

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

% *Judgment Pronounced on: June 13, 2014*

+ **RC. Rev. No.109/2013**

SUDERSHAN KUMAR Petitioner
Through Mr.Sandeep Sethi, Sr.Adv. with
Mr.Narender Sharma, Adv.

versus

HARISH CHAND GARG Respondent
Through Mr.J.P.Sengh, Sr.Adv. with
Mr.B.B.Gupta, Mr.Sumeet Batra &
Ms.Ankita Gupta, Adv.

+ **RC. Rev. No.113/2013 & C.M. No.4912/2013**

SURESH KUMAR GUPTA Petitioner
Through Mr.Gaurav Aggarwal, Adv. with
Mr.M.P.Sinha, Adv.

versus

SUDERSHAN KUMAR Respondent
Through Mr.Sandeep Sethi, Sr.Adv. with
Mr.Narender Sharma, Adv.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. Mr. Sudershan Kumar, landlord/owner filed two eviction petitions under Section 14(1)(e) read with Section 25-B of the Delhi Rent Control Act, 1958 (hereinafter referred to as the "Act") for

bonafide requirement, against his two tenants, namely, Mr.Suresh Kumar Gupta and Mr.Harish Chand Garg.

2. The said eviction petitions were filed by him with respect to Shop No.1 and Shop No.2, situated on the ground floor of the suit property bearing No.29/5, Shakti Nagar, Delhi-110007. He purchased suit property on 27th July, 2006. He thereafter approached this Court challenging the vires of sub-Section (6) of Section 14 of the Act in Writ Petition (Civil) No.8975/2008, *inter-alia*, submitting that the embargo of five years imposed by the said sub-Section upon a purchaser prohibiting him from instituting an eviction petition on the ground of bonafide requirement was unconstitutional. The said petition was dismissed on 17th December, 2008. Thereafter he terminated the tenancy of the tenants and filed the eviction-petitions against them.

3. The number of the eviction petition filed against Mr.Suresh Kumar Gupta is E-77/12, and against Mr.Harish Chand Garg is E-115/11. The grounds of eviction in both the eviction petitions are the same.

4. The leave to defend applications filed by both the tenants, namely, Mr.Suresh Kumar Gupta (Shop No.1) and Mr.Harish Chand Garg (Shop No.2) are almost on the same grounds. However, both the matters were dealt by the different Additional Rent Controllers.

5. By an order dated 15th December, 2012, the application for leave to defend filed by Mr.Harish Chand Garg in Eviction Petition No.115/11 was allowed by the Addl. Rent Controller (North), Delhi. The said order has been challenged by the landlord Dr.Sudershan

Kumar by filing of the petition being RC. Rev. No.109/2013, under Section 25-B(8) of the Act before this Court against his tenant Mr.Harish Chand Garg.

6. However, the leave to defend application in the Eviction Petition No.77/12 was dismissed by the impugned order dated 12th February, 2013 passed by the Additional Rent Controller (North), Delhi despite of having knowledge about the granting of leave to defend in the matter of adjoining shop. The said order is challenged by the tenant of Shop No.1, i.e. Mr.Suresh Kumar Gupta, is the subject matter of petition being RC. Rev. No.113/2013 under Section 25-B(9) of the Act.

7. Both the matters were listed before this Court from time to time. Almost similar submissions were addressed by the parties, as the numbers of grounds mentioned in the application for leave to defend were similar, thus, common order is being passed by disposing of both the petitions.

RC.Rev. No.109/2013 filed by Mr.Sudershan Kumar, Landlord

8. The petitioner by way of the present petition under Section 25B(8) of the Act assailed the order dated 15th December, 2012 passed by Addl. Rent Controller, North, Delhi whereby respondent/tenant's application for leave to defend was allowed in the eviction petition being No.115/2011 filed by the petitioner

9. Brief facts are that the petitioner filed an eviction petition against the respondent on the ground of bonafide requirement under Section 14(1)(e) of the Act in respect of shop No. 2, on the ground

floor of the suit property which was let out by the previous owner to the respondent.

10. The petitioner, who is a dentist by profession, has his own dental surgery clinic at shop bearing No.2, on the ground floor, situated at Municipal Market Mandelia Road, Kamla Nagar, Delhi. It was stated in the eviction petition that the petitioner required the tenanted shop for establishing a full-fledged 24-hour Dental Hospital with all ultramodern facilities. It was stated that the vacant portion in suit property purchased by the petitioner of which the tenanted shop No.2 is a part, is not sufficient enough to execute the desired plan.

11. Petitioner stated himself to be highly qualified dentist, having worked as Sr. Consultant and Head of Department with St. Stephens Hospital for 16 years. He has been a consultant at Tirath Ram Hospital and was at the time of filing the eviction petition, the Head of Department of Dental Surgery at Sunder Lal Jain Hospital and also Pentamed Hospital. It was stated in the eviction petition that the space available at the clinic of the petitioner is insufficient and it is difficult for the petitioner and his two associate junior doctors and assistants to work together. The waiting patients also faced difficulty due to paucity of space.

12. The petitioner resides at H. No. 11/8, Shakti Nagar, Delhi-7 which is near to the tenanted shop No.2 and establishing the new clinic closer to his house would be of great convenience to him. The second floor of the suit property is owned by the wife of the petitioner but it is not suitable for the purpose of a dental clinic by the petitioner.

13. In the leave to defend application filed by respondent, it was contended that the petitioner is merely a co-owner in the suit property and there is no proof of the petitioner being the exclusive owner/ title holder of the suit property. It was also contended that the respondent is not the sole tenant under the petitioner, since on death of his wife, who was a co-tenant in the tenanted shop No.2, her rights devolved upon her children, who also became by operation of law, the co-tenants in the tenanted shop No.2. Therefore, the eviction petition is bad in law and even otherwise, it has triable issue in the absence of impleading all legal heirs of co-tenant of the tenanted shop No.2.

14. It was stated that the suit property is situated in a highly overcrowded and grossly congested area where there are acute restrictions on traffic- including parking of vehicles. The hospital of any successful doctor/dentist cannot be located in such an area because it requires prior approval/clearance from various government/statutory authorities. It also requires the proper facilities for disposal of bio-medical waste and non-polluting environment.

15. It was averred that the eviction petition had been preferred by the petitioner with an intention to earn 'pugree' from a commercial area which has enormous potential for 'pugree' and intellectual property rights. The site plan filed by the petitioner of the suit property was disputed by the respondent.

16. It was also averred that the sole purpose behind the institution of the eviction petition is to start/set up a new professional clinic from the tenanted shop No.2. It was contended that the petitioner already

possess much more than sufficient alternative accommodation for his professional requirements. It was also averred that the petitioner had already in the actual use and occupation for professional purposes, a number of accommodations, details of which were given, besides being professionally associated with number of hospitals.

17. It was contended that the petitioner's clinic at Kamla Nagar market was much more than sufficient, being approximately 230 sq ft. area., for a dental surgeon to run a dental clinic. The respondent also objected to the plan of the proposed dental hospital the petitioner wanted to establish in the suit property as imaginary. It was stated that in the said plan duplicate facilities were shown without any explanation.

18. It was stated that the only son of the petitioner is residing in U.S.A, and having his avocation there. As such, the petitioner does not have any financial liability towards members of his family he is earning a handsome amount of salary/perks from the hospitals in which he is working as HOD and/or consultant.

19. It was also contended that sometime towards Navratras of 2011, the petitioner approached the respondent and his family proposing an amicable settlement for the tenanted shop No.2. During the course of the discussions, the petitioner offered to sell the tenanted shop No.2 to the respondent but demanded an exorbitant price-nearly four times the prevailing market price. The respondent allegedly was ready and willing to pay anything over and above the market price, which is stated to have annoyed the petitioner who

allegedly claimed that he had the resources to throw the respondent out from the tenanted shop No.2 in minutes/hours. Soon thereafter the petitioner instituted the eviction petition alleging bonafide requirement. It was further contended that similar negotiations were going on between the petitioner and the neighbour of the respondent in respect of the adjoining shop (shop No.1) to the tenanted shop No.2.

20. It was stated that the petitioner and his wife were the only two persons residing at the residential address of the petition which is a 2 and ½ storeyed structure and has ample space. In case the petitioner was/is seriously desirous of setting up an ultra model dental clinic or a dental hospital in this locality, he could have done so in the said residential premises since the space therein is lying surplus and the house is sufficiently big for two family members to use and occupy.

21. The learned Rent Controller allowed the leave to contest application filed by the respondent vide the impugned order and observed that the petitioner had denied the accommodations alleged by the respondent to be run by the petitioner, and submitted that he only visits those places occasionally as and when he is called upon by the said clinics. The respondent referred to copies of visiting cards, letter pads, prescription slips etc wherein petitioner had given address not only of the Kamla Nagar clinic but also other clinics. The learned Rent Controller observed that the inference that could be drawn from these documents is that the petitioner is also available at those addresses and the petitioner is associated in someway with the

running of the clinics at the said places. Had the petitioner been only visiting consultant, petitioner would not have mentioned those addresses on the said documents. In view of the learned Rent Controller, it became a triable issue as to whether the petitioner was running clinics at those addresses or not; whether petitioner is only a visiting consultant. This will throw light on the issue of alternative accommodation already available with the petitioner

22. It was further observed that it was apparent from the petition itself that the entire second floor of the suit property is owned by the petitioner's wife. A dental hospital can conveniently be run thereon.

23. In view thereof the learned Rent Controller granted the respondent leave to contest the petition and aggrieved thereof the petitioner filed the present petition.

24. The submissions are addressed by Mr.Sandeep Sethi, learned Senior counsel appearing on behalf of the landlord, i.e. Dr.Sudershan Kumar. It is submitted by Mr.Sethi that it is the prerogative of the landlord if he requires the premises in question for his bonafide use of the expansion of business. The tenant or even Court cannot dictate the terms to the landlord as to how else he can adjust himself. He is the best judge of his requirement and when the landlord is able to show a *prima-facie* case, a presumption is that the requirement of the landlord is bonafide. He referred various decisions so far as the allegations of the respondent that the petitioner visited his shop and offered to sell the tenanted shop No.2 to him are concerned, the same are totally false concocted and baseless. As regard his use of

property in area of Shakti Nagar for commercial purpose is concerned, it is argued by him that the petitioner has been residing in 11/18, Shakti Nagar, Delhi which is residence of the petitioner who has no other place to live and he cannot be compelled to first come on road and shift his residence and open a dental clinic in his residential house in total contravention of building bye-laws. He cannot be asked by the tenant to operate the business from his residence. The other submission of Mr.Sethi is that the landlord is highly qualified who needs sufficient infrastructure for opening a new Dental Clinic. He cannot be asked by the tenant to carry on business from the small shop where there was no washroom and patients used to stand outside. Thus, the tenanted premises, i.e. both shops are very convenient for him to establish his proposed modern clinic. His next submission is that it totally immaterial if whether the tenanted shop No.2 is smaller or bigger than the present shop of the landlord who actually requires both tenanted shops for his ultra modern dental clinics. He has already in his possession back portion of the suit property and hence the total property can be used by him for the proposed project. He has denied the suggestion of the tenants that the proposed site plan given by him for use of the building for running his dental clinic cannot take place until and unless the structural changes are carried out in the building and he argues that its is impossible for his client to operate his new clinic from the back portion of the suit property as there is only 8 feet wide back service lane available to the suit property and denied that the petitioner-landlord has any such clinics or hospitals in Greater Kailash or other

places except his present Shop No. 3, Mandaliya Road, Kamla Nagar, New Delhi.

25. The argument of Mr. J P Sengh, learned senior counsel appearing on behalf of tenant is that after purchase of property Mr Suresh Kumar has been harassing the respondent and other tenants in many ways right from day one. His intention always was to earn a premium in this investment made by him by purchasing one-half specified share in partially tenanted suit property from one of the brothers, to show that the said half share had fallen on partition between brothers. In fact, his intention from day one was to acquire the tenanted premises in terms of the sale deed dated 27th July, 2006 which was 'investment in immoveable property' and if vacated, was bound to yield very high dividends. It was with this malafide intention that he had even issued a notice dated 22nd September, 2008, inter alia, terminating the tenancy, even though the same was always protected under the provisions of the Act.

25.1 The judgment in the case of **Satyawati Sharma vs. Union of India & Anr.**, 2008 (5) SCC 287 came much later. The petitioner/landlord now wants to take undue advantage of the same. The purpose of **Satyawati's** judgment of the Supreme Court cannot be extended to such a whimsical and fanciful desire which has been sought to be termed as bonafide requirement of the landlord. On the face of the eviction petition, the tenanted premises is merely a desire which cannot be called bonafide.

25.2 It is submitted by Mr Sengh that it has been specifically stated in the leave to defend application that the petitioner had approached the respondent towards the *Navratras* of 2011 and had offered to sell the tenanted shop No.2 to the respondent. The photographs to the said effect (taken from the CCTV Camera installed in the tenanted shop No.2) were also filed. The visit to the tenanted shop No.2 by the landlord and his meeting with the tenant is not disputed by the petitioner, though he has denied any such offer. The contention of the respondent is that said aspect would require trial of *prima facie* evidence which has been filed on record by the respondent.

25.3 The lease qua the tenanted shop No.2 was admittedly created jointly in favour of the respondent and his wife Smt.Shashi Kanta Garg. Apparently, all her natural heirs/legal representatives have not been impleaded as a party to the eviction petition, even though they are in actual possession of the tenanted shop No.2. The said fact was specifically pleaded by the respondent/tenant in his affidavit seeking leave to defend. Still, the landlord did nothing. The said eviction petition was/is always bad in the eye of law.

26. Mr.J.P.Sengh, learned Senior counsel appearing on behalf of respondent has relied upon the judgments passed by the learned single judges of this Court in the cases of ***M/s S. K. Sethi & Sons Vs. Vijay Bhalla***, 191 (2012) DLT 722; ***Santosh Devi Soni vs. Chand Kiran***, (2001) 1 SCC 255; ***S.M. Mehta (Dr.) vs. D.D. Malik***, (2001) 1 SCC 256; ***Aggarwal Papers v. Mukesh Kumar Decd. Through LRs***, 194 (2012) Delhi Law Times 605; ***Vinod Ahuja Vs.***

Anil Bajaj & Anr, 194 (2012) Delhi Law Times 203; **Kishore & Anr v. Prabodh Kumar & Ors**, 2012 (132) DRJ 562; **Accebeen Steel Pvt. Ltd & Ors v. Jai Shree Khanna** in RCR 290/2012 (Decided on 23.07.2012) wherein the consistent view has been taken that when there exists an alternative accommodation, then the Controller or the Court should grant the leave to defend so that the issue as to the genuineness of the need may be thrashed out in the full-fledged trial.

27. His submission is that as per own admission made by the petitioner-landlord about owning various properties, it is the case of additional accommodation. It is not a case of bonafide requirement but it is a simple case of desire of the petitioner to get all tenants vacated and in future, he would construct new clinic as per his choice. It is to be tested in trial as to whether his requirement is genuine or merely desire which cannot be fulfilled at this stage while considering the application for leave to defend. At least the tenant is entitled for a trial in view of issue raised by him. His further submission in the present petition that there is hardly any chance for interference, if the leave is granted by the trial after long hearing and detailed orders passed in the matter.

The appropriateness of the additional accommodation is required to be considered in trial and not in summary manner by believing the stand of petitioner only. Therefore, the impugned order does not suffer from the legal infirmities.

It is argued by Mr.Sengh that the said requirement is merely a fanciful desire as the same is resting upon too many contingencies

the petitioner is not entitled for any relief in view of the existence of the alternative accommodation.

Submission is also made by him that the respondent has filed several photographs of the locality surrounding 11/8 Shakti Nagar to show that the commercial activity is permissible therein and more particularly on the ground floor thereof. All this was/is not disputed by the landlord/petitioner.

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28. The petitioner/tenant by way of the present petition under Section 25B(8) of the Act has assailed the order dated 12th February, 2013 passed by Additional Rent Controller, North, Delhi in the petition filed by the respondent – landlord in Eviction Petition No.77/2012. The petitioner herein is tenant at the adjoining shop of another tenant Harish Chand Garg who is the respondent in RC. Rev. No.109/2013.

29. The respondent filed an eviction petition against the petitioner on the ground of bonafide requirement under Section 14(1)(e) of the Act in respect of a shop bearing No. 1, on the ground floor of the suit property which was let out by the previous owner to the petitioner. The other facts mentioned in the eviction petition are identical to the ones mentioned in RC. Rev. No.109/2013. These are not repeated for the sake of brevity.

30. In the leave to defend application filed by tenant, it was contended that the respondent at the time of purchase of the suit property in the year 2006, had deposed that the same was for investment purposes and had he the intention to open a dental clinic,

he would not have purchased the same knowing that the suit property is occupied by tenants.

It was contended that the respondent's clinic at Kamla Nagar market is much bigger than the tenanted shop which is only 8'.4" X 10'. It was also contended that had the respondent wanted to establish a new Dental Clinic, he could have done so at a much larger and bigger scale from his house which is constructed on 350 sq. yards, corner plot, three sides open and two sides facing main road; and is located in a commercial area.

It was stated that the respondent does not have liability of any kind since only son of the respondent is residing in U.S.A, and having his avocation and the daughters are married. It was also averred that the respondent has concealed running shops/clinics from other accommodations, details of which were given.

31. The respondent filed a reply to the said application alongwith an affidavit wherein he denied the contentions and averments made by the petitioner. It was stated that from the day of purchase of the suit property, the respondent intended to commence the proposed clinic and for the said purpose, besides the tenanted shop No.1, an eviction petition was filed in respect of the adjoining shop (shop No.2) and the remaining portion of the suit property is in possession of the respondent.

It was also stated in the reply that the area of the residential house of the respondent is 260 sq. yards and not 350 sq. yards as alleged. It was stated that the son and the daughter of the respondent

alongwith their families often visit the respondent and stay with them. The son of the respondent alongwith his family does not have any intention to settle permanently in USA, and still hold Indian passports. It was further stated that except the Kamla Nagar clinic, the respondent does not have any other clinic.

32. The learned Additional Rent Controller dismissed the leave to contest application filed by the petitioner vide the impugned order and after considering the submissions of both the parties observed that when the dental clinic by the respondent had not been disputed and respondent performing the job as Head of dental surgery in Sunder Lal Jain Hospital was also not disputed, the learned Additional Rent Controller opined that from the admitted facts, it did not appear that age of the respondent was a problem for the respondent for opening a new big proposed dental clinic/hospital. It was observed that the respondent is able to cope up with the pressure of work and still has stamina to work, and when the respondent could work at multiple fronts, his age was of no consequence.

It was observed that though the eviction petition was filed in the year 2012, the respondent had written a letter dated 25th September 2008 to the petitioner, a copy of which was filed with the petition, mentioning that he required the tenanted shop No.1 for his bonafide requirement of running his clinic. This in the opinion of the learned Additional Rent Controller, showed that the respondent intended at least from the year 2008 to open up the proposed clinic/hospital. It was further opined that keeping in mind the experience of the

respondent and his qualification (not disputed by the petitioner), it was not unreasonable to believe the respondent on the count that he wanted to open up a big Dental hospital/clinic in which various services to patients could be provided under a single roof. This fact coupled with the fact that the tenanted shop No.1 adjoins the property already in possession of the respondent, it could not be said that intention of the respondent while purchasing the suit property was merely for investment purposes. Further fact that the residence of the respondent is very near to the suit property, choice of the respondent to open up a dental hospital/clinic in the suit property makes all the more sense.

32.1 With regard to the size of the tenanted shop No.1, the learned Additional Rent Controller observed that the tenanted shop No.1 is bigger than the Kamla Nagar clinic of the respondent and the respondent had not stated in the eviction petition that he would run his proposed clinic/hospital from the tenanted shop alone and rather he has taken the stand that he intends to open dental clinic from tenanted shop No.1 along with other part of the suit property which is in his possession.

32.2 With regard to the contention that the respondent can use his residential premises for his proposed dental clinic/hospital, it was observed by the learned Additional Rent Controller that the landlord is the best judge of his requirement and that he can pick and choose properties available with him for the purpose of his bonafide requirement and court or tenant cannot force him to pinpoint a

particular property so as to limit his choice. It is rather convenient for the respondent to carry out his practice from the suit property while residing at his residence since they are located nearby.

32.3 It was further observed that the documents submitted by the petitioner to show that respondent is running other dental clinics did not show that the respondent is the owner thereof. Being a specialist, it is not unnatural to expect that other clinics will call respondent in case of exigency keeping in mind his experience and expertise.

33. In view thereof, the learned Additional Rent Controller passed the impugned eviction order in favour of the respondent in respect of the tenanted shop No.1 and aggrieved thereof the petitioner has filed the present petition.

34. The argument of respondent is almost same in the above matter as addressed in RC. Rev. No.109/2013 except few additional grounds are taken by the petitioner, the same are that the landlord had brought 2 separate and independent eviction petitions, i.e. one against the petitioner and the other against the tenant of the adjoining shop (shop No.2). The learned Addl. Rent Controller did not even look into the factum of leave to defend being granted to the adjoining shop (shop No.2), though now the landlord has even brought separate Revision Petition against the said tenant by challenging the earlier order passed where the leave to defend was granted and thus passing of conflicting orders in respect of both the adjoining shops has remained a matter of concern, which is also against the mandates of orders passed by this Court in CM (Main) No.1510/2010

titled ***Prem Chand & Anr. vs. Subhash Chand Saini & Ors.*** where it was specifically directed to avoid passing any divergent views, and on this account as well, the learned Addl. Rent Controller ought to have granted the leave.

In addition, it is argued on behalf of the tenant that the landlord owns House No.11/8, Shakti Nagar, Delhi, which is just in the vicinity of the tenanted shop No.1, constructed on an area of 350 sq.yds., being a corner three sided open house, where two sides open on the main roads, which could also be seen from the photographs annexed, and in case he really intended opening a “high profile clinic”, he could very well do so from the said house, without touching the tenants. The photographs filed by the tenants would show that commercial activities are already going on in the locality even in the adjoining buildings. The said areas fall in “mixed-land use” against the residential as is being alleged.

35. Various other submissions have been made by both parties who have also relied upon large number of decisions. At this stage, the court has to take the adverse view of matter and to decide as to whether the tenants are prima facie able to establish the case of triable issue or not. Therefore, only relevant decisions are discussed in my order.

36. Before dealing with rival submission of the parties, it is undisputed by the petitioner/landlord that he has in his possession the following properties:-

- (i) Entire rear side at the ground floor of the building bearing Municipal No.29/5, Shakti Nagar, Delhi.
- (ii) Second floor of the building owned by his wife (a simple house-wife) and the same is lying vacant.
- (iii) The landlord has been carrying on his professional practice from his premises at Kamla Nagar, Delhi.
- (iv) Two and a half storeyed building built on land admeasuring 260 Sq. Yards (approx.) wherein the landlord and his wife have been residing and their children are settled abroad.

37. Proviso (e) to Section 14(1) of the Act is a Special Provision which has been enacted by the legislature for the class of landlords who require the premises genuinely and their requirement is bonafide and they do not have any suitable accommodation. The essential ingredients for attracting the proviso (e) of the Section 14 (1) of the Act are:

- a) The said premises are bonafide required by the landlord either for himself or for his family member.
- b) The landlord or the family member has no other reasonable suitable accommodation.

Both conditions are to be satisfied conjunctively in order to attract the provisions of Section 14(1)(e) of the Act in order to obtain eviction order and the absence of even one of the said ingredients clearly makes the said provision inapplicable.

38. It is settled law that while deciding the leave to defend, the Controller is not expected to examine the success or failure of the plea raised but has to examine merely a tenable case. The Controller is estopped in view of settled law from recording a finding as to disputed questions of fact. All the above stated propositions of law has been laid down in the case of ***Charan Dass Duggal vs. Brahma Nand***, (1983) 1 SCC 301 speaking through Hon'ble Desai, J. observed thus:-

“5. What should be the approach when leave to defend is sought? There appears to be a mistaken belief that unless the tenant at that stage makes out such a strong case as would non-suit the landlord, leave to defend cannot be granted. This approach is wholly improper. When leave to defend is sought, the tenant must make out such a prima facie case raising such pleas that a triable issue would emerge and that in our opinion should be sufficient to grant leave. The test is the test of a triable issue and not the final success in the action (see Santosh Kumar v. Bhai Mool Singh). At the stage of granting the leave parties rely in support of their rival contentions on affidavits and assertions and counter-assertions on affidavits may not afford such incontrovertible evidence to lead to an affirmative conclusion one way or the other. Conceding that when possession is sought on the ground of personal requirement, an absolute need is not to be satisfied but a mere desire equally is not sufficient. It has to be something more than a mere desire. And being an enabling provision, the burden is on the landlord to establish his case affirmatively. If as it appears in this case, the landlord is staying at Pathankot, that a house is purchased, may be in the name of his sons and daughters, but there may not be

an apparent need to return to Delhi in his old age, a triable issue would come into existence and that was sufficient in our opinion to grant leave to defend in this case.”

In the same judgment, in para 7 it is further observed:-

“7. The genesis of our procedural laws is to be traced to principles of natural justice, the principal amongst them being that no one shall suffer civil or evil or pecuniary consequence at his back without giving him an adequate and effective opportunity to participate to disprove the case against him and provide his own case. Summary procedure does not clothe an authority with power to enjoy summary dismissal. Undoubtedly wholly frivolous defence may not entitle a person leave to defend. **But equally a triable issue raised, enjoins a duty to grant leave. Maybe in the end the defence may fail.** It is necessary to bear in mind that when leave to defend is refused the party seeking leave is denied an opportunity to test the truth of the averments of the opposite party by cross-examination and rival affidavits may not furnish reliable evidence for concluding the point one way or the other. It is not for a moment suggested that leave to defend must be granted on mere asking but it is equally improper to refuse to grant leave though triable issues are raised and the controversy can be properly adjudicated after ascertainment of truth through cross-examination of witnesses who have filed their affidavits. **Burden is on the landlord to prove his requirements and his assertion is required to be tested more so when it is shown that for long he is staying outside Delhi, that he has a building albeit standing in the names of his sons and daughters where he is staying and at which place he receives his normal correspondence. If in such a situation one can say that a triable issue is not raised, one is at a loss to**

find out where, when and in what circumstances such an issue would arise. We are, therefore, satisfied that this is a case in which triable issues were raised and both the learned Rent Controller and the High Court were in error in refusing to grant the leave.” (Emphasis Supplied)

39. The Supreme Court in the case of ***M.M. Quasim vs. Manohar Lal***, AIR 1981 SC 1113 which is a three bench decision passed by the Court speaking through Hon’ble Desai, J. (as His Lordship then was) has categorically flawed this approach of mechanically stating that the landlord is the best judge without applying a judicious approach in the matter. In the words of Hon’ble Desai, J. it was observed thus:

“Before turning to the next topic, a word about the judicial approach to the question of personal requirement of the landlord under the Rent Act would not be out of place.

40. In the case of ***Precision Steel and Engineering Works and Anr. vs Prem Deva Niranjana Deva Tayal***, 1983 SCR (1) 498, the Hon’ble three judges of the Supreme Court speaking through Hon’ble Justice Desai (as his lordship then was) has clearly laid down the scope and nature of enquiry permissible in law while deciding the question of grant or non grant of the leave to defend in the eviction proceedings approving the view of ***Charan Dass*** (supra). In the words of Hon’ble Justice Desai, it was observed thus:

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“But what happens if the tenant appears pursuant to the summons issued under sub-sec. 2 of section 25B, files an affidavit stating the grounds on which he seeks

to contest the application. As a corollary it would transpire that the facts pleaded by the landlord are disputed and controverted. How is the Controller thereafter to proceed in the matter. It would be open to the landlord to contest the application of the tenant seeking leave to contest and for that purpose he can file an affidavit in reply but production and admission and evaluation of documents at that stage has no place. The Controller has to confine himself to the affidavit filed by the tenant under sub-section 4 and the reply, if any. On perusing the affidavit filed by the tenant and the reply if any filed by landlord the Controller has to pose to himself the only question: Does the affidavit disclose, not prove, facts as would disentitle the landlord from obtaining an order for the recovery of possession on the ground specified in Clause (e) of the proviso to section 14(1). The Controller is not to record a finding on disputed questions of facts or his preference of one set of affidavits against other set of affidavits. That is not the jurisdiction conferred on the Controller by sub-sec. S because the Controller while examining the question whether there is a proper case for granting leave to contest the application has to confine himself to the affidavit filed by the tenant disclosing such facts as would prima facie and not on contest disentitle the landlord from obtaining an order for recovery of possession. At the stage when affidavit is filed under sub-section (4) by the tenant and the same is being examined for the purposes of sub-section (5) the Controller has to confine himself only to the averments in the affidavit and the reply if any and that becomes manifestly clear from the language of sub-section (S) that the Controller shall give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would

disentitle the landlord from recovering possession etc. The jurisdiction to grant leave to contest or refuse the same is to be exercised on the basis of the affidavit filed by the tenant. That alone at stage is the relevant document and one must confine to the averments in the affidavit. If the averments in the affidavit disclose such facts which, if ultimately proved to the satisfaction of the Court, would disentitle the landlord from recovering possession, that by itself makes it obligatory upon the Controller to grant leave. It is immaterial that facts alleged and disclosed are controverted by the landlord because the stage of proof is yet to come. It is distinctly possible that a tenant may fail to make good the defence raised by him. Plausibility of the defence raised and proof of the same are materially different from each other and one cannot bring in the concept of proof at the stage when plausibility has to be shown."

(Emphasis Supplied)

41. Admittedly, in the present cases, the landlord has in his possession of commercial accommodation at Kamla Nagar, Delhi from where he is operating business. He is also owner of the part of the ground floor, rear portion and second floor (wife's name) of the suit property. The abovementioned portions of building were purchased by him in 2006 with the tenanted shops of two tenants. The area in the second floor is more than about 500 sq. ft. His projected need definitely appears to be his desire to start his business from the tenanted shops.

42. The aforesaid view of the Supreme Court in ***M.M. Quasim*** (supra) and other views quoted above are consistently followed by the courts in the country which make it clear that even though the

landlord is considered to be the best judge to decide his need, the same should be merely a weighing factor in order to decide the reasonableness and suitability of the alternative accommodation and ultimately the said question is to be decided by the Rent Controller on objective standards and not on the subjective will of the either party be it landlord or the tenant. As I have indicated, the reasonableness and suitability of the available accommodation is a question of fact, it has to be decided on case to case basis by Controller by examining the tenability of the grounds taken in the application for leave to defend.

43. This Court in many cases has already approved the view of the Supreme Court in **Santosh Devi** (supra) and **Dr. S.M. Mishra** (supra) in number of cases decided recently including the case of **M/s S.K. Seth** (supra) by observing that in the case which is seemingly of additional accommodation, the leave to defend should be granted.

44. He also did not dispute that he had been carrying on the professional practice not only at Kamla Nagar (his own clinic) but also at Tirath Ram Shah Hospital, Civil Lines, Suder Lal Jain Hospital at Ashok Vihar and Pentamed Hospital (near Model Town) besides the various clinics mentioned in the affidavit of the respondent/tenant seeking leave to defend to contest the proceedings.

45. In the present cases, it is not case of the landlord that he intends to abandon and/or give up his professional practice at his various clinics and hospitals to devote full time to the so called

proposed super specialty hospital that too after carrying out the extensive additions/alterations and constructions in the half share of the suit property purchased by him. Even, during the course of hearing, he is agreeable if the tenants be asked to shift to rear portion of the building. On one hand, he says that he wants to have a modern Dental Clinic from the entire portion of the building he had purchased in 2006 and on the other hand, he intends to have the front portion of the tenanted shops of the tenants in question. It shows that his requirement is to be tested at trial as to whether the same is genuine or fanciful. It is also a matter of fact that he is not carrying on any business from the rear side and the second floor of the portion of the building was purchased by him in 2006.

46. The said projected need would be nothing but that an additional accommodation for setting up a new clinic and expanding the existing business. The projected requirement is to be examined at the time of trial. When the Court would examine after trial as whether his needs is really genuine and bona fide or it is merely a desire/fanciful. If the leave to defend is refused, an opportunity to test the requirement as averred by landlord is denied which is not the scheme of the Act. It is not necessary to discuss other issues and decisions referred by the parties as each case depends upon its own fact and on the basis of facts available on record, this Court feels that the trial in the matter is necessary.

47. In the case of ***Deena Nath vs. Pooran Lal***, (2001) 5 SCC 705, the Supreme Court observed thus :

“The Legislature in enacting the provision has taken ample care to avoid any arbitrary or whimsical action of a landlord to evict his tenant. The statutory mandate is that there must be first a requirement by the landlord which means that it is not a mere whim or a fanciful desire by him; further, such requirement must be bonafide which is intended to avoid the mere whim or desire. **The 'bonafide requirement' must be in praesenti and must be manifested in actual need which would evidence the Court that it is not a mere fanciful or whimsical desire.** The legislative intent is made further clear by making the provision that the landlord has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned. This requirement lays stress that the need is pressing and there is no reasonably suitable alternative for the landlord but to get the tenant evicted from the accommodation. Similar statutory provision is made in sub-section (e) of Section 12(1) of the Act in respect of accommodation let for residential purposes. Thus, the legislative mandate being clear and unambiguous, **the Court is duty-bound to examine not merely the requirement of the landlord as pleaded in the eviction petition but also whether any other reasonably suitable non-residential accommodation in his occupation in the city/town is available.** The judgment/order of the court/authority for eviction of a tenant which does not show that the court/authority has applied its mind to these statutory requirements cannot be sustained and the superior court will be justified in upsetting such judgment/order in appeal/second appeal/revision. **Bonafide requirement, on a first look, appears to be a question of fact.** But in recording a finding on the question the court has to bear in mind the statutory mandate incorporated in Section 12(1)(f). **If it is found that the court has not applied the statutory provisions to the evidence on record in its proper perspective then the finding regarding bonafide requirement would cease to be a mere finding of fact, for such erroneous finding**

illegally arrived at would vitiate the entire judgment.”
(Emphasis Supplied).

48. In the light of the above mentioned facts and circumstances, the impugned order passed in RC. Rev. No.109/2013 does not suffer from any legality infirmity and is in accordance with the law applicable. The learned Controller has dealt with all the facts and circumstances of the case and held that the respondent has raised triable issue in the facts of the present case. Therefore, the petition is dismissed.

49. In RC. Rev. No.113/2013, as already mentioned that grounds in the eviction petition filed by the landlord are identical. The issue raised in the application for the leave to defend are almost similar, At least, in order to maintain judicial discipline, the learned Controller ought to have awaited the final outcome of the similar matter. The learned Controller legally erred in not testing the case of both the parties on the objective standards which is the requirement of law and failed to even refer the earlier order passed on similar facts where the leave was granted.

50. It is necessary to bear in mind that when leave to defend is refused, the party seeking leave to defend would miss an opportunity to test the truth of the averments of the opposite party by cross-examination. In my view, as per discussion, the petitioner in RCR No.113/2013 has been able to raise *prima facie* triable issues, which seem to have been ignored by the learned Addl. Rent Controller and

eviction order could not be passed at the stage of application for leave to defend.

51. The impugned order suffers from infirmity. Thus, the impugned order is liable to be set aside. The tenant in RC. Rev. No.113/2013 is granted three weeks time to file the written statement. Replication, if any, be filed by the next date.

52. All pending applications in both matters are disposed of and it is directed that both matters i.e. Eviction Petition No.115/2011 and Eviction Petition No.77/2012 be tried together by the same Court in order to save time of Court and conflicting decisions.

53. The parties in both matters to appear before the concerned Addl. Rent Controller on 28th July, 2014. The learned Addl. Rent Controller is requested to complete the trial within six months from the date of completion of pleadings and main petition be disposed of within two months thereafter.

54. Copy of this order be sent to the trial Court forthwith.

55. No costs.

(MANMOHAN SINGH)
JUDGE

JUNE 13, 2014