

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

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

IN THE MATTER OF:

+ **RC.REV. 73/2022 & CM APPL. 18632/2022 (Stay)**

KISHAN LAL GUPTA AND ORS ..... Petitioners

Through: Mr. Sanjeev Sindhvani, Senior  
Advocate with Mr. Sanjay Dua,  
Mr. Sharvan Dev, Advocates

versus

KEWAL KRISHAN BANSAL ..... Respondent

Through: Mr. Vikram Baweja, Advocate

**CORAM:**

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

**SUBRAMONIUM PRASAD, J.**

1. The instant Revision Petition has been filed under Section 25-B(8) of the Delhi Rent Control Act, 1958 (*hereinafter referred to as 'the DRC Act'*) against the Order dated 17.09.2021 passed by the learned Additional Rent Controller-02 (Central), Tis Hazari Court, Delhi, in CNR No.DLCT03-002992/2020, ARC No.311/20, E-98/20 wherein the learned ARC dismissed the Petitioners' application for leave to defend and consequently allowed the eviction petition of the Respondent/landlord herein and directed the Petitioners/tenants to vacate the premises in question i.e. a private shop at front side facing main road in Property No.49, GB Road, Shardha Nand Marg, Delhi-110006.

2. The facts, in brief, leading to the filing of the instant petition are that the Respondent/landlord (Petitioner in the eviction petition) had purchased the property in question bearing No.49, GB Road, Shardha Nand Marg, Delhi - 110006 *vide* a registered Sale Deed dated 18.09.2015 executed by the erstwhile owner Sh. Bhusan Raheja. It is stated in the eviction petition that the Petitioner Nos.1 and 2 along with Sh. Pran Nath Gupta and Sh. Om Prakash Gupta were co-tenants in the tenanted shop and all of them were running their businesses from the tenanted shop. However, after the death of the Sh. Pran Nath Gupta and Sh. Om Prakash Gupta, Sh. Ashish Gupta (Petitioner No.3 herein) being the son of Sh. Pran Nath Gupta, and Sh. Abhinav Gupta (Petitioner No.4 herein) being the son of Sh. Om Prakash Gupta occupied the tenanted shop and started carrying out business from the same. It is stated that the Petitioner Nos.1 and 2 are carrying out their business as Partners under the name of M/s Rekha Agency, Petitioner No.3 is running his business under the name of M/s Adishakti Enterprises, and Petitioner No.4 is running his business under the name of M/s Technomast in the tenanted shop. It is stated that all the Petitioners herein (Respondents in the eviction petition) are running their businesses by partitioning the tenanted shop without the permission of erstwhile owner as well as the Respondent herein (Petitioner in the eviction petition).

3. It is stated in the eviction petition that the Respondent/landlord now requires the tenanted shop *bona fide*ly for his son, namely, Pankaj Bansal, who wants to start his business of electrical/machinery and its parts from the tenanted shop as he is currently employed. It is stated that though the son of the Respondent/landlord was working earlier, he has now left his job and intends to start his own business of electrical/machinery and its parts. Therefore, the Respondent/landlord, wanting to discharge his responsibility

as a father, requires the tenanted shop for his son in order for his son to start his own business from the tenanted premises as neither the Respondent/landlord nor does his son have any other commercial property with them besides the said tenanted premises. It is also stated in the eviction petition that since the tenanted shop is situated in the commercial area where the majority of the shops are suitable for the business of electrical/machinery and its parts, and as the Respondent/landlord is having no other commercial property available with him nor does his son has any other property, therefore, the said tenanted shop is required by the Respondent/landlord for his son Pankaj Bansal.

4. The Petitioners herein (Respondents in the eviction petition), thereafter, filed an application under Section 25B (4) of Delhi Rent Control Act, 1958 seeking leave to defend. The grounds raised by the Petitioners herein in their leave to defend application are as follows:

- a) that the Respondent/landlord had earlier filed a petition under Section 14(1)(j) of the DRC Act which was dismissed as withdrawn *vide* Order dated 28.02.2019;
- b) that the said petition under Section 14(1)(j) of the DRC Act was filed by the Respondent/landlord on false allegations with an intention to harass the tenants;
- c) that the Respondent/landlord has not disclosed the age of his son and also as to whether the son of the Respondent/landlord was minor or major at the time of filing the petition under Section 14(1)(j) of the DRC Act;
- d) that the petition under Section 14(1)(j) of the DRC Act was filed by the Respondent/landlord against the seven (7) respondents, but the

eviction petition under Section 14(1)(e) has been filed only against the four (4) Respondents;

e) that there is a dispute between the two sets of tenants, i.e. the LRs of Late Sh. Sham Narain Gupta and the LRs of Late Ram Narayan Gupta; that the present Petitioners are LRs of Sh. Ram Narain Gupta and both sets of LRs are claiming to be the tenants with civil litigations pending before this Court in this regard. The entire factum of litigation to ascertain the real owners of the Property is still pending before this Court and, therefore, the eviction petition is not maintainable.

5. It is stated that a civil suit bearing No.361/81 (old) 337/2014 (new) was filed by one Sh. Sham Narain against Smt. Sumitra Devi and other persons, including the present Petitioners and the erstwhile owner of the property, Sh. Bhushan Raheja. The said suit was filed for dissolution of partnership and rendition of accounts. After completion of the pleadings in the said suit some issues were framed by the learned ADJ. The relevant issues framed by the learned ADJ read as under:

- a) Issue No.3 as to whether the Shop No.49, GB Road, Shardha Nand Marg, Delhi-110006 came to the share of the defendents.
- b) Issue No.5 as to whether Sh. Sham Narain had been and continues to be a tenant of No.49, GB Road, Shardha Nand Marg, Delhi-110006 as alleged.
- c) Issue No.6 as to whether Sh. Sham Narain was the tenant of No.49, GB Road, Shardha Nand Marg, Delhi-110006 and whether after his death, his legal heirs have become the tenants.

6. It is stated that the above mentioned Civil Suit was dismissed by the learned ADJ (Central), Delhi *vide* Judgment and decree dated 21.04.2014. It

is stated that thereafter, an appeal bearing RFA No.473/2014 against the said Civil Suit was filed which is pending adjudication before this Court.

7. It is stated in the leave to defend application that the Respondent/landlord and his son are well settled, and the son of the Respondent/landlord is not dependent upon his father (Respondent/landlord herein). It is stated that the son of the Respondent/landlord is well qualified and is more than 40 years of age. It is further stated in the leave to defend application that the son of the Respondent/landlord has recently purchased a flat bearing A-139, Sector - 21, Jalvayu Vihar, Noida - 201301 in his name. It is stated that if the son of the Respondent/landlord is capable of purchasing a property in his name, he cannot be said to be dependent on his father. It is also stated that the Respondent/landlord and his son are also well settled at Rudrapur, Uttarakhand, and have purchased the suit property for a valuable consideration which itself shows that they are well off and well settled and, therefore, disentitles the Respondent/landlord from instituting and proceeding with the eviction petition. It is stated that the Respondent/landlord has not disclosed as to how many members in his family are dependent upon him.

8. The learned Additional Rent Controller-02 (Central), Tis Hazari Court, Delhi, has dismissed the leave to defend application of the Petitioners herein *vide* impugned order dated 17.09.2021 by observing as under:

- a) that the withdrawal of the petition under Section 14(1)(j) of the DRC Act is no bar for the Respondent/landlord to file an eviction petition under Section 14(1)(e) of the DRC Act and it does not raise a triable issue;
- b) the fact that an appeal bearing RFA No.473/2014 is pending for adjudication before this Court, which arises out of the said Civil Suit

in a dispute between the two sets of tenants i.e. the LRs of Late Sh. Sham Narain Gupta and the LRs of Late Ram Narayan Gupta, who are claiming to be the tenants, is of no concern for the adjudication of the eviction petition.

- c) no convincing and reliable document has been furnished by the Petitioners/tenants in respect of the employment of the son of the Respondent/landlord. Even if it is assumed that the son of the Respondent/landlord is working and employed, it is not expected from the son of the Respondent/landlord to await the outcome of the eviction petition filed under Section 14(1)(e) of the DRC Act for starting his business;
- d) as far as the age of the son of the Respondent/landlord is concerned, nothing has been placed on record by the Petitioners/tenants to show that the son of the Respondent/landlord was minor at the time of filing of the petition under Section 14(1)(j) of the DRC Act;
- e) the fact that the Respondent/landlord and his son are well settled in Rudrapur, Uttarakhand cannot raise a triable issue for the reason that the son of the Respondent/landlord wants to start his own business and it is not expected that he will continue to be unemployed and stay with his father as he is not working anywhere at present. There is nothing mala fide, if the son of the Respondent/landlord wants to start his own business from the tenanted premises.
- f) that the residential premises at Noida i.e. a flat bearing A-139, Sector - 21, Jalvayu Vihar, Noida – 201301 and the property at Rudrapur, Uttarakhand are all residential premises only, and no commercial activities can be conducted at the said properties and, therefore, the

tenanted shop is required by the Respondent/landlord for his son so that he can start his own business.

9. Aggrieved by the order dated 17.09.2021 passed by the learned Additional Rent Controller-02 (Central), Tis Hazari Court, Delhi, the Petitioners have filed the instant petition seeking setting aside the order dated 17.09.2021 and praying for their application for leave to defend to be allowed.

10. Mr. Sanjeev Sindhvani, learned Senior Counsel appearing for the Petitioners, contended that it is yet to be ascertained as to whether the Petitioners are the tenants in the tenanted premises/shop or not. He draws attention of this Court towards a legal notice dated 23.07.2016 sent by the Respondent to the Petitioner Sh. Kishan Lal by stating that the erstwhile owner of the property in question Sh. Bhushan Raheja had never accepted the Petitioners as his tenants and in consequence of which the Petitioners herein has never been a tenant of the erstwhile owner, namely, Sh. Bhushan Raheja. He states that once the stand has been taken by the erstwhile owner, namely, Sh. Bhushan Raheja of the tenanted shop that the Petitioners are not the tenants of the tenanted premises/shop in question, then it has to be first ascertained as to whether the Petitioners are the tenants or not in the tenanted premises/shop. Mr. Sindhvani argues that until this was decided, the learned ARC could not have assumed jurisdiction to entertain the eviction petition filed by the Respondent/landlord herein. He states that said issue is pending for adjudication before this Court in an appeal bearing RFA No.473/2014 and in case the said appeal is allowed then the Appellant Sh. Sham Narain and his Legal Representatives will become the tenants of the Property.

11. Mr. Sindhvani further states that the son of the Respondent/landlord has purchased a flat bearing bearing A-139, Sector - 21, Jalvayu Vihar, Noida – 201301. He states that if the son of the Respondent/landlord could afford to purchase a property in Noida in his name, he cannot be said to be dependent on his father for the purposes of accommodation. He further states that the son of the Respondent/landlord is employed and nothing has been placed on record to demonstrate otherwise.

12. Mr. Sindhvani further states that the Respondent/landlord and his son are well settled in Rudrapur, Uttrakhand and, therefore, the so-called bonafide requirement of the tenanted shop in question by the Respondent/landlord is only a sham and, at best, only a desire. He states that it has not been specifically averred in the eviction petition that the son of the Respondent/landlord is dependent upon his father, and until and unless it is not specifically pleaded that the son of the Respondent/landlord is dependent upon his father for the purposes of accommodation, the eviction petition can not be entertained.

13. *Per contra*, Mr. Vikram Baweja, learned counsel appearing for the Respondent, contends that the pleadings should be read in totality. He draws the attention of this Court towards the eviction petition wherein it is specifically stated that the Respondent/landlord requires the tenanted shop for bona fide purpose for his son Pankaj Bansal who wants to start his own business of electrical/machinery and its parts from the tenanted shop as he is currently unemployed. He states that the absence of the word “dependent” itself would not defeat a legitimate claim of the Respondent/landlord.

14. Mr. Baweja further states that the fact that a legal notice dated 23.07.2016 was sent to the Petitioner Sh. Kishan Lal by stating that the Petitioners herein have never been the tenants of the erstwhile owner,



namely, Sh. Bhushan Rajeja, fails in its significance for the simple reason that the Petitioners had moved a petition for depositing the rent in Court in favour of the Respondent/landlord in respect of the tenanted premises/shop wherein it was specifically admitted by the Petitioners herein that the Respondent herein was their landlord. He states that in fact the Petitioners have also sent money orders to the Respondent herein in respect of the tenanted premises/shop admitting the fact that they are the tenants of the property in question. He states that the Petitioners herein now cannot be permitted to take a complete U-turn by saying that they are not the tenants of the tenanted premises/shop.

15. Mr. Baweja further states that the Respondent herein had sent an intimation letter dated 29.07.2020 to the Petitioners herein for remitting rent in respect of the tenanted premises/shop bearing No.49, GB Road, Shardha Nand Marg, Delhi – 110006 by way of a cheque or demand draft at his Noida residence. He states that a reply to the said intimation letter dated 29.07.2020 was duly sent by the Petitioners herein by sending a Demand Draft bearing DD No.317090 dated 03.04.2021 for a sum of Rs.660/- drawn on Yes Bank as rent of the said tenanted premises/shop w.e.f 01.04.2021 to 31.03.2022 @ Rs.55/- per month. He states that this categorically proves the relationship of the landlord and tenant between the Respondent and the Petitioners herein. He, therefore, states that the eviction petition is maintainable.

16. Heard Mr. Sanjeev Sindhvani, learned Senior Counsel appearing for the Petitioner, Mr. Vikram Baweja, learned counsel appearing for the Respondent, and perused the material on record.

17. The principal contention of the Petitioners/tenants is that the erstwhile owner of the tenanted premises/shop Sh. Bhusan Raheja had himself denied

that the Petitioners herein are his tenants and to substantiate this Contention, the learned Senior counsel appearing for the Petitioners draws attention of this Court towards a legal notice dated 23.07.2016 sent by the Respondent herein to the Petitioner, Sh. Kishan Lal, by stating that the erstwhile owner of the property in question, Sh. Bhushan Raheja, had never accepted the Petitioners as his tenants, and in consequence of which the Petitioners herein have never been a tenant of the erstwhile owner of the tenanted premises/shop Sh. Bhushan Raheja. There is a dispute between the two sets of tenants i.e. the LRs of Late Sh. Sham Narain Gupta and the LRs of Late Ram Narayan Gupta; that the present Petitioners are LRs of Sh. Ram Narain Gupta and both sets of LRs are contesting among themselves as to who are the real tenants of the tenanted premises/shop in question. A civil suit bearing No.361/81 (old) 337/2014 (new) was filed by one Sh. Sham Narain against Smt. Sumitra Devi and other persons, including the present Petitioners and the erstwhile owner of the Property Sh. Bhushan Raheja. The said suit was filed for dissolution of partnership and rendition of accounts. In the said suit the Plaintiff - Sh. Sham Narain had stated that the property in issue i.e. Property No.49, GB Road, Shardha Nand Marg, Delhi – 110006 was taken by him from the erstwhile owner - Sh. Bhushan Raheja on tenancy as long before the partnership came into existence. It was stated in the suit that Sh. Sham Narain was the sole tenant in the said premises and the partnership has nothing to do with the tenancy rights and the Plaintiff - Sh. Sham Narain was only permitted to use the premises only as a licensee. In the written statement filed by the Petitioners herein in the suit, the only stand taken by the Petitioners herein was an arbitration clause. The essence of the partnership was to distribute the shares amongst themselves.

18. The said Civil Suit was dismissed by the Ld. Additional District Judge, Central-14, Delhi *vide* Judgment dated 21.04.2014. The relevant portion of the said judgment reads as under:

*“11. It is the case of the plaintiff that in the process of dissolution while resolving the dispute following division took place and acted upon. It is also the case of the plaintiff that the shop No. 49 G.B.Road, Delhi was taken on tenancy by Sh. Shyam Narain which was his exclusive tenancy though partnership was allowed to use that. It is the case of the plaintiff in the plaint that he has taken the property No. 49 G.B.Road on tenancy from the landlord which prior to the coming into being the partnership in question dissolution of which he has sought. It was his exclusive tenancy and the partnership has nothing to do with the tenancy right but the plaintiff has allowed the partnership to use the same only as a licensee, the para 4 of the plaint is reproduced as under;*

*"That the shop No. 49 G.B.Road, Delhi was taken by the plaintiff from the landlord on tenancy basis long before the partnership in question. As such, he is the sole tenant in the said premises. The partnership firm has nothing to do with the tenancy rights but the plaintiff has allowed the partnership to use the same only as a licensee."*

*12. The bone of contention is regarding only this particular property which at present seems in possession of defendant No.1 to 5. So as per his own case, the form of the business stopped in 1978 thereafter and the distribution of the six assets has taken place as per mutual settlement and this fact was reiterated in the statement made by PW1 before the court so as per his own case dissolution of assets or distribution as mentioned in para 8 and 9 of the plaint took place. Business was already stopped so nothing is left to be disputed.*

**13.** *It has been duly placed on record and proved and admitted by the plaintiff as to be correct position of the account on the record sealed upto 31<sup>st</sup> March 1978. There is nothing left to be divided and as per the own case of the plaintiff itself when he is claiming for property No. 49 G.B. Road, Delhi was under the exclusive tenancy of the plaintiff and partnership firm has nothing to do with the tenancy right of the same and he permitted the partnership firm to use the possession as a licensee only. After saying that if he want to go back and say that this property is still the disputed property of the partnership and again the dissolution take place of the partnership asset re-opening, acted upon the settlement on the ground of some mis-conception in his mind regarding what he is saying in the plaint as far as pleading in the plaint qua property No:49, G.B.Road, Delhi.*

**14.** *According to the case of the plaintiff it was never a partnership asset. Though the counsel for plaintiff Sh. S.K. Bhattachatya has tried to argue against the plaintiff itself that it was the intention of the plaintiff that he threw the tenancy rights in the hotch - potch and the rent was being paid by the partnership firm so it be treated as asset of partnership firm.*

**15.** *I am constrained to say after making these submissions, he left saying it was the intention of the plaintiff and the words are not matching the intention of the plaintiff which should not be strictly contributed and they meant this after that Ld. Seasoned counsel for the defendant No.1 to 5 has clearly drawn the attention of the court to para No.4 of the plaint qua property No.49 G.B.Road, Delhi where it is specifically mentioned. There cannot be other clear words for the position of this property in the mind of the plaintiff as per the case of the plaintiff that this was allowed to be use by the partnership firm as a licensee by the plaintiff and the partnership firm has nothing to do with the tenancy rights. After this statement in para No.4 of the plaint, the*

*plaintiff seek dissolution of the property which according to the case of the plaintiff in para 4 of the plaint is the exclusive tenancy of the plaintiff with the tenancy rights of which partnership firm has nothing to do and it was allowed to be used as a licensee by the firm.*

*16. So as per his own case, it is not a asset of the partnership firm so on the basis of his own pleadings over other assets stood resolved by mutual settlement of account settled, admittedly as proved on record, so as per his own admitted case nothing left to be divided. The dissolution has already taken place where it is in the form of arbitration agreement, mutual settlement, or any other way on the basis of the plaint, nothing survives to be divided.*

*17. In view of my above discussions, all the issues are decided against the plaintiff and in favour of the defendants as the declaration is inconsequential because as per the case of the plaintiff in the plaint itself the shares were determined by way of mutual settlement by meets and bounds as it had taken place and admittedly as per statement of account duly proved on record and accepted by the plaintiff, the accounts stood settled.”*

19. A perusal of the above deliberation in the said suit indicates that the Court did not go into the question as to who was the tenant of the tenanted premises/shop in question.

20. The Petitioners had moved a petition for depositing the rent in Court in favour of the Respondent/landlord in respect of the tenanted premises/shop wherein it was specifically admitted by the Petitioners that the Respondent herein was their landlord. In view of this fact, the Petitioners herein now cannot be permitted to take a complete U-turn by saying that they are not the tenants of the tenanted premises/shop. The Petitioners cannot be permitted to approbate and reprobate. In the wake of assertion

made by the tenants by moving a petition for depositing rent as if they were the tenants of the tenanted premises/shop, the pendency of the RFA No.473/2014 which is pending for adjudication before this Court becomes meaningless, as far as the eviction petition is concerned. In case, the said RFA is allowed, it is for Sh. Sham Narain to take further proceedings in respect of the tenancy and the Petitioners herein shall not be concerned with the same. In case the RFA is dismissed, it still remains that there is no finding as to whether the Petitioners herein are not the tenants of the tenanted premises/shop and it will again be futile in view of the assertion made on the part of the Petitioners herein, in their petition for depositing rent, that they are the tenants of the tenanted premises/shop, and as a result of which they would be liable to face proceedings under the DRC Act.

21. The fact that the word “dependent” is not mentioned in the eviction petition will not be fatal for the eviction petition. It is well settled that each and every word of the relevant statutory provision need not be reproduced in the eviction petition. The Apex Court in Ram Sarup Gupta vs. Bishun Narayan Inter College and Ors, (1987) 2 SCC 555 has observed as under:

*“The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should settle the essential material facts so that other party may not be taken by surprise. The pleadings however should receive a liberal construction; no pedantic approach should be adopted to defeat justice on hair-splitting technicalities. Some times, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law. In such a case it is the duty of the court to ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not be so much about the*

*form of the pleadings; instead the court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the pleadings parties knew the case and they proceeded to trial on those issues by producing evidence in that event it would not be open to a party to raise the question of absence of pleadings in appeal.”*

22. Similarly, the Apex Court in Bhagwati Prasad vs. Chandramaul, (1966) 2 SCR 286 has observed as under:

*“If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the court has to consider in dealing with such an objection is: did the parties know that the matter in question was involved in the trial, and did they lead evidence about it? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the court cannot do injustice to another.”*

23. A perusal of the above judgments of the Apex Court shows that the pleadings are to be read as a whole, and that no specific expression or phrase is required to be pleaded in this regard. Mere reproduction of language of the statute is not necessary or desirable.

24. Keeping in view the above principle in mind, it is necessary to peruse the pleadings in the eviction petition which reads as under:

*“4. That the petitioner now requires the tenanted shop bonafidely for his son namely Shri Pankaj Bansal, who wants to start his business of electrical / machinery and its Parts, from the tenanted shop as he is not doing anything now a days, however, earlier he was doing some job but he has left the job and wants to start his own business and accordingly the petitioner being the father requires the tenanted shop for his son to start his business from the tenanted shop as neither the petitioner nor his son namely Shri Pankaj Bansal is having any other commercial property with them beside the tenanted shop and other Shops of the Property No.49, GB Road, Shradha Nand Marg, Delhi-110006 is being occupied by other owners. On main road facing is best suited to start the business and accordingly the tenanted shop is being required bonafidely by the petitioner.*

*5. That the tenanted shop is being required bonafidely by the petitioner or his son namely Shri Pankaj Bansal as the tenanted shop is situated in the commercial where the majority of shop deals in electrical and Machinery goods and its parts and accordingly the tenanted shop is best suited for starting the business of electrical / machinery goods by the son of the petitioner and since the petitioner is having no other property available with him nor Shri Pankaj Bansal is having any other property available with him, hence the tenanted shop is required bonafidely by the petitioner for his son namely Shri Pankaj Bansal for the reason stated herein above.”*



25. A reply to the leave to defend application has been filed wherein, the Respondent/landlord has stated as under:

*“4. That in reply to para No.4 of the leave to defend affidavit of the respondents No.1 to 3, it is submitted that the earlier petition filed under section 14(1) (j) of the D.R.C. Act by the petitioner against the respondents has no concern with the present petition, moreover the withdrawal of the said petition by the petitioner has no affect in the present petition as the present petition is being filed by the deponent / petitioner under section 14(1)(e) of the D.R.C. Act which is an independent proceeding and the petition under section 14(1)(j) of the D.R.C. Act which was prior to this petition and also withdrawn by the present petitioner has no binding upon the present petition. Further it is pertinent to mention here that it has been clearly mentioned by the deponent / petitioner that the tenanted premises is required bonafidely for his son Shri Pankaj Bansal, who wants to start his business of electrical / machinery and its parts from the tenanted premises and as the son of the petitioner now wants to start business as earlier he was doing some job but had left the same and wants to start his own business and accordingly the tenanted premises is being required by the petitioner / deponent for his son bonafildely as the deponent as well as his son Shri Pankaj Bansal does not have any other suitable commercial property available with them beside the tenanted premises which is located in the Central Delhi that too in the vicinity of electrical and machinery shops i.e. G.B. Road, Delhi.*

*Further regarding disclosing Age of Son, it is submitted that the age of Shri Pankaj Bansal is 38 years and earlier doing job and now wants to start his own Business.”*

*10. That in reply to para No.10 of the leave to defend affidavit of the respondents No.1 to 3, it is submitted that the son of the deponent / petitioner is not well settled and not working and require the tenanted premises*

*bonafidely. The petitioner requires the tenanted premises for his son namely Shri Pankaj Bansal, who is not employed these days and earlier he was working in the company Jabong and he has left the job and accordingly the petitioner / deponent requires the premises bonafidely for his son Shri Pankaj Bansal who wants to start his business of electrical / machinery and its parts from the tenanted premises and it is settled proposition of law that the respondent / tenant cannot dictate terms to the petitioner / deponent / landlord / owner and it is the prerogative of the petitioner / landlord to get the tenant evicted from the tenanted premises on bonafide ground under section 14(1)(e) of the D.R.C. Act and the respondent has got no right to challenge the bonafide needs of the petitioner as he is the best judge to get the tenanted premises evicted on the bonafide ground. However, with respect to property bearing No.A- 139, Sector-21, Jalvayu Vihar, Noida-201301 is being purchased by the son of the petitioner namely Shri Pankaj Bansal for residential purpose only as the said property is a residential one and no commercial activities can be done from the said property and the same is being purchased by the son of the petitioner for residential purpose only as the petitioner as well as his son is residing in the said flat and moreover it will be convenient for the son of the petitioner to commute to the tenanted premises for running his business from the tenanted premises.”*

26. From the perusal of the above pleadings in the eviction petition and the reply filed by the Respondent/landlord to the leave to defend application, the following facts emerge:

- a) that the son of the Respondent/landlord intends to start his own business of electrical/machinery and its parts from the tenanted shop i.e. Property No.49, GB Road, Shardha Nand Marg, Delhi – 110006.
- b) that neither the Respondent/landlord nor the son is having any other

commercial premises.

- c) in the absence of any other commercial property from where the business can be started, it can be said that the son is dependent upon his father for the purposes of accommodation in the tenanted shop.

27. In order to establish that it is the moral duty of the father to settle his son well in his life, the learned ARC has placed reliance upon a Judgment in Joginder Pal Singh vs. Naval Kishore Behal, AIR 2002 SC 2256 wherein 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 overlaid 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.”*

28. In view of the above, no prejudice has been caused to the Respondent/landlord by not using the word “dependent”. The facts as stated in the eviction petition categorically bring out that the son of the

Respondent/landlord is dependent upon his father for the purpose of attaining accommodation in the tenanted premises/shop to start his own business. As rightly pointed out by the learned counsel for the Respondent, the son of the Respondent/landlord need not wait till eviction petition is decided. In fact Chapter IIIA of the Delhi Rent Control Act, 1958 was introduced only to ensure that the bonafide requirements of the landlord are immediately met with instead of the landlord going to the rigor of a full-fledged trial.

29. It is well settled that if the son of the Respondent/landlord does not occupy the tenanted premises/shop and does not start his own business within three years, it is always open to the tenants to invoke Section 19 of the Delhi Rent Control Act, 1958 for getting back the possession of the tenanted premises/shop.

30. The fact that the son of the Respondent/landlord has purchased a flat bearing A-139, Sector - 21, Jalvayu Vihar, Noida – 201301, it does not mean that the tenanted premises/shop in question is not required by the Respondent/landlord bonafidely for his son who wants to start his own business of electrical/machinery and its parts from the tenanted shop/premises. As correctly pointed out by the learned ARC that the property at Noida i.e. a flat bearing A-139, Sector - 21, Jalvayu Vihar, Noida – 201301 and the property at Rudrapur, Uttrakhand will not raise a triable issue inasmuch as both the properties are residential premises only and no commercial activities can be started from the said properties, and the tenanted premises/shop is a commercial property from the where the son of the Respondent/landlord may start his own business of electrical/machinery and its parts.

31. The Petitioners state that the son of the Respondent/landlord is

working at some other private organization. In support of this contention, the Petitioners have filed certain salary statements of Jade eServices Pvt. Ltd. for the month of May and June, 2016 where the son of the Respondent/landlord was working, and the last net pay which was drawn by the son of the Respondent/landlord in month of June, 2016 was Rs.1,34,482/-. However, these salary statements of the son of the Respondent/landlord have not been made part of the leave to defend application nor has it been presented before the learned Trial Court. In response to this fact, it is stated that though the son of the Respondent/landlord was doing a job earlier but he has now left the job as he intends to start his own business of electrical/machinery and its parts, and the Respondent/landlord being the father requires the tenanted premises/shop for his son so that his son may start his own business from the tenanted premises as neither the Respondent/landlord nor does his son have any other commercial property with them besides the said tenanted premises. As rightly pointed by the Ld ARC that it is not expected from the son of the Respondent/landlord to sit idle or to make an attempt get an alternate employment in the meantime till the disposal of the eviction petition. This does not raise a triable issue at all. The son of the Respondent/landlord intends to start his own business of electrical/machinery and its parts from the tenanted premises/shop and being the father, it is the duty of the Respondent/landlord to provide the tenanted premises/shop to his son so that his son may start his own business.

32. This Court is of the opinion that no triable issues arise in the present case on the facts which are placed before the Court and on the points raised in the leave to defend application. Even if the points which have been raised in leave to defend application, are proven in favour of the

Petitioners/tenants, it would not disentitle the Respondent/landlord from evicting the Petitioners/tenants from the tenanted premises/shop.

33. Accordingly, the petition is dismissed, along with pending application(s), if any.

**SUBRAMONIUM PRASAD, J.**

**JULY 11, 2022**

*S. Zakir*

HIGH COURT OF DELHI



नान्यमेव जयते