

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

Date of decision: 11<sup>th</sup> JULY, 2022

IN THE MATTER OF:

+ **RC.REV. 259/2016 & CM APPLs. 17519/2016, 17521/2016, 31327/2021, 12496/2022, 13131/2022, 19039/2022**

BOSCO JOSEPH

..... Petitioner

Through: Mr. Wills Mathews, Mr.Dhanesh M  
Nair, Advocates

versus

RAJ KUMAR

..... Respondent

Through: Mr. Ishan Gaur, Mr.Vasu Singh,  
Advocates

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**SUBRAMONIUM PRASAD, J.**

1. The instant revision petition under Section 25-B (8) of the Delhi Rent Control Act, 1958, is directed against the Order dated 31.10.2015, passed by the learned SCJ-cum-Rent Controller, Patiala House Courts, Delhi, in Eviction Petition, being E.No.21/2015, dismissing the application filed by the Petitioner herein (*hereinafter referred to as 'the Tenant'*) for leave to defend and evicting the Tenant from the property bearing Shop No. 16 (admeasuring approximately 160 sq. ft.) with a public Verandah (admeasuring approximately 120 sq. ft.) in front thereof at the address plot No.1, Block No.88, Lady Harding Road, New Delhi (*hereinafter referred to as 'the tenanted premises'*).

2. The facts, in brief, leading to the instant petition are as under:-
- i. It is stated that the mother of the Respondent herein (*hereinafter referred to as 'the Land-lord'*) had purchased the tenanted premises *vide* sale deed dated 24.12.1979 and the Land-lord acquired the title of the tenanted premises by way of a gift deed dated 26.02.2020. It is stated that the tenanted premises was originally let out to the father of the Petitioner herein – Late Sh. C. D. Joseph at a monthly rent of Rs.39.80/- per month. It is stated that the father of the Petitioner was conducting his business at the tenanted premises under the name and style of M/s. Southland's @ South Indian Concern. It is stated that after the death of C. D. Joseph in the year 2006, physical possession of the tenanted premises came to be with the Petitioner herein/Tenant.
  - ii. It is stated that the Land-lord filed an eviction petition for evicting the Tenant on the ground that the Land-lord wants to establish his younger son – Rohit Aggarwal, who was about 23 years of age at the time of filing of the eviction petition. It is stated that Rohit Aggarwal does not own or possess any other accommodation of his own and requires the tenanted premises for carrying out the proposed business of ice-cream parlour/ coffee shop/ fruit juice parlour. It is stated that at present, the son of the Land-lord is assisting the Land-lord and his family members in the family business of M/s Bangla Sweet House and M/s Bangla Foods Pvt. Ltd. It is further stated that Rohit Aggarwal does not have any fixed place of business and he

earns through some commissions and also receives some rental income from his proportionate share in property No.86, Baird Road, New Delhi, in which he has 25% share by way of a gift deed dated 28.06.2020 executed by the father of the Landlord - Atma Ram Aggrawal.

- iii. It is stated that the Land-lord owns Shops No. 115 and 117, Baird Road, Plot No.1, New Delhi from where the business of M/s. Bangla Sweet House is running since 1959. It is stated that the Land-lord is one of the partners in the said business along with his brother and father by way of a partnership deed dated 01.04.1996.
- iv. It is stated that the Land-lord also owns Shop No.18, Lady Harding Road, Delhi, which is under the tenancy of the LRs of one Sh. Ratan Lal. It is stated that the said shop is adjacent to the tenanted premises and is also required by the Tenant for settling his son. It is stated that an eviction petition for evicting the LRs of Sh. Ratan Lal from the said shop has already been filed.
- v. It is stated that the Land-lord is also a licensee of Shop No.113, Baird Road, Plot No.1, New Delhi and his father – Atma Ram Aggarwal is a licensee of Shop No.111, Baird Road. It is stated that the Land-lord or his sons have no right, title or interest in Shop No.111, Baird Road. Even otherwise the family business under the name of M/s Bangla Foods Pvt. Ltd. is being run from Shop No.111-113, where the Land-lord is only a Director along with other Directors, and the family of the Land-lord has been

conducting the business of fast food bakery and other items in the said shops since December, 2003. It is stated that the Land-lord also owns one built-up residential property bearing No.32 Babar Road, New Delhi. It is stated that the said property is being used by the Land-lord and his family members for residential purposes.

- vi. It is stated that the father of the Land-lord – Sh. Atma Ram Aggarwal had gifted a property bearing No.86, Baird Road to Ms. Rachna Aggarwal (wife of the Land-lord), Mr. Ramit Aggarwal (elder son of the Land-lord) and Mr. Rohit Aggarwal (younger son of the Land-lord for whom the tenanted premises is required) *vide* a registered gift deed dated 28.06.2010. It is stated that the said property is jointly owned by Ms. Rachna Aggarwal, Mr. Ramit Aggarwal and Mr. Rohit Aggarwal in the ratio of 50%, 25% and 25% respectively. It is stated that the front portion of the said property is in occupation of Mr. Ramit Aggarwal (elder son of the Land-lord) where he is running his business of Commission Agent on full time basis, with his wife - Nikita Aggarwal, running her business of packed gift baskets. It is stated that the remaining portion of the said property is in possession of M/s. Asian Overseas as a Lessee through a registered Lease Deed dated 01.04.2008 which was mutually extended between the parties for a further period of five years w.e.f. 01.04.2013 *vide* a registered lease deed dated 25.02.2015. It is stated that the rental income from the remaining portion of the said property is being proportionately shared by Ms.

Rachna Aggarwal (wife of the Land-lord), Mr. Ramit Aggarwal (elder son of the Land-lord) and Mr. Rohit Aggarwal (younger son of the Land-lord for whom the tenanted premises is required).

- vii. The eviction petition further discloses that the mother of the Land-lord was the owner of properties bearing No.119, 119A & 121, Plot No.1, Block No.88, situated at the crossing of Lady Harding Road and Baird Road, New Delhi and the said properties have been gifted by her to the brother of the Land-lord – Praveen Aggarwal and his wife – Meena Aggarwal and the Land-lord does not have any right or interest in the said properties. It is stated that apart from the abovementioned properties, the Land-lord does not have any other property and no alternate vacant accommodations are available to the Land-lord which can meet the requirement of his younger son who has completed his graduation and now wants to start his own independent business of ice-cream parlour/coffee shop/ fruit juice parlour so that he can independently earn his livelihood.
- viii. An application for leave to defend was filed by the Tenant stating that the Landlord hails from a wealthy family and owns a number of shops in the locality. It is further stated that the Landlord has not revealed the details of shops that are lying vacant or of those properties where he can accommodate his younger son. It is stated that the Landlord has two shops bearing No.115 & 117, just adjacent to the tenanted premises, where the Landlord is running a sweet shop in the name of

Bangla Sweet House. It is stated that Shops No.119 and 121 are also at the disposal of the Landlord as shop No.119 is lying vacant and Shop No.121 has been let out to Apollo Pharmacy. It is stated that four other shops at Bangla Sahib Road are also at the disposal of the Landlord and his family members. It is further stated that there are 7-8 shops at the disposal of the Landlord just opposite to the Bangla Sahib Road. It is stated that other than Shop No.111 and 113, from where the Landlord is running a shop in the name and style of Bangla Foods Pvt. Ltd., there are two more shops at the disposal of the Landlord in the same building which are lying vacant. It is further stated that just opposite to the tenanted premises, in another building, there are 4-5 shops at the disposal of the Landlord out of which one shop is lying vacant and 3-4 shops have been let out to different tenants and one shop is being used as an office by the Landlord and his family members. It is stated that apart from the abovementioned properties, the Landlord has other properties in Delhi NCR, including one shop bearing No. 1 at Doctor's lane; one Restaurant in Rohini, opposite Deepali Chowk, Saraswati Vihar, Delhi; workshop/manufacturing unit at Baird Road; a big estate in Mathura Vrindavan, and a restaurant and one sweet shop in Karnal. It is further stated in the application for leave to defend that the Landlord and his family members have got enough surplus places adjacent to the tenanted premises which are sufficient and enough to accommodate the needs of the younger son of the Landlord. It

is also stated in the leave to defend application that on the death of the original tenant, i.e. C. D. Joseph, the tenancy devolved on the legal heirs of C. D. Joseph and since the Landlord chose not to implead all the legal heirs of C.D. Joseph, the eviction petition is barred by non-joinder of all the necessary parties.

- ix. A reply to the application for leave to defend was filed by the Landlord reiterating the facts as mentioned in the eviction petition and denying the averments made by the Tenant. In reply, the Landlord denied that he is the owner of shop No.119 and 121. The Landlord also denied that any of these shops are available to him or are at his disposal. It is stated in the reply that Shops No.119 & 121 are owned and possessed by the brother of the Landlord – Praveen Aggarwal and his wife – Meena Aggarwal. It is further denied by the Landlord that he or his family members own a restaurant in Rohini or that he owns or possess any workshop or manufacturing unit at Baird Road. However, it is stated that the brother of the Landlord – Praveen Aggarwal is a licensee of a shop/fuel depot No.5, Gole Market from where a workshop is being run by M/s Bangla Sweet House. Further the averments of the Tenant that the Landlord owns an estate in Mathura Vrindavan and a restaurant in Karnal have also been denied by the Landlord in the reply to the application for leave to defend. It is stated by the Landlord that he owns some agricultural land in Vrindavan, Mathura and the said agricultural land is presently under Land Acquisition proceedings and is not available to the Petitioner for setting

independent business for his younger son.

x. The learned Rent Controller, after considering all the fact and circumstances, rejected the application of the Tenant for leave to defend and allowed the eviction petition *vide* Order dated 31.10.2015 by holding as under:

a) That the extent of the tenanted premises which is disputed by the Tenant has not lead to any triable issue. The learned Rent Controller relied on the Order dated 30.01.2014, passed by this Court dismissing the regular second appeal filed by the Tenant with respect to the passage, staircase and roof over the tenanted premises. This Court, by the said Order had held that the Tenant failed to prove that he was the Tenant in respect of the passage, staircase and the roof. The learned Rent Controller held that the Landlord is seeking eviction of the Tenant from Shop No.16, which is specifically shown in red colour in the site plan and, therefore, the Tenant knew about the area of which he is the Tenant.

b) The learned Rent Controller rejected the averment of the Tenant that the eviction petition is barred by non-joinder of necessary parties by stating that the tenanted premises was let out to C. D. Joseph and the Petitioner herein being the son of C. D. Joseph, is a legal heir of C. D. Joseph. The learned Rent Controller held that in cases where more than one legal representatives of the deceased tenant are in occupation of premises, an eviction petition by landlord



against those who are in occupation of the premises is a valid petition and it is not necessary for landlord to implead all the legal heirs of the deceased tenant. For this purpose, the learned Rent Controller relied upon the judgment of the Supreme Court in H.C. Pandey vs. G.C. Paul, (1989) 3 SCC 77.

- c) The learned Rent Controller also rejected the argument raised by the learned counsel for the Tenant that the Landlord is not the owner of the tenanted premises. The learned Rent Controller held that the Landlord has placed on record a copy of the gift deed dated 26.02.2000 executed by his mother - Smt. Saraswati Devi in favour of the Landlord and, therefore, the Landlord is entitled to institute an eviction petition against the Tenant.
- d) The learned Rent Controller also rejected the argument of the Tenant that the need of the Landlord is not *bona fide*. The learned Rent Controller held that the tenanted premises is required for opening a business of ice cream parlour/ coffee shop/juice or shake parlour for his son Rohit Aggarwal who has completed his graduation and now wants to start his own independent business. The learned Rent Controller held that the fact that Rohit Aggarwal is getting 25% of the rent amount from property bearing No.86, Baird Road, does not take away the need of the Landlord to settle his own son and enable him to support his own business. The learned Rent Controller held that the son of the

Landlord has only a small share in the property bearing No.86, Baird Road, which is primarily occupied by the elder son of the Landlord and his wife, and the rest of the portion is under tenancy and, therefore, it cannot be said that the Landlord has a suitable accommodation with him to settle his younger son – Rohit Aggarwal. The learned Rent Controller held that at the time of filing of the eviction petition the younger son of the Landlord was only helping his father in the family business and it cannot be said that the Landlord cannot endeavour to ensure that his younger son sets up his own independent business. The learned Rent Controller held that the desire of the Landlord to establish his younger son cannot be said to be fanciful or unreasonable. The learned Rent Controller held that the fact that Rohit Aggarwal has completed his graduation is not disputed and it is quite natural that the Landlord would like to settle his sons in separate businesses without interference of each other. The learned Rent Controller further held that Rohit Aggarwal is dependent upon the Landlord for his livelihood and for accommodation, and merely because he is getting some income by way of commissions and share in property bearing No.86, Baird Road, does not lead to the inference that he is gainfully employed and does not cast any doubt on the *bona fide* of the Landlord to establish his younger son.

- e) The learned Rent Controller also rejected the plea of the

Tenant that there is availability of an alternative accommodation. The learned Rent Controller rejected the argument of the Tenant that there is a basement under the possession of the Landlord in shop No.115-117 where Bangla Sweet House is being run and the said space can be utilized by the Landlord to meet his requirement of settling his younger son. The learned Rent Controller relied upon the judgment of the Supreme Court in Anil Bajaj and Anr. v. Vinod Ahuja, (2014) 15 SCC 610, wherein it was held that landlord is entitled to evict his tenant if the landlord is carrying on business from a less convenient location and wants to shift to a more convenient location. The learned Rent Controller also relied on the judgment of this Court in Surinder Singh vs. Jasbir Singh, 172 (2010) DLT 6117, wherein it has been held that the fact the Landlord has not disclosed the availability of an accommodation in the basement would not be fatal to the case of the Landlord as it cannot be said that the basement is a suitable alternative accommodation for the Landlord for the purpose of setting up a business. The learned Rent Controller held that as far as property bearing No. 117 and 115 are concerned, it is stated that M/s. Bangla Sweet House is running from the said premises and the Landlord is one of the partners in the same. The learned Rent Controller held that this fact is not disputed by the Tenant. It was further held that as far as property bearing No. 111-113 is concerned, admittedly M/s.

Bangla Foods Pvt. Ltd is being run in the said premises. He held that Shop No.18, Plot no. 1, Block No. 88, Lady Harding road is under tenancy of LRs of Late Sh. Ratan Lal. The learned Rent Controller held that as far as property bearing No. 32, Baber Road, New Delhi is concerned, it is purely a residential accommodation where the Landlord is residing along with his family and the said accommodation, by no stretch of imagination, can be termed as an alternative accommodation for the purpose of carrying out a business. The learned Rent Controller further held that as far as property bearing No.86, Baird Road is concerned, the same is jointly owned by the wife of the Landlord and his two sons in the ratio of 50%, 25% and 25% respectively and the said property is located far from the tenanted premises. The learned Rent Controller held that the fact that the younger son of the Landlord is the owner of 25% of the said property does not mean that he has an alternate accommodation as maximum portion of the said property is with the elder son of the Landlord. The learned Rent Controller further held that as far as properties bearing No.119, 119A and 121 are concerned, it has been stated by the Landlord that his mother - Smt. Saraswati Devi, was the owner of said property and she has gifted the said property to his brother Sh. Praveen Aggarwal and his wife Smt. Meena Aggarwal. The learned Rent Controller also held that with regard to the property at Doctor's lane, it has been stated by the Landlord

that his brother Praveen Aggarwal is a licensee of the said property and the same is being used by him as a workshop for M/s. Bangla Sweet House. The learned Rent Controller, therefore, held that these properties cannot be considered as alternative suitable accommodation for the Landlord to establish his younger son.

f) The learned Rent Controller further held that as far as the property at Vrindavan is concerned, it has been stated by the Landlord in his reply that the same is an agricultural land and is also under the Land Acquisition proceedings. The learned Rent Controller held that even if it is assumed that the said land in Vrindavan is available to the Landlord then also it cannot be termed as an alternative accommodation for the Landlord as it is natural that a father would like to keep his sons near him.

xi. It is this Order which is under challenge in the instant revision petition.

2. Notice in the instant revision petition was issued on 10.05.2016. On 28.08.2019, at the request of the parties, the matter was referred to the Delhi High Court Mediation & Conciliation Centre. Unfortunately, the mediation failed. *Vide* Order dated 07.02.2022, this Court fixed the rent of the tenanted premises at Rs.75,000/- per month. An application was filed by the Landlord stating that the monthly rent, as has been fixed by this Court *vide* Order dated 07.02.2022, is not being paid by the Tenant. This Court, at this juncture, is not going into the said issue as it is deciding the main dispute as to whether the Order dated 31.10.2015, passed by the learned SCJ-cum-Rent

Controller, Patiala House Courts, Delhi, in Eviction Petition, being E.No.21/2015, dismissing the application filed by the Tenant for leave to defend and evicting the Tenant from the tenanted premises, is in accordance with law or not.

3. Mr. Wills Mathews, learned Counsel for the Petitioner/Tenant, submits that though the family of the Tenant took the tenancy of the tenanted premises many years ago, the Petitioner/Tenant has been in occupation of the tenanted premises for more than 16 years now. He states that the Petitioner/Tenant does not have any alternative accommodation and the business that he is running from the tenanted premises is the only source of livelihood for the Tenant whereas the Landlord has about 12 properties in the same locality and two shops in the same market have been kept closed. It is also stated by the learned Counsel for the Tenant that the Landlord is a rich man having a number of properties and over 100 employees and, therefore, the need of the Landlord cannot be said to be *bona fide*. The learned Counsel for the Petitioner further submits that the eviction petition was filed by the Landlord without impleading all the LRs of C.D. Joseph, who was the original tenant of the tenanted premises. He relies on the earlier eviction petition, being E.No.42/2009, filed by the mother of the Respondent herein/Landlord against the Petitioner herein and other legal representatives of C.D. Joseph. He states that all the legal representatives of C.D. Joseph were impleaded in the abovementioned petition, however, in the impugned eviction petition the other legal representatives of C. D. Joseph were not made parties. He further submits that the Landlord has suppressed the fact regarding the ownership of the property at Vrindavan. He states that the factum of ownership of the property at Vrindavan was accepted by the

Landlord only in his reply to the application for leave to defend filed by the Tenant. He further states that the Landlord has also suppressed the fact about the availability of a basement at shop No.115-117 and, therefore, this itself raises a triable issue and the learned Rent Controller ought not have dismissed the application of the Tenant for leave to defend.

4. *Per contra*, Mr. Ishan Gaur, learned Counsel for the Respondent/Tenant, supports the impugned judgment. He states that other than the tenanted premises, no other property is available with the Landlord to establish the business of his younger son. He states that the learned Rent Controller has meticulously gone into all the issues and the Order of the learned Rent Controller does not require any interference.

5. Heard Mr. Wills Mathews, learned Counsel for the Petitioner/Tenant, Mr. Ishan Gaur, learned Counsel for the Respondent/Tenant, and perused the material on record.

6. The question which arises for consideration is whether the Tenant has raised triable issues which would entitle him leave to defend or not.

7. The eviction petition has been filed by the Landlord for evicting the Tenant on the ground that the Land-lord wants to establish his younger son – Rohit Aggarwal, who was about 23 years of age at the time of filing of the eviction petition, and has completed his graduation. It was stated in the eviction petition that Rohit Aggarwal does not own or possess any other accommodation of his own which may be as reasonably and suitably located as the tenanted premises for carrying out the proposed business of ice-cream parlour/ coffee shop/ fruit or juice parlour.

8. In the application for leave to defend, the Tenant has stated that

a) The Landlord hails from a wealthy family and has a number of

shops in the locality.

- b) The Landlord has not revealed the details of shops that are lying vacant and the details of other properties where he can accommodate his younger son.
- c) The Landlord has two shops bearing No.115 & 117, just adjacent to the tenanted premises, where the Landlord is running sweet shop in the name of Bangla Sweet House.
- d) That Shops No.119 and 121 are also at the disposal of the Landlord, and while shop No.119 is lying vacant, Shop No.121 has been let out to Apollo Pharmacy.
- e) Four other shops at Bangla Sahib Road are also at the disposal of the Landlord and his family members.
- f) Just opposite to the Bangla Sahib Road, there are 7-8 shops at the disposal of the Landlord.
- g) Other than Shop No.111 and 113, from where the Landlord is running a shop in the name and style of Bangla Foods Pvt. Ltd., there are two more shops at the disposal of the Landlord in the same building which are lying vacant.
- h) Just opposite to the tenanted premises, in other building, there are 4-5 shops at the disposal of the Landlord, out of which one shop is lying vacant, 3-4 shops have been let out to different tenants, and one shop is being used as an office by the Landlord and his family members.
- i) Apart from the abovementioned properties, the Landlord has other properties in Delhi NCR including one shop bearing No. 1 at Doctor's lane; one Restaurant in Rohini, opposite Deepali



Chowk, Saraswati Vihar, Delhi; workshop/manufacturing unit at Baird Road; a big estate in Mathura Vrindavan; and a restaurant and one sweet shop in Karnal.

- j) The Respondent/Landlord and his family members have got enough surplus places adjacent to the tenanted premises which are sufficient and enough to accommodate the needs of the younger son of the Landlord.

9. Material on record reveals that the tenanted premises was purchased by the mother of the Land-lord *vide* a sale deed dated 24.12.1979. The tenanted premises was originally let out to the father of the Petitioner herein – Late Sh. C. D. Joseph at a monthly rent of Rs.39.80/- per month. After the death of C. D. Joseph in the year 2006, physical possession of the tenanted premises is with the Petitioner herein/Tenant. Material on record further reveals that the Respondent herein acquired the title of the tenanted premises by way of a gift deed dated 26.02.2020. Respondent herein, therefore, became the Landlord and was, therefore, entitled to file the eviction petition. Material on record discloses that the mother of the Respondent/Landlord has also instituted an eviction petition against the Petitioner herein and had impleaded all the legal representatives of C.D. Joseph in that eviction petition. After becoming the owner of the tenanted premises, the Respondent herein filed the impugned eviction petition and he has only impleaded the Petitioner herein and not all the legal representatives of C.D. Joseph. In the eviction petition it was not the case of the Landlord that somebody else, other than the Petitioner herein, is in occupation of the tenanted premises. This Court in Rajender Kumar Sharma & Ors. vs. Leela Wati & Ors. **2008**

**106 DRJ 4721**, has held as under:

*"14. It is also settled law that when original tenant dies, the legal heirs inherit the tenancy as joint tenants and occupation of one of the tenant is occupation of all the joint tenants. It is not necessary for landlord to implead all legal heirs of the deceased tenant, whether they are living in the property or not. It is sufficient for the landlord to implead only those persons who are living in the property, as party. There may be a case where landlord is not aware of all the legal heirs of deceased tenant and impleading only those LRs who are in occupation of the property is sufficient for the purpose of filing Eviction Petition. An eviction petition against one of the joint tenants is an Eviction Petition against all the joint tenants and all joint tenants are bound by order of the Rent Controller as joint tenancy is one tenancy and is not a tenancy split into different legal heirs. Thus, the plea of the tenants on this count must fail."*

Further the learned Rent Controller, while dealing with this question, has placed reliance on the judgment of the Apex Court in H. C. Pandey v. G. C. Paul, (1989) 3 SCC 77. In view of the above, the contention of the learned counsel for the Petitioner that the eviction petition filed by the Landlord was barred by non-joinder of necessary parties, cannot be accepted and this does not raise a triable issue.

10. The contention of the learned counsel for the Petitioner that there is a suppression on the part of the Landlord regarding the availability of a basement at shop No.115-117 and a property at Vrindavan, which has been admitted by the Landlord in his reply to the leave to defend application, raises a triable issue, also cannot be accepted. The Apex Court in M.L.

Prabhakar v. Rajiv Singal, (2001) 2 SCC 355, has observed as under:

*“5. It has been urged that there was suppression on the part of the landlord inasmuch as he did not disclose the premises which were available at No. 16/57, Gali No. 1, Joshi Road as well as the premises which are available at Basant Road, Pahar Ganj. On the other hand, on behalf of the respondent, Dr Singhvi has submitted that the only requirement is to disclose such accommodation as is suitable for residence of the landlord. Dr Singhvi submitted that if there is no other residential accommodation which is suitable then there is no duty to disclose. Dr Singhvi relied upon the authority in the case of Ram Narain Arora v. Asha Rani [(1999) 1 SCC 141] wherein it has been held that the question whether the landlord has any other reasonably suitable residential accommodation is a question which is intermixed with the question regarding bona fide requirement. It is held that whether the landlord has any other reasonably suitable residential accommodation is a defence for the tenant. It is held that whether the other accommodation is more suitable than the suit premises would not solely depend upon pleadings and non-disclosure by the landlord. It was held that the landlord having another accommodation would not be fatal to the eviction proceedings if both the parties understood the case and placed materials before the court and case of neither party was prejudiced. In this case even though the landlord has not mentioned about the other two premises, the material in respect of the other two premises was placed before the Rent Controller as well as before the High Court, thus no prejudice has been caused. The parties have squarely dealt with this question.”*

11. In view of the above, no prejudice has, therefore, been caused to the Tenant. Basement of a shop cannot be equated with the shop itself. The Landlord's son wants to start a business of ice-cream parlour/ coffee shop/ fruit juice parlour. The said business can run more effectively from a shop at the ground floor rather than a shop at the basement. Further, the availability of a property at Vrindavan also does not help the case of the Tenant. It is stated that the said land is sought to be acquired by the Government. Further, in any event, it cannot be said that the need of the Landlord's son to set up a business of ice-cream parlour/coffee shop/fruit juice parlour can be effectively run from Vrindavan and not from the tenanted premises which is located on a busy market road. The findings of the learned Rent Controller, therefore, does not require any interference by this Court.

12. It is well settled that a tenant cannot dictate as to which of the premises is more suitable for the landlord to conduct his business and it is always the choice of the Landlord to establish his son in a premises which is most suitable to him. As stated earlier, the tenanted premises faces the market road and is, therefore, more conducive to run a business. The Apex Court in Anil Bajaj v. Vinod Ahuja, (2014) 15 SCC 610, has reiterated that it is not for the tenant to dictate the terms to the landlord and advise him as to what he should do and what he should not do. The relevant portion of the said judgment has been reproduced as under :

*“6. In the present case it is clear that while the landlord (Appellant 1) is carrying on his business from a shop premise located in a narrow lane, the*

*tenant is in occupation of the premises located on the main road which the landlord considers to be more suitable for his own business. The materials on record, in fact, disclose that the landlord had offered to the tenant the premises located in the narrow lane in exchange for the tenanted premises which offer was declined by the tenant. It is not the tenant's case that the landlord, Appellant 1, does not propose to utilise the tenanted premises from which eviction is sought for the purposes of his business. It is also not the tenant's case that the landlord proposes to rent out/keep vacant the tenanted premises after obtaining possession thereof or to use the same in any way inconsistent with the need of the landlord. What the tenant contends is that the landlord has several other shop houses from which he is carrying on different businesses 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 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 utilised 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.* (emphasis supplied)

13. Similarly, this Court in Anil Jain v. Bhagwan Shankar Khanna, 2014 SCC OnLine Del 3855, has held as follows :

*“11 (c)....This Court is in agreement with the reasoning and finding of the learned ARC. Moreover, it is well settled that a landlord is the best judge of his requirement. It is neither open for the Court or for the tenant to dictate terms to the landlord. Furthermore, the contention of the tenant that the son in the past never intended to start such a business and that too from a small bye lane situated in old Delhi which has no potential for such business is without any merit. A tenant cannot be permitted to dictate terms to the landlord as to the suitability of the premises for purposes under which the eviction is sought. Therefore, the finding of the learned ARC does not warrant any interference by this Court.”*

14. The contention of the learned Counsel for the Tenant that the family of the Tenant is in possession of the tenanted premises for many years now and the Landlord, who is a wealthy man and has a number of properties, should not seek to evict the Tenant because of the hardships which the Tenant will face would weigh out the need of the Landlord, also cannot be accepted.

15. 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. The argument of the learned Counsel for the Petitioner that the Landlord, coming from a wealthy family and having more than 100 people working under him, cannot be permitted to evict the Tenant, who is solely dependent on the tenanted premises for his livelihood, cannot be accepted. It is not disputed that the younger son of the Landlord has become a graduate and the need of a father to settle his son cannot be said to be not *bona fide*.

16. The learned Rent Controller has gone into great detail of every property which, according to the Tenant, was available with the Landlord to satisfy the *bona fide* requirement of settling his younger son. Shop No.115-117 are occupied by M/s Bangla Sweet House and the Landlord is only a partner in M/s Bangla Sweet House. This property, therefore, cannot be said to be available to the Landlord for the purpose of establishing his son. As far as Shop No.111-113 are concerned, M/s Bangla Foods Pvt. Ltd. is being run from the said premises which is separate from M/s Bangla Sweet House. Shop No.18, Plot No.1, Block No.88, Lady Harding Road, was in possession of the LRs of Sh. Ratan Lal on the date when the eviction petition was filed. Though it is stated that the said shop is available to the Landlord, however, no site plan has been filed by the Tenant to show that the said premises is equal in size and dimension as the tenanted premises. On the contrary, the learned Counsel for the Landlord has submitted that the said shop is actually half the size of the tenanted premises. Shop No.119, 119A and 121 are owned by the brother of the Landlord and nothing has been placed on record by the Tenant to show that the said shops are owned by the Landlord. As far as property No.86, Baird Road, is concerned, material on record shows that

the front portion of the said property is in occupation of Mr. Ramit Aggarwal (elder son of the Land-lord) where he is running his business of Commission Agent on full time basis, with his wife - Nikita Aggarwal, running her business of packed gift baskets. The remaining portion of the said property is in possession of M/s. Asian Overseas as a Lessee through a registered Lease Deed dated 01.04.2008 which was mutually extended between the parties for a further period of five years w.e.f 01.04.2013 *vide* registered lease deed dated 25.02.2015. Hence, that premises is also not available to the Landlord to accommodate or establish his younger son. Other than vaguely mentioning that the Landlord has a shop at Karnal, the Tenant has not filed any material to substantiate the same. The property at Vrindavan is also not suitable for the Landlord to establish his son. This Court cannot shut its eyes to the fact that a land in Vrindavan cannot be equated to a shop on a busy Delhi market.

17. The need of a father to establish his son by enabling him to start his own independent business cannot be said to be not *bona fide*. The Apex Court in Joginder Pal v. Naval Kishore Behal, (2002) 5 SCC 397, has laid down certain tests to identify as to whether the tenanted premises is required by the Landlord to discharge his obligation to settle a person closely connected with him to make him economically independent so as to support himself and/or the Landlord. The Apex Court has observed as under:

*" 24. .... Keeping in view the social or socio-religious milieu and practices prevalent in a particular section of society or a particular region, to which the landlord belongs, it may be the obligation of the landlord to settle a person closely connected with him to make him economically independent so*



*as to support himself and/or the landlord. To discharge such obligation the landlord may require the tenancy premises and such requirement would be the requirement of the landlord. If the requirement is of actual user of the premises by a person other than the landlord himself the court shall with circumspection inquire: (i) whether the requirement of such person can be considered to be the requirement of the landlord, and (ii) whether there is a close interrelation or identity nexus between such person and the landlord so as to satisfy the requirement of the first query. Applying the abovesaid tests to the facts of the present case it is clear that the tenancy premises are required for the office of the landlord's son who is a chartered accountant. **It is the moral obligation of the landlord to settle his son well in his life and to contribute his best to see him economically independent. The landlord is not going to let out the premises to his son and though the son would run his office in the premises the possession would continue with the landlord and in a sense the actual occupation by the son would be the occupation by the landlord himself. It is the landlord who requires the premises for his son and in substance the user would be by the landlord for his son's office. The case squarely falls within the scope of Section 13(3)(a)(ii) of the Act.***

(emphasis supplied)

18. In view of the above, it is settled that the Landlord is the best judge of his requirements, and he also has the complete authority to prioritize the needs of his family and those who are dependent on him over any hardship that might be caused to the tenant. In the instant case, the son of the Landlord is currently unemployed, has no alternative accommodation and is dependent

on his father. Therefore, it cannot be said that the requirement of the Landlord is not bona-fide.

19. In view of the above, this Court is of the opinion that the Tenant has failed to raise any triable issue, and the Order dated 31.10.2015, passed by the learned SCJ-cum-Rent Controller, Patiala House Courts, Delhi, in Eviction Petition, being E.No.21/2015, does not require any interference from this Court.

20. Accordingly, the instant revision petition is dismissed, along with all the pending application(s), if any.

**SUBRAMONIUM PRASAD, J.**

**JULY 11, 2022**

*Rahul*

भारत्यमेव जयते