

**IN THE COURT OF MR. SHIRISH AGGARWAL, ARC-1, CENTRAL
DISTRICT, TIS HAZARI COUTS, DELHI**

Eviction Petition No. E-1054/14

New No.77749/16

Sh. Raj Pal Singh,
S/o Late Sh. Khem Chand,
R/o 25/131, Shakti Nagar,
Delhi-110007.

...Petitioner

Versus

1. Dr. Vasudev Sukhwani
S/o Late Sh. B.T. Sukhwani,
C/o 1/9, Roop Nagar,
P.N.B. Building,
G.T. Road, New Delhi-110007.

2. Sh. Raj Kumar
S/o Dr. Vasudev Sukhwani,
C/o 1/9, Roop Nagar,
P.N.B. Building,
G.T. Road, New Delhi-110007.

...Respondents

Application for eviction of tenant under section 14(1) (e) r/w section 25 B of
Delhi Rent Control Act 1958.

Date of Institution of Petition : 15.09.2014

Date on which order was reserved : 01.03.2018

Date of decision : 06.03.2018

Decision : Application seeking leave to defend filed on behalf of the respondents is dismissed. Eviction order is passed.

ORDER

1. This order shall dispose of the application seeking leave to defend filed by respondents. This is a petition for eviction of tenant under Section 14 (1) (e) r/w Section 25 B of the Delhi Rent Control Act, 1958.

2. The petitioner claims to be the owner and landlord of a shop on the Ground Floor of property bearing no. 25/142, Shakti Nagar, Delhi. It is stated that the respondents are in possession of this property shown in red colour in the site plan filed alongwith the eviction petition (hereinafter referred to as the 'tenanted premises') as tenants. It is pleaded that the monthly rate of rent for this premises is Rs. 1,400/- excluding other charges.

3. It is stated by the petitioner that the tenanted premises and the portion shown in yellow color in the site plan were given to him by his mother and in this regard, a letter of attornment dated 20.01.2003 was issued by her. It is stated that the family of the petitioner comprises of his mother, his wife, his two sons and one daughter. It is averred that the elder son of the petitioner

who is named Anubhav is around 31 years of age and unemployed. It is stated that Mr. Anubhav recently got married. It is pleaded that the younger son Ankit is 25 years of age and is also unemployed. It is averred that even petitioner is unemployed. It is submitted that the two sons are dependent upon the petitioner. It is pleaded that the petitioner alongwith his two unemployed dependent sons wish to open a kirana shop in the tenanted premises to settle themselves. For this reason, the petitioner has sought possession of the tenanted premises.

4. It is submitted that the wife of the petitioner owns three floors i.e. first, second and third floors in a 200 sq. yard property in a residential lane in building no. 25/131, Shakti Nagar, Delhi. It is averred that the petitioner is residing with his family on the first floor of this property and second and third floors have been rented out to different tenants for their residence. It is submitted that the petitioner's wife is earning rent from the second and third floors of this property.

5. It is further disclosed by the petitioner that he has a share in an ancestral residential property bearing Khasra No. 145/48, Village Khera

Kalan, Delhi, measuring 710 sq. yards. It is pleaded that this property has eight stakeholders including the petitioners, his two brothers and four sisters and is still undivided. It is stated that this property in the form of godowns has been rented out to tenants.

6. It is the case of the petitioner that he requires the tenanted premises bonafide for starting kirana shop with his two sons for their livelihood. It is stated by the petitioner that he does not have any other reasonably suitable accommodation for this purpose.

7. The petitioner has prayed that eviction order may be passed in respect of the tenanted premises in terms of section 14 (1) (e) of the DRC Act.

8. Notice of the petition was served upon the respondents. The respondents filed an application seeking leave to defend. It has been contended by the said respondents that the petitioner has no right to file the present petition. It is submitted that the tenanted premises is owned by Smt. Singharo Devi who has only authorized the petitioner to collect rent on her behalf by executing letter of attornment dated 20.01.2013. It is submitted that the respondents had received possession of the premises from Late Sh.

Khem Chand who executed a Will by which the tenanted premises devolved upon his wife Smt. Singharo Devi. It is pointed out that even as per the sale deeds dated 07.03.2003 and 22.04.2004 executed by Smt. Singharo Devi, she is the absolute owner of the tenanted premises. It is pointed out that the petitioner himself is a witness to the execution of sale deed dated 07.03.2003. It is pointed out that the sale deeds have been executed after execution of attornment letter dated 20.01.2003. It is further pleaded that even from the Will of Smt. Singharo Devi, it is evident that she is currently the owner of the property, which after her demise, will devolve upon the petitioner herein. It is argued that by virtue of letter of attornment, the petitioner has only been authorized to receive and collect rent and that does not confer upon him in ownership rights.

9. It is submitted that Smt. Singharo Devi is still alive and has never executed any sale deed, gift deed or transfer document in favour of the petitioner. It is pointed out that the attornment letter is an unregistered document despite it purporting to transfer immovable property in the sum of more than Rs.100/-. It is argued that in view of Section 17 of the Registration Act, since the attornment letter is not registered, it has no value in the eyes of

law.

10. It is submitted that the present petition has been filed with the malafide intention of increasing the rate of rent. It is stated that Smt. Singharo Devi has been putting pressure upon the respondents to increase the rent or enter into a 50% partnership business.

11. It is stated that the petitioner has not disclosed its true income and source of income. It is submitted that the wife of the petitioner Smt. Geeta Rana purchased three floors at property no. 25/131, Shakti Nagar, New Delhi for a total consideration of Rs.68,64,000/-. It is stated that the petitioner has not disclosed from where the said amount was arranged if neither he nor his sons and wife have any source of income.

12. It is submitted that the petitioner has not even disclosed the rental income that he receives from the godown at Village Khera Kalan, Delhi.

13. It is submitted that the petitioner and his sons are employed and that the sons are not dependent upon the petitioner. It is stated that the sons are

doing business of property consultancy at the back portion of the tenanted premises. It is further submitted that the petitioner is doing business as a proprietor of M/s Nidhi Traders from the property at Khera Kalan and is doing business of iron mesh (Jaali) & other products.

14. It is pleaded that the petitioner has concealed that there are three godowns at the property in Village Khera Kalan. It is submitted that the petitioner has disclosed only about two godowns. In this regard, attention of the court is drawn to the Will dated 07.06.1996 of Late Sh. Khem Chand in which it is admitted that there are three godowns in Village Khera Kalan. It is submitted that one of these spacious godown is being used by the petitioner for commercial purpose for running his business. It is submitted that the petitioner is paying bill of more than Rs.1,000/- per month at this property.

15. It is submitted that the petitioner is an Income tax payee and that he has raised a false plea that he is unemployed. It is submitted that the petitioner owns a Toyota Altis Corolla Car which was purchased on 13.01.2010 and at that time was having a worth of Rs. 10 lacs. It is submitted that the petitioner also performed two marriages of his children and spent

huge amount in their marriages. It is stated that the petitioner has 12 air conditioners installed in his premises and is leading a luxurious life. He owns a German Shepherd dog and bears expenses of Rs.10,000/- per month.

16. It is further submitted that the sons of the petitioner are both income tax assesseees and are doing business from property no. 25/142, Shakti Nagar, Delhi. It is stated that the son Anubhav also uses a car bearing registration no. DL-8C AD 0238. It is submitted that the petitioner, his son Anubhav and his wife Geeta are involved in an attempt to murder case which is pending before Court. It is averred that in this murder case, statement of Anubhav Jain was recorded in which he admitted that he is looking after the business of iron mesh. It is submitted that the son Anubhav has a separate electricity connection in his name at property no. 25/131, Shakti Nagar, Delhi and is paying huge amount of electricity bill. It is further stated that Anubhav and wife of the petitioner pay a large amount as their mobile phone bill which is not possible for unemployed persons.

17. It is submitted that no document has been furnished to show that the petitioner's sons are dependent upon him. It is submitted that the alleged

need of the petitioner to start a kirana shop is a mere desire. It is averred that the petitioner and his sons have no experience to run a kirana store.

18. The respondents have pleaded that the alleged bonafide need of the petitioner is fake and malafide and have prayed that leave to defend the petition may be granted to the respondents as the application/affidavit of the respondents/tenants disclose such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises under section 14 (1) (e) of DRC Act.

19. The petitioner filed reply to the application seeking leave to defend. The petitioner reiterated and reaffirmed the contents of his eviction petition. The petitioner stated that the respondents have been paying rent to him against valid rent receipts after the issuance of letter of attornment. It is further submitted that in a petition under Section 27 of the Delhi Rent Control Act filed by the respondents against the petitioner's mother Smt. Singharo Devi, the petitioner filed an application under O. 1 R. 10 of CPC which was allowed by order dated 19.08.2015 and it was held that the petitioner is the landlord.

20. It is pointed out that an oral family partition settlement had taken place by which the petitioner and his family members divided the family properties. As a consequence of the settlement, the tenanted premises and the portion on the mezzanine floor shown in yellow color fell in the share of the petitioner herein. It is pointed out that this was informed to the respondents by letter of attornment dated 20.01.2003. Reliance has also been placed upon the Will dated 01.02.2013 executed by Smt. Singharo Devi which is duly registered.

21. It is submitted that the wife of the petitioner Smt. Geeta Rana had received compensation after the land owned by her was acquired by the Government of Haryana. It is stated that by using the compensation amount, she purchased the first, second and third floors of property no. 25/131 of Shakti Nagar, Delhi. It is submitted that there were three godowns at the property at Khera Kalan which were later converted into two godowns and have been let out to two tenants. It is submitted that the petitioner is receiving Rs.17250/- as his share in the rent from these two godowns.

22. It is submitted that the mezzanine floor in the property no. 25/142, Shakti Nagar, Delhi, is a residential room having bathroom on the ground floor

and room and kitchen on the mezzanine floor. It is stated that the said premises has been rented out to one Anshul Galav and rent agreement has been filed. It is submitted that in any case, no kind of business can be carried out from the mezzanine floor.

23. It is further submitted that the firm M/s Nidhi Traders is not run by the petitioner, but by one Amarjeet Singh @ Amar Singh who was tenant in respect of the 400 sq. yards front portion godown in the Village Khera Kalan Property. The rent agreement executed in this regard has also been filed alongwith copy of Sales Tax License of M/s Nidhi Traders. It is submitted that electricity connection has been installed in the godown in the name of the petitioner to provide electricity to the tenants of the godown. It is submitted that the bills are being paid by the tenants.

24. It is submitted by the petitioner that even though he is an income tax assessee, his income is from the rent received and not from any business. It is pointed out that the Corolla Altis Car was purchased second hand in the sum of Rs.6 lac which was paid through RTGS. It is submitted that the marriages of the children were carried out by the petitioner in a simple

manner. It is pleaded that petitioner was allotted a plot bearing no. 396 in Khasra No. 106, Khera Kalan Village, Delhi which was sold. It is submitted that from the proceeds of sale, the car was purchased and marriages of the children was funded.

25. It is denied that the sons Anubhav and Ankit are income tax assesses. It is submitted that the son Anubhav is using a scooty purchased by the petitioner and not a car. It is pointed out that the son Anubhav had started a small business of manufacturing of iron jaali in the name of Sri Ram Udyog. However, the business had to shut as it was not doing well. It is submitted that for the purpose of doing this business, Anubhav had applied for PAN card and was paying income tax. However, after closing of the business, Anubhav stopped paying income tax and is unemployed.

26. The respondents filed rejoinder to the reply of the petitioner and denied the averments made in the reply of the petitioner and simultaneously reiterated and reaffirmed the contents of the application.

27. I have heard arguments and carefully gone through the record. In order

to succeed in a petition for eviction filed under section 14 (1) (e) of the Delhi Rent Control Act, the petitioner must establish that:

- i. He is owner and landlord in respect of the tenanted premises.
- ii. He requires the premises bonafide for himself or for any member of his family dependent upon him.
- iii. He has no other reasonably suitable accommodation.

Ownership of tenanted premises and relationship of landlord-tenant between petitioner and respondents :

28. The respondents have stated that the petitioner has no right to file the present eviction petition since he is not the owner of the tenanted premises. It is submitted by the respondents that it is Smt. Singaro Devi who is the landlady of the premises. The respondents have admitted that the premises was let out by Late Sh. Khem Chand. Admittedly, Sh. Khem Chand was the father of the petitioner and Smt. Singharo Devi is the mother of the petitioner. It is also not in dispute that Late Sh. Khem Chand had executed a Will in favour of Smt. Singharo Devi by which the tenanted premises devolved upon her. The petitioner has relied upon a letter of attornment executed by Smt. Singharo Devi. The letter of attornment provides the following :

“..., as Sh. Raj Pal Singh has now become the owner of the property bearing no. 25/142, Shakti Nagar, Delhi-110007”

29. It is admitted by the respondents that it is by virtue of this letter that they started paying rent to the petitioner. It is their case that this letter only authorizes the petitioner to collect rent on behalf of Smt. Singharo Devi and that he does not become the owner of this property by virtue of the attornment letter. It is argued by the respondents that the sale deeds and Will of Smt. Singharo Devi filed by the petitioner himself, declare and hold that it is Smt. Singharo Devi who is owner of tenanted premises and not the petitioner. It is submitted that the sale deeds and Will have been executed subsequent to the execution of the letter of attornment. It is further pleaded that since the attornment letter purports to transfer immovable property of more than Rs.100/-, since it is not registered, the title of the property has not been transferred to the petitioner. Per contra, it is argued by the Ld. Counsel for the petitioner that the attornment letter need not have been registered since a oral family settlement which took place earlier has only been incorporated in the said document. By relying upon the decision of the Hon'ble Delhi high Court in the case of Romesh Chander Sethi vs Inder Mohan Sethi and Anr. 163 (2009) DLT 4, it is submitted that a document which merely records a previously completed transaction and does not *in praesenti* create any right in a property need not be registered.

30. The Court is of the view that non-registration of the document is not something which the respondent can question. It is not the case of the respondents that the attornment letter is forged and fabricated. They have themselves taken the documents to be authentic and therefore started paying rent to the petitioner. The petitioner is not required to prove a perfect and absolute title over the premises for the purpose of establishing his locus to file eviction petition against tenants. The respondents have no locus standi to challenge the legality of the document by which title of the tenanted premises was transferred to the petitioner by his mother. The respondents have no right to object to the transfer. There is nothing on record to show that Smt. Singharo Devi or her other children have objected to the filing of the present petition. On the contrary Smt. Singharo Devi has executed a Will, copy of which has been filed by the petitioner, by which she has made her intention clear that it is the petitioner herein who has a right in the tenanted premises.

31. In judgment titled as Rajender Kumar Sharma vs. Smt. Leela Wati reported as 155 (2008) DLT 383 the Hon'ble High Court of Delhi held the following:

“.....It is settled law that for the purpose of section 14 (1) (e)

of Delhi Rent Control Act, a landlord is not supposed to prove absolute ownership as required under Transfer of Property Act. He is required to show only that he is more than a tenant. In this case, the landlady had placed on record the documents by which she became owner. The attornment given by the erstwhile landlord in her favour as well as an admission made by the tenant by filing petition under section 27 of Delhi Rent Control Act acknowledgement the landlordship of landlady. Thus, the conclusion arrived at by the ARC regarding ownership and relationship of landlord and tenant were based on sound legal position and the cogent material before it.....”

32. In the present case, the petitioner has been able to establish that he is more than a tenant. There is also a document placed on record by which the petitioner became the owner. Attornment has been given by the erstwhile landlord in his favour. By paying rent to the petitioner and issuing rent receipts to the petitioner, the respondents have admitted that the petitioner is the landlord.

33. In the judgment titled as Ramesh Chand vs. Uganti Devi reported as 157 (2009) DLT 450 the Hon'ble High Court of Delhi held the following:

“..... The imperfectness of the title of the premises cannot stand in the way an eviction petition under section 14 (1) (e) of the DRC Act, neither the tenant can be allowed to raise the plea of imperect title or title not vesting in the landlord and that too when the tenant has been paying rent to the landlord. Section 116 of the Evidence Act creates estoppels

against such a tenant. A tenant can challenge the title of landlord only after vacating the premises and not when he is occupying the premises. In fact, such a tenant who denies the title of the landlord, qua the premises, to whom he is paying rent acts dishonestly.....”

34. The principle is very clear that once a tenant always a tenant. The tenant cannot dispute the title of his landlord or his successor in interest. The respondents have admitted that father of the petitioner was the original landlord and after his demise, the mother of the petitioner became the landlady. The petitioner has filed copy of the receipt issued when he was paid rent by the respondents. The receipt categorically mentions the name of the petitioner as the recipient of the amount. The respondents have also admitted that they have been paying rent to the petitioner.

35. Section 116 of the Evidence Act is a complete answer to the plea taken by the respondents. The Hon'ble Supreme Court in the case of *Bansraj Laltaprasad Mishra v. Stanley Parker Jones* (2006) 3 SCC 91 held the following:

“.....13. The underlying policy of section 116 is that where a person has been brought into possession as a tenant by the landlord and if that tenant is permitted to question the title of the landlord at the time of the settlement, then that

will give rise to extreme confusion in the matter of relationship of the landlord and tenant and so the equitable principle of estoppel has been incorporated by the legislature in the said section.

14. The principle of estoppel arising from the contract of tenancy is based upon a healthy and salutary principle of law and justice that a tenant who could not have got possession but for his contract of tenancy admitting the right of the landlord situation taking undue advantage of the possession that he got and any probable defect in the title of his landlord. It is on account of such a contract of tenancy and as a result of the tenant's entry into possession on the admission of the landlord's title that the principle of estoppel is attracted.

15. Section 116 enumerates the principle of estoppel which is merely an extension of the principle that no person is allowed to approbate and reprobate at the same time.....”

36. Accordingly, in view of the provisions of section 116 of the Evidence Act, they are estopped from challenging the title of the petitioner. In the case of *Atyam Veerraju v. Pechetti Venkanna* (1996) 1 SCR 831, the Hon'ble Supreme Court quoted with approval the judgment of the Privy Counsel in *Bilas Kunwar v. Desraj Ranjit Singh*, wherein it was observed as follows:

“ A tenant who has been let into possession cannot deny his landlords title, however defective it may be, so long as he has not openly restored possession by surrender to his landlord.”

37. It is the case of the respondents that the petitioner is being paid rent

not in his own right, but on behalf of Smt. Singharo Devi. However, in a case filed by the respondents for deposit of rent against Smt. Singharo Devi, the application of the petitioner herein under O. 1 R. 10 of CPC was allowed and the petition was disposed off with the direction that the petitioner herein shall be entitled to withdraw the rent. In this case also, the petitioner herein had relied on the oral family settlement which was referred to by the court. In the order dated 19.08.2015 by which the petition for deposit of rent was disposed off, the petitioner herein was held to be the landlord. This is evident from the observation of the court that "the landlord/respondent no.2" is at liberty to withdraw rent. In this case also, Smt. Singharo Devi never objected to the application under O. 1 R. 10 of CPC or to the court declaring Sh. Raj Pal Singh as the landlord.

38. Even if it is presumed that rent is being paid to the petitioner on behalf of Smt. Singharo Devi and not in his own right, if the transfer of the landlord's title is valid, and even if the tenancy is not attorned in favour of the transferee, the lease continues. Thus, a transferee of the landlord's rights, steps into the shoes of the landlord with all the rights and liabilities of the transferor landlord in respect of the subsisting tenancy. Attornment by the new tenants is

unnecessary to confer validity to the transfer of the landlord's rights and there is no such statutory requirement. In the present case, the letter of attornment categorically provides that Sh. Raj Pal Singh has become the owner of the property bearing no. 25/142, Shakti Nagar, Delhi-110007.

39. Reference may be made to the case of Hajee K. Assainar vs. Chacku Joseph AIR 1984 Ker 113. In the case of Mahendra Raghunathdas Gupta vs. Vishvanath Bhikaji Mogul AIR 1997 SC 2437, it was held that attornment by tenant is not necessary though it is desirable. Mere non-payment of rent by tenant even for a considerably long period does not extinguish the landlord-tenant relationship. The possession of a tenant cannot be adverse to his landlord. The petitioner is therefore, the landlord and owner of the tenanted premises.

40. Accordingly, I am of the opinion that the petitioner is competent to have filed the present eviction petition as he is the owner as well as landlord in respect of the tenanted premises for the purpose of section 14 (1) (e) of DRC Act.

Requirement of premises bonafide by the petitioner for himself and for members of his family dependent upon him and non-availability of any

other reasonably suitable accommodation:

41. The respondents have alleged that the petitioner does not bonafide need the tenanted premises for starting a kirana shop. The respondents have refuted the claim of the petitioner that he and his sons are employed and therefore need the tenanted premises for starting a business i.e. opening a kirana shop. It is stated by the respondents that the petitioner and his sons are gainfully employed and have sufficient means of livelihood to sustain themselves. It is pleaded by the respondents that the petitioner has alternate reasonably suitable accommodation for starting a kirana shop.

42. It is stated by the respondents that the petitioner admittedly owns the mezzanine floor of property no. 25/142, Shakti Nagar, Delhi which can be used for starting a kirana shop. The petitioner has denied that the mezzanine floor can be used for his requirements. It is pointed out by the petitioner that the mezzanine floor is a residential property and cannot be used for commercial purpose for starting a kirana shop. It is also disclosed by the petitioner that even otherwise, the mezzanine floor has already been rented out to one Sh. Anshul Galav. In this regard, the petitioner has filed copy of the rent agreement dated 23.05.2014 entered into by him with Sh. Anshul Galav.

It is further pointed out by the petitioner that the mezzanine floor is at a height of 10 feet from the ground. It is stated that bathroom is on the ground floor and room and kitchen are on the mezzanine floor from where no business can be carried out.

43. There is no reason to doubt the correctness of the rent agreement, copy of which has been filed by the petitioner to establish that the mezzanine floor has been rented out to Sh. Anshul Galav.

44. On the other hand, the respondents have filed a photograph purported to be that of the entrance of the mezzanine floor. At the entrance of the premises that can be seen in the photograph, it is mentioned that Anubhav Rana and Ankit Rana are operating as property consultants from the property. The petitioner has denied that the sons Anubhav Rana and Ankit Rana are working as property consultants. It is stated that the photograph is not that of the mezzanine floor and has been fabricated by the respondents.

45. The court is of the view that the photograph does not establish that the sons of the petitioner are indeed gainfully employed as property consultants

and are operating from the mezzanine floor. It is also not clear whether the photograph is indeed that of the mezzanine floor or that of any other property. The possibility of the photograph being fabricated cannot be ruled out. The respondents are in possession of the tenanted premises at the same address. If the sons of the petitioner were indeed working as property consultants, the respondents ought to have placed on record better proof of the same like photographs of the sons present at the spot and operating from this premises. In this regard, reliance is placed upon the decision of the Hon'ble High Court passed in the case of Mohd. Naseer Vs. Mohd. Zaheer and Anr. RC Rev. No. 267/2016 dated 03.11.2016 in which the following was held :-

“19. Clearly, the contentions raised by the petitioners appear to be an allegation without any basis whatsoever. The respondent on affidavit has denied the contention and has named the occupants/tenants. The petitioners themselves are occupying a shop in the premises and would certainly have better details if the respondent was in occupation of the two shops. Mere raising of baseless contentions against the landlord cannot be a ground for being granted leave to defend to the petitioners. It cannot be said that the petitioners have given facts or particulars which require to be established by way of evidence. The petitioners have merely made allegations for the sake of making allegation. There is no merit in the said plea of the petitioner.

20. The trial court has rightly concluded that the petitioners have failed to place on record any material to raise a

suspicion that the respondents are having a vacant space on the ground floor of the suit property which can be used by them to open his workshop for industrial tools.”

46. Even if it is presumed that the photograph is authentic, that also by itself does not establish that the sons of the petitioner are able to earn a livelihood from the business. No proof of income from the business of property consultancy has been brought on record by the respondents. On the other hand, the petitioner has categorically stated that the sons are not paying income tax and have no source of income.

47. It is argued by the petitioner that even otherwise, the mezzanine floor is not suitable for his requirement of starting a kirana shop. The petitioner cannot be expected to start his business from a higher floor when he owns a property at the ground floor which is more commercially viable. The petitioner has first right to choose which property owned by him is suitable for his needs. In the cases of Dhannalal Vs. Kalawatibai (2002) 6 SCC 16 and Uday Shanker Upadhyay Vs. Naveen Maheshwari (2010) 1 SCC 503, it was held that judicial notice can be taken of the fact that the upper floors are generally not commercially viable and consumers and patrons of the market are reluctant to walk into the same and are more prone to walk into a shop/office

on the ground floor. Relying on these decisions, the Hon'ble High Court of Delhi in the case of M/s A.K.Woolen Industries & Ors. Vs. Shri Narayan Gupta RC. Rev. No. 495/2017 dated 31.10.2017 held that availability of upper floors above the tenanted premises on the ground floor cannot be said to be alternate suitable accommodation. When the petitioner owns a property on the ground floor, the court and the tenants cannot dictate to him that he should start a kirana shop on a higher floor i.e. mezzanine floor.

48. It is further argued by the respondents that the petitioner has property at Khasra No. 145/48, Village Khera Kalan, Delhi-110082 which can be used for starting a kirana shop. It is submitted that the petitioner has three godowns at this premises and has sufficient space for starting his business. Per Contra, the petitioner has submitted that there are eight owners including the petitioner of the property at Village Khera Kalan. It is submitted that this is an ancestral residential property which has been rented to other persons. It is submitted that earlier there were three godowns at this premises which were later converted into two godowns measuring 400 sq. yards and 310 sq. yards. The petitioner has filed the site plan of the property at Village Khera Kalan. As per the site plan, there are only two godowns at the premises. Though the

respondents have denied the existence of only two godowns and have stated that there are three godowns at the property, they have not filed a site plan which according to them is correct. In the case of V. S. Sachdeva vs M. L. Grover 1997 (2) RCR 302, it was held that if no site plan is filed by the tenant, then the site plan filed by the landlord should be accepted. In the present case, since the respondents have not filed a counter site plan, the site plan of the property at Village Khera Kalan filed by the petitioner shall be deemed to be correct and it shall be taken to be correct that there are two godowns at the property.

49. It is submitted that the godown measuring 400 sq. yards has been rented out to one Sh. Anil Kumar Gupta and the one measuring 310 sq. yards has been rented to one Sh. Sunil Jain. Copy of the rent agreements entered into with these two persons have been filed by the petitioner. It is further disclosed by the petitioner that his share in the rent receipt from these two persons is Rs.17,250/- per month.

50. The respondents have denied the aforesaid assertions of the petitioner made qua the property at Village Khera Kalan. They have stated that the

petitioner is doing a business of 'Iron mesh (jali) & other products' from the property at Village Khera Kalan which is being run under the name & style of M/s Nidhi Traders. It is submitted that the petitioner has taken electricity connection at this property in his own name and also a mobile phone connection number 9717198190 in the name of Nidhi Traders. It is submitted that petitioner is paying electricity bill of more than Rs.1,000/- per month and has also got a landline connection no. 27843106 at this premises. The petitioner has denied this and has mentioned that M/s Nidhi Traders was a venture of one Sh. Amarjeet Singh @ Amar Singh who was the tenant in one of the godowns at the property at Village Khera Kalan. The petitioner has filed the copy of rent agreement entered into with Sh. Amarjeet Singh. He has also filed copy of the sales tax license of M/s Nidhi Traders in which Sh. Amarjeet Singh has been shown to be the proprietor of the business. It is submitted that the aforesaid mobile phone number is in the name of M/s Nidhi Traders and is being used by Sh. Amarjeet Singh.

51. The petitioner has filed documents in support of the assertions made by him regarding the property at Village Khera Kalan. He has gone to the extent of disclosing the exact amount of rent that he is receiving from this

property. On the other hand, the respondents have only made bald assertions unsupported with any material and documents. In the case of Rajender Kumar Sharma v. Smt. Leela Wati 155 (2008) DLT 383, the Hon'ble High Court of Delhi held that the respondents tenants have to place on record some material in support of the assertions made in the application for leave to defend. In this regard, the following was held by the Hon'ble Delhi High Court in the case of Sarwan Dass Bange Vs. Ram Prakash, 161 (2010) DLT 80:

“However, merely because the tenant so disputes and controverts the pleas of the landlord does not imply that the provision of summary procedure introduced in the Act with respect to ground of eviction on the ground of requirement is to be set at naught....The tenant is required to give all the necessary facts and particulars supported by documentary evidence if available to prove his plea in the affidavit itself so that the Controller will be in a position to adjudicate and decide the question of genuine or bonafide requirement of the landlord; a mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlord's favour that his requirement of occupation of the premises is real and genuine.”

52. In the case of K.K. Sarin Vs. M/s Pigott Chapman & Co. 46 (1992) DLT 352, the Hon'ble Delhi High Court held the following:

“Due to paucity of accommodation in Delhi the tenants are likely to plead facts and if they are held to be raising triable issue in every case, hardly any application seeking leave to defend would fail. This certainly is not the idea behind this

provision. While deciding the application seeking leave, what is required of the Rent Controller is to observe the rules of natural justice and to give opportunity to both the parties to produce the affidavits and material on which they rely. When leave to defend is sought, the tenant must make out a prima facie case raising such pleas that a triable issue would emerge.”

53. In the present case, there are bald assertions been made by the respondents that the petitioner has other alternative accommodations which can be used for its purpose of starting business. There is no reason to disbelieve the petitioner about the non-availability of the property at Village Khera Kalan. Even otherwise, this property cannot be accepted to be an alternative reasonably suitable accommodation for the purpose of starting a kirana shop. The property at Village Khera Kalan is stated to be a residential property. The tenanted premises is a commercial property which obviously would be more commercially viable for starting a new venture of kirana shop. Also it is not in dispute that the property at Village Khera Kalan is in the form of godowns. The petitioner cannot be expected to open a shop in a godown when he already owns a better property which is being used by the respondents tenants.

54. The respondents have also averred that the petitioner has sufficient

space at property no. 25/142, Shakti Nagar, Delhi which can be used by him for starting a kirana shop. The petitioner has denied this and has pointed out that the property no. 25/142 is a residential property. He has stated that the ground floor of this property is being used for parking. Upper ground floor of the property is owned by one Smt. Sunita Bansal. It is submitted that the first, second and third floor of the property are owned by the petitioner's wife. It is stated that the petitioner is residing with his family on the first floor. The second and third floors have been rented out and his wife is earning rent from these floors. The petitioner has even filed copy of the tenancy agreement qua the property on the third floor.

55. It is not in dispute that the property no. 25/131 is a residential property. Therefore, it cannot be considered to be an alternative reasonably suitable accommodation for starting a kirana shop. Also as has been held hereinabove, the tenanted premises being on the ground floor is more commercially viable than the first, second and third floors of property no. 25/131, Shakti Nagar. The petitioner cannot be compelled to start his venture from a commercially unviable property only because the respondents do not wish to vacate the property owned by the petitioner.

56. Even if it is presumed that the petitioner has other premises available for his requirements as stated in the application for leave to defend, even then the choice is left to the landlord/petitioner to decide as to which of these premises he should occupy and the tenants do not have any say in this matter. In the case of Ravichandran and Ors. Vs Natrajan Nadar and Ors. (2004) 1 MLJ 458, the following was held:

“Even assuming that other premises are available, then the choice is left to the landlord to decide as to which non-residential premises he should occupy, and the tenant cannot have any say in the matter. If the landlord is able to show the bonafide, then the tenant cannot dictate terms to the landlord that he should occupy some other building and not the one mentioned in the petition.”

57. In the case of Ragavendra Kumar vs. Firm Prem Machinery AIR 2000 SC 534, the Hon'ble Supreme court held that it is settled position of law that the landlord is best judge of his requirement for residential or business purpose and he has got complete freedom in the matter. Reference may also be made to the case of Prativa Devi (Smt) v. T.V. Krishnan (1996) 5 SCC 353.

58. In the case of Sarla Ahuja v. United India Insurance Co. Ltd. AIR 1999 SC 100, the following was held:

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

59. In the case of Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta AIR 1999 SC 2507, it was held as under:

“..... The landlord may convince the court that the alternate residential accommodation though available is still of no consequence as the same is not reasonable suitable to satisfy the felt need which the landlord has succeeded in demonstrating objectively to exist. Needless to say that an alternate accommodation, the entail denial of the claim of the landlord, must be reasonable suitable, obviously in comparison with the suitable accommodation wherefrom the landlord is seeking eviction. Convenience and safety of the landlord and his family members would be relevant factors. While considering the totality of the circumstances, the court may keep in view the profession or vocation of the landlord and his family members, their style of living, their habits and the background wherefrom they come...”

60. In the case of Nem Chand Daga v. Inder Mohan Singh Rana 94 (2001)

DLT 683, the Hon'ble High Court of Delhi held as under:-

“.....That before leave to defend is granted, the respondent must show that some triable issues which disentitled the applicant from getting the order of eviction against the respondent and at the same time entitled the respondent to leave to defend existed. The onus is prima facie on the respondent and if he fails, the eviction follows....”

61. In the case of Rajender Kumar Sharma v. Smt. Leela Wati 155 (2008)

DLT 383, the Hon'ble High Court of Delhi held the following:

“..... Where a tenant pleads, in leave to defend preposterous propositions and makes such averments which are palpably false and the landlord in his reply affidavit to leave to defend is able to show to the ARC that all facts stated in leave to defend, were palpably false, ARC is not precluded from considering the falsity of such facts on the basis of material placed by the landlord before it. If the tenant in its leave to defend pleads that landlord was owner of another premises with which landlord had nothing to do, mere filing of affidavit is not sufficient. The tenant has to place before the learned ARC such documents which show that the landlord was owner of that premises. If such document is placed on record by the tenant, the learned ARC is not required to consider the ownership of the landlord of such a premises. If the leave is granted on mere assertions that landlord was owner of the premises, of which he is not, then in every case the tenant would get leave by just naming any premises with which landlord has no concern. In the present case, the

landlady has specifically shown that the premises about which tenant made allegations that she was co-owner, did not belong to her and she placed on record documents showing that she had no share in the premises and premises was a house of 50 square yards in occupation of 22 adult persons among others whose names appeared in the voter list. There is no reason why the learned ARC should not considered these documents. Similarly tenant falsely alleged that the landlady was owner of the second floor of the premises in question without placing on record any documents regarding ownership of second floor by the landlady. The landlady had a right to show to the ARC at a very first stage that the second floor was not owned by her, but owned by someone else...”

62. In view of the settled legal position it is not for the respondents to dictate to the petitioner that he should manage his work and family in any other accommodation, even if they are indeed available with the petitioner. The tenanted premises belongs to the petitioner and it is for the petitioner to see which of his property is suitable for him to start a business with his children. It is the right of the petitioner to look after his comfort and profitability of his new business venture for which he needs the tenanted premises. If the tenanted premises is suitable as per his needs, he has every right to possess the said premises and the respondents cannot contend that he should manage his work otherwise. While deciding the question of bonafide requirement of the landlord, it is quite unnecessary to make an endeavor as to

how else the landlord could have adjusted.

63. It has also been submitted by the respondents that the sons of the petitioner are already employed. It is stated that the son Sh. Anubhav Rana runs a business of manufacturing iron mesh (jali) from the factory at Village Khara Kalan. It is submitted that he alongwith his brother Sh. Ankit Rana are also doing a business of property dealing. It is submitted that they both are earning a large sum and are income tax assessies. In this regard, the petitioner has disclosed that Sh. Anubhav Rana had started a small business of manufacturing iron jali in the name of M/s Shri Ram Udyog. It is stated that the business was started in the year 2007. However, it did not run well and was closed down within a short span of time. It is disclosed that Sh. Anubhav Rana had also applied and had got PAN Card No. ALH5778A, but has stopped paying income tax after the closure of business as he has no source of income from the year 2011 onwards. It is submitted that the license issued in the name of M/s Shri Ram Udyog was also canceled by the Government. In this regard, the petitioner has also filed the information received from the Trade & Taxes Department about the cancellation of the license of M/s Shri Ram Udyog.

64. It has already been observed hereinabove that there is no reason to disbelieve that the property at Village Khera Kalan is already in possession and occupation of two tenants. Also it has been observed hereinabove that the respondents have failed to place sufficient material on record to establish that the son of respondents are running a business of property consultants from the mezzanine floor of property no. 25/142, Kamla Nagar. Specific details about the business earlier run by Sh. Anubhav Rana have been disclosed by the petitioner. Documents have also been placed by the petitioner in support of his contentions. On the other hand, respondents have only made bald assertions on oath unsupported with any documents. The assertions of the respondents have been sufficiently controverted by the petitioner and it is clear that the assertions of the respondents are false. In the case of *Rajender Kumar Sharma v. Smt. Leela Wati* 155 (2008) DLT 383, the Hon'ble High Court of Delhi held the following:

“...Where a tenant pleads, in leave to defend preposterous propositions and makes such averments which are palpably false and the landlord in his reply affidavit to leave to defend is able to show to the ARC that all facts stated in leave to defend, were palpably false, ARC is not precluded from considering the falsity of such facts on the basis of material placed by the landlord before it.”

65. In the case of Babaji Medicos Vs. Prem Prakash, 193 (2012) DLT 609, the Hon'ble Delhi High Court held the following:

“Where a tenant pleads, in application seeking leave to defend, preposterous propositions and makes such averments which are palpably false and the landlord in his reply affidavit is able to show to the ARC that all facts stated in leave to defend, were palpably false, ARC is not precluded from considering the falsity of such facts on the basis of material placed by the landlord before it.”

66. Even if it is presumed that the petitioner and/or his children are already employed or have sufficient income for their livelihood, that also does not bar them from obtaining possession of the tenanted premises for starting a new business.

67. In the case of Anil Kumar Verma Vs. Shiv Rani & Ors. RC Revision No. 522/2011 dated 07.03.2012, the landlord sought possession of the tenanted premises on the ground that his married son Sidharth is unemployed, has experience in business and needs the premises to carry on his business. The tenant objected to the same and alleged that the son is employed. The Hon'ble High Court of Delhi held the following:

“Even assuming that petitioner no. 4 is working with M/s

Home Appliances and petitioner no. 6 is working with Ozone Pvt. Ltd. Health Club; these employments of petitioners No. 4 & 6 are private jobs and it does not take away their bonafide need to start their own business from the shop which is owned by them..."

68. In the case of Smt. Phool Kumari & Ors. Vs. Sh. Shyambir Tyagi RCR No. 318/2013 dated 01.10.2014, the landlord sought possession of the tenanted premises on the ground that he was unemployed and needed the premises to open a shop. The tenant denied that the landlord was unemployed. The Hon'ble High Court of Delhi upheld the order of the Ld. Trial Court and observed that no triable issues were raised which warrant that the application for leave to defend be allowed. The Hon'ble Delhi High Court relied upon the decision of the Hon'ble Supreme Court in the case of Raghunath G. Panhale Vs. M/s Chaganlal Sunderji & Co. in which the following was held:

"A landlord need not lose his existing job nor resign it nor reach a level of starvation to contemplate that he must get possession of his premises for establishing a business."

69. Reference is also made to the decision of the Hon'ble High Court of Delhi in the case of M/s A.K. Woolen Industries and Ors. Vs. Shri Narayan Gupta RC Rev. 495/2017 dated 31.10.2017 in which the following was held :-

“19. The law to be applied in this regard has been laid down by the Supreme Court in Ragavendra Kumar Vs. Firm Prem Machinery & Co. (2000) 1 SCC 679, Sait Nagjee Purushottam & Co. Ltd. Vs. Vimlabai Prabhulal (2005) 8 SCC 252 and Anil Bajaj Vs. Vinod Ahuja (2014) 15 SCC 610. It has been held that even if the landlord has other commercial premises available to him and even if the landlord is carrying on other businesses, if it is found that the landlord intends to use the premises in occupation of the tenant for carrying on his business therefrom, the landlord is entitled to an order of eviction and the Courts cannot intervene in the same.

70. Even if the petitioner and his sons are affluent enough, that does not disentitle them from starting a new business venture. In the case of Ravinder Singh Vs. Dipesh Khorana RC Revision No. 3/11 dated 10.12.2012, the landlord sought possession of the tenanted premises for his son who was stated to be unemployed. The tenant made allegations regarding the landlord's son being gainfully employed in an MNC. The Hon'ble High Court of Delhi held the following:

“17....The final contention of the petitioner is that the respondent is leading a comfortable life style because of his defense pension and does not need to start a new business. Firstly, it is not disputed that the respondent is suffering from cancer and was required to sell the upper floors to meet the expenses of the treatment, and also pay for his son's flying school in Canada. Besides, I am inclined towards the reasoning given by the Ld. ARC. Even if one

should assume that the landlord is leading a comfortable life, it is not malafide for him to want his son to find a suitable source of livelihood and get settled in his life.

71. The following was held by the Hon'ble High Court in the case of Naresh Khanna Vs. Saroj Gupta RC Rev. 281/2017 dated 28.08.2017 :-

“11. Merely because the landlady is well to do or her husband is a practitioner of law, does not prevent him/her from invoking Section 14(1)(e) of the Act and vague arguments, without any specifics, cannot be considered. Supreme Court in Bhimanagouda Basanagouda Patil Vs. Mohammad Gudusaheb (2003) 3 SCC 101 held that the fact that a person has a capacity to purchase the property cannot be the sole ground to hold against him, if has a genuine need for the premises purchased. This Court also, in Ramesh Kumar Vs. Neelam Dawar MANU/DE/175/2014, (SLP (C) No. 23911/2014 preferred whereagainst was dismissed on 3rd September, 2014) held that although the landlord may be financially well off but in the absence of suitable accommodation for his need, his financial well being cannot deny him the eviction order.”

72. About the averment of the respondents that Sh. Anubhav Rana is using a car, it has been disclosed by the petitioner that the registration number provided by the respondents is that of a scooty (two wheeler vehicle) and not that of a car. The petitioner has also filed copy of the registration certificate of the vehicle. In this regard also, the respondents have made false assertions.

73. It has also been stated that the petitioner has sufficient income to own and maintain a corolla car purchased by him in the year 2010 during which time, its cost was Rs.10 lakhs. It has further been averred by the respondents that the petitioner owns a dog and spends Rs.10,000/- per month on its maintenance. It has been stated that 12 air conditioners have been installed by the petitioner and is leading a luxurious life. It is further stated that the petitioner is affluent enough to have performed two marriages of his daughter and son in which he spends huge amount. In this regard, petitioner has disclosed that the petitioner was allotted plot bearing no. 396 in Khasra No. 106, Village Khera Kalan, Delhi. This property was sold by him for Rs.32,57,292/-. Copy of the sale deed has been filed by the petitioner. It is submitted that he used this money received from the sale of the property to purchase the Toyota Altis Corolla car and to fund the marriages of his son and daughter. It is submitted that he had purchased the car second hand for Rs.6 lakh which were paid through RTGS. Bank account details have also been disclosed by the petitioner.

74. The respondents have further stated that the wife of the petitioner purchased three floors of the property no. 25/131, Kamla Nagar, Delhi for

Rs.68,64,000/-. It is submitted that the wife is a housewife and the petitioner and his children claim to be unemployed. It is argued that if these claims of the petitioner are correct, there was no source of income for the wife to have purchased the property worth Rs.68,64,000/-. In this regard, the petitioner has clarified that his wife had received money after property owned by her was acquired by the State. Copy of the passbook of the account held by the petitioner's wife has been filed by the petitioner.

75. The court is of the view that the petitioner has given sufficient and cogent explanation about the sources of income and how he and his wife funded various purchases and expenses incurred by them. Even otherwise, as has been held hereinabove, there is no bar for an affluent person to start a new business venture and to seek possession of a property for this purpose from a tenant.

76. It is pleaded by the respondents that the sons of the petitioner are not dependent upon him, either financially or otherwise. It is averred that no document has been furnished by the petitioner to establish that his sons are dependent upon him.

77. In this regard, the Court is of the view that dependence of children upon the parent is not always financial. There can be no document which states that the sons are dependent on the petitioner. It is not in dispute that they are residing with the petitioner. By this very fact, it is clear that they are dependent upon the petitioner. The following was held by the Hon'ble High Court in the case of Naresh Khanna Vs. Saroj Gupta RC Rev. 281/2017 dated 28.08.2017 :-

“...The said question is no longer res integra and it has been settled that the words ‘requirement of the landlord’ within the meaning of Section 14(1)(e) of the Act is not only confined to requirement of the landlord but of all members of the family of the landlord who are dependent upon the landlord for accommodation and with whom landlord is residing as a family or who constitute family of landlord. It is for this reason only that eviction under Section 14(1)(e) of the Act has been ordered for the requirements of financially well off sons as well. In the present case, the plea of the respondent/landlady in the petition for eviction is that the shop in the tenancy of the petitioner/tenant is required to enable her daughter-in-law who have been doing the work of sale of garments from their residence, to set up a boutique.

...It was yet further held that dependence may not in all circumstances be entirely a matter of finance. Again in J.L.Mehta Vs. Hira Devi (1970) 6 DLT 484 it was held that what constitutes a family in a particular society depends upon the habits and ideas of persons constituting that society and the religious and socio religious customs of the community to which such persons may belong. It was thus

held that the requirement of the family of the brother of the landlord residing with the landlord would also be the requirement of the landlord. It was further held that the requirement of the landlord "himself" cannot be considered by excluding the requirement of other persons with whom the landlord is habituated to residing as a family. To the same effect is the judgment of the Division Bench of this Court in Gobind Dass Vs. Kuldip Singh ILR (1970) I Delhi 585. Supreme Court in Joginder Pal Vs. Naval Kishore Behal (2002) 5 SCC 397 approved of the view taken in J.L.Mehta supra as well as in Krishna Devi Vs. Parmeshwari Devi (1977) 2 RCJ 529 where requirement of the family of the married daughter was also considered as a requirement of the landlady. It was further held that the words "for his own use" cannot be construed narrowly. Again, in Kailash Chand Vs. Dharam Das (2005) 5 SCC 375 it was held that the expression "his own occupation" has to be liberally construed and given a practical meaning and does not mean occupation by the landlord himself only. Recently in Bhupinder Singh Bawa Vs. Asha Devi (2016) 10 SCC 209 also the requirement of premises for the business of the son already engaged in one other business was held to be the requirement of the landlord. Reference in this regard may also be made to my judgment dated 17th July, 2017 in RC. Rev. No. 315/2017 titled Asha Sawhney Vs. Kamini Gupta and to Anil Kumar Gupta Vs. Deepika Verma (224) 2015 DLT 473 and Labhu Lal Vs. Sandhya Gupta (2010) 119 DRJ 599. The latter two were also cases of requirement of the daughter-in-law residing with the mother-in-law. Mention may also be made of M/s. Jhalani Tools (India) Pvt. Ltd. Vs. B.K.Soni AIR 1994 Del 167 and Santosh Kumari Mehra Vs. Om Prakash (2015) 221 DLT 578 (SLP (C) No. 20970/2015 preferred whereagainst was dismissed on 15th January, 2016), both of which were cases of requirement for financially independent sons and grand children of the landlord."

78. The respondents have further relied upon a CD purported to contain a video in which the petitioner is allegedly seen telling the respondents to vacate the property unless they pay a monthly rent of Rs.50,000/- or enter into a 50% business partnership with the petitioner. It is pleaded that since the respondents did not accede to the blackmailing, threats and demands of the petitioner, the petitioner has filed the present false case by making claims that he needs the premises as he and his sons are unemployed and want to start a business. In this context, the petitioner has denied the authenticity of the CD. He has stated that the CD has been forged, morphed and fabricated.

79. The court is of the view that even if the contents of the CD are correct and the CD is authentic, that also does not give rise to a triable issue. The contents of the CD do not create doubt on the case of the petitioner that he and his children are unemployed and need the tenanted premises for starting a business. The CD at best discloses that the petitioner wanted to enhance the rent or be a partner in the business of the respondents. This does not imply that he does not bonafide require the tenanted premises to start a business.

80. It is submitted that the petitioner and his sons have no experience to run a kirana store. It is averred that the alleged need of the petitioner to start business of kirana store is a mere desire and not real. In this regard, the decision of the Hon'ble Supreme Court in the case of Ram Babu Aggarwal Vs. Jay Kishan Dass 2009 (4) RCR (Civil) 748 is relevant. The following was held in this case :-

“However, as regards the question of bona fide need, we find that the main ground for rejecting the landlord's petition for eviction was that in the petition the landlord had alleged that he required the premises for his son Giriraj who wanted to do footwear business in the premises in question. The High Court has held that since Giriraj has no experience in the footwear business and was only helping his father in the cloth business, hence there was no bonafide need. We are of the opinion that a person can start a new business even if he has no experience in the new business. That does not mean that his claim for starting the new business must be rejected on the ground that it is a false. Many people start new businesses even if they do not have experience in the new business, and sometimes they are successful in the new business also”.

81. Therefore, it cannot be held that since the petitioner and his sons do not have experience in running a kirana store, the claim of the petitioner that a kirana store is to be opened in the tenanted premises is false. The petitioner and his sons can start a new business without even having experience in the

said field.

82. It has been argued by Ld. Counsel for the respondents that petitioner has concealed material facts and therefore the respondents are entitled to unconditional leave to contest the present case. The petitioner has submitted that he has not concealed any material fact and has disclosed about all the properties that are available with him. In the case of Mumtaz Begum Vs. Mohd. Khan RCR No. 78-79/2005 dated 12.01.2009, it was held that non-disclosure of other accommodation available is always not fatal. In the present case, the respondents have failed to establish that the petitioner has other reasonably suitable accommodation for his requirements. As such, even if the petitioner has failed to disclose about any of the properties that he owns, such alleged non-disclosure, not being a material fact, is inconsequential.

83. The prime question to be answered is that whether the tenanted premises is required bonafide by the landlord for his use or for the use of his family. The petitioner has contended that he requires the premises for starting a new business with his children. It is stated that the petitioner and his children are unemployed. The respondents have contended that the petitioner

does not bonafide need the tenanted premises for starting a new business. As has been held by the Hon'ble Delhi High Court in the case of M/s A.K. Woolen Industries and Ors. Vs. Shri Narayan Gupta RC Rev. 495/2017 dated 31.10.2017, in case the petitioner sells the tenanted premises or rents it out at a higher rate of rent after obtaining its possession from the respondents, the respondents herein have the remedy of getting back the possession of the property under Section 19 of the Delhi Rent Control Act. The following was held in this case of M/s A.K. Woolen Industries and Ors. :

“21. I may in this regard also notice that Section 19(2) of the Rent Act of Delhi provides as remedy to the tenant of repossession, if finds landlord to be not in use of the premises after obtaining an order of eviction against the tenant on the ground of the requirement of the premises for own use.”

84. In the case of Sarwan Dass Bange v. Ram Prakash 167 (2010) DLT 80, the Hon'ble High Court of Delhi referring to the judgment of Baldev Singh Bajwa v. Monish Saini (2005) 12 SCC 778 held the following:

“... It was held that the legislative intent is of expeditious disposal of the application for ejection of tenant filed on the ground of requirement by the landlord of the premises for his own occupation; a special category of landlords requiring the premises for their own use has been created; if there is any breach by the landlord, the tenant is given a

right of restoration of possession; the landlord who evicts a tenant on the ground of own requirement is not only prohibited from letting out the premises or disposing of the same but also required to use the same for his own residence only. It was held that these restrictions and conditions inculcate in built strong presumption that the need of the landlord is genuine; the conditions and restrictions imposed on the landlord make it virtually improbable for the landlord to approach the court for ejection of tenant unless his need is bonafide no unscrupulous landlord in all probability, under this section, would approach the court for ejection of the tenant considering the onerous conditions imposed on him. It was further held that this inbuilt protection in the Act for the tenants implies that whenever the landlord would approach the court his requirement shall be presumed to be genuine and bona fide. It was further held that a heavy burden lies on the tenant to prove that the requirement is not genuine..”.

85. The net result is that petitioner has been able to establish that the tenanted premises is required bonafide by him for starting a new business and he has no other reasonably suitable alternative accommodation in his possession. The respondents have failed to raise any reasonable triable issue. The application for leave to defend is dismissed.

86. Since the application seeking leave to defend has been dismissed, the petitioner is entitled for an eviction order. Accordingly, eviction order is passed

in favour of the petitioner and against the respondents directing the respondents to vacate the tenanted premises i.e. Shop on the ground Floor of property bearing no. 25/142, Shakti Nagar, Delhi shown in red colour in the site plan filed by the petitioner, in terms of Section 14 (1) (e) r/w Section 25-B of the Delhi Rent Control Act. The landlord however shall not be entitled to obtain possession thereof before the expiration of a period of six months from the date of this order.

87. No order as to costs. File be consigned to Record Room.

SHIRISH AGGARWAL
ARC-I, Central District,
Tis Hazari Courts, Delhi

*(Announced in open court
on 06th March, 2018)*