$~49

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

Date of Decision: 22.01.2025

\+ **RC.REV. 25/2025**

SHRI RAVI ARORA .....Petitioner

Through: Mr. Sudhir Nandrajog, Sr. Adv. with Mr. P.K. Rawal, Mr. Tarun Agarwal, Ms. Ankita Singh and Mr. Akhil Singh, Advs.

versus

SHRI VIJAY SHANKER .....Respondent

Through: Ms. Kamlakshi Singh and Mr. Pankaj Kumar Mishra, Advs.

CORAM:
HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

CAV 35/2025 ***[caveat]***

1. Since there is an appearance on behalf of the Respondent, the caveat stands discharged.

CM Appl.3912/2025***[Exemption from filing certified copies]***

2. Allowed, subject to the Petitioner filing certified copies within a period of four weeks.

3. The Application stands disposed of.

CM Appl.3913/2025***[Seeking condonation of delay in re-filing]***

4. This is an Application filed on behalf of the Petitioner seeking condonation of delay of 34 days in re-filing the present Petition.

5. For the reasons as stated in the Application, the delay is condoned.

6. The Application is accordingly allowed.

7. The present Petition has been filed on behalf of the Petitioner impugning the order dated 29.07.2024 [hereinafter referred to as "Impugned Order"] passed by the learned SCJ-cum-RC (Central), Tis Hazari Courts, Delhi with respect to the premises i.e., shop no. 37/15, Ground Floor, Vijay Market Main Bazar, Paharganj, New Delhi-110055 as specifically shown in the red colour in the site plan attached with the Eviction Petition [hereinafter referred to as "subject premises"], By the Impugned Order, the leave to defend Application filed by the Petitioner has been dismissed.

8. Learned Senior Counsel for the Petitioner raises one contention. He submits that the requirement as projected by the Respondent was for expansion of his business requiring 100 sq. yds. (approximately) for this purpose.

8.1 Learned Senior Counsel for the Petitioner submits that after the passing of the Impugned Order, the Eviction Orders have also been passed with respect to four other premises in the same building and that those orders will translate into sufficient space for the Respondent. He thus submits that in view of the subsequent event, the need as projected by the Respondent does not prevail.

8.2 Learned Senior Counsel for the Petitioner seeks to rely upon the judgment of the Supreme Court in ***Hasmat Rai v. Raghunath Prasad***[1]to state that the requirement must exist on the date of the decree before the Court and the landlord must be able to show his requirement when the action commenced and during the pendency of the Appeal. Relying on the said judgment, it is further contended that once an Appeal against the decree or

[1] (1981) 3 SCC 103

order of eviction is preferred, the Appeal being a continuation of suit, the landlord's need must be shown to continue to exist at appellate stage.

9. Learned Counsel for the Respondent, on caveat, in the first instance submits that the Impugned Order does not suffer from any infirmity. The Petitioner has raised multiple objections in the leave to defend Application and all these objections were dealt with by the Respondent. She further submits that the grounds being stated by the Petitioner today are new and subsequent events and that appropriate proceedings to take these documents/grounds have not been placed on record.

10. Without prejudice to the aforesaid contention, it is contended by learned Counsel for the Respondent that the contentions made by the Petitioner are devoid of merit. Relying on the site plan which is annexed along with Eviction Petition, it is contended that even if it was to be taken into consideration, the four shops which are being vacated i.e., Shop Nos. 3 and 4 on the ground floor and 1 and 2 on the first floor as can be seen from map (a copy of the same is available on page 446 of the case file), the requirement of the Respondent is not fulfilled at all.

10.1 Learned Counsel for the Respondent submits that Shop Nos. 3, 4, 1 and 2 altogether would approximately only provide for 26 sq. yds. and of these, Shop Nos. 1 and 2 will be available only on 31.03.2025. Thus, it is contended that the *bona fide* need does in fact persist.

11. The Impugned order shows that the Petitioner raised several objections before the learned Trial Court. Although, the tenancy was admitted, the ownership of the Respondent was challenged, however the learned Trial Court after examining the same found that the Respondent is co-owner of the subject premises, thus this challenge was not sustained. The

other objections on the applicability of the Slums Area (Improvement and Clearance) Act, 1956/non-joinder of the parties was also taken into consideration and in the opinion of this Court rightly rejected by the learned Trial Court.

12. As stated above, the *bona fide* need as stated by the Respondent is for his son who wants to set-up an export garment business and he does not have adequate space. The objection taken by the Petitioner before the learned Trial Court was that the Respondent has no experience to set up his business. It is settled law that the landlord is not required to show his experience. In the case of ***M/s Seth & Sons Pvt. Ltd. v. Arjun Uppal & Anr.***[2]**,** *a* Coordinate Bench of this Court has held that the landlord is not required to show any evidence of having prior experience in running the business and further it is not necessary for the landlord to indicate the precise nature of the business which the landlord intends to start in the premises. The relevant extract of the ***M/s Seth & Sons case*** is reproduced below:

> ***"20.*** *The next plea raised by the petitioner is that the respondent No. 1 does not have experience in running a restaurant. It is true that in his cross-examination PW-1, namely, Respondent No. 1 admits that he does not have experience of running/having worked in a restaurant business. However, prior experience in running of a business is not necessary prior to filing of an Eviction Petition. This aspect has no bearing on the bona fide of the requirement. Reference may be had to the judgment of the Supreme Court in Ram Babu Agarwal v. Jay Kishan Das (2010) 1 SCC 164 where it was held as follows:—*
>
> > *"6. However, as regards the question of bona fide need, we find that the main ground for rejecting the landlord's petition for eviction was that in the petition the landlord had alleged that he required the premises for his son Giriraj who wanted to do footwear business in the premises in question. The High Court has*

[2] 2017 SCC OnLine Del 10955

held that since Giriraj has no experience in the footwear business and was only helping his father in the cloth business, hence there was no bona fide need.

7. We are of the opinion that a person can start a new business even if he has no experience in the new business. That does not mean that his claim for starting the new business must be rejected on the ground that it is a false claim. Many people start new businesses even if they do not have experience in the new business, and sometimes they are successful in the new business also. Hence, we are of the opinion that the High Court should have gone deeper into the question of bona fide need and not rejected it only on the ground that Giriraj has no experience in footwear business."

21. *This court in Puran Chand Aggarwal v. Lekh Raj, 210 (2014) DLT 131 held as follows:*

"26. As far as business is concerned, it is not necessary that the landlord must show some evidence that he has experience of said business. That is not the requirement of law in order to file the eviction petition on the grounds of bonafide requirement.

27. The following judgments do help the case of the respondent:

Start new business/no experience required

(i) In Ram Babu Agarwal v. Jay Kishan Das, (2010) 1 SCC 164, it was observed that "A person can start a new business even if he has no experience in the new business that does not mean that his claim for starting new business must be rejected on the ground that it is a false claim. Many people start new businesses even if they do not have experience in the new business and sometimes they are successful in the new business also."

(ii) In Tarsem Singh v. Gurvinder Singh, 173 (2010) DLT 379, it was observed that "If the landlord wants to start his own business in the premises owned by him then by no stretch of imagination, it can be said that the requirement of the landlord for the premises is neither bonafide nor genuine."

(iii) In Balwant Singh Chowdhary v. Hindustan Petroleum Corporation Ltd., 2004 (1) RCR 487, it was held that "It is not necessary for the landlord to plead and prove the specific business he wants to set up, if the landlord wanted the premises for business purposes."

(iv) In Gurcharan Lal Kumar v. Srimati Satyawati, 2013 (2) RCR (Rent) 120 it was observed that "Merely because the exact nature of business has not been described would not take away their bonafide need to carry out a business (when admittedly both the sons are dependent upon petitioner for this need). It was observed that if the business need is not disclosed this would not wipe away the bonafide need of the landlord as has been pressed under Section 14(1)(e) of the DRCA, 1958."

(v) In Raj Kumar Khaitan v. Bibi Zubaida Khatun, (1997) 11 SCC 411 : AIR 1995 SC 576, it was observed that "It was not necessary for the appellants-landlords to indicate the precise nature of the business which they intended to start in the premises. Even if the nature of business would have been indicated nobody would bind the landlords to start the same business in the premises after it was vacated."

***22.** Hence, the legal position is quite clear**. <u>The landlord need not show evidence that he has experience of said business. It is not necessary for landlord to indicate the precise nature of business which he intends to start in the premises. There is no merit in the contention of the petitioner that the need for starting a restaurant is not bonafide requirement. Hence, there is no merit in the said plea of the petitioner</u>**."*

[Emphasis Supplied]

13. On the aspect of availability of alternate suitable accommodation, as discussed above, no alternate accommodation was shown to be available before the learned Trial Court. However, before this Court, the Petitioner has agitated the availability of four additional shops. This contention has also been dealt with as set out in paragraphs 10 and 10.1 above.

14. The examination by a Court in a Revision Petition is limited and circumspect. The Supreme Court in ***Abid-ul-Islam v. Inder Sain Dua***[3], has held that the jurisdiction of this Court is only revisionary in nature and limited in scope. The Supreme Court while interpreting the intendment of the legislature in removing two stages of Appeal that were earlier provided

[3] (2022) 6 SCC 30

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 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:

> *"**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 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*

> *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]

15. Concededly, the objections raised by the Petitioner were not raised by him before the learned Trial Court. Thus, in effect, what has been sought to be placed before this Court is a subsequent event. The law on subsequent event is also well settled. The Supreme Court has in ***Gaya Prasad v. Pradeep Srivastava***[4] held that the crucial date for considering the need of the Respondent is the date, the Eviction Petition was filed.

[4] (2001) 2 SCC 604

15.1 In addition, this Court has in ***Arvinder Singh v. Urmila Bali***[5] while relying on the judgment of the Supreme Court in ***Gaya Prasad*** case has cautioned that the cognizance of subsequent events should be taken with care. It was held that since the process of litigation is slow, by the time the litigation reaches its final stages, there are likely to be several subsequent events, however, only those events which would completely overshadow the genuineness of the landlord's requirement should be considered as subsequent events. The relevant extract is as follows:

> *"5. The Supreme Court has in **Gaya Prasad v. Pradeep Srivastava** held that the date for considering the need of the Respondent/landlord is the date, the Eviction Petition was filed. However, and for an event to be considered by the Court as a subsequent event, it should be such that it would extinguish/eclipse the bona fide need of the Respondent/landlord entirely.*
>
> *5.1 This Court has in **Laxmi Narain and Others v. Vishal Moondhra and Others** while relying on the judgment of the Supreme Court in **Gaya Prasad** case held as follows:*
>
> > *"13. The Gaya Prasad case [Gaya Prasad v. Pradeep Srivastava, (2001) 2 SCC 604 : AIR 2001 SC 803] **has held that crucial date for considering the bona fide need of the landlord is the date the petition was filed.** Reliance is placed on the following extract: (SCC p. 609, paras 10 and 11)*
> >
> > > *"10. **We have no doubt that the crucial date for deciding as to the bona fides of the requirement of the landlord is the date of his application for eviction**. The antecedent days may perhaps have utility for him to reach the said crucial date of consideration. **If every subsequent development during the post-petition period is to be taken into account for judging the bona fides of the requirement pleaded by the landlord there would perhaps be no end so long as the unfortunate situation in our litigative slow process system subsists.…***
> >
> > *11.We cannot forget that while considering the bona*

[5] (2024) SCC OnLine Del 9410

fides of the need of ***the landlord the crucial date is the date of petition.*** *In Ramesh Kumar v. Kesho Ram [Ramesh Kumar v. Kesho Ram, 1992 Supp (2) SCC 623] a two-Judge Bench of this Court (M.N. Venkatachalia, J., as he then was, and N.M. Kasliwal, J.) pointed out that the normal rule is* ***that rights and obligations of the parties are to be determined as they were when the lis commenced and the only exception is that the court is not precluded from moulding the reliefs appropriately in consideration of subsequent events provided such events had an impact on those rights and obligations….***

(emphasis supplied)

13.1. Admittedly, at the time of filing of the eviction petition, there was no other commercial accommodation available with the respondents landlords that was suitable for their respective businesses.

[Emphasis supplied]

5.2 In the ***Laxmi Narain*** *case, while relying on the settled law of the Supreme Court, this Court also cautioned that cognizance of subsequent events should be taken with care. Since, the process of litigation is slow, by the time the litigation reaches its final stages, there are likely to be several subsequent events. However, only those events which would completely overshadow the genuineness of the landlord's requirement should be considered as subsequent events. The relevant extract is below:*

"14.1. ***Usually, the bona fide need of a landlord is required to be substantiated at the time of filing of the petition. However, if a subsequent event significantly eclipses the bona fide need, it will be required to be taken into account****. This principle is supported by the decision in Gaya Prasad case [Gaya Prasad v. Pradeep Srivastava, (2001) 2 SCC 604 : AIR 2001 SC 803] which states: (SCC p. 610, para 13)*

"13. In our opinion, the ***subsequent events to overshadow the genuineness of the need must be of such nature and of such a dimension that the need propounded by the petitioning party should have been completely eclipsed by such subsequent events****. A three-Judge Bench of this Court* ***in Pasupuleti Venkateswarlu v. Motor & General Traders [Pasupuleti Venkateswarlu*** *v. Motor & General Traders, (1975) 1 SCC 770] which pointed to the need for remoulding the reliefs on the strength of subsequent events* ***affecting the cause of action in the field of rent control***

litigation, forewarned that cognizance of such subsequent events should be taken very cautiously*. This is what learned Judges of the Bench said then: (SCC pp. 772-73, para 4)*

> *'4. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed'....*
>
> *(emphasis supplied)"*

14.2. The Supreme Court in the Gaya Prasad case relying on the Pasupuleti Venkateswarlu case, has however cautioned that in the field of rent control litigation, ***cognizance of subsequent events should be taken with care so that the rules of fairness are available to both parties.***

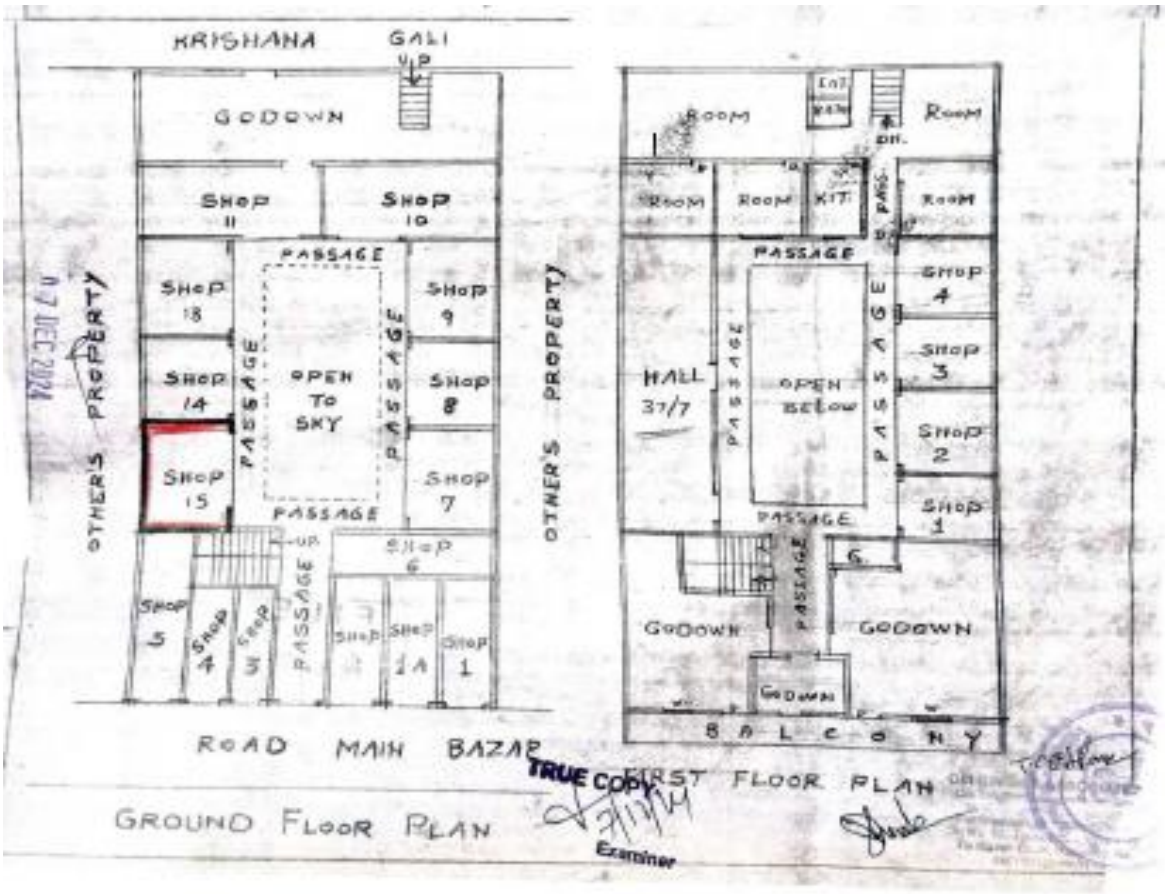
14.3. ***Since the process of litigation is slow, by the time the litigation reaches its final stages, there are likely to be several subsequent events. However, only some are "subsequent" events of such nature, that would completely overshadow the genuineness of a landlord's requirement****."*

[Emphasis supplied]

6. The Petitioner has relied upon the ***Kedar Nath Agarwal*** *case in support of his contention that subsequent events are required to be taken into consideration by the Courts. It has further been contended that the* ***Gaya Prasad*** *case is not good law. The contentions of the Petitioner are misconceived. In* ***Kedar Nath Agarwal*** *case, the applicant for whom the Eviction Petition was filed was no longer alive, and as such the subsequent event was relevant. In addition, the judgment in the* ***Kedar Nath Agrawal*** *case from paragraph 29 onwards also discusses the legal position in* ***Pasupuleti Venkateswarlu v. Motor and General Traders****, and* ***Hasmat Rai v. Raghunath Prasad*** *judgments. However, the Supreme Court in* ***Kedar Nath Agrawal*** *case while discussing* ***Gaya Prasad*** *case, distinguishes the* ***Gaya Prasad*** *case on its facts. In any event, the judgment in the* ***Kedar Nath Agrawal*** *case would not be applicable to the present case in view of the fact that the bona fide need of the Respondent/landlord for his son still subsists. Thus, the reliance placed upon this case by the Petitioner is without merit."*

[Emphasis supplied]

16. A perusal of the site plan which is on record shows that what is in the possession of the Petitioner are large shops whereas what has been vacated are smaller shops in area. It is apposite to extract the site plan which is reproduced below:



17. For the reasons as stated above, this Court finds no ground to interdict the Impugned Order. CM Appl.3911/2025 is accordingly dismissed.

18. At request of the learned Senior Counsel for the Petitioner, list on 24.01.2025.

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

TARA VITASTA GANJU, J

JANUARY 22, 2025/r *Click here to check corrigendum, if any*