject premises. It is contended by the learned Counsel for the Petitioner/tenant that the owner of the subject premises is one Smt. Pushpanjali Arora and this contention has



been raised on the basis of a rent receipt counterfoil which was produced by the Petitioner/tenant before the learned Trial Court.

4.1 In addition, it is contended that the Respondent/landlord has an alternate accommodation available including three godowns at Arora Building, Rodgran, Delhi and commercial space at Sheeshmahal, Azad Market, Delhi.

4.2 Admittedly, the bona fide need of the Respondent/landlord has not been disputed by the Petitioner/tenant.

5. Learned Counsel for the Respondent/landlord submits that, in the first instance, the issues raised before this Court have already been raised before the learned Trial Court and have been dealt with. He further submits that so far as concerns the ownership of the property, it is not disputed that the original owner was one Sh. Khushi Ram who had since died and has bequeathed the property to his wife Smt. Raj Rani. It is the Respondent's case that he has purchased the property from Smt. Raj Rani.

5.1 Learned Counsel for the Respondent/landlord further submits that so far concerns the averments of the Petitioner/tenant that Smt. Pushpanjali Arora was the owner of the subject premises, the same was disputed by the Respondent/landlord before the learned Trial Court. He further submits that this contention has already been examined by the learned Trial Court in paragraph 11 and 12 of the Impugned Order and that there is no infirmity with the same.

6. On the aspect of alternate accommodation, learned Counsel for the Respondent/landlord seeks to rely upon paragraph 18 to 20 of the Impugned Order to submit that in the first instance, he has categorically denied in his reply to the Application of leave to defend that he owns the godowns or the commercial space as mentioned by the Petitioner in his Application for leave to defend. In addition, it is also stated that he does not run his business from Ghalib Apartment, Pitampura, Delhi but in fact resides there.

6.1 Learned Counsel for the Respondent/landlord thus, submits that the Impugned Order does not suffer from any infirmity.

7. An examination of the Impugned Order shows that the submissions raised by the learned Counsel for the Petitioner before this Court have already been previously raised by him before the learned Trial Court and have been examined and the Impugned Order has been passed.

8. As adverted to above, the bona fide need is not being controverted. The availability of suitable alternate accommodation has also been denied by the Respondent/landlord. So far as concerns the issue of ownership of the subject premises, it is settled law that all that the Respondent/landlord has required to show is that he is more than just a tenant. In addition, the Impugned Order also contains a finding that the Petitioner/tenant does not claim to be an owner but does claim to be a tenant.”



2.1 As can be seen from the above, so far as concerns the landlord-tenant relationship between the parties and ownership of the subject premises, the learned Trial Court has given a finding that the Respondent/landlord is the owner of the subject premises. It is however the case of the Petitioner/tenant that the owner of the subject premises is one Smt. Pushpanjali Arora and this contention has been raised on the basis of a rent receipt counterfoil which was produced by the Petitioner/tenant before the learned Trial Court. On the contrary it is the contention of the Respondent/landlord that the subject premises has been purchased by the Respondent/landlord from Smt. Raj Rani.

2.2 The learned Trial Court examined the issue and has held that the Petitioner/tenant has failed to show how the subject premises was acquired by Smt. Pushpanjali Arora so as to confer it on the Petitioner/tenant. It was further held by the learned Trial Court that all that is required to be shown in an Eviction Petition is that the Respondent is more than a tenant and that the Petitioner/tenant has admitted to being a tenant. The relevant extract of the Impugned Order is set out below:

**“10.... In the entire application for leave to defend, the respondent has failed to state the exact relationship subsisting between Smt. Pushpanjali Arora and Sh. Khushi Ram Arora. He has just relied upon the counterfoil of a rent receipt dated 05.07.2015, issued in his favour as well as in favour of his brother Ikhlas Ahmed, by Smt. Pushpanjali Arora to claim that it is her who became the owner of the demised premises after the demise of Sh. Khushi Ram Arora, and later the said Pushpanjali Arora had written a letter addressed to him as well as the LRs of his deceased brother Ikhlas Ahmed requiring them to pay rent qua the demised premises to Mst. Husn Ara Begum w.e.f. 01.04.2016. The respondent has failed to elaborate as to how the said title was acquired by the said Pushpanjali Arora. Per-contra, the petitioner has relied upon the registered Sale Deed executed in favour by Sohail Sartaj and Shahar Yaar, the attorney holders of Asha Malik,**



**Roma Arora@ Poonam Arora vide GPA dated 05.08.2016, upon whom the property was bequeathed by their late mother Raj Rani Arora, who inturn was the beneficiary of the Will of her late husband Sh. Khushi Ram Arora. By virtue of the Sale Deed, the petitioner has established that he has some semblance of title over the demised premises, which is better than that of the respondent. Needless to say, the respondent has not claimed to be the owner of the demised premises. He has only disputed the ownership of the petitioner, without specifying as to who is the owner thereof.** In view thereof, the case of the petitioner, which is supported by registered Sale Deed in his favour appears to stand on a better footing. While it is true that in terms of Section 116 of Indian Evidence Act, 1872, a tenant can challenge the subsequent title of a transferee of a property, it is equally well settled position of law that when tenant challenges the title of the landlord over the tenanted property, he is also required to state as to who is the actual owner of the property, if not the petitioner.....

11..... **Even for the respondent to claim that Pushpanjali Arora became the owner of the demised premises merely on the basis of the rent receipt is an argument which is unsustainable in law. The said receipt is not a Conveyance Deed or a title document, needless to say. Petitioner has placed reliance on a registered Will, and respondent/tenant has no right to challenge the said Will, since he is not the legal heir of the executant Khushi Ram Arora. (Ret: Aljan Dass Vs. Madan Lal 6 {1970}DLT260).** The fact that the Wills executed by Sh. Khushi Ram Arora (who expired on 12.11.1986 as per petitioner) and Raj Rani Arora (who expired on 03.12.2013) were not probated is also not an impediment in them becoming operational upon the deaths of the testators, as per all settled cannons of law. Bearing in mind the fact that the scope of these proceedings cannot be stretched so to convert them into a suit for declaration of title, for the purpose of the proceedings instant it can safely be concluded that it is the petitioner who is the owner of the demised premises. This is more so in view of the fact that even the respondent has nowhere contended that any title dispute with respect to the demised premises is pending between the Pushpanjali Arora or Husn Ara Begum on the one hand and the petitioner or his predecessor-in interest on the other. **For the purpose of any proceedings under Section 14 (I) (e) of DRC Act, the scope of the term 'ownership' is only that the petitioner/landlord has to show that he is on a better footing than the respondent and does not have to show perfect title. Reliance at this juncture can be placed upon the judgment titled T.C. Rakhi Vs. Usha Gujral, ILR 1969 Delhi 9. In this endeavor, the petitioner has succeeded by placing reliance on registered instruments in his favour, and is declared to be the owner of the demised premises for the purpose of these proceedings.**”

[Emphasis supplied]



2.3 The learned Trial Court has additionally relied upon the rent receipt which has been signed by the Petitioner/tenant and filed by the Respondent/landlord to hold that the Petitioner/tenant has attorned to the Respondent as landlord and is barred from disputing the title of the Respondent/landlord over the subject premises.

3. On the aspect of challenge to the ownership raised by the Petitioner/tenant, in a petition under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 [hereinafter referred to as “Act”], it is a settled law that all that a landlord has to prove is a better title than the tenant to seek eviction from the tenanted premises. The Supreme Court in the case of *Swadesh Ranjan Sinha v. Haradeb Banerjee*<sup>1</sup>, in the context of ownership in an eviction petition, has clarified that:

**“ 9. All that a plaintiff needs to prove is that he has a better title than the defendant. He has no burden to show that he has the best of all possible titles. His ownership is good against all the world except the true owner. The rights of an owner are seldom absolute, and often are in many respects controlled and regulated by statute. The question, however, is whether he has a superior right or interest vis-a-vis the person challenging it....”**

[Emphasis supplied]

3.1 This Court while discussing the issue of ownership in a Petition filed under Section 25-B(8) of the Act in a case titled *R.S. Chadha v. Thakur Dass*<sup>2</sup> has held that what a landlord has to prove is a better title than the tenant to seek his eviction for the tenanted premises. The Court relied on the judgment of the Supreme Court in the case of *Shanti Sharma vs. Ved Prabha*<sup>3</sup> to hold that the term owner has to be

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<sup>1</sup> (1991) 4 SCC 572

<sup>2</sup> 2024 SCC OnLine Del47

<sup>3</sup> (1987) 4 SCC 193



understood in the context of the background of the law. The relevant extract reads as follows:

**“10.1 It is settled law that what a landlord has to prove is a better title than the tenant to seek his eviction from a tenanted premises under Section 14(1)(e) of the Act. The Supreme Court in the case of the Shanti Sharma v. Ved Prabha has held as follows:...**

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**“14. The word “owner” has not been defined in this Act and the word ‘owner’ has also not been defined in the Transfer of Property Act. The contention of the learned Counsel for the appellant appears to be that ownership means absolute ownership in the land as well as of the structure standing thereupon. Ordinarily, the concept of ownership may be what is contended by the counsel for the appellant but in the modern context where it is more or less admitted that all lands belong to the State, the persons who hold properties will only be lessees or the persons holding the land on some term from the government or the authorities constituted by the State and *in this view of the matter it could not be thought of that the legislature when it used the term “owner” in the provision of Section 14(1)(e) it thought of ownership as absolute ownership.* It must be presumed that the concept of ownership only will be as it is understood at present. *It could not be doubted that the term “owner” has to be understood in the context of the background of the law and what is contemplated in the scheme of the Act.* This Act has been enacted for protection of the tenants. But at the same time it has provided that the landlord under certain circumstances will be entitled to eviction and bona fide requirement is one of such grounds on the basis of which landlords have been permitted to have eviction of a tenant. *In this context, the phrase “owner” thereof has to be understood, and it is clear that what is contemplated is that where the person builds up his property and lets out to the tenant and subsequently needs it for his own use, he should be entitled to an order or decree for eviction the only thing necessary for him to prove is bona fide requirement and that he is the owner thereof. In this context, what appears to be the meaning of the term “owner” is vis-a-vis the tenant i.e. the owner should be something more than the tenant.* Admittedly in these cases where the plot of land is taken on lease the structure is built by the landlord and admittedly he is the owner of the structure....”**

[Emphasis supplied]



4. The learned Counsel for the Petitioner/tenant has not been able to controvert this contention before this Court. The only contention raised by the Petitioner/tenant before this Court is that there was a joint tenancy in the matter and that the legal heirs of the joint tenant were not impleaded.

5. Learned Counsel for the Respondent/landlord submits that this aspect was raised before the learned Trial Court and has already been dealt with in the Impugned Order. He seeks to rely upon paragraph nos. 13 and 14 of the Impugned Order in this behalf.

5.1 On this aspect, the learned Trial Court has held that the Petitioner was inducted as a co tenant along with his brother in the subject premises and that the Petitioner/tenant has failed to bring anything on record to prove otherwise. The relevant extract of the Impugned Order is reproduced below:

*“13. Another argument was taken by the respondent that the petition is bad for non-joinder of the LRs of his late brother, who was inducted as a tenant in common in the demised premises. This argument of the respondent is legally unsound.*

*14. The incidences of tenancy in common are quite distinct than the incidences of joint tenancy. While there is unity of possession in cases of tenancy-in-common, there is no unity of interest. Between tenants in common, the shares of tenancy rights are divided in specific portions, which may or may not be equal. In the case at hand, it has not been pleaded by the respondent that there was demarcation of interest between him and his deceased brother Ikhlas Ahmed. No rent agreement has been placed on record by him to show that tenancy in common was created, or that they were inducted as tenants in common by the predecessor-in-interest of the petitioner. The counterfoil of rent receipt, basis which such an arguments is made, also shows that the two brothers were inducted as co-tenants or joint tenants, and not as tenants in common. The receipt does not reflect any bifurcation of share in tenancy rights, and the rent was also jointly paid by the two brothers. Neither they paid rent separately to the petitioner in*



*proportion to their share in tenancy, nor were they were issued separate rent receipts. These circumstances impel the Court to raise the inference that both the brothers were joint tenants or co-tenants. Reliance at this juncture can be placed upon the judgment of Hon'ble Supreme Court of India titled Kanji Manji Vs. The Trustees of The Port of Bombay 1963 AIR 468. As such, upon the death of the one of the joint tenants, by way of survivor-ship, tenancy rights devolved upon the respondent alone, right of survivorship being one of the important incidences of joint tenancy. The fact that demised premises are occupied by respondent alone, without any interference from LRs of his brother, also fortifies the conclusion reached by Court. Petition instant cannot be held to be bad in law for non-joinder of LRs of Ikhlas Ahmed, thus.”*

6. It is no longer *res integra* that all legal representatives of a tenant are not required to be impleaded as a party to an Eviction Petition. Reliance is placed on the judgment of the Supreme Court in ***Suresh Kumar Kohli vs. Rakesh Jain and Another***<sup>4</sup> in this regard. The relevant extract is reproduced below:

*“24. We are of the view that in the light of H.C. Pandey [H.C. Pandey v. G.C. Paul, (1989) 3 SCC 77] , the situation is very clear that when original tenant dies, the legal heirs inherit the tenancy as joint tenants and occupation of one of the tenants is occupation of all the joint tenants. **It is not necessary for the landlord to implead all legal heirs of the deceased tenant, whether they are occupying the property or not. It is sufficient for the landlord to implead either of those persons who are occupying the property, as party. There may be a case where landlord is not aware of all the legal heirs of the deceased tenant and impleading only those heirs who are in occupation of the property is sufficient for the purpose of filing of eviction petition.** An eviction petition against one of the joint tenants is sufficient against all the joint tenants and all joint tenants are bound by the order of the Rent Controller as joint tenancy is one tenancy and is not a tenancy split into different legal heirs. Thus, the plea of the tenants on this count must fail.”*

[Emphasis supplied]

7. As was stated on the last date of hearing, on the aspect of *bona fide* need of the Respondent/landlord, there has been no dispute by the

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<sup>4</sup> (2018) 6 SCC 708



Petitioner/tenant. The learned Trial Court while examining this aspect has held that Petitioner/tenant has not controverted the averment made by the Respondent/landlord regarding the *bona fide* need of the subject premises, thus it can be held that no triable issue has been raised in this regard.

7.1 The need as projected by the Respondent/landlord in paragraph 18(F) of the Eviction Petition is that the Respondent/landlord requires the subject premises for his own business for earning his livelihood. He has further stated that the business premises which he is currently using is very small and that too as a licensee. The relevant extract is set out below:

**“18(F)The business premises used by petitioner is of small size wherein he is only a licensee of its owner Mr. Vaqar Ahmed, elder brother of petitioner who needs it for his own business and has asking petitioner since long to vacate the same and shift in the tenanted premises which is lying vacant. The petitioner doesn't have any commercial property in Delhi except the tenanted premises in occupation of respondent which he requires bonafidely for his business for earning his livelihood. The petitioner no longer can use the premises in his occupation for business as the same is not owned by him for the reason given herein above which respondent is also aware but demanding a hefty sum to vacate.”**

[Emphasis supplied]

7.2 Clearly, the need of the Respondent/landlord which is for the use of the subject premises for his own business is *bona fide*. This Court finds no infirmity with this finding of the learned Trial Court given what is stated above.

8. On the aspect of availability of alternate accommodation, the Petitioner/tenant had stated that there are other accommodations



available, however the learned Trial Court has found that the averments regarding availability of alternate suitable accommodations are vague and without any details. It was further found that no material has been placed on record by the Petitioner/tenant in this behalf.

8.1. A Coordinate Bench of this Court in the case of *Lalta Prasad Gupta v. Sita Ram*<sup>5</sup>, has held that for a tenant to seek leave to defend on the ground that alternate suitable accommodation is available with the landlord, the onus is on the tenant to provide specific particulars. The burden on the tenant falls between mere vague allegations and conclusive documentary proof, and its extent depends on the facts of each case. The relevant extract of the *Lalta Prasad Gupta case* is reproduced below:

*“18. Thus, if the tenant seeks leave to defend controverting the requirement pleaded by landlord on the ground of the landlord, though at the time of requirement having alternate premises, having not used the same and instead having commercially exploited the same, the tenant must plead (a) the particulars of such premises; (b) the right/title of the landlord to the same; (c) that the said premises were vacant and available for use at the time of the pleaded requirement of landlord; (d) how the said premises were suitable for the pleaded requirement; and, (e) how the landlord has deprived himself thereof i.e. by sale or letting and support the said pleas with material on the basis whereof such pleas will be proved. I say that it is essential to place such material before the Rent Controller because the purpose of trial, resulting from grant of leave to defend, is to prove the said pleas and if the tenant has nothing from which he can possibly prove the said pleas, the trial also will not result in the landlord being “disentitled from obtaining an order for recovery of possession of premises on the ground specified in Clause (e) of proviso to sub Section (1) of Section 14” of the Act, within the meaning of Section 25B(5) supra. This is not to say that the tenant should file fool proof documentary evidence at the stage of leave to defend. However, there must be placed on record all the requisite particulars. The onus on the tenant, at the stage of seeking leave to defend, is thus somewhere in between fool proof documentary*

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<sup>5</sup> 2017 SCC OnLine Del 13026



**evidence and a totally vague, bereft of any particulars plea. Where, in between the said onus lies, depends on facts of each case.”**

[Emphasis Supplied]

9. 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*<sup>6</sup> which has also been relied upon in the case of *Abid-ul-Islam v. Inder Sain Dua*<sup>7</sup> 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**

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<sup>6</sup> (2001) 1 SCC 706

<sup>7</sup> (2022) 6 SCC 30



**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]

10. The Respondent/landlord has stated that he requires the subject premises for his bonafide need and that the subject premises is lying locked by the Petitioner/tenant. As set out herein, the bona fide need is not being controverted. The availability of suitable alternate accommodation has also been denied by the Respondent/landlord. So far as concerns the issue of ownership of the subject premises, it is settled law that all that the Respondent/landlord has required to show is that he is more than just a tenant. In addition, the Impugned Order also contains a finding that the Petitioner/tenant does not claim to be an owner but does claim to be a tenant. To that extent the Impugned Order does not suffer from any infirmity.

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

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

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

**TARA VITASTA GANJU, J**

**FEBRUARY 12, 2025/r**

*Click here to check corrigendum, if any*