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

Pronounced on: 14.09.2023

+ **RC.REV. 251/2020 and CM Appl. Nos. 30390/2020, 25023/2022,
40697/2022**

SANTOSH BHUTANI & ANR.

.....Petitioners

Through: Ms. Arunima Dwivedi,
Ms. Swati Jhunjhunwala, Ms.
Pinky Pawar and Mr. Aakash
Pathak, Advocates.

versus

SAVITRI DEVI THROUGH LRs

..... Respondent

Through: Mr. Lalit Gupta, Mr. Gaurav
Kumar, Mr. Priyansh Jain and
Mr. Ankit Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

1. The present petition under Section 25B(8) of the Delhi Rent Control Act, 1958 (the 'DRC Act') assails the order dated 26.02.2020 passed by the ACJ-cum-ARC (Central) Delhi (the 'rent controller') in eviction petition e-78924/16, whereby an eviction order has been passed under Section 14(1)(e) of the DRC Act in favour of the respondent/landlord and against the petitioners/tenants, in respect of one shop i.e. property bearing no. 201, Bazar Ajmeri Gate, Delhi -110006 (the 'tenanted premises').
2. The eviction petition was filed by late Smt. Savitri Devi (original landlord) on the assertion that the tenanted premises is required for *bonafide*



need of Mr. Sushil Kumar, her son, who was stated to be dependent on her, for starting a business. It was averred in the petition that the family of Smt. Savitri Devi consists of herself, her three sons, namely, Mr. Kulbushan, Mr. Naresh Kumar and Mr. Sushil Kumar and two daughters, namely, Ms. Avinash Lata who predeceased her and Ms. Kapila. Mr. Kulbushan and Mr. Naresh Kumar were stated to be running their respective businesses in the adjoining shops bearing No. 192 and 200, Gali Bandook Wali, Ajmeri Gate, Delhi. It was averred that Mr. Sushil Kumar had been unemployed since long and Smt. Savitri Devi had no other alternative accommodation except the tenanted premises for the aforesaid *bonafide* need of her son.

3. The leave to defend application of the petitioners was allowed vide order dated 21.02.2015 on the issue of alternate accommodation alleged to be available with Smt. Savitri Devi and in the light of contention of the tenant that Mr. Sushil Kumar, was already running a business from premises bearing No.216, Gali Lohran, Ajmeri Gate, Delhi and property bearing No. 160/308. Pursuant to grant of leave to defend, the matter was set down for trial, and evidence was adduced by the parties. During the course of trial, Smt. Savitri Devi died and the respondents herein were impleaded as her legal heirs. An amended eviction petition came to be filed, wherein it was stated that the tenanted premises were required for the *bonafide* need of Mr. Sushil Kumar, who required the premises for starting his own business, with the assistance of his brother Mr. Naresh Kumar. No written statement to the amended petition was filed on behalf of petitioners. The learned rent controller after evaluating the evidence on record, affirmed the *bonafide* requirement of Mr. Sushil Kumar and also held that the said Sushil Kumar



did not have any reasonably suitable alternative accommodation for running his business, except the tenanted premises.

4. The rent controller considered the objections raised by the petitioners in their written statement, and with regard to the contention that the eviction petition is not maintainable for want of prior permission of the Competent Authority under Section 19 of the Slum Area (Improvement and Clearance) Act, 1956, held as under:-

“15. Now, before appreciating the present facts of the case, lets discuss the basic law on the point.

The first & foremost contention of respondent is that the present petition is barred by law, as no permission from Competent Authority (Slum) is taken by the petitioner before filing the same. On this point, reliance is placed by this Court upon judgment delivered in case titled as Shafait Ali Vs. Shiva Mal (Dead) by LRs AIR 1988 SC 214, where in reference was made to judgment delivered in Ravi Dutt Sharma Vs. Rattan Lai Bhargava AIR 1984 SC 967 and it was held that "section 14A, 14 (1)(E), 25A, 253 & 25C of Delhi Rent Control Act are special provisions so far as the landlord and tenant are concerned and further in the view of the non-obstante clause in the Section, these provisions override the existing law, so far as the new procedure is concerned. In that view of that matter, we are of the opinion that the Slum Areas (Improvement and Clearance) Act, 1956 would have no application in these cases covered by Section 14A and 14 (1)(E) of the Delhi Rent Control Act specially in view of provisions which were added by the Amending Act of 1976.

.....In view of the procedure in Chapter IIIA of the Rent Act, the Slum Act is rendered inapplicable to the extent of inconsistency and it is not, therefore, necessary for the landlord to obtain permission of the Competent Authority U/s. 19(1) (A) of the Slum Act before instituting a suit for eviction and coming within Section 14(1) (e) of the Rent Act."

Hence, no permission was required by the petitioner before filing the present petition."

4.2 With regard to contention that Section 14(1)(e) of the DRC Act is applicable only to residential premises and not commercial premises, it was held as under:-

“16. The second contention raised by respondent is that 'tenanted premises' is commercial in nature, hence, the eviction petition u/s. 14 (1) (e) of the Act



is not maintainable. Qua the same, reliance is placed by this Court, also relied by Ld. Counsel on behalf of the petitioner, upon judgment delivered in case titled as Satyawati Sharma Vs. Union of India. AIR 2008 SC 3148, wherein it has made clear that petitioner may file petition under 14 (1) (e) DRC Act in respect of 'tenanted premises' let out for commercial purposes."

4.3 With regard to the contention that Mr. Sushil Kumar has no *bonafide* requirement for the tenanted premises as he is already running a business from shop number 216 and 160/318, it was held as under:-

"19(ii) The landlord requires the tenanted premises bonafidely for himself or any member of his family depended upon him.

The contention of the petitioners is that the 'tenanted premises' are required by petitioner No.2 for starting his business, as he is unemployed and does not have any other alternate suitable accommodation for the same. It has been contented by the respondents that petitioner No.2 Sh. Sushil Kumar is already running his business from two shops bearing No.216, GaliLohran, Ajmeri Gate, Delhi & 160/308, Ajmeri Gate, Delhi.

However, PW-3 Sh. Jag Prasad Tiwari has deposed on oath that he is the owner of the shop bearing No.216, Gali Lohran, Ajmeri Gate, Delhi vide sale deed and he is running his business/ proprietorship concerned under name & style of M/s J.P.Tools Supply Agency from the aforesaid premises since 18.12.1987, The petitioner No. 2 has no connection with his business and only a telephone connection in his name was used at his premises till March, 2015. He has proved certificate issued by him on letter head of his firm bearing the same address mentioning the said details, as Ex.PW3/1 and certificate issued by Union Bank of India in this regard, as EX.PW3/2.

Further, PW-4 Sh. Pradeep Goyal also deposed that he is running his business under name & style of Ms/ Chinta Mani Industrial Agencies from shop No. 160/308, Shyam Shanti Market, Ajmeri Gate, Delhi under tenancy of Smt. Sunita and Smt. Madhu, since 1995. Petitioner No.2 has no connection with the said shop or his business and only telephone connection, in his name was taken by him, which was got transferred in his own name in the year 2014. He proved on record certificate issued by him in this regard on the letter head of his firm mentioning the said address, as Ex.PW4/R1 and certificate of registration of trade mark for his firm, as Ex.PW4/R2.

Hence, it is clearly established from the testimony of PW-3 &PW-4 as well as documents proved on record that petitioner No.2 Sh. Sushil N Kumar is



neither in possession of aforesaid shops nor is running business from there. It has not come on record that petitioner No.2 is working or carrying on business from elsewhere, therefore, there seems no malafide intention on the part of the petitioner seeking possession of the 'tenanted premises' and his bonafide need appears to be genuine.”

4.4 With regard to the contention of the petitioners that reasonably suitable alternative accommodations are available with the respondents, it was held as under:-

“19(iii) Now coming to last ingredient i.e., non-availability of reasonably suitable alternative accommodation with the petitioner.

It is clearly stated by the petitioners that they have shops under their ownership i.e., Shop No.192-193, Gali Bandook Wali, Ajmeri Gate, Delhi, however, petitioner No. 1 is running his business from Shop No. 192 whereas Shop No. 193 is under tenancy & occupation of Sh. Rajeshwar Kalra, who is running business under name & style of M/s Ganpati Fastners. Respondent No.1 has admitted during her testimony as RW-1 that shop No. 193, Gali Bandook Wali Ajmeri Gate Delhi is in possession of M/s Ganpati Fastners as tenant. It has also not been specifically denied by the respondents that shop no. 192, Gali Bandook Wali, Ajmeri Gate, Delhi is in possession of petitioner No. 1 from where he is running his business.

It has also been stated by the petitioner No.1/ PW-5 that petitioners are co-owners of property/ shop bearing No.200-201, Ajmeri Gate, Delhi, however, shop No.200 was in possession of his deceased brother Sh. Kulbhushan earlier from where he was running his confectionery shop, which was later-on taken over by his sister after demise of Sh. Kulbhushan. Further, the shop bearing No.201, Ajmeri Gate, Delhi is the 'tenanted premises' itself. It has been also stated that shop at 352, Katra Sheikh Ranjha, Hauz Qazi, Delhi is under tenancy of Sh. Gur Dev Prasad and rest of the premises is used as residence, being non-commercial in nature, which has not been denied specifically by the respondents.

Surprisingly, it has been admitted by respondent No.1/ RW-1 that the GST number in respect of business, being run from the 'tenanted premises' is in name of her son Sh. Kapil Bhutani, as proprietor. This clearly implies that the respondents are not carrying on their business from the 'tenanted premises', though, it is stated in the pleadings that the business run from 'tenanted premises' is the only source of their livelihood. It is stated in the written arguments by the petitioners that after demise of their sister, now the confectionery business from shop No.200 is carried-on by the petitioner No.1 and shop no. 192 is used as godown for storing the confectionery items, Petitioner No.2 is still unemployed. The same has not been rebutted by the respondents.”



5. The petitioners in the present revision petition have assailed the impugned eviction order on the following grounds:-

- (i) It is contended that Section 14(1)(e) of the DRC Act is applicable only to residential premises and not to commercial premises.
- (ii) It is further submitted that Mr. Sushil Kumar is suffering from low vision and the same could not be improved despite treatment and therefore, he is not in a position to run a business independently; as such the requirement asserted by the eviction petitioners (landlord) cannot be said to be *bonafide*.
- (iii) The factual findings rendered in the impugned judgment have been sought to be controverted. It is contended that Mr. Sushil Kumar for whose *bonafide* requirement the eviction petition had been filed, is running his business from Shop no. 160/318 and 216 and there were telephone connections in the name of Mr.Sushil Kumar which indicate that he is running business therefrom in partnership with Mr. Pradeep Goel and Mr. Jag Prashad Goel.
- (iv) In the written submissions filed by the petitioners, a detailed account of the properties allegedly owned by and available with the respondents, is given. As per the petitioners herein, the following is the position of the various properties owned by the respondents:-
 - a. ***Shop No. 192, Gali Bandook Wali, Ajmeri Gate, Delhi-110006*** - This shop is stated to be used by Mr. Naresh Kumar as his godown.



- b. **Shop No. 193, Gali Bandook Wali, Ajmeri Gate, Delhi-110006** - This shop is stated to be rented out by the respondents to “M/s. Ganpati Fasteners” in March 2013; it is contented that the said shop was vacant before March 2013 and could have been used by the respondents. It is further contended that after the death of Mr. Kalra, owner of “M/s. Ganpati Fasteners” in 2017, the said shop was handed over to the respondents.
- c. **Shop No. 200, Ajmeri Gate, Delhi-110006** - This shop is stated to have been in use by Mr. Kulbhushan and Mr. Sushil Kumar (both son Ms. Savitri Devi) for running a business in the name and style “Pinki Super Store”; after demise of Mr. Kulbhushan in August 2013 the said shop is stated to be used by Mr. Sushil Kumar for running his business. It is stated that the said fact is proved by an envelope/letter sent by the aunt (*buā*) of Mr. Sushil Kumar to the shop in the name of and addressed to “Pinki Super Store”.
- d. **Shop No. 216, Gali Lohran, Ajmeri Gate, Delhi-110006.** - This shop is under the tenancy of Mr. J.P. Tiwari who is running a business by the name of JP Tools. It is stated that the MTNL connection in the said shop was in the name of Mr.Sushil Kumar, from this it is evident that Mr. Sushil Kumar was running business in collaboration with JP Tools. It is contented that the statement of Mr. J.P. Tiwari/PW-3 that Mr. Sushil Kumar was nowhere connected with him in the said



business cannot be believed since he never entered the witness box to give his testimony.

- e. **Shop No. 160/308, Shyam Shanti Market, Ajmeri Gate, Delhi-110006** - This shop is stated to be under the tenancy of Mr. Pradeep Goel who is running a business by the name of M/S Chintamani Industrial Agency. It is stated that the MTNL connection in this shop as well was in the name of Mr. Sushil Kumar. It is therefore contended that even from this shop, Mr. Sushil Kumar was running a business.
- f. **352, Katra Sheikh Ranjha, Delhi-110006** - This property is stated to comprise 6 shops on the ground floor and first floor; after the death of Smt. Savitri Devi, the said property is stated to have devolved upon Mr. Naresh Kumar and Mr. Sushil Kumar. The said property is stated to have been sold by the respondents in October, 2019.
- g. **Shop No. 201, Bazar Ajmeri Gate, Delhi -110006** –These are the tenanted premises itself.
- h. **Shop No. 197, Gali Bندوق Wali, Ajmeri Gate, Delhi-110006.** - This shop is admittedly under tenancy of a third party.
- i. **Property No. 344.** - This property was admittedly sold by Smt. Savitri Devi prior to filing of the eviction petition.



- (v) It is further submitted that Mr. Sushil Kumar's name was given in the list of witnesses, however he did not lead any evidence in support of the contentions raised in the eviction petition.
- (vi) Lastly, it is contended that the petitioner no.1 is the owner/landlord in respect of shop no. 4932 (1st Floor), Phatak Namak, Hauz Qazi and has obtained eviction order against its tenants, however the said eviction order has been stayed by this court in R.C. REV No. 178/2022. It is submitted that the petitioners may be allowed to run their business from the tenanted premises till said shop No. 4932/7 is vacated by the tenants.
6. On the other hand, the learned counsel for the respondents has submitted as under:-
- (i) The petition under section 14(1)(e) is maintainable in respect of property which is commercial in nature; in this regard, reliance has been placed on the judgements in *Vinod Kumar vs. Ashok Kumar Gandhi*¹, *State of Maharashtra vs. Super Max International (P) Ltd.*² and *Satyawati Sharma vs. Union of India.*³
- (ii) It is submitted that the *bonafide* need of the landlord has to be seen as of the date of institution of the eviction proceedings; in this regard reliance has been placed on the judgement in the case of *Hukum Chandra vs. Nemi Chand Jain*⁴.
- (iii) It is strenuously urged that the landlord has an absolute choice of premises with which he wishes to fulfil his requirement; reliance in

¹ (2019) 17 SCC 237

² (2009) 9 SCC 772.

³ (2008) 5 SCC 287.

⁴ (2019) 13 SCC 363



this regard has been placed on the judgement in the case of *W.H Brady & Co. Ltd. vs. Sarita Jain*⁵

- (iv) It is emphasized that it is not permissible for a tenant to dictate terms to the landlord as to how he should adjust himself without getting the tenanted premises vacated; reliance in this regard has been placed on the judgement of *Sarla Ahuja vs. United India Insurance Co. Ltd.*⁶
- (v) It is contended that the factual controversy sought to be raised by the petitioners as regards availability of sufficient alternate accommodation is unfounded. It is submitted that the petitioners have failed to prove that the respondents have any other vacant, suitable alternate accommodation. The respondents have disclosed the status of each and every property referred to by the petitioners and the correct position is stated to be as under:-
- a. *Shop No. 192, Gali Bandook Wali, Ajmeri Gate, Delhi-110006.* –This shop is stated to be in use by Mr Naresh Kumar for maintaining a godown.
 - b. *Shop No. 193, Gali Bandook Wali, Ajmeri Gate, Delhi-110006* - This shop is stated to be in possession of “M/s. Ganpati Fasteners” In this regard reliance is placed upon the testimony of RW-1 (Smt. Santosh Bhutani), to the effect that Shop No. 193, is in possession of M/s. Ganpati Fasteners as “tenant.”

⁵ 2018 SCC Online Del 6576

⁶ 1998 (8) SCC 119



- c. **Shop No. 200, Ajmeri Gate, Delhi-110006** - This shop is being used by Mr Naresh Kumar for running a shop dealing in confectionery items. It is stated that the said fact is mentioned in the additional affidavit of examination-in-chief of PW-5 (Mr. Naresh Kumar), which fact was not disputed during his cross examination.
- d. **Shop No. 216, Gali Lohran, Ajmeri Gate, Delhi-110006** - It is stated that the said shop is owned by Sh. Jag Prasad Tiwari, being proprietor of M/s. J.P. Tools Supply Agency. In this regard reliance is placed on the testimony of PW-3.
- e. **Shop No. 160/308, Shyam Shanti Market, Ajmeri Gate, Delhi-110006** - It is stated Sh.Pradeep Goel, being proprietor of M/s. Chintamani Industrial Agencies, has been running a business of hardware goods in the said shop, as a tenant under one Smt. Sunita & Smt. Madhu and the respondents have no concern with the said shop. In this regard reliance is placed on the testimony of PW-4.
- f. **352, Katra Sheikh Ranjha, Delhi-110006** - It is stated that five shops forming part of the property were sold in 2022 and one godown on the ground floor of the said property is on tenancy. It is stated that two rooms on First Floor and one room on Second Floor in the said property were residential in nature and no evidence has been led to contradict the said fact.



- (vi) Learned counsel for the respondents has also stated that PW-5 was not put to any cross examination on the envelope addressed to “Pinki General Store”, at Shop No. 200; as such reliance thereupon to dispute the *bonafide* requirement for Sushil Kumar is misconceived. It is further stated that M/s. Pinki Super Store stood closed and its registration was cancelled on 30.09.2003 i.e. more than 8 years prior to filing of the present eviction petition on 29.11.2011, as is evident from the dealer profile of M/s. Pinki Super Store.
- (vii) It is submitted that non-examination of the person for whose need the tenanted premises is required is no ground to non-suit the landlord; in this regard reliance has been placed upon the judgement in the case of *Mehmooda Gulshan vs. Javid Hussain Mungloo*⁷

ANALYSIS AND CONCLUSION

7. Having perused the record and having heard learned counsel for the parties, no merit is found in the contentions raised on behalf of the petitioners.

8. With respect to the contention of the petitioners that Section 14 (1)(e) of the DRC Act is applicable only to residential premises and not to commercial premises, the law is well settled that Section 14(1)(e) of the DRC Act is applicable to tenanted premises let out for commercial purposes as well. In this regard, respondents have rightly relied upon the judgment in

⁷ (2017) 5 SCC 683



the case of *Satyawati Sharma* (supra). The relevant observations in the said judgment are extracted hereunder:-

“41. In view of the above discussion, we hold that Section 14(1)(e) of the 1958 Act is violative of the doctrine of equality embodied in Article 14 of the Constitution of India insofar as it discriminates between the premises let for residential and non-residential purposes when the same are required bona fide by the landlord for occupation for himself or for any member of his family dependent on him and restricts the latter's right to seek eviction of the tenant from the premises let for residential purposes only”

9. With regard to contention of the petitioners [based upon telephone connections in the name of Mr. Sushil Kumar] that Mr. Sushil Kumar is already running business from Shop No. 216, and Shop No. 160/308, the learned rent controller, based on the testimony of PW-3 and PW-4, has rendered a finding in para 19 (ii) of the impugned order (supra) that Mr. Sushil Kumar is neither in possession of the said shops nor is he running any business from there. The said finding is based on a proper appraisal and appreciation of the material on record. From the statement/examination-in-chief and cross-examination of PW-3 and PW-4, it clearly emerges that Shop No. 216 and Shop No. 160/308 are not in possession and ownership of the respondents. PW-3 was Mr. Jag Prasad Tiwari, who produced a registered sale deed in his favour in respect of the said Shop No. 216. Both PW-3 and PW-4 made a statement that Mr. Sushil Kumar has no connection with the business being carried on by them from the concerned premises. In the cross-examination, it was stated that the bills of telephone connection have been paid by PW-3 and PW-4 since inception. No independent evidence was adduced by the petitioners to prove that Mr. Sushil Kumar carries on business from the Shop No. 216 and Shop No. 160/308. In view thereof, no exception can be taken to the finding rendered in the impugned



judgment that Mr. Sushil Kumar is neither in possession of said shops nor is running any business from there.

10. With regard to contention of the petitioners that Mr. Sushil Kumar was running a business in Shop no. 200, in the name and style “Pinki Super Store” with his brother Mr. Kulbhushan [who died in August, 2013] and since then Mr. Sushil Kumar has been running the said business, the impugned judgment notes as follows:-

“RW-2 proved that M/s Pinky Superstore was previously operating from shop No. 200, Ajmeri Gate, Delhi, however, it stands closed, as its registration was cancelled on 30.09.2003.

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It is stated in the written arguments by the petitioners that after demise of their sister, now the confectionery business from shop No.200 is carried-on by the petitioner No.1 and shop no. 192 is used as godown for storing the confectionery items. Petitioner No.2 is still unemployed. The same has not been rebutted-by the respondents.”

11. Learned counsel for the petitioners has relied on an envelope sent in the name of “Pinki Super Store” to contend that the said store was being run from Shop No. 200. It is further submitted that certificate/dealer profile of “Pinki Super Store” mentions the date of cancellation as 30.09.2003 while date of registration is later in point of time i.e. 01.04.2005, thus, it is contended that the said certificate cannot be relied upon. It is further submitted that the Sales Tax number in the name of “Pinki Super Store” was active and the same was surrendered in January 2017 much after filing of the eviction petition.

12. PW-5 [Naresh Kumar] in his evidence affidavit has deposed that the Shop No. 200 was in possession of his brother Sh. Kulbhushan, who was running his business from there and after his death, the business was being



run by his sister, Ms Kapila. In the additional evidence affidavit, it was further deposed that after the death of her sister, PW-5 has shifted his business from Shop No. 192 to the said Shop no. 200 and the Shop No. 192 is now being used as a godown. During the cross-examination it was deposed by PW-5 that he is running a confectionery shop from Shop No. 200. PW-5 has also annexed bills of business being carried out from Shop no. 200 marked as Ex. PW-5/R-1 (OS&R), which stand duly proved in trial. The name of the store mentioned in the bills evidently is “K B Stores”. During cross-examination of PW-5, it has further been stated as under:-

“The name of the business run by Sh. Kulbhushan was K.B. Store.

Question: What does (K.B.) stands for?

Answer: K.B. stands for Kulbhushan. It also stands for Kapila Bhushan.

Sh. Kulbhushan has been doing business prior to year 2000 and did till his death. Sh. Kulbhushan used to run his business on his own. It is incorrect to suggest that Sh. Kulbhushan used to be assisted by his brother Sh. Sushil Kumar, in his business. It is also correct that Ms. Kapila never used to assist Sh. Kulbhushan in his business. It is incorrect to suggest that as today Sh. Sushil Kumar is doing business from Shop No. 200, Ajmeri Gate, Delhi from where Sh. Kulbhushan used to run his business during his life time.....”

13. It was, thus, proved in trial that the store in the name and style “K B Stores” was being operated from the Shop no. 200. Moreover, the store was being operated by Mr. Naresh Kumar [PW-5] and not by Mr. Sushil Kumar, for whose *bonafide* necessity the present petition has been filed.

14. The petitioners in the present petition again seek to rely on the aforesaid envelope sent in the name of “Pinki Super Store” to contend that the said store is being run from Shop No. 200. The said envelope was taken on the record of the trial court pursuant to order dated 05.09.2017 passed by this Court in CM(M) No.963/2017. However, the petitioners have not cross-examined PW-5 on the aspect of envelope during the trial even after



additional evidence affidavit came to be filed by Naresh Kumar [PW-5] on 14.02.2019. Even otherwise, the said envelope does not in any manner prove that a store in the name of “Pinki Super Store” was being run by Mr. Sushil Kumar from Shop No. 200, when eviction petition was filed. Further, the certificate/dealer profile, which the petitioners contend should be disregarded, has been tendered in evidence by the petitioners’ witness marked as Ex. RW-3/1. The same also does not prove that a store in the name of “Pinki Super Store” was being run from Shop No. 200 when eviction petition was filed. In view thereof, the rent controller rightly came to the conclusion that Mr. Sushil Kumar was not working/ carrying on business from Shop No. 200.

15. Learned counsel for the petitioners has further contended that Shop no. 193 was rented out by the respondents to “Ganpati Fastener” in March 2013 and thus the said shop was vacant when the eviction petition was filed. It is further contended that the sales tax information of “Ganpati Fasteners” shows that the sale tax number of the said business was surrendered in the year 2017 and the shop was handed over to the respondents. With regard to this shop, the impugned judgment notes as under:-

“It is clearly stated by the petitioners that they have shops under their ownership i.e. Shop No.192-193, Gali Bandook Wall, Ajmeri Gate, Delhi, however, petitioner No. 1 is running his business from Shop No. 192 whereas Shop No. 193 is under tenancy & 'occupation of Sh. Rajeshwar Kalra, who is running business under name & style of M/s Ganpati Fasteners. Respondent No.1 has admitted during her testimony as R'W-1 that shop No. 193. Gali Bandobk Wall. Aimerd Gate. Delhi is in possession of M/s Ganpati Fasteners. as tenant. It has also not been specifically denied by the respondents that shop NO. 192, Gali Bandook Wali, Ajmeri Gate, Delhi is in possession of petitioner no.1 from where he is running his business.”



16. The aforesaid finding of the rent controller is based on a correct appraisal and appreciation of the evidence of record. The relevant extract of the RW-1's cross-examination, is as under:-

"It is correct that shop bearing no. 193, Gali Bandook Wali is in possession M/s. Ganpati Fasteners as tenant."

17. The contention of the petitioners that the Shop No. 193 was vacant when the eviction petition was filed appears to have not been raised before the rent controller. No evidence has been led on the said aspect by the petitioners. In fact, in the evidence affidavit of PW-5 dated February, 2016, it was stated as under:-

"7.shop No. 193 is in the possession of one tenant namely Rajesliwar Kalra, who is running the business from the said shop under the name and style of "Ganpati Fastners" for the last more than seven years."

18. However, there was no cross examination of PW-5 with respect to the above aspect. Again, the submission of the petitioners that the said shop No. 193 was surrendered to the respondent in 2017 is not borne out from the material on record; mere surrender of the sale tax number of the said business in the year 2017 cannot lead to such conclusion.

19. The law is well settled that a tenant cannot dictate to the landlord as to how he should accommodate itself, or dictate to the landlord his choice of accommodation. This position has been reiterated in numerous of judgments of the Supreme Court. In *Anil Bajaj v. Vinod Ahuja*⁸, it has been held as under:

"...what the tenant contends is that the landlord has several other shop houses from which he is carrying on different business and further that the landlord has other premises from where the business proposed from the tenanted premises can be effectively carried out. It would hardly require

⁸ (2014) 15 SCC 610



any reiteration of the settled principle of law that it is not for the tenant to dictate to the landlord as to how the property belonging to the landlord should be utilized by him for the purpose of his business. Also, the fact that the landlord is doing business from various other premises cannot foreclose his right to seek eviction from the tenanted premises so long as he intends to use the said tenanted premises for his own business.”

20. In ***Shiv Sarup Gupta Vs. Mahesh Chand Gupta (Dr)***⁹, it has been held as under:-

“Once the court is satisfied of the bona fides of the need of the landlord for the premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the court.”

21. In ***Sait Nagjee Purushotham & Co. Ltd. v. Vimalabai Prabhulal***¹⁰, it has been held as under:

“It is not the tenant who can dictate the terms to the landlord and advise him what he should do and what he should not. It is always the privilege of the landlord to choose the nature of the business and the place of business.”

22. In ***Prativa Devi (Smt.) Vs. T.V. Krishnan***¹¹, it has been held as under:-

“The landlord is the best judge of his requirement. He has a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a standard of their own.”

23. In ***Sarla Ahuja Vs. United India Insurance Co. Ltd***¹², it has been held as under:-

“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

⁹(1999) 6 SCC 222

¹⁰(2005) 8 SCC 252

¹¹(1996) 5 SCC 353

¹²AIR 1999 SC 100



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

24. With regard to the alleged availability of Property no.352, Katra Sheikh Ranjha, Delhi-110006, the impugned judgment renders the following finding :-

“It has been also stated that shop at 352, Katra Sheikh Ranjha, Hauz Qazi, Delhi is under tenancy of Sh. Gur Dev Prasad and rest of the premises is used as residence, being non-commercial in nature, which has not been denied specifically by the respondents.”

25. The aforesaid finding of the rent controller is also based on, and consistent with the pleadings/evidence on record.

26. The petitioners have further sought to assert that Mr. Sushil Kumar [for whose *bonafide* necessity the present petition has been filed] is not capable of running a business due to impaired vision. This submission, besides being contrary to the assertion that the said person is running multiple businesses from multiple shops, is most reprehensible and deserves to be rejected outright. Mere disability of a person does not deprive such a person of his constitutional right to practise any profession, or to carry on any occupation, trade or business. This submission on behalf of the petitioners not only undermines sacrosanct constitutional principles, it also runs afoul to the objectives and provisions of the Rights of Persons with Disabilities Act, 2016.

27. In *Union of India & Anr. vs. National Federation of the Blind & Ors.*¹³, the Supreme Court held as under:-

“23. India as a welfare State is committed to promote overall development of its citizens including those who are differently abled in order to enable them to lead a life of dignity, equality, freedom and justice as mandated by the

¹³ (2013) 10 SCC 772



Constitution of India. The roots of statutory provisions for ensuring equality and equalisation of opportunities to the differently abled citizens in our country could be traced in Part III and Part IV of the Constitution. For the persons with disabilities, the changing world offers more new opportunities owing to technological advancement, however, the actual limitation surfaces only when they are not provided with equal opportunities. Therefore, bringing them in the society based on their capabilities is the need of the hour.”

28. In **Vikash Kumar vs. UPSC & Ors.**¹⁴, the Supreme Court held as under:-

“G. The Rights of Persons with Disabilities Act, 2016 : A paradigm shift

G.1. A statutory manifestation of a constitutional commitment

41. Part III of our Constitution does not explicitly include persons with disabilities within its protective fold. However, much like their able-bodied counterparts, the golden triangle of Articles 14, 19 and 21 applies with full force and vigour to the disabled. The 2016 RPwD Act seeks to operationalise and give concrete shape to the promise of full and equal citizenship held out by the Constitution to the disabled and to execute its ethos of inclusion and acceptance.

42. The fundamental postulate upon which the 2016 RPwD Act is based is the principle of equality and non-discrimination. Section 3 casts an affirmative obligation on the Government to ensure that persons with disabilities enjoy : (i) the right to equality; (ii) a life with dignity; and (iii) respect for their integrity equally with others. Section 3 is an affirmative declaration of the intent of the legislature that the fundamental postulate of equality and non-discrimination is made available to persons with disabilities without constraining it with the notion of a benchmark disability. Section 3 is a statutory recognition of the constitutional rights embodied in Articles 14, 19 and 21 among other provisions of Part III of the Constitution. By recognising a statutory right and entitlement on the part of persons who are disabled, Section 3 seeks to implement and facilitate the fulfilment of the constitutional rights of persons with disabilities.

*43. There is a critical qualitative difference between the barriers faced by persons with disabilities and other marginalised groups. In order to enable persons with disabilities to lead a life of equal dignity and worth, it is not enough to mandate that discrimination against them is impermissible. That is necessary, but not sufficient. We must equally ensure, as a society, that we provide them the additional support and facilities that are necessary for them to offset the impact of their disability. This Court in its judgment in *Jeeja Ghosh v. Union of India* [*Jeeja Ghosh v. Union of India*, (2016) 7*

¹⁴ (2021) 5 SCC 370



SCC 761 : (2016) 3 SCC (Civ) 551] , noted that a key component of equality is the principle of reasonable differentiation and specific measures must be undertaken, recognising the different needs of persons with disabilities, to pave the way for substantive equality. A.K. Sikri, J. stated in the above judgment : (SCC p. 793, para 40)

“40. In international human rights law, equality is founded upon two complementary principles : non-discrimination and reasonable differentiation. The principle of non-discrimination seeks to ensure that all persons can equally enjoy and exercise all their rights and freedoms. Discrimination occurs due to arbitrary denial of opportunities for equal participation. For example, when public facilities and services are set on standards out of the reach of persons with disabilities, it leads to exclusion and denial of rights. Equality not only implies preventing discrimination (example, the protection of individuals against unfavourable treatment by introducing anti-discrimination laws), but goes beyond in remedying discrimination against groups suffering systematic discrimination in society. In concrete terms, it means embracing the notion of positive rights, affirmative action and reasonable accommodation.”

*44. The principle of reasonable accommodation captures the positive obligation of the State and private parties to provide additional support to persons with disabilities to facilitate their full and effective participation in society. The concept of reasonable accommodation is developed in section (H) below. For the present, suffice it to say that, for a person with disability, the constitutionally guaranteed fundamental rights to equality, the six freedoms and the right to life under Article 21 will ring hollow if they are not given this additional support that helps make these rights real and meaningful for them. Reasonable accommodation is the instrumentality— are an obligation as a society—to enable the disabled to enjoy the constitutional guarantee of equality and non-discrimination. In this context, it would be apposite to remember R.M. Lodha, J's (as he then was) observation in *Sunanda Bhandare Foundation v. Union of India* [*Sunanda Bhandare Foundation v. Union of India*, (2014) 14 SCC 383 : (2015) 3 SCC (L&S) 470; *Disabled Rights Group v. Union of India*, (2018) 2 SCC 397 : (2018) 1 SCC (L&S) 391] , where he stated : (SCC p. 387, para 9)*

“9. ... In the matters of providing relief to those who are differently abled, the approach and attitude of the executive must be liberal and relief oriented and not obstructive or lethargic.”

G.2. Scheme of the 2016 Act

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54. This Court in *Union of India v. National Federation of the Blind* [*Union of India v. National Federation of the Blind*, (2013) 10 SCC 772 : (2014) 2 SCC (L&S) 257] has recognised that employment opportunities play an instrumental role in empowering persons with disabilities. P. Sathasivam, J. (as he then was) observed : (SCC p. 799, para 50)

“50. Employment is a key factor in the empowerment and inclusion of people with disabilities. It is an alarming reality that the disabled people are out of job not because their disability comes in the way of their functioning rather it is social and practical barriers that prevent them from joining the workforce. As a result, many disabled people live in poverty and in deplorable conditions. They are denied the right to make a useful contribution to their own lives and to the lives of their families and community.”

It is imperative that not only the Government but also the private sector takes proactive steps for the implementation of the 2016 RPwD Act.

55. The 2016 RPwD Act is fundamentally premised on the recognition that there are many ways to be, none more “normal” or “better” than the other. It seeks to provide the disabled a sense of comfort and empowerment in their difference. Recognising the state of affairs created by centuries of sequestering and discrimination that this discrete and insular minority has faced for no fault on its part, the 2016 RPwD Act aims to provide them an even platform to thrive, to flourish and offer their unique contribution to the world. It is based on the simple idea with profound implications that each of us has: “unique powers to share with the world and make it interesting and richer”. [Sonia Sotomayor, *Just Ask! Be Different, Be Brave, Be You* [2019, Penguin] letter to the reader.] By opening doors for them and attenuating the barriers thwarting the realisation of their full potential, it seeks to ensure that they are no longer treated as second class citizens.

56. It gives a powerful voice to the disabled people who, by dint of the way their impairment interacts with society, hitherto felt muted and silenced. The Act tells them that they belong, that they matter, that they are assets, not liabilities and that they make us stronger, not weaker.....”

29. Thus, it would be wholly retrograde, and in derogation of the constitutional guarantees under Articles 14, 19 & 21, to deny the right of a person suffering from any disability, to carry on any trade or business. As such, the alleged low vision/disability of Mr.Sushil Kumar cannot undermine his *bonafide* necessity for the premises in question, for the purpose of carrying on his business.



30. With regard to the contention of the petitioners that Mr. Sushil Kumar for whose *bonafide* requirement the eviction petition was filed, did not lead any evidence/ give his own testimony, the law is well settled that mere non-examination of the person for whose need the tenanted premises is required by itself is no ground to non-suit the landlord, in case he has otherwise established a *bonafide* need. In this regard, reference is apposite to the judgment in the case of ***Mehmooda Gulshan vs. Javaid Hussain Mungloo*** (supra), wherein it has been held as under:-

“18. In C. Karunakaran v. T. Meenakshi [C. Karunakaran v. T. Meenakshi, (2005) 13 SCC 99], one issue which arose for consideration was whether non-examination of the person for whose need the building was required was fatal. It was held that “mere non-examination of the person for whose need the building was required by itself was no ground to non-suit the landlady”. To quote: (SCC p. 101, para 5)

“5. ... Mere non-examination of the person for whose need the building was required by itself was no ground to non-suit the landlady. In a number of decisions (this fact is acknowledged by the first appellate court also), it has been held that it is not necessary to examine the person for whose need the premises are required. It depends on the facts and circumstances of each case.”

19. In Gulraj Singh Grewal v. Harbans Singh [Gulraj Singh Grewal v. Harbans Singh, (1993) 2 SCC 68] , this Court had an occasion to see whether a landlord can be non-suited on the ground of non-examination of the son for whose benefit the premises are sought to be vacated. This Court held that in case the need has otherwise been established in evidence, the non-examination is not material. At the best, it is only a matter of appreciation of evidence. To the extent relevant, para 8 reads as follows: (SCC p. 72)

“8. The learned counsel for the appellant submitted that the personal need found proved is only of Respondent 2, son of Respondent 1, who did not enter the witness box and, as stated in an affidavit filed in this Court, even he is carrying on his profession at a place about 25 km away from Ludhiana, in our opinion, this finding of fact is unassailable. The High Court has clearly observed that no meaningful argument could be advanced on behalf of the appellant to challenge this finding of the appellate authority. Respondent 1 who is the father of Respondent 2, has supported and proved the need of Respondent 2, who also is a landlord. The fact that for want of suitable accommodation in the



city of Ludhiana, Respondent 2 is at present carrying on his profession at some distance from Ludhiana is not sufficient to negative the landlord's need. In these circumstances, the non-examination of Respondent 2 also, when Respondent 1 has examined himself and proved the need of the landlord, is immaterial and, at best, a matter relating only to appreciation of evidence, on which ground this finding of fact cannot be reopened.”

20. Thus, the question is whether there is a reasonable requirement by the landlord of the premises. This would depend on whether the landlord has been able to establish a genuine element of need for the premises. What is a genuine need would depend on the facts and circumstances of each case. Merely because the landlord has not examined the member of the family who intends to do business in the premises, he cannot be non-suited in case he has otherwise established a genuine need. The need is a matter of appreciation of evidence, and once there is no perversity in the appreciation of evidence on the need, the said finding of fact cannot be reopened. It may be crucially relevant to note that the eviction is not sought on the last limb of Section 11(1)(h) of the Act, namely, “for the occupation of any person for whose benefit the house or shop is held”. The premises sought to be evicted is not held for the benefit of the son alone, but the whole family. It is for the own occupation of the landlord. It has been established in the facts of this case that the landlord was not happy and content with the paltry rent received from the premises. The landlord intended to engage her son in the business at the premises. It is for the landlord to decide as to the best use the premises should be put to. There is nothing wrong on the part of a landlord in making plans for a better living by doing business engaging her son. Having regard to the background of the son who is unemployed and undereducated, the appellant was able to establish that business was the available option and the tenanted premises was the only space available. Thus, the genuine need for the premises has been established. Unfortunately, the High Court has missed these crucial aspects.”

31. It may also be noted that RW-1 [Smt. Santosh Bhutani] during cross-examination has stated as under:-

“I can not point out the documents which shows that petitioners are not having any bonafide need.”

32. The contention that the petitioners may be allowed to run their business from the tenanted premises till another shop, in respect of which the petitioner no. 1 herein is the landlord, is vacated by the tenants thereof, is



also liable to be rejected. In ***Bosco Joseph vs. Raj Kumar***¹⁵, this court has held as under:-

“17. Unlike a few of the Rent Control statutes where comparative hardship is one of the tests that a Rent Controller applies, under the Delhi Rent Control Act, 1958, there is no test of comparative requirement. Under the Delhi Rent Control Act, all that has to be shown is that the tenanted premises is bona fide required by the Landlord or by any member of the family who is dependent on the Landlord for the said premises or that other member of the family for whose benefit the premises is sought for is dependent on him and no other reasonably suitable accommodation is available. There is no test of comparative hardship in the Delhi Rent Control Act.....”

33. The Supreme Court, in ***Abid-Ul-Islam vs. Inder Sain Dua***¹⁶ has emphasised that the scope of interference in revisional jurisdiction is very restricted, and except in cases where there is an error apparent on the face of the record, this court would not proceed to disturb the findings rendered by the rent controller. In this regard reference has been made to the following observations in the said judgement:-

“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.”

¹⁵2022 SCC OnLine Del 2029 : (2023) 1 RCR (Rent) 149

¹⁶(2022) 6 SCC 30



34. In the facts and circumstance of the present case, the impugned eviction order does not merit any interference in exercise of revisional jurisdiction under Section 25B (8) of the DRC Act.

35. As such, no merit is found in the present petition and the same is accordingly dismissed.

36. All pending applications also stand disposed of.

SEPTEMBER 14, 2023/ r/ hg

SACHIN DATTA, J