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

*Date of Decision: 31.01.2025*

+ **RC.REV. 218/2024 & CM APPL. 46833/2024**

MR. GIRDHAR TOLANI

.....Petitioner

Through: Mr. Varun Tyagi, Mr. Bharat Gupta,  
Mr. Yugal Chaudhary and Mr.  
Saurabh Khanijon, Advocates with  
Petitioner in person.

versus

MR. SATBHUSHAN ARORA

.....Respondent

Through: Mr. Alok Sinha and Mr. Aakash  
Saini, 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 on behalf of the Petitioner/landlord impugning the order dated 28.05.2024 [hereinafter referred to as "Impugned Order"] passed by the learned SCJ-cum-RC (West), Tis Hazari Court, Delhi. By the Impugned Order, the Leave to Defend/Contest Application filed by the Respondent/tenant has been allowed and the matter has been posted for trial.

2. This Court on the last date of hearing after examining the Impugned Order dated 28.05.2024, had *prima facie* found the same to be erroneous. The relevant extract of the order dated 30.01.2025 is set out below:

“ ...

6. *This Court has examined the pleadings of the parties. The need as set out in the Eviction Petition is for the wife of the*



*Petitioner/landlord, who retired as a bank manager from the Bank of Baroda and has also trained in Palmistry, to set up her own office to pursue a career in palmistry from the subject premises. This need cannot be said to be a wishful need.*

6.1. A Coordinate Bench of this Court in the case of **Babu Lal v. Ashok Kumar**; 2024 SCC OnLine Del 2536, has held that merely on account of old age, a person cannot be deprived of the right to livelihood and the consequent right to live with dignity. The relevant extract of the **Babu Lal** case is reproduced below:

*11. Then comes the stand taken on behalf of the present petitioner that looking into the age and health of the present respondent, it is not believable that he would carry out any business from the subject premises, if the same are vacated. In the impugned order, the learned Additional Rent Controller has correctly rejected this argument. **The bona fides of the requirement set up by the landlord cannot be shrouded with doubts on such presumptive arguments. Merely because the landlord suffers old age and frail health, it cannot be presumed that he does not require the tenanted premises to run his business or is not capable to earn livelihood.** There is nothing on record to even feebly suggest that the present respondent is completely bedridden and/or being taken care of financially by his son engaged in the independent business. The surrender of the Bawana plot by the present respondent was because of long distance between Bawana and the place of residence of the present respondent. But that cannot be read to mean that he is incapable of earning his livelihood through business from the subject premises. **Merely on account of old age and frail health, a person cannot be deprived of right to livelihood and the consequent right to live with dignity.***

6.2 *The need of a person to set up a business post-retirement is not a wish or a desire but a bonafide need. Over the several decades, with the average Indian lifespan exceeding 75 years of age, the need for doing a business or keeping oneself occupied in their old age cannot be considered to be whimsical. Studies have shown that encouraging people after retirement and in old age to engage in business not only supports their mental and emotional well-being by keeping them intellectually active but also enhances their financial stability through additional income opportunities. Such involvement instills a sense of purpose and fulfilment, reducing the risks of isolation and depression that often accompany this stage of life. The finding of the learned Trial Court on this aspect is thus rejected.*



7. On the aspect of alternate suitable accommodation, the learned Trial Court has given a finding that Shop Nos. 5, 6 and 7 are available in the same building as that of the subject premises [hereinafter referred to as "Shop No.5/6/7"] with the Petitioner/landlord as alternate premises. The Impugned Order directed that since Shop Nos.5 and 6 were given on rent during the Eviction proceedings, alternate suitable accommodation is available with the Petitioner/landlord.

8. Learned Counsel for the Petitioner/landlord has taken the Court through pleadings in the matter. The Eviction Petition clearly sets out averments in relation to Shop Nos.5, 6 and 7 and hence the same have not been concealed as they form part of the Eviction Petition.

8.1 Secondly, the Eviction Petition individually discussed how neither shop/premises are available. So far as concerns the Shop No.7, the Petitioner/landlord has stated in the Eviction Petition that the same is being used by the Petitioner/landlord and son of his deceased brother (both of whom are co-owners of the shop) for running a small office of property dealing and consultancy. So far as concerns the Shop Nos.5 and 6, the Eviction Petition sets out that both the shops are co-owned, and that Shop No.6 has been rented out to Sai Motors, thus this shop is clearly not available. So far as concerns Shop No.5, it has been given on rent by the co-owner to supplement his income. It is stated in the Eviction Petition that the co-owner of the Petitioner/landlord does not have sufficient income, and thus, the Shop No.5 has been given on rent.

9. In order for an accommodation to be available to a landlord, it has to be alternate, suitable and also available. If a premises is already under tenancy or being utilized by a party, then it can neither be said to be available nor to be suitable. The Supreme Court in explaining the concept of alternate suitable accommodation in the case of **Shiv Sarup Gupta v. Mahesh Chand Gupta**; (1999) 6 SCC 222 has held that for an Eviction Petition to fail on the ground of availability of alternate suitable accommodation, the availability of another accommodation must be suitable and convenient in all respects as the tenanted accommodation from which the landlord seeks eviction of the tenant. This Court in the case of **Shakuntala Devi v. Mohan Das** 2024 SCC OnLine Del 8514 has held that whenever another accommodation is shown to exist as available, the Court has to examine as to why the accommodation is not suitable for the landlord. For an alternate accommodation, to deny the claim of the landlord, it must be reasonably suitable and also available. While considering the totality of the circumstances, the Court may also keep in mind the profession or vocation of the landlord and his family



members, their style of living, habits and background. The relevant extract of **Shakuntala Devi** case is below:

“18. The provisions of Section 14(1)(e) of the Act have been provided with care by the legislature, not only is the accommodation to be ‘alternate’, but it is also required to be suitable. The Supreme Court in the **Shiv Sarup Gupta v. Mahesh Chand Gupta** [(1999) 6 SCC 222] has held that for an Eviction Petition to fail on the ground of availability of alternate suitable accommodation, the availability of another accommodation must be suitable and convenient in all respects as the tenanted accommodation from which the landlord seeks eviction of the tenant. It was held that:

“14. The availability of an alternative accommodation with the landlord i.e. an accommodation other than the one in occupation of the tenant wherefrom he is sought to be evicted has a dual relevancy. **Firstly, the availability of another accommodation, suitable and convenient in all respects as the suit accommodation,** may have an adverse bearing on the finding as to the bona fides of the landlord if he unreasonably refuses to occupy the available premises to satisfy his alleged need. Availability of such circumstance would enable the court drawing an inference that the need of the landlord was not a felt need or the state of mind of the landlord was not honest, sincere, and natural. **Secondly, another principal ingredient of clause (e) of sub-section (1) of Section 14, which speaks of non-availability of any other reasonably suitable residential accommodation to the landlord, would not be satisfied. Wherever another residential accommodation is shown to exist as available then the court has to ask the landlord why he is not occupying such other available accommodation to satisfy his need. The landlord may convince the court that the alternative residential accommodation though available is still of no consequence as the same is not reasonably suitable to satisfy the felt need which the landlord has succeeded in demonstrating objectively to exist. Needless to say that an alternative accommodation, to entail denial of the claim of the landlord, must be reasonably suitable, obviously in comparison with the suit accommodation wherefrom the landlord is seeking eviction.** Convenience and safety of the landlord and his family members would be relevant factors. While considering the totality of the circumstances, the court may keep in view the profession or vocation of the landlord and his family members, their style of living, their habits and the background wherefrom they come.”



10. *Once a landlord shows that he has a requirement and there is no alternate suitable accommodation available, the burden of proof shifts on the tenant. Neither in the Leave to Defend/Contest Application nor in the Rejoinder to the Leave to Defend/Contest Application has the Respondent/tenant been able to show that Shop Nos. 5, 6 or is available with the Petitioner/landlord. Thus, this Court, prima facie, finds an infirmity with the Impugned Order.*

11. *At this stage, learned Counsel for the Respondent/tenant requests for some time take instructions...*”

[Emphasis supplied]

3. The Petitioner and the Respondent are physically present in the Court today.
4. After some arguments, learned Counsel for the parties submit that the parties have amicably resolved their disputes.
5. Learned Counsel for the Respondent/tenant submits that the Respondent/tenant will vacate the subject premises on or before 30.11.2025.
6. In view thereof, let an Undertaking by way of an Affidavit be filed by the Respondent/tenant, within a period of one week undertaking that:
  - (i) The Respondent/tenant shall hand over the vacant physical possession of the premises i.e., one shop admeasuring about 70 sq. ft. (7” x 10”) situated at ground floor of property bearing No. B-125, Double Storey, Ramesh Nagar, New Delhi-110015 [hereinafter referred to as “subject premises”].
  - (ii) The vacant, physical and peaceful possession of the subject premises will be handed over by the Respondent/tenant to the Petitioner/landlord on or before 30.11.2025;
  - (iii) The Respondent/tenant undertakes and confirms that the entire subject premises is under his occupation and control;
  - (iv) The Respondent/tenant will pay all the utility bills such as electricity



and water and any other dues, for the subject premises till the date of handing over of the vacant, physical and peaceful possession thereof;

(v) The Respondent/tenant undertakes that he will not create any third-party rights or part with possession of the subject premises and that he shall not damage the subject premises in any manner whatsoever prior to its vacation;

(vi) The Respondent/tenant shall remain bound by the aforesaid Undertaking.

7. An advance copy of the Undertaking shall be served on the Petitioner/landlord.

8. In the event that the Respondent/tenant defaults in complying with the terms of the Undertaking filed, Petitioner/landlord will be at liberty to take recourse to appropriate proceedings including for recovery of possession and for recovery of rental/user and occupation charges, in accordance with law.

9. The Revision Petition is disposed of in the foregoing terms. Pending Application stands closed.

10. List the matter for compliance on 20.02.2025 in the Supplementary list.

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

**TARA VITASTA GANJU, J**

**JANUARY 31, 2025/pa**

*Click here to check corrigendum, if any*