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

Date of Decision: 20.02.2025

\+ **RC.REV. 15/2025, CM APPL. 10512/2024**

PRABHATI LAL NOW DECEASED THROUGH THEIR LEGAL HEIRS .....Petitioner

Through: Mr. Manish Kumar & Mr. Ashwani Kumar, Advocates.

versus

NEETU NANDA .....Respondent

Through: Ms. Upasana Pahuja, Ms. Mehak Chaudhary & Mr. Pranav Sahni, Advocates for R-1 with R-1 in person.

CORAM:
HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. This order is in continuation of the order dated 15.01.2025 passed by the Court.

2. This Court had examined the Impugned Order on 15.01.2025 and passed a detailed order. The relevant extract of the order dated 15.01.2025 is set out below:

> "7. The present Petition has been filed on behalf of the Petitioner impugning the order dated 06.07.2024 [hereinafter referred to as "Impugned Order"] passed by the learned CCJ-cum-ARC (Central), Tis Hazari Courts, Delhi with respect to the premises i.e., property bearing no. 3772, Gali Ram Nath Patwa, Pahar Ganj, New Delhi [hereinafter referred to as "subject premises"]. By the Impugned Order, the leave to defend Application filed by the Petitioner has been dismissed.
>
> 8. Learned Counsel for the Petitioner submits that the Impugned Order suffers from an infirmity. It is submitted that the Respondent is not the owner of the subject premises. In addition, it is submitted that the

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need as projected by the Respondent is not bonafide.

9. The record reflects that the Petitioner admits that he is the tenant, he however states that the Respondent is not the owner of the subject premises. The learned Trial Court has dealt with this objection in the Impugned Order and has found that the Respondent has provided the entire chain of documents with respect to her ownership. The Respondent was found to have received the subject premises on a transfer from her predecessor-in-interest. The law on this aspect is well settled. All that the landlord has to prove is a better title than the tenant to seek his eviction from the subject premises under Section 14(1)(e) of the Delhi Rent Control Act, 1958 [hereinafter referred to as "the Act"]. Reliance is placed on ***Shanti Sharma v. Ved Prabha[(1987) 4 SCC 193]*** in this regard.

10. The learned Trial Court has given a finding that the Respondent is a co-owner of the subject premises, and thus is the landlord.

11. On the aspect of *bona fide* need, the need as projected by the Respondent is for her own residence. There was no challenge on this aspect by the Petitioner, none is submitted before this Court either. So far as concerns the availability of alternate suitable accommodation, the learned Trial Court has given a finding that no details of the suitable alternate accommodation have been provided and merely a bare reference has been made that there is an alternate accommodation available with the Respondent/landlord. The Courts have settled the law on this aspect as well.

11.1 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. This has been elucidated by the Supreme Court in ***Shiv Sarup Gupta* v. *Mahesh Chand Gupta[(1999) 6 SCC 222],*** which 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 compared to the tenanted accommodation from which the landlord seeks eviction of the tenant. The relevant extract of ***Shiv Sarup*** case is extracted below:

> *"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***

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> ***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]
>
> 11.2 As stated above, the alternate accommodation as provided has to be alternate as well as suitable to the Respondent. Since, no details have been provided, the challenge of the Petitioner on this aspect has been repelled by the learned Trial Court. *Prima facie*, this Court finds no infirmity with the same.
>
> 12. For reasons as stated above, this Court finds no reason to stay the execution proceedings of Impugned Order. Accordingly, CM Appl.2199/2025 is dismissed."

3. On 15.01.2025, this Court had recorded a *prima facie* view that there is no infirmity with Impugned Order and dismissed the application for stay on the operation of the Impugned Order filed by the Petitioner/tenant. Thereafter, the learned Counsel for the Petitioner/tenant had requested for some time take instructions.

4. The Respondent/landlord has entered appearance today.

5. Learned Counsel for the Petitioner/tenant has once again made submissions in challenge to the Impugned Order. Learned Counsel for the Petitioner/tenant today submits that the Impugned Order suffers from an infirmity as the landlord-tenant relationship is denied. As is recorded above, paragraph 8 of the order dated 15.01.2025 records that the challenge made

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on that date was to the ownership of the Respondent/landlord over the subject premises.

5.1 In addition, learned Counsel for the Petitioner/tenant also seeks to rely upon a memorandum of understanding executed between the Respondent/landlord and other co-owners of the subject premises to submit that this memorandum is required to be examined by the Court. Lastly, it is contended by the learned Counsel for the Petitioner/tenant that the Petitioner is not the tenant of the Respondent/landlord but of some third party.

6. Learned Counsel for the Respondent/landlord makes two submissions. In the first instance, it is submitted that new submissions are being made by the Petitioner/tenant before this Court which were not raised before the learned Trial Court. It is further contended that the Petitioner/tenant had admitted to being a tenant in another legal proceedings.

7. In addition, learned Counsel for the Respondent/landlord submits that the predecessor-in-interest i.e., the mother of the Respondent/landlord had purchased part of the subject premises by virtue of sale deed and another part by way of a gift deed. Subsequently, on the demise of the mother of the Respondent/landlord, the legal representatives of the mother of the Respondent/landlord entered into a family arrangement basis on which the Respondent/landlord has become the owner. Thus, it is stated that the Respondent/landlord is an owner by virtue of the family settlement as well as based on registered documents.

8. On the aspect of landlord-tenant relationship and ownership of the

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subject premises, the learned Trial Court had examined the entire chain of ownership through which the Respondent/landlord had obtained title over the subject premises and has held that the Respondent/landlord has clearly derived co-ownership in the subject premises and that the Petitioner is a tenant of the Respondent/landlord.

8.1. Further, the contention of the Petitioner/tenant that one Sh. Mohanlal had inducted the father of the Petitioner as tenant in the subject premises was also examined by the learned Trial Court and it was held that once the sale deed in favour of Sh. Mohanlal was cancelled subsequently, Sh. Mohanlal could not have retained any right over the subject premises.

8.2 A Coordinate Bench of this Court in the judgment of ***M.R. Sahni v. Dorris Randhawa***[1], which was also referred to and relied upon in the judgment of ***Hari Gopal Manu v. B.S. Ojha***[2], has held that a tenant continues to remain a tenant unless there is change in status by contract or by operation of law. The relevant extract of the ***M.R. Sahni*** case is reproduced below:

> *"12. What are the consequences of a suit for ejectment suffering a dismissal in default? Does the tenant become a tenant in perpetuity? Does he become the owner of the tenanted premises? Does the landlord loose the right to regain possession for all times to come?*
>
> *13.* ***Ex facie, once a tenant always remains a tenant unless the status changes by contract or by operation of law****."*
>
> [Emphasis Supplied]

9. The Petitioner/tenant, in the first instance, has submitted that the Respondent/landlord is not the owner of the subject premises. Thereafter, it

[1] 2008 SCC OnLine Del 268
[2] 2016 SCC OnLine Del 985

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has been contended that the Petitioner is not the tenant. However, clearly from an examination of the paragraph 2 of the leave to defend/contest Application, the Petitioner/tenant has admitted to being a tenant. The relevant extract of the leave to defend/contest application is reproduced below:

> *"2.* ***That the father of the respondent is/was under the tenancy of Late Mohan Lal Khandelwal. That the Late Mohan Lal Khandelwal was the landlord/owner of the suit property in question. The rent receipt filed by the petitioner in the present petition as admitted.****"*
>
> [Emphasis Supplied]

9.1. The provisions of Section 116 of the Evidence Act, 1872/Section 122 of The Bharatiya Sakshya Adhiniyam, 2023 provides for an estoppel on a tenant to challenge the ownership of a landlord. Section 116 of the Evidence Act, 1872 is reproduced below:

> *"116. Estoppel of tenants and of licensee of person in possession. — No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession there of shall be permitted to deny that such person had a title to such possession at the time when such licence was given."*

9.2 The Supreme Court in the case of ***Bansraj Laltaprasad Mishra v. Stanley Parker Jones,***[3] has held that where a person has been brought into possession as a tenant by the landlord and if such tenant is permitted to question the title of the landlord, it will give rise to extreme confusion in the matter of relationship of the landlord and tenant and hence the equitable principle of estoppel has been incorporated by the legislature.

[3] **(**2006) 3 SCC 91

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The relevant extract of the ***Bansraj Laltaprasad Mishra case*** is reproduced below:

> *"13.* ***The underlying policy of Section 116 is that where a person has been brought into possession as a tenant by the landlord and if that tenant is permitted to question the title of the landlord at the time of the settlement, then that will give rise to extreme confusion in the matter of relationship of the landlord and tenant and so the equitable principle of estoppel has been incorporated by the legislature in the said section.***
>
> *14. The principle of estoppel arising from the contract of tenancy is based upon a healthy and salutary* ***principle of law and justice that a tenant who could not have got possession but for his contract of tenancy admitting the right of the landlord should not be allowed to launch his landlord in some inequitable situation taking undue advantage of the possession that he got and any probable defect in the title of his landlord****. It is on account of such a contract of tenancy and as a result of the tenant's entry into possession on the admission of the landlord's title that the principle of estoppel is attracted.*
>
> ***15. Section 116 enumerates the principle of estoppel which is merely an extension of the principle that no person is allowed to approbate and reprobate at the same time****."*
>
> [Emphasis Supplied]

9.3 It is also settled law that the Petitioner/tenant cannot be allowed to approbate and reprobate with his contentions. The subject matter of examination before this Court is the grounds taken by the Petitioner/tenant in his Application for leave to defend/contest. Those, as stated above, have already been examined by the learned Trial Court and the Respondent/landlord has been found entitled to an eviction order.

10. It is also settled law that a title dispute cannot be adjudicated by this Court in rent revision petition. The Supreme Court in ***Kanaklata Das v. Naba Kumar Das***[4], has held that the question of title to a premises is not

[4] (2018) 2 SCC 352

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germane to the decision of the eviction suit.

> *"11.1. First, in an eviction suit filed by the plaintiff (landlord) against the defendant (tenant) under the State Rent Act, the landlord and tenant are the only necessary parties. In other words, in a tenancy suit, only two persons are necessary parties for the decision of the suit, namely, the landlord and the tenant.*
>
> *xxx xxx xxx xxx xxx*
>
> ***11.3. Third, the question of title to the suit premises is not germane for the decision of the eviction suit. The reason being, if the landlord fails to prove his title to the suit premises but proves the existence of relationship of the landlord and tenant in relation to the suit premises and further proves existence of any ground on which the eviction is sought under the Tenancy Act, the eviction suit succeeds.*** *Conversely, if the landlord proves his title to the suit premises but fails to prove the existence of relationship of the landlord and tenant in relation to the suit premises, the eviction suit fails. (See Ranbir Singh v. Asharfi Lal [Ranbir Singh v. Asharfi Lal, (1995) 6 SCC 580] .)*
>
> *11.4. Fourth, the plaintiff being a dominus litis cannot be compelled to make any third person a party to the suit, be that a plaintiff or the defendant, against his wish unless such person is able to prove that he is a necessary party to the suit and without his presence, the suit cannot proceed and nor can be decided effectively. In other words, no person can compel the plaintiff to allow such person to become the co-plaintiff or defendant in the suit. It is more so when such person is unable to show as to how he is a necessary or proper party to the suit and how without his presence, the suit can neither proceed and nor it can be decided or how his presence is necessary for the effective decision of the suit. (See Ruma Chakraborty v. Sudha Rani Banerjee [Ruma Chakraborty v. Sudha Rani Banerjee, (2005) 8 SCC 140] .)*
>
> *xxx xxx xxx xxx xxx*
>
> *11.6. Sixth, if there are co-owners or co-landlords of the suit premises then any co-owner or co-landlord can file a suit for eviction against the tenant. In other words, it is not necessary that all the owners/landlords should join in filing the eviction suit against the tenant. (See Kasthuri Radhakrishnan v. M. Chinniyan [Kasthuri Radhakrishnan v. M. Chinniyan, (2016) 3 SCC 296 : (2016) 2 SCC (Civ) 331] .)*
>
> *xxx xxx xxx xxx xxx*
>
> *13. In our considered opinion, Respondent 1, who claims to be the co-sharer or/and co-owner with the plaintiff-appellants herein of the suit property is neither a necessary and nor a proper party in the eviction suit of the*

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appellants against Respondents 2 to 5. In other words, such eviction suit can be decreed or dismissed on merits even without the impleadment of Respondent 1."

[Emphasis Supplied]

10.1 In addition, the Supreme Court in the case of ***Tribhuvanshankar vs Amrutlal***[5] has held that in case where a landlord initiates eviction proceedings against the tenant based on landlord-tenant relationship the scope of the proceedings are very limited and the question of title cannot be adjudicated. It was further observed therein that all that the Court has to do is to satisfy itself that the person seeking eviction is a landlord, who has prima facie right to receive the rent of the property in question. In order to decide whether denial of landlord's title by the tenant is bona fide the Court may have to go into tenant's contention on the issue but the Court is not to decide the question of title finally as the Court has to see whether the tenant's denial of title of the landlord is bona fide in the circumstances of the case. The relevant extract is set out below:

"28. At this juncture, we may fruitfully refer to the principles stated in Ranbir Singh v. Asharfi Lal [(1995) 6 SCC 580]. In the said case the Court was dealing with the case instituted by the landlord under the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 for eviction of the tenant who had disputed the title and the High Court had set aside the judgment and decree of the courts below and dismissed the suit of the plaintiff seeking eviction. ***While adverting to the issue of title the Court in Ranbir Singh [(1995) 6 SCC 580] ruled that in a case where a plaintiff institutes a suit for eviction of his tenant based on the relationship of the landlord and tenant, the scope of the suit is very much limited in which a question of title cannot be gone into because the suit of the plaintiff would be dismissed even if he succeeds in proving his title but fails to establish the privity of contract of tenancy. In a suit for eviction based on such relationship the court has only to decide whether the defendant is the tenant of the plaintiff or not, though the question of title if disputed, may***

[5] (2014) 2 SCC 788

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incidentally be gone into, in connection with the primary question for determining the main question about the relationship between the litigating parties.

29. In the said case the learned Judges referred to the authority in LIC v. India Automobiles & Co. [(1990) 4 SCC 286] wherein the Court had observed that: (Ranbir Singh case [(1995) 6 SCC 580] , SCC pp. 585-86, para 9)

> *"9. ... in a suit for eviction between the landlord and tenant, the Court will take only a prima facie decision on the collateral issue as to whether the applicant was landlord. If the Court finds existence of relationship of landlord and tenant between the parties it will have to pass a decree in accordance with law. It has been further observed therein that all that the Court has to do is to satisfy itself that the person seeking eviction is a landlord, who has prima facie right to receive the rent of the property in question. In order to decide whether denial of landlord's title by the tenant is bona fide the Court may have to go into tenant's contention on the issue but the Court is not to decide the question of title finally as the Court has to see whether the tenant's denial of title of the landlord is bona fide in the circumstances of the case."*
>
> [Emphasis Supplied]

11. The *bona fide* need as set out by the Respondent/landlord in the Eviction Petition is for her own residence. On this aspect learned Trial Court has held that the Respondent/landlord being the co-owner of the subject premises cannot be stopped from using the subject premises just because the subject premises is in possession of the tenant. The Petitioner/tenant was not able to controvert the *bona fide* need of the Respondent/landlord before this Court.

12. So far as concerns the availability of alternate suitable accommodation with the Respondent/landlord it has been held by the learned Trial Court that the Petitioner/tenant had only made a reference that there is alternate suitable accommodation available with the

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Respondent/landlord, however, no details as such have been provided by the Petitioner/tenant.

12.1. A Coordinate Bench of this Court in the case of ***Lalta Prasad Gupta v. Sita Ram***[6], has held that for a tenant to seek leave to defend on the ground that the alternate suitable accommodation is available with the landlord then 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 evidence and a totally vague, bereft of any particulars plea. Where, in between the said onus lies, depends on facts of each case.*** *"*
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> [Emphasis Supplied]

[6] 2017 SCC OnLine Del 13026

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13. The jurisdiction of this Court is only revisionary in nature and limited in scope. The Supreme Court in ***Abid-Ul-Islam v. Inder Sain Dua***[7] 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***:***

> *"Scope of revision*
>
> *22. We are, in fact, more concerned with the scope and ambit of the proviso to Section 25-B(8). The proviso creates a distinct and unequivocal embargo by not providing an appeal against the order passed by the learned Rent Controller over an application filed under sub-section (5). The intendment of the legislature is very clear, which is to remove the appellate remedy and thereafter, a further second appeal. It is a clear omission that is done by the legislature consciously through a covenant removing the right of two stages of appeals.*
>
> *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***

[7] (2022) 6 SCC 30

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> ***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 xxx xxx xxx xxx*
>
> *25…****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]

14. The learned Trial Court has examined the contentions as raised by the Petitioner/tenant and has found that no triable issue has been raised. The examination by this Court does not show anything to the contrary. As stated above, the revisionary jurisdiction of this Court is limited and circumspect. All that the Court is required to examine, in terms of the judgment of the Supreme Court in ***Abid-ul-Islam*** case, is whether there is absence of adjudication for interference by this Court or any error apparent on the face of the record. This Court finds that no ground for interference has been made out by the Petitioner/tenant.

15. In view of the discussions above, this Court finds no merit in the present Petition. The Petition is accordingly dismissed. Pending Application also stand closed.

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

TARA VITASTA GANJU, J

FEBRUARY 20, 2025/ *ha*

Click here to check corrigendum, if any

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