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

Judgment reserved on: 25.09.2023

Judgment pronounced on: 09.11.2023

+ **RC.REV. 56/2018, CM APPL. 5785/2018, CM APPL. 5786/2018**

TARUN KUMAR

..... Petitioner

Through: H.M. Singh, Adv.

versus

PARMANAND GARG

..... Respondent

Through: Mr. LK Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: **JASMEET SINGH, J**

1. This is a petition seeking quashing of the order dated 05.07.2017 passed by learned Senior Civil Judge/Rent Controller (East District), Karkardooma Court, Delhi in Suit RC/ARC/113/16 titled as "*Tarun Kumar v Parmanad Garg*", wherein leave to defend was granted to the respondent tenant.

FACTS GIVING RISE TO THE PRESENT PETITION

2. The petitioner is the landlord/owner of Shop No. 434/113, Ground Floor, Veer Savarkar Block, Vikas Marg, Shakarpur, Delhi-110092 (hereinafter referred to as "tenanted premises"). The petitioner bought the suit property from his father Mr. Prem Singh by virtue of a sale deed dated 10.09.1996. This property was let out to the respondent/tenant by the father of the petitioner on a rent of Rs. 500 per month exclusive of



electricity and all other charges. No written rent agreement was executed between the petitioner and the respondent.

3. It is alleged by the petitioner that around the year 2008, the respondent shut down his previous business and got his son named Anil Garg to start a new business of mobiles in the tenanted premises in the name of M/S Nachiketa Enterprises and assured the petitioner that the respondent himself would continue to be the actual tenant in the tenanted premises.
4. It is further alleged that the respondent is a bad pay master and is in arrears of rent since August 2003. Additionally, his electricity was disconnected by the BSES as the arrears of electricity of Rs. 93,330/- were not paid by the respondent.
5. It is stated that the petitioner is himself running a shop in another tenanted premises situated in front of the Property No. D-30E, Dayanand Block, Shakarpur, Delhi-110092 under the ownership of Ms. Kela Devi and is paying rent to her.
6. Subsequently, the petitioner filed an eviction petition on the ground of a *bona fide* need stating that the wife of the petitioner is an MBA from Punjab Technical University and is seeking to establish her own business of consultancy. It is submitted that the wife of the petitioner requires a big space to start a decent consultancy business, consisting of one big cabin/office for herself, several other small cabins for the employees, a pantry, toilet along with a lounge area containing a sofa-set and center table.
7. It is further submitted that the petitioner has no other suitable alternate accommodation where his wife Ms. Shivani Chaudhary can start her consultancy business. For this reason, the suit property is required by the petitioner for the use of his wife.



8. On receipt of summons, the respondent filed an application under section 25(B) of the Delhi Rent Control Act for seeking leave to defend supported with an affidavit stating that the petitioner is not the owner of the suit property and the sale deed in question is a forged and fabricated document.
9. The respondent raised a plea in the leave to defend that Ms. Shivani Chaudhary cannot be given the status of a “wife” of the petitioner since the marriage of the petitioner with his first wife, i.e Ms. Indra Devi was still subsisting and hence, there being no relation of husband and wife between the petitioner and Ms. Shivani Chaudhary, the very foundation of the eviction petition is non-existent. It was also stated by the respondent that the petitioner is residing with his first wife Ms. Indra Devi at her matrimonial home bearing No. 377/A-86, Mandawali Fazalpur, Delhi-110092.
10. *Vide* the impugned order dated 05.07.2017, the leave to defend was granted to the respondent. The learned ARC was of view that:-
 - i. the very existence of custom and customary divorce between the petitioner and his first wife Ms. Indra Devi is doubtful and therefore, the same is a triable issue.
 - ii. the petitioner has not denied that he does own the property No. 377/A-86, Mandawali Fazalpur, Delhi-110092, where Ms. Indra Devi resides. Hence, the present petition was one for additional accommodation and not for a *bona fide* accommodation.

SUBMISSIONS ON BEHALF OF THE PETITIONER

11. With regard to the first issue for consideration, i.e., whether there was a customary divorce between the petitioner and his first wife Ms. Indra Devi, it is submitted by Mr. H.M. Singh, learned counsel for the



petitioner that the learned ARC has no jurisdiction to embark upon the enquiry or trial to adjudicate upon the legality and validity of the marriage of the petitioner with his current wife Ms. Shivani Chaudhary. It lies within the exclusive jurisdiction under the Hindu Marriage Act to declare any marriage as null and void under section 11 of the Act r/w section 5 of the Act.

12. He further submits that under section 14(1)(e) of the Delhi Rent Control Act, the landlord can file a petition for *bona fide* requirement for himself or any members of his family dependent on him and there is no definition of “family” in the said Act. He relies upon a judgement of Allahabad High Court titled as “*Sheel Wati v. Ram Nandani*” [1980 SCC OnLine All 700], and more particularly para 8 which reads as under:-

“8. I have, therefore, no hesitation in reiterating the view expressed by me in the referring order dated 27th September, 1979, for the reasons given therein and the further reasons given hereinabove, that a marriage though null and void for contravening any of the conditions prescribed, by clauses (i), (iv) and (v) of Section 5 of the Act, has yet to be regarded a subsisting fact, and in that sense it cannot be said to be wholly non est in law, or a nullity, so long as it is not declared to be null and void by a decree of Nullity of the District Court on a petition presented by either party thereto against the other party to the marriage. No third person can treat the marriage to be void or have it adjudged to be null and void in any other suit or proceeding unless it has, already been declared to be so by a decree of Nullity of a District Court in accordance with the procedure prescribed by and under the Act.”



13. He further relies upon the judgement of Supreme Court titled as “ **A. Subash Babu v. State of A.P.**,” [(2011) 7 SCC 616] which reads as under:-

“24...Therefore, until the declaration contemplated by Section 11 of the Hindu Marriage Act is made by a competent court, the woman with whom second marriage is solemnised continues to be the wife within the meaning of Section 494 IPC and would be entitled to maintain a complaint against her husband.”

14. Reliance is also placed on “**Chanmuniya v. Virendra Kumar Singh Kushwaha**”[(2011) 1 SCC 141], wherein the Supreme Court held that:-

“42. We are of the opinion that a broad and expansive interpretation should be given to the term “wife” to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time, and strict proof of marriage should not be a precondition for maintenance under Section 125 CrPC, so as to fulfil the true spirit and essence of the beneficial provision of maintenance under Section 125.”

15. With regard to the second triable issue, i.e., whether the property bearing No. 377/A-86, Mandawali Fazalpur, Delhi would be construed and held to be an alternative accommodation available to the petitioner, Mr. H.M. Singh states that while observing “*The petitioner has falsely stated that he is residing in house no. D-30-E. In fact, the petitioner is residing with his family, including his wife, Ms. Indira Devi and his son born from his wedlock with Ms. Indira Devi at house no. 377 /A-86 Mandawali, Fazilpur, Delhi- 110092.*”, the learned ARC has not stated that this house is available with the petitioner as commercial accommodation in alternative to the shop from which eviction has been sought by the petitioner for his wife.



16. He further states that the learned ARC while observing that the petitioner has denied of staying at Property No. 377/A-86 Mandawali Fazalpur, Delhi-110092 but has not specifically denied that he does not own the said House No. 377/A-86, Mandawali Fazalpur, and the same has raised a triable issue, did not take into consideration that the respondent did not state that this property is owned by the petitioner. Hence, this could not be considered as an alternative commercial accommodation available with the petitioner.
17. He relies on the judgement of Supreme Court “**Sarla Ahuja v. United India Insurance Co. Ltd.**,”[(1998) 8 SCC 119] wherein it was held that:-

“14...It is often said by courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord, it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.”

18. Reliance is also placed on “**Precision Steel & Engg. Works v. Prem Deva Niranjana Deva Tayal**” [(1982) 3 SCC 270], wherein the Supreme Court opined that:-

“8... Then comes Section 25-B(5) which provides that the Controller is under a statutory duty — note the expression “shall give leave to the tenant to contest the application” to grant leave if the “affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession” of the premises on the ground mentioned in Section 14(1)(e) i.e. bona fide requirement for his personal use or the use of the members of his family.”



19. It is submitted that in the present case, the respondent has no plausible defence and thus, the impugned order is liable to be set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

20. Per contra, Mr. L.K. Singh, learned counsel for the respondent submits that the primary issue revolves around the legal status/validity of the petitioner's marriage with Ms. Shivani Chaudhary. It is submitted that at the time of the petitioner's alleged marriage with Ms. Shivani Chaudhary, the petitioner's first wife (Ms. Indra Devi) was still alive and their marriage was still subsisting as per law. Hence, Ms. Shivani Chaudhary cannot be construed as the wife of the petitioner as per law.
21. It is further submitted that as per the mandate of section 14(1)(e) of the Delhi Rent Control Act, the petitioner can seek eviction of a tenant on the ground of *bona fide* need either for himself or his family members who are dependent upon him. Hence, the first requirement would be that the concerned person should be a family member of the petitioner and the second requirement would be that the said family member is dependent upon the petitioner. In the present case, Ms. Shivani Chaudhary cannot be construed as a family member or wife of the petitioner.
22. With regard to the petitioner's contention that the learned ARC did not have jurisdiction to question or decide the issue of validity of marriage of the petitioner with Ms. Shivani Chaudhary, learned counsel for the respondent states that the issue whether the first marriage of the petitioner had ended in a customary divorce would definitely be an issue for consideration because if the said fact is not proved by the petitioner, then by legal implication, his marriage with Ms. Shivani Chaudhary



would be void in law on account of survival of the first marriage as per the mandate of section 5(i) of the Hindu Marriage Act. Hence, the *bona fide* need of the petitioner that he requires the suit property for his wife Ms. Shivani Chaudhary would become an exercise in futility since Ms. Shivani Chaudhary cannot be conferred with the status of being a family member of the petitioner.

23. He relies upon a judgement of Supreme Court “*Surajmani Stella Kujur (Dr) v. Durga Charan Hansdah*” [(2001) 3 SCC 13], and more particularly para 10 which states that:-

“10. For custom to have the colour of a rule or law, it is necessary for the party claiming it, to plead and thereafter prove that such custom is ancient, certain and reasonable. Custom being in derogation of the general rule is required to be construed strictly. The party relying upon a custom is obliged to establish it by clear and unambiguous evidence.”

24. He states that a perusal of the eviction petitioner as well as the reply of the petitioner to the application for leave to defend would show that no cogent and reliable evidence was furnished by the petitioner in support of his plea of customary divorce with his first wife. He states that in the absence of this fact being established, the law would take its course and as a natural corollary, the marriage of the petitioner with Ms. Shivani Chaudhary would be rendered as null and void and as a necessary implication, the status of “wife” conferred by the petitioner on Ms. Shivani Chaudhary so as to make her a part of his family members would cease to exist. This issue is a triable issue and hence, the impugned order suffers from no legal infirmity.

ANALYSIS



25. I have heard learned counsel for the parties.
26. In order to succeed in a petition under section 14(1)(e) of the Delhi Rent Control Act, the landlord is required to establish three conditions:-
- i. There must be a relationship between the parties as landlord and tenant
 - ii. The tenanted premises must be *bonafidely* required by the landlord either for himself or for his family members
 - iii. There is no other alternate suitable accommodation available with the landlord.

I. First ingredient being relationship between the parties as landlord and tenant:-

27. The relationship of landlord and tenant already exists between the parties, and the same is also not under dispute. The learned ARC has already held in para 7.3 that “...*It is not sufficient for respondent to say that petitioner is not landlord but to show his relationship by his acts of such payment of rent to such other person Sh Prem Singh which the respondent has failed to show even at prima facie level. On the face of GPA and WILL dated 25.03.2011 the relationship of landlord and tenant exist between the parties.*”

II. Second ingredient of bona fide requirement by the landlord:-

28. The learned ARC was of the view that “8.4. *After hearing both the parties it is noted that the petitioner has not even mentioned the date of customary divorce. It is incumbent on the part of the petitioner to show that he has brought to the notice of the Hon’ble Court where from divorce decree is obtained of having obtained the customary divorce from his first wife Ms. Indra Devi. The divorce is alleged in the year 2007 and it must have to be shown that the said facts were both in the*



knowledge in the Court and also required from the petitioner to show it by filing copy of the order. Hence the very existence of custom and customary divorce is doubtful and therefore it is a triable issue.”

29. Hence, the learned ARC was of the view that the status of Ms. Shivani Chaudhary as to whether she is the wife of the petitioner or not, is doubtful.
30. It is submitted by the respondent that for satisfying the second ingredient, i.e, the tenanted premises must be *bonafidely* required by the landlord either for himself or for any member of his family dependent on him, is not satisfied in the present case. It is stated that since the marriage of the petitioner with his first wife Ms. Indra Devi is still subsisting, Ms. Shivani Chaudhary cannot be said to be the wife of the petitioner and hence, she cannot be termed as “family” of the petitioner.
31. With regard to this issue, I am of the view that this Court in a petition under Delhi Rent Control Act is not to embark upon the question of marriage between the petitioner and Ms. Shivani Chaudhary and/or customary divorce between the petitioner and Ms. Indra Devi or return a finding that Ms. Shivani Chaudhary is or is not the legally wedded wife of the petitioner.
32. The eviction petition filed by petitioner under the Delhi Rent Control Act cannot be converted into a petition to decide the legal relationship of the petitioner with Ms. Shivani Chaudhary, but it is a petition to decide whether there exists a relationship of landlord-tenant between the parties, and whether the tenanted premises is *bonafidely* required by the landlord himself or for any family member dependent on him. Under section 14(1)(e), this Court is not to get into the controversy of the status of the marriage between the petitioner and Ms. Indra Devi. The learned ARC misconstrued the scope of the said section by observing that a triable



issue was raised due to the petitioner's first marriage still subsisting or not.

33. In the present case, the petitioner has placed on record the photographs of marriage between him and Ms. Shivani Chaudhary, their Certificate of Marriage and Aadhar Card of Ms. Shivani Chaudhary. This documentary evidence is sufficient *prima facie* material to prove that Ms. Shivani Chaudhary is the wife of the petitioner. I find no reason to disbelieve that Ms. Shivani Chaudhary is not the legally wedded wife of the petitioner unless and until there is a decree of declaration to that effect or until the marriage of the petitioner with Ms. Shivani Chaudhary is declared as null and void by the competent Court under section 11 of the Hindu Marriage Act. In the absence of such a declaration, Ms. Shivani Chaudhary remains the wife and consequently a family member of the petitioner. The locus to obtain that decree lies either with the petitioner or Ms. Shivani Chaudhary or Ms. Indra Devi. It is certainly not open to the tenant, in an eviction petition, to challenge the status/title of Ms. Shivani Chaudhary as the wife of the petitioner. In this regard, section 11 of the Hindu Marriage Act would be relevant and it reads as under:-

“11. Void Marriages- Any marriage solemnised after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto [against the other party], be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5.”

34. The question as to who is “either party thereto” has been interpreted by various High Courts. The Allahabad High Court in “**Garima Singh v. Pratima Singh**” [2023 SCC OnLine All 508] observed that:-

“44. The narrow interpretation given to the phrase “either party thereto” should not apply in cases where provisions of social



welfare legislation are invoked. Such a restrictive interpretation would affect the principle of equal protection of laws and equality before the law, guaranteed under Article 14 of the Constitution. It would also negatively impact the rights of the first wife, as guaranteed under Article 14 and the provisions of the Family Courts Act, 1984.

45. If the first wife is deprived of seeking a remedy under Section 11 of the Hindu Marriage Act, it would defeat the very purpose and intent of the Act. The protection offered to legally wedded wives under sections 5, 11, and 12 of the Hindu Marriage Act would become insignificant in such a scenario.”

35. The Punjab and Haryana High Court in “**Suresh Kumar v. Asha Rani**” [1992 SCC OnLine P&H 744] opined that:-

“... It is worth noticing that Section 11 confers on the Court the power to grant declaration that the marriage of the petitioner with the respondent is nullity. The expression ‘either party thereto’ in Section 11 means the two actual parties to the marriage and no third party.”

36. The Karnataka High Court in “**Shakuntala Bai v. MallikarjunappaJevargi**” [1997 SCC OnLine Kar 604] also opined that:-

“7... By reading Section 11 it is manifest that on a petition presented by either party thereto any marriage solemnized after the commencement of this Act shall be declared null and void if the marriage contravenes any one of the conditions specified in Clause (i), (iv) and (v) of Section 5 of the Act. The parliament has specifically used the words ‘either party’ that means the husband or



the wife. If the parliament wanted, the petition can be filed only by an aggrieved party, it ought to have used 'aggrieved party'. In the absence of such words it cannot be interpreted that the petition filed by the husband a party to the second marriage is not maintainable. The words 'either party' to the marriage itself denote that any one of the party to the marriage can file a petition for declaration of nullity of marriage."

37. I am of the view that under section 11 of Hindu Marriage Act, the phrase "either party thereto" is preceding the phrase "against other party" and hence have to be read in conjunction with each other. According to me, the only interpretation of this section is that the party to the marriage is the only party which can file for a declaratory decree under section 11 of the Hindu Marriage Act.
38. The word "either" has been defined in the dictionary as "one or other- of two". Hence to my mind, it can either be the husband or his wife who can maintain a petition under section 11 of the Hindu Marriage Act. Whether it is the first wife or the second wife is not the issue for consideration before me and therefore, it is left open to be adjudicated in appropriate proceedings.
39. The sum and substance of the discussion above is only to highlight that it is not open to a tenant in an eviction petition to question the status of the alleged second wife of the petitioner.
40. The judgement of *Surajmani Stella Kujur* (supra) relied upon by the respondent is not applicable to the facts of the present case as the question in that judgement was the status of marriage and the status of parties being Hindu or not. In the present case, the core issue is the *bona fide* need of the tenanted premises for Ms. Shivani Chaudhary, who is the wife of the petitioner.



41. The preamble of the Delhi Rent Control Act says that “it is an act to provide for the control of rents and evictions and of rates of hotels and lodging houses, and for the lease of vacant premises to Government, in certain areas in the Union territory of Delhi.” Hence, the learned ARC misconstrued the scope of the Delhi Rent Control Act by opining that the existence of marriage between the petitioner and Ms. Shivani Chaudhary/existence of a custom and customary divorce between the petitioner and his first wife Ms. Indra Devi was a triable issue.
42. The fact that the petitioner landlord has stated that Ms. Shivani Chaudhary is his wife, coupled with the fact that the petitioner’s first wife Ms. Indra Devi has not challenged the marriage of the petitioner Ms. Shivani Chaudhary, I am of the view that as of today, Ms. Shivani Chaudhary is the wife and hence the family member of the petitioner.
43. It is also a settled law that the Court must presume the *bona fide* requirement of the landlord. The Supreme Court in *Sarla Ahuja* (supra) observed that:-

“14. The crux of the ground envisaged in clause (e) of Section 14(1) of the Act is that the requirement of the landlord for occupation of the tenanted premises must be bona fide. When a landlord asserts that he requires his building for his own occupation, the Rent Controller shall not proceed on the presumption that the requirement is not bona fide. When other conditions of the clause are satisfied and when the landlord shows a prima facie case, it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bona fide. It is often said by courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the



requirement of the landlord, it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.”

44. The landlord is only required to show that the requirement of the tenanted premises is a *bona fide* requirement and not merely a whimsical or a fanciful desire by him. The Supreme Court in the landmark case of “**Deena Nath v. Pooran Lal**”[(2001) 5 SCC 705] observed that:-
- “15...The statutory mandate is that there must be first a requirement by the landlord which means that it is not a mere whim or a fanciful desire by him; further, such requirement must be bona fide which is intended to avoid a mere whim or desire. The “bona fide requirement” must be in praesenti and must be manifested in actual need which would evidence the court that it is not a mere fanciful or whimsical desire.”*
45. Once the landlord has stated that he requires the tenanted property for a particular use, the Courts are required to believe the statement to be true and genuine, unless and until it is shown by the tenant through cogent material that the requirement is fanciful or whimsical.
46. I am of the view that the petitioner’s ground that he requires the tenanted premises for setting up the business of his wife comes within the category of a *bona fide* requirement.
47. Keeping in view the above discussion that the petitioner has successfully shown his *bona fide* requirement of the tenanted premises for his wife Ms. Shivani Chaudhary, the second ingredient of section 14(1)(e) is fulfilled.

III. Third ingredient of suitable alternative accommodation available with the landlord



48. The learned ARC was of the view that –

“9.3...The petitioner has denied of having been staying at property no. 377/A-86, Mandawali, Fazalpur, Delhi-110092. However the petitioner has not specifically denied that he does not own the said house no. 377/A-86, Mandawali, Fazalpur, Delhi-110092. This has raised a triable issue.

10. In view of the discussion above it is found that the case of the petitioner comes under the category of additional accommodation in regard to property no 377/A-86, Mandawali, Fazalpur, Delhi-110092 and its reasonableness needs to be tested by evidence.”

49. The other triable issue framed in the impugned order is that the present case is a case of additional accommodation and not a *bona fide* accommodation. At the time of framing this issue, what weighed with the learned ARC was the status of marriage between the petitioner with Ms. Indra Devi and Ms. Shivani Chaudhary. The learned ARC was of the view that the petitioner would be required to lead evidence to show that he is divorced with Ms. Indra Devi as per custom and customary law. Hence, the learned ARC came to a finding that the accommodation at Property No. 377/A-86, Mandawali Fazalpur, Delhi- 11009 was available to the petitioner at Ms. Indra Devi’s house. I am unable to agree.

50. In my view, the foundation of this finding was itself misconceived because the learned ARC could not have gone into the issue whether the petitioner and Ms Indra Devi were divorced by customary rights or whether the relationship of husband and wife between the petitioner and Ms. Shivani Chaudhary is void. The petitioner has categorically made an averment that he and Ms. Shivani are married and are living together. In this view of the matter, the learned ARC had no option but to believe the



version of the petitioner unless and until the same was declared as null and void by a court of competent jurisdiction. Respondent, by cogent material in his leave to defend application could have shown otherwise. Merely stating that Ms. Indra Devi continues to be the wife of the petitioner and the petitioner continues to stay with Ms. Indra Devi is merely a bald averment which to my mind, does not raise a triable issue. In addition, the leave to defend filed by the respondent also neither avers nor states that the accommodation available at Property No. 377/A-86, Mandawali Fazalpur, Delhi- 11009 is a commercial accommodation available to the petitioner for setting up a consultancy business for his wife. With regard to this accommodation, the respondent has only averred that:-

“In fact, the petitioner is residing with his family including his wife Ms. Indra Devi and his son born from his wedlock with Indra Devi at House No. 377/A-86 Mandawali, Fazalpur, Delhi-110092.”

51. At best, the same is stated to be a residential accommodation and hence, cannot by any stretch of imagination be considered as an “alternative” and “suitable” accommodation for a commercial purpose.
52. The Hon’ble Supreme Court as well as this Court has repeatedly held that the Courts are not to sit in the armchair of the landlord and dictate as to how the available property of the landlord is to be best utilized by him. The landlord is the absolute owner of his property and the best person to decide which property is to be utilized in what way is the landlord himself. In addition, the respondent also cannot dictate as to how the landlord is to utilize his property.
53. The landlord possesses the prerogative to determine their specific requirements, exercising full autonomy in this regard. It is not within the purview of the courts to impose directives on the landlord regarding the



nature or quality of their chosen usage of the tenanted premises. Essentially, the courts should refrain from prescribing any standard or guidelines for the landlord's residential choices.

54. In “**Ragavendra Kumar v. Prem Machinery & Co.**” [(2000) 1 SCC 679] the Supreme Court was of the view that:-

“10... It is true that the plaintiff landlord in his evidence stated that there were a number of other shops and houses belonging to him but he made a categorical statement that his said houses and shops were not vacant and that the suit premises is suitable for his business purpose. It is a settled position of law that the landlord is the best judge of his requirement for residential or business purpose and he has got complete freedom in the matter. (See Prativa Devi v. T.V. Krishnan [(1996) 5 SCC 353] .) In the case in hand the plaintiff landlord wanted eviction of the tenant from the suit premises for starting his business as it was suitable and it cannot be faulted.”

55. The Supreme Court in “**Balwant Singh v. Sudarshan Kumar**” [(2021) 15 SCC 75] held that:-

“12. On the above aspect, it is not for the tenant to dictate how much space is adequate for the proposed business venture or to suggest that the available space with the landlord will be adequate. Insofar as the earlier eviction proceeding, the vacant shops concerned under possession of the landlords were duly disclosed, but the case of the landlord is that the premises/space under their possession is insufficient for the proposed furniture business.

14. On consideration of the above aspects, the genuine need of the appellants to secure vacant possession of the premises for the proposed business is found to be established. According to us, the



adequacy or otherwise of the space available with the landlord for the business in mind is not for the tenant to dictate.”

56. Similarly in the present case, it is not for the respondent tenant to dictate to the petitioner landlord whether Property No. 377/A-86, Mandawali Fazalpur, Delhi-110092 is suitable to set up the business of petitioner’s wife or not. I am of the view that even if the Property No. 377/A-86, Mandawali Fazalpur, Delhi-110092 is owned by the petitioner and is also available with him, the same must also be a suitable accommodation to the petitioner.
57. The learned ARC erred in observing that the Property No. 377/A-86, Mandawali Fazalpur, Delhi-110092, where Ms. Indra Devi is residing, could be considered as an alternative accommodation to the tenanted premises. The learned ARC also erred in observing that merely because the petitioner did not deny owning the said property, the same raised a triable issue.
58. The petitioner has categorically stated that Ms. Shivani Chaudhary requires a big space for setting up her business and that Property No. 377/A-86, Mandawali Fazalpur, Delhi-110092 is a residential accommodation and not a commercial one.
59. I am of the view that the petitioner landlord has successfully shown that the tenanted premises is the only premises which is best suitable accommodation for setting up the consultancy business of his wife. Hence, this ingredient also stands fulfilled.
60. The Hon’ble Supreme Court in “*Abid-Ul-Islam v. Inder Sain Dua*” [(2022) 6 SCC 30] has dealt with the revisional power of the High Court. The relevant portion reads as under:-

“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.”

CONCLUSION

61. I am of the view that the order dated 05.07.2017 suffers from error apparent from the face of record. The learned ARC has not appreciated the provisions of the Delhi Rent Control Act.
62. In view of my reasoning and findings above, the order dated 05.07.2017 passed by learned Senior Civil Judge/Rent Controller (East District), Karkardooma Court, Delhi in Suit RC/ARC/113/16 titled as “*Tarun Kumar v Parmanad Garg*”, is hereby set aside and the order of eviction with respect to Shop No. 434/113, Ground Floor, Veer Savarkar Block, Vikas Marg, Shakarpur, Delhi-110092 is passed, in favour of the petitioner and against the respondent.
63. The petitioner landlord shall not be entitled to get possession of the tenanted premises before the expiry of six months from today as per section 14(7) of the DRC Act.



64. Petition allowed.

JASMEET SINGH, J

NOVEMBER 09, 2023/DM/st

Click here to check corrigendum, if any