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

Date of Decision: 17.03.2025

\+ RC.REV. 387/2024 & CM APPL. 74957/2024

MADAN LAL SHARMA .....Petitioner

Through: Mr. Kuldeep Jauhari, Mr. Anubhav Tyagi and Mr. Sahil Ahuja, Advocates with Petitioner in person.

versus

AMIT BANSAL .....Respondent

Through: Mr. Ankur Mahindro, Mr. Shubham Aggarwal and Mr. Soumil Gonsalves, Advocates with Respondent in person.

CORAM:
HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. The present Petition has been filed seeking to challenge an order dated 19.09.2024 passed by the learned CCJ-cum-ARC, Central District, Tis Hazari Courts, Delhi [hereinafter referred to as "Impugned Order"]. By the Impugned Order, the Application of Leave to Defend/Contest filed by the Petitioner/tenant has been dismissed. The premises in issue are two rooms on the ground floor of property No.1309, Ward No.V, Vaidwara, Maliwara, Delhi-110006 as shown in red colour in the site plan annexed to the Eviction Petition [hereinafter referred to as "subject premises"].

2. This Court had an occasion to examine the Impugned Order on two prior dates, i.e., 20.12.2024 as well as on 11.03.2025. It is apposite to extract

the relevant portion of the order dated 20.12.2024, which reads as under:

> "5. Learned Counsel for the Petitioner/tenant has raised one contention. It is submitted that the need of the Respondent/landlord is not bonafide. It is the contention of the learned Counsel for the Petitioner/tenant that the remaining premises on the ground floor is under the occupation of another tenant (a saree shop). It is further submitted that it is this business that has been projected by the Respondent/landlord for his bonafide need.
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> 6. On the aspect of landlord/tenant relationship, ownership and the availability of alternate suitable accommodation, there is no contest.
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> 6.1 In any event, as can be seen from the Impugned Order, the Respondent/landlord is admittedly a co-owner of the subject premises and no other alternate accommodation has been set out in the Leave to Defend/Contest Application.
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> 7. Learned Counsel for the Respondent/landlord, on the other hand, draws the attention of the Court to the Leave to Defend/Contest Application filed by the Petitioner/tenant to submit that the Petitioner/tenant in his Leave to Defend/Contest Application set out that the premises which he is saying is currently tenanted is actually vacant. Learned Counsel for the Respondent/landlord, thus, submits that the plea taken by the Petitioner/tenant before this Court is contrary to his Leave to Defend/Contest Application itself.
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> 8. Issue Notice on this limited aspect.
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> 8.1 Learned Counsel for the Respondent/landlord accepts Notice."

3. This Court had thus issued notice in the matter on the limited issue, as stated above.

4. Subsequently, the arguments were addressed by learned Counsel for both the parties on 11.03.2025 as well. On that date, learned Counsel for the Petitioner/tenant requested for some time to take instructions on additional time to vacate the subject premises. On his request, the matter was adjourned to today.

4.1 Today, learned Counsel for the Petitioner/tenant submits that the Petitioner/tenant is "*not willing to take additional time to vacate*".

5. As stated above, so far as concerns the aspect of landlord-tenant relationship and ownership of the subject premises, there is no contest made by the Petitioner/tenant before this Court. The learned Trial Court also found that there was no challenge before the learned Trial Court as well. In order to make out a case under Section 14(1)(e) read with Section 25B of the DRC Act, the landlord is required to show the following:

> *(i) Existence of landlord/tenant relationship;*
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> *(ii) Existence of bona fide need on the part of the landlord and;*
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> *(iii)Non-availability of reasonable suitable alternative accommodation with the landlord.*

6. So far as concerns the availability of alternate accommodation, there is no challenge before this Court. In any event, as stated above, Notice was issued in the matter limited to examination to a shop on the ground floor.

7. It is the contention of the learned Counsel for the Petitioner/tenant that the need of the Respondent/landlord was not *bona fide* as another business was being operated under the name of M/s Deepanshi Sarees from one of the rooms on the ground floor and that GST details of such entity which shows that the business is being operated from the ground floor of the subject premises, have been placed on record before this Court. Thus, it is contended that the need of the Petitioner/tenant is not bona fide.

8. Learned Counsel for the Respondent/landlord submits that in the first instance, the documents that have been placed before this Court were also filed before the learned Trial Court along with the Rejoinder. However, by an order dated 27.07.2024, the documents which were filed along with the Rejoinder were not taken on record as being filed belatedly.

8.1 In addition, it is contended by the learned Counsel for the Respondent/landlord that despite these documents not being taken on record by the learned Trial Court, the Petitioner/tenant has filed the documents before this Court. Since, this order was deliberately concealed and was not filed by the Petitioner/tenant before this Court, it is contended that given the conduct of the Petitioner/tenant, no relief can be granted to him.

9. It is not disputed by the learned Counsel for the Petitioner/tenant that the order dated 27.07.2024 passed by the learned Trial Court was not challenged by the Petitioner/tenant before any Court. The Petitioner/tenant is also unable to give any reason for not filing this order on record, thus, there is a deliberate concealment on part of the Petitioner/tenant.

10. The Supreme Court in ***Abid-ul-Islam v. Inder Sain Dua***[1] has while relying on the judgment in ***Inderjeet Kaur v. Nirpal Singh***[2] has held that the Leave to Defend sought for cannot be granted for the mere asking or in routine manner, nor can it be refused on the basis of a mere desire. The relevant extract of the ***Abid-ul-Islam*** case is as follows:

> *"16. We may usefully refer to the decision of this Court in Inderjeet Kaur v. Nirpal Singh [Inderjeet Kaur v. Nirpal Singh, (2001) 1 SCC 706] : (SCC pp. 711-13, paras 9-13)*
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> *"...*
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> *11.* ***As is evident from Sections 25-B(4) and (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****.*

[1] (2022) 6 SCC 30
[2] (2001) 1 SCC 706

12. A landlord, who bona fide requires a premises for his residence and occupation should not suffer for long, waiting for eviction of a tenant. At the same time a tenant cannot be thrown out from a premises summarily, even though prima facie he is able to say that the claim of the landlord is not bona fide or untenable and as such not entitled to obtain an order of eviction. Hence the approach has to be cautious and judicious in granting or refusing leave to defend to a tenant to contest an eviction petition within the broad scheme of Chapter III-A and in particular having regard to the clear terms and language of Section 25-B(5).

*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**…."*

[Emphasis supplied]

11. The Petitioner/tenant in his Application for Leave to Defend initially challenged the *bona fide* requirement on the ground that the Petition is not maintainable because the entire property is lying vacant. It is apposite to extract Paragraph (C) of the Application for Leave to Defend in this behalf, which reads as under:

> *"C.* ***That the present petition even otherwise is also not maintainable because the entire property is measuring about 183 sq.meters and except the portion in occupation and possession of the respondent as a tenant, the entire property is lying vacant and no portion of it is in occupation and possession*** *of any person, and in case the petitioner has any alleged bonafide,* ***he can very well occupy any other portion of the property as the entire property except the tenanted portion is lying vacant****. Therefore, on this ground alone, the present petition is liable to be dismissed and/or in the alternative unconditional leave to defend and contest the present eviction petition is entitled to be granted in favour of the respondent."*
>
> [Emphasis supplied]

12. The Respondent/landlord in its Reply to Leave to Defend has denied this allegation. The relevant extract is reproduced below:

> *"C. Allegations made in Para C of the Ground as stated are vague, evasive, wrong and therefore denied. It is denied that the present Petition even otherwise is also not maintainable as alleged. It* ***is submitted that the Petitioner in the Petition has clearly mentioned that the Petitioner wants to open s Showroom and the Entire Ground floor is required for the same. It is further submitted that it is well settled proposition of Law*** *that the "Landlord is the best judge of its own needs and a Tenant cannot dictate a Landlord" and* ***as such the Respondent cannot dictate the Petitioner how to use the Property. It is denied that the Ground alone, the Present Petition is liable to be dismissed and/or in the alternative unconditional leave to defend and contest Present Eviction Petition is entitled to be granted in favour of the Respondent as alleged.*** *It is submitted that the ground so raised needs no consideration as the Law is clear on the aforesaid fact."*
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> [Emphasis supplied]

13. Thereafter, in the Rejoinder which was filed, the Petitioner/tenant changed its stand, which is the stand that has been taken before this Court as well, that the Petitioner/tenant has let out the entire ground floor to one M/s Deepanshi Sarees, who is in possession of the entire ground floor, thus, the need of the Respondent/landlord is not bona fide.

14. Learned Counsel for the Respondent/landlord has contended that so far as concerns the plea regarding M/s Deepanshi Sarees, the same was raised for the first time only in the Rejoinder and as stated above, the Respondent/landlord was not required to rebut these documents filed since these documents were not allowed to be placed on record by the learned Trial Court by its order of 27.07.2024, which order has attained finality.

14.1 Learned Counsel for the Respondent/landlord further submits that these documents relied upon by the Petitioner/tenant are fraudulent. It is reiterated that the ground floor is lying vacant and not occupied. In addition, it is submitted that the Respondent/landlord has undertaken the necessary steps for cancellation/modification thereof since they wrongly show his address**.** Learned Counsel for the Respondent/landlord, on instructions, submits that the address of the Respondent/landlord has been wrongly used by a third party and that he has taken appropriate steps with the concerned GST authorities for rectifying the defect. It is reiterated by the Respondent/landlord that the ground floor of this building is lying vacant and that the Respondent/landlord requires to set up a cloth showroom in the entire ground floor, which includes the subject premises, and thus, there is a requirement for the subject premises.

15. The need as set out by the Respondent/landlord in the Eviction Petition is for the Respondent to open and run his showroom of clothes on the entire ground floor of the subject building since the same is situated in a commercially viable area, in a cloth market**.** The relevant extract of the Eviction Petition is set out below:

> *"18 (a). The grounds on which the eviction of the tenant is sought.*
>
> *... 5. That the Petitioner do not have any business and wants to start his own business of Clothes from the Complete Ground Floor where the Petitioner wishes to open the Clothes Showroom.*
>
> *6.* ***That the Ground Floor of the Suit Property consists of Godowns and other vacant place and however the Petitioner wishes to open his Showroom of Clothes and wants to run a Showroom of Clothes from the entire Ground Floor and the aforesaid Area is famous for the Cloth Market and there are various Shops and Showrooms in the neighborhood as it is a Hub of Clothes.****"*
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> [Emphasis Supplied]

15.1 The Petitioner/tenant has made two contentions:

(i) that there is no such need as there is other accommodation on the ground floor available and on the second floor is available; and

(ii) that another tenant has been inducted on the ground floor, thus, the need is not genuine.

16. On the first aspect the Respondent/landlord has clarified that he would require the entire ground floor for the purposes of setting up his business.

16.1 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 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:*
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> > *"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]

16.2 In addition, 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 take alternate premises or to operate out of the top floor. In ***Uday Shankar Upadhyay v. Naveen Maheshwari***[6], the Supreme Court has held

[3] 2023 SCC OnLine Del 7396
[4] (2005) 8 SCC 252
[5] (2014) 15 SCC 610
[6] (2010) 1 SCC 503

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]

16.3 The Petitioner/tenant thus cannot compel the Respondent/landlord to use other portions which are not suitable for his requirement.

17. On the second aspect, the Respondent/landlord has clarified that the ground portion is not tenanted. It has been contended by the Petitioner/tenant in the Rejoinder to the Application of Leave to Defend/Contest, that another tenant is in occupation of the ground floor. This contention has been firmly denied by the Respondent/landlord. He submits that it is lying vacant. Even though the new documents were sought to be relied upon by the Petitioner/tenant in support of his contentions, the learned Counsel for the Respondent/landlord has clarified that these documents are fraudulent and that requisite steps in this behalf have been taken.

18. This Court has been made aware that the Petitioner/tenant failed to disclose to this Court that these documents, although were filed before the learned Trial Court, were disallowed to be placed on record by the learned Trial Court as being filed belatedly. The order passed by the learned Trial Court 27.07.2024 was not disclosed by the Petitioner/tenant before this Court but was filed by the Respondent/landlord.

18.1 The Supreme Court in the case of ***S.P. Chengalvaraya Naidu v. Jagannath***[7], has held that the Courts of law are meant for imparting justice between the parties, and the one who comes to the Court must come with clean hands. The relevant extract is reproduced below:

> *"5….The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants.* ***The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.****"*
>
> [Emphasis Supplied]

18.2 In ***Moti Lal Songara v. Prem Prakash***[8], the Supreme Court has held that anyone who takes recourse to methods of suppression in a court of law, is, in actuality, playing fraud upon the court, and the maxim *suppressio veri, expressio falsi* i.e. suppression of the truth is equivalent to the expression of falsehood, gets attracted.

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[7] (1994) 1 SCC 1
[8] (2013) 9 SCC 199

> *19. …We have clearly stated that though the respondent was fully aware about the fact that charges had been framed against him by the learned trial Judge, yet he did not bring the same to the notice of the Revisional Court hearing the revision against the order taking cognizance. It is a clear case of suppression. It was within the special knowledge of the accused.* ***Anyone who takes recourse to method of suppression in a court of law, is, in actuality, playing fraud upon the court, and the maxim suppressio veri, expressio falsi i.e. suppression of the truth is equivalent to the expression of falsehood, gets attracted. We are compelled to say so as there has been a calculated concealment of the fact before the Revisional Court.*** *It can be stated with certitude that the respondent-accused tried to gain advantage by such factual suppression. The fraudulent intention is writ large. In fact, he has shown his courage of ignorance and tried to play possum.*
>
> [Emphasis Supplied]

18.3 Given the fact that the said order, firstly, was not disclosed by the Petitioner/tenant before this Court, and secondly, the said order was never challenged, this Court does not deem it apposite to examine this aspect any further.

19. The examination by a Court in a Revision Petition is limited and circumspect. The Supreme Court in ***Abid-Ul-Islam v. Inder Sain Dua***[9], 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

[9] (2022) 6 SCC 30

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)*
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> > *"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]

20. In view of the aforegoing discussions, no ground for interference has been made out. Accordingly, the present Petition is dismissed. Pending Application stand closed.

21. However, given the conduct of the Petitioner/tenant, this Court deems it apposite to impose costs in the sum of Rs.25,000/- payable directly to *"Bar Council of Delhi-Indigent and Disabled Lawyers Account".*

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

TARA VITASTA GANJU, J

MARCH 17, 2025/pa/*ha*

Click here to check corrigendum, if any