



\$~24 (1)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RC.REV. 118/2021 & CM APPLs. 26953-26955/2021

MOTIWALA AND SONS

.....Petitioner

Through: Mr Salman Khurshid, Senior
Advocate with Ms Vibha Mahajan
Seth and Mr Rishab Gupta,
Advocates.

versus

M/S PLB INFRASTRUCTURE PRIVATE LIMITED Respondent

Through: Mr Saurabh Kirpal, Senior Advocate
with Mr Gaurav Barathi, Mr Manan
Verma and Mr Kartik Bhagat,
Advocates.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **18.08.2021**

The hearing was conducted through video conferencing.

1. The petitioner/tenant has been in possession of the tenanted premises, i.e., Ground Floor, Shop no. 2633, Bank Street, Naiwala Estate, Karol Bagh, New Delhi-110005, for the last almost four decades and is carrying out its jewellery business therefrom. The entire bazaar and this location, in particular, is considered the hub of jewellery trade in the said market.
2. The respondent/landlord, a real-estate company is carrying on its business from the 4th floor of the aforesaid building. It had sought the tenant premises admeasuring approximately 15 x 50 ft, in order to expand the nature of its business activities, by starting a jewellery business. It was the landlord's case that it does not own any other



alternate, vacant property which could be considered as ‘suitable’ for starting a jewellery business; that the premises occupied by the tenant is most suitable for the proposed new enterprise and its locations is indeed most advantageous.

3. The eviction petition was filed in March, 2020. All properties owned by the landlord were enumerated and all were encumbered against the loans taken by the landlord from banks and/or NBFCs. All except one small shop about 6’x8’ in a side street, were rented out. The last letting-out was about nine months prior to the filing of the eviction petition.
4. In its application for leave to defend, the tenant listed a number of properties as alternate accommodation available with the landlord. None of these properties, were found to be owned by the landlord. Therefore, to consider the said properties as an alternate accommodation was a non-starter. Each of the aforesaid properties had been duly considered by the learned Rent Controller in the impugned eviction order as under:

“...Coming to the availability of the alternate suitable accommodations specifically stated by the respondent in the affidavit seeking leave to defend.

S.No.	Property number	Status of the property as per pleadings.
a.	Property bearing municipal no XV12679-80 and 2678/1-4 1 st floor, shop no 117, Diamond Mall, Karol Bagh, New Delhi, measuring 293 sq ft.	The property is not in the name of the petitioner company, its in the name of one of the directors, and its symbolic possession has been taken over by Central Bank of India, hence the property is not available as such.



b.	<i>Property bearing municipal no XV12679-80 and 2678/1-4 1 floor, shop no 117. Diamond Mall, Karol Bagh, New Delhi, measuring 403.60 ft</i>	<i>The property is not in the name of the petitioner company, its in the name of one of the directors and its symbolic possession has been taken over by Central Bank of India, hence the property is not available as such.</i>
c.	<i>Property bearing municipal no XV12679-80 and 2678/1-4 1 floor, shop no 117, Diamond Mall, Karol Bagh, New Delhi, measuring 403.60 ft.</i>	<i>The property is not in the name of the petitioner company, its in the name of one of the directors and its symbolic possession has been taken over by Central Bank of India, hence the property is not available as such.</i>
d.	<i>Part of commercial property bearing no.10409(16-A/81), plot No.8, block WEA, Karol Bagh, app. 900 sq. ft on ground floor.</i>	<i>The property is not in the name of the petitioner company, its in the name of, and its symbolic possession has been taken over by Central Bank of India, hence the property is not available as such.</i>
e.	<i>Part of commercial property bearing no.10409 (16-A/8), Plot No.8, block WEA, Karol Bagh, app. 1950 sq. ft on ground floor</i>	<i>The property is not in the name of the petitioner company, its in the name of, and its symbolic possession has been taken over by Central Bank of India, hence the property is not available as such.</i>
f.	<i>Part of commercial property bearing no.10409 (16-A/8), Plot No.8, block WEA, Karol Bagh, app. 1950 sq. ft on third floor with terrace/roof.</i>	<i>Petitioner company has no concern.</i>
g.	<i>Part of commercial property bearing no.10409 (16-A/8), Plot No.8, block WEA, Karol Bagh, app. 1950 sq. ft on third floor</i>	<i>The property is not in the name of the petitioner company, its in the name of, and its symbolic possession</i>



	<i>with terrace/roof.</i>	<i>has been taken over by Central Bank of India, hence the property is not available as such.</i>
<i>h.</i>	<i>Part of commercial property bearing no.10409 (16-A/8), Plot No.8, block WEA, Karol Bagh, app. 1950 sq. ft on third floor with terrace/roof.</i>	<i>The property is not in the name of the petitioner company, its in the name of, its symbolic possession has been taken over by Central Bank of India, hence the property is not available as such.</i>
<i>i.</i>	<i>Freehold property situated at lower ground/basement floor at M.N.2608, 2613 and 2637, admeasuring total 500 sq. yards, at Block M, Bank Street, Naiwala Estate, Karol Bagh, Delhi</i>	<i>The property is not in the name of the petitioner company, its in the name of one of the directors and its symbolic possession has been taken over by Central Bank of India, hence the property is not available as such.</i>
<i>j.</i>	<i>Freehold property situated at lower ground/basement floor at M.N.2608, 2613 and 2637, admeasuring total 500 sq. yards, at Block M, Bank Street, Naiwala Estate, Karol Bagh, Delhi</i>	<i>The property is not in the name of the petitioner company, its in the name of one of the directors and its symbolic possession has been taken over by Central Bank of India, hence the property is not available as such.</i>
<i>k.</i>	<i>Freehold property situated at lower ground/basement floor at M.N.2608, 2613 and 2637, admeasuring total 500 sq. yards, at Block M, Bank Street, Naiwala Estate, Karol Bagh, Delhi</i>	<i>The property is not in the name of the petitioner company, its in the name of one of the directors and its symbolic possession has been taken over by Central Bank of India, hence the property is not available as such.</i>
<i>l.</i>	<i>Freehold property situated at lower ground/basement floor at M.N.2608, 2613 and 2637, admeasuring total 500 sq. yards, at Block M, Bank Street,</i>	<i>The property is not in the name of the petitioner company, its in the name of one of the directors and its symbolic possession has been</i>



	<i>Naiwala Estate, Karol Bagh, Delhi</i>	<i>taken over by Central Bank of India, hence the property is not available as such.</i>
<i>m.</i>	<i>3347, Christian Colony, Pyarelal Road, Karol Bagh, Delhi</i>	<i>Petitioner company had got no concern, hence not available.</i>
<i>n.</i>	<i>D-28, Ground Floor, Defence Colony, Delhi</i>	<i>Petitioner company had got no concern, hence not available.</i>
<i>o.</i>	<i>Building no.2182, Gali No.62, Karol Bagh, New Delhi</i>	<i>Petitioner company had got no concern, hence not available.</i>
<i>p.</i>	<i>City Centre Mall, Building No.2105, DB Gupta Road, Karol Bagh, Delhi</i>	<i>Petitioner company had got no concern, hence not available.</i>
<i>q.</i>	<i>53/4492, Regarpura, Delhi</i>	<i>Petitioner company had got no concern, hence not available.</i>
<i>R and s</i>	<i>2035, Bank Street, Karol Bagh, Delhi and Shop No.103 and 105, 1 floor, Solitaire Plaza, Gurudwara Road, Karol Bagh, Delhi</i>	<i>Petitioner company had sold off the properties in 2015 and 2016 respectively.</i>
<i>t.</i>	<i>3rd floor, shop no.2633 and 2634, Bank Street, Karol Bagh, Delhi</i>	<i>Petitioner company had got no concern, hence not available.</i>

The respondent had not been able to show that any of the above mentioned property is lying vacant and at the disposal of the petitioner. Even though the respondent had been able to enlist number of properties, however, it is not clear as to how the same can be termed as alternate suitable accommodation, as most of the properties are not owned by the petitioner company. Merely stating the properties is not enough, the respondent had to show that the properties are available to the petitioner and that they are as suitable to meet the bonafide need of the petitioner as the tenanted premises. However, in the present case, respondent had failed to do so. The petitioner might be owner of 100 properties, however, respondent had not been



able to show how any one, let alone all of them, could be termed as 'alternate suitable accommodation'.

The petitioner had given factual matrix with respect to the properties, as stated above, in para 9 of reply to factual as well as additional legal matrix, however, the respondent had not countered the same in the rejoinder and had not replied to the same.

The petitioner had enumerated the properties which are owned by the petitioner, however none of the properties so stated are shown to be vacant and suitably available to the petitioner. Neither the property at the basement nor the properties mentioned on the above floors or located in some other location would be suitable to meet the need of the petitioner considering the fact that the tenanted property is located in a commercial hub...”

5. The tenant has argued that the Directors of the landlord company, are Directors in many corporate entities, the latter own many properties in which the landlord could be accommodated; that the letting-out of and creation of encumbrance in the landlord's own properties was a deliberate contrivance of circumstances only to seek the tenant's eviction, therefore the corporate veil between the landlord and other companies owned by the common Directors must be lifted.
6. The learned Senior Advocate for the landlord submits that; i) symbolic possession of the encumbered properties has been taken over by the lender i.e. Central Bank of India; ii) none of the afore enumerated properties were available for occupation by the landlord, iii) properties of other entities cannot be clubbed together only to obfuscate a clearly established bonafide case for eviction of tenant, who incidentally has been in occupation of the premises since about



four decades, iv) there is no occasion for link different corporate entities for piercing their corporate veil and v) no triable issue was raised by the tenant.

7. The leave to defend filed by the tenant does not specify whether the said directors are the owners and/or if they carry out the same business and/or the other composition of the said companies and/or that there is any element of fraud on account of non-disclosure apropos the business of the other companies which would require piercing the corporate veil. The test for evicting a tenant under the Delhi Rent Control Act, 1958 is that there should be a bonafide need for the tenanted premises and that the landlord should have no alternate accommodation.
8. The landlord has so established. The impugned eviction order has considered the facts before it and found that the landlord had no alternate accommodation, the tenanted property is most suitable for the purpose of starting a jewellery business since it is in the hub of the jewellery trade and the need for the premises was bona fide.
9. On a query by the Court to the learned Senior Counsel for the tenant as to: whether the landlord is in the jewellery business, the reply is in the negative. This defeats the tenant's case that the corporate veil should be lifted. There is nothing in common apropos the trade which the landlord now seeks to initiate. There can be no estoppel or embargo on the aspirations, either of an individual or a corporate entity in starting a new business which holds good prospects.
10. The learned Senior Advocate for the tenant seeks to rely upon the dicta of the Andhra Pradesh High Court in *Sree Datta Agencies v.*



Dinesh Kumar Kucheria, Manu AP/0229/2008 (paras 10 to 13) to assert that the case of lifting of the corporate veil is made out in the instant case.

11. The landlord says that the market rent for the tenanted premises is in about Rs.3 lacs per month; that since the six months' time granted by the learned vide the impugned eviction order expired on 15.08.2021, the petitioner is a tenant on sufferance, therefore, in terms of *M/s Atma Ram Properties (P) Ltd vs M/s. Federal Motors Pvt. Ltd* user and occupation charges be fixed, till such time that the tenant vacates the premises.
12. List for further arguments on 07.09.2021.
13. The learned Senior Counsel for the respondent/landlord submits that it may be clarified that notice has not been issued in this revision petition.
14. The order be uploaded on the website forthwith.

NAJMI WAZIRI, J

AUGUST 18, 2021/rd