

Subhash Jain Vs. Ravi Sehgal

Subhash Jain Vs. Ravi Sehgal

SooperKanoon Citation : sooperkanoon.com/1124074

Court : Delhi

Decided On : Feb-04-2014

Judge : Manmohan Singh

Appellant : Subhash Jain

Respondent : Ravi Sehgal

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment pronounced on: February 4, 2014 RC. Rev. No.292/2013, C.M. Nos.12119/2013 & 18918/2013 SUBHASH JAIN Through Petitioner Mr.Jayant Bhushan, Sr.Adv. with Mr.Vishal Gupta & Mr.Kumar Mihir, Adv.s. versus RAVI SEHGAL Respondent Through Mr.Rajiv Bajaj, Adv. CORAM: HON'BLE MR. JUSTICE MANMOHAN SINGH MANMOHAN SINGH, J.

1. The petitioner by way of the present petition under Section 25B(8) of Delhi Rent Control Act, 1958 (hereinafter referred to as the DRC Act) has assailed the eviction order dated 7th August 2013 passed by Additional Rent Controller-1, Central, Delhi.

2. Brief facts of the case are that the respondent filed an eviction petition against the petitioner in respect of a shop bearing No.1, Ground Floor, 51/02, New Market, New Rohtak Road, Karol Bagh, New Delhi (hereinafter referred to as the tenanted shop) wherein the respondent was a co-owner of the portion of the said property. It

was the case of the respondent that he had been running his business from a rented shop bearing No.3613, Idgah Road, Singara Chowk, Delhi-110006 with his son. However due to old age, the respondent is unable to go to his business place and wanted to settle his business near his residence which was situated on the first floor of the tenanted shop. Hence the eviction petition was filed in respect of the tenanted shop stating that the respondent bonafidely requires the same for running his business. It was stated that the respondent had inherited the said property alongwith other legal heirs of his father Late Sh. Madan Lal Sehgal.

3. In the leave to defend application, the petitioner contested the maintainability of the petition filed by the respondent. It was contended that the respondent had not placed any document on record to show his claim qua the ownership of the tenanted shop. The sale deed qua the tenanted shop was disputed. It was averred that the respondent was already running his business from shop No.3613 Idgah Road, Singara Chowk, Delhi-1100 06 alongwith his shop and that the said shop was owned by the respondent. It was averred that the respondent had let out and sold various other properties and therefore the tenanted shop was not required bonafidely.

4. The contentions of the petitioner were contested by the respondent vide his reply to the leave to defend application and the letting out and selling out of other properties as alleged by the petitioner were explained by the respondent.

5. In the rejoinder to the application for leave to defend, the petitioner denied the contentions raised by the respondent.

6. With regard to the issue of bonafide requirement, the learned Trial Court observed that the respondent alongwith his son wanted to establish their business in the tenanted shop to earn their livelihood and that they were running the business from a rented premises and that in his old age, the respondent was finding it difficult to go to the said rented premises at Sadar Bazar from his house. Though it was contended by the petitioner that the said premises are not rented but owned by the respondent, nothing was placed on record to rebut the plea of the respondent that the said premises was rented. The learned Trial Court opined that on such issue, the law is well settled that the landlord cannot be asked to

continue his business from the rented shop. Furthermore, it could not be disputed that life would be much easier for the respondent if he established his business in the tenanted shop situated below his residential accommodation.

7. With regard to the contention of the petitioner that the respondent had recently let out or disposed of a number of other properties and that the same was a sufficient ground to reject the claim of the respondent, the learned Trial Court observed that the respondent had not filed any document on record in support of his contention. The respondent had admitted that some portion of the property was sold by his father for legal necessity and explained the position with regard to other properties.

8. Accordingly, in the light of these observations, the learned Trial Court opined that the petitioner had failed to disclose sufficient facts so as to raise any triable issues and so the leave to defend application was dismissed vide the impugned order. Aggrieved thereof, the petitioner has filed the present petition.

9. The issue before this Court is, whether said findings call for any interference by this Court in revisionary jurisdiction in view of the facts and circumstances of the present case or not. It is settled law and it has been held from time to time by various courts that the revision under Section 25B(8) cannot be regarded as a first appeal and nor can it be as restricted as the revisional jurisdiction under Section 115 CPC. The High Court would have jurisdiction to interfere if it is of the opinion that there has been a gross illegality or material irregularity which has been committed or the Controller has acted in excess of his jurisdiction or has not exercised the jurisdiction vested in him. In other words, this Court has only to see whether the learned Rent Controller has committed any jurisdictional error and has passed the order on the basis of material available before it. A finding of fact arrived at by the Controller would not be interfered with by the High Court unless it can be shown that finding has been arrived at by misreading or omitting relevant evidence and this has resulted in gross injustice being caused. If none of the aforesaid circumstances exist the High Court would not be entitled to interfere with the order of the Controller in exercise of its jurisdiction under proviso to Section 25B(8) of the Act. However, the High Court is obliged to test the order of the Rent

Controller on the touchstone of whether it is according to law. For that limited purpose it may enter into reappraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity would have reached on the material available before him. The Apex Court in *Sarla Ahuja vs. United India Insurance Company Ltd.*, reported in AIR (1999) SC100 held as under:

6...The above proviso indicates that power of the High Court is supervisory in nature and it is intended to ensure that the Rent Controller conforms to law when he passes the order. The satisfaction of the High Court when perusing the records of the case must be confined to the limited sphere that the order of the Rent Controller is according to the law. In other words, the High Court shall scrutinize the records to ascertain whether any illegality has been committed by the Rent Controller in passing the order under Section 25-B. It is not permissible for the High Court in that exercise to come to a different fact finding unless the finding arrived at by the Rent Controller on the facts is so unreasonable that no Rent Controller should have reached such a finding on the materials available.

10. In the case of (i) *Meenakshi vs. Ramesh Khanna & Anr.*, 60 (1995) DLT524 it was held that:

Mere denial of ownership is no denial at all. It has to be something more. For this, first and foremost thing which has always been considered as a good guide is does that tenant say who else is the owner of the premises if not the petitioner?. In the present case, the tenant does not say anything except denying petitioner's ownership. The tenant is completely silent on this aspect. Merely by saying that the petitioner is not the owner, the tenant is trying to ensure that the case drags on for years for trial. If leave is granted on the basis of such vague pleas, it will encourage the tenants to deny ownership of the petitioners in every case. The tenants are well aware that once leave to contest is granted, the cases go on for trial for years. Their purpose is achieved. Keeping this in mind, the Controllers should rather have positive approach in such matters so as to discourage such vague and frivolous pleas which are most of the time false to the knowledge of

persons raising them.

11. In *Ramesh Chand vs. Uganti Devi*, 157 (2009) DLT450 this Court has specifically held that:

It is settled proposition of law that in order to consider the concept of ownership under Delhi Rent Control Act, the Court has to see the title and right of the landlord qua the tenant. The only thing to be seen by the Court is that the landlord had been receiving rent for his own benefit and not for and on behalf of someone else. If the landlord was receiving rent for himself and not on behalf of someone else, he is to be considered as the owner, howsoever imperfect his title over the premises may be. The imperfectness of the title of the premises cannot stand in the way of an eviction petition under Section 14 (1) (e) of the D.R.C. Act, neither the tenant can be allowed to raise the plea of imperfect 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 estoppel against such 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. I, therefore, find that there was no infirmity in the order of learned ARC in this respect.

12. In *Shanti Sharma and Ors. vs. Ved Prabha & Ors.*, (1987) 4 SCC193 the Supreme Court has held that:

In application for eviction on ground of bonafide requirement tenant contended that such landlord cannot be considered to be owner within meaning of Section 14 (1) (e) but contention was turned down & held expression 'owner' does not indicate absolute ownership and the same to be 7/13 *Janak Rani Sawhney Vs. Satish Kumar & Another* RC no.03/12 interpreted in broader sense and held such landlord come within meaning of 'owner' under Section 14 (1) (e).

13. The submission of Mr. Jayant Bhushan, learned Senior counsel appearing on behalf of the petitioner is that the eviction petition filed by the respondent/landlord is barred under the provisions of Section 14(6) of the DRC Act, as any petition on the ground of bonafide requirement within 5 years from the date of acquiring of

rights in the property is barred. Mr. Bhushan states that as per the admission made by the respondent in the eviction petition, the respondent got the right in the suit property only on the death of his father late Sh. Madan Lal Sehgal on 28th February, 2011, thus the respondent is stopped from filing the present petition. He also argued that in view thereof the respondent is neither the owner nor the landlord of the suit property, as there is no privity of contract between the petitioner and the respondent. The respondent has failed to produce the documents as to how the respondent is claiming himself to be the owner of the suit property. The respondent has also failed to produce any Will/Letter of Administration/Probate or registered family settlement to be placed on record to show the title of the suit property in favour of the respondent. Therefore, the petition is barred under Section 14(6) of the Act which is a triable issue in the matter as the respondent has failed to discharge the onus upon him to prove his co-ownership to file the eviction petition against the petitioner 14. According to Mr. Bhushan, another triable issue is whether there was a mutual settlement of rights pursuant to a family settlement by which the family members have relinquished their rights in favour of the respondent which amounts to transfer or acquisition of property and the eviction petition is barred under Section 14(6) of the Act. Even producing of the sale deed dated 29th March, 1993 by the respondent in favour of his father who, allegedly, purchased the undivided share from the vendor is concerned, the said share is not specified in the sale deed or any site plan is annexed with the sale deed to specify the allegedly sold portion. Thus, the sale deed produced by the respondent in favour of his father is also vague.

15. With regard to the bonafide of the respondent for use the tenanted premises for his personal requirement or for requirement of his family members is concerned, it is argued by Mr. Bhushan, learned Senior counsel appearing on behalf of the petitioner that the respondent is already running his business of suitcases from Shop No. 3613, Idgah Road, Chowm Singhara, Delhi-110006. His son is also engaged in the same business in the said shop. The said business is being run by the respondent for the last many years. Therefore, the tenanted premises is not required by the son of the respondent who is already doing the business from the said shop. The respondent is unnecessarily alleging the ground of bonafide having no requirement at all.

16. Learned Senior counsel has relied upon a decision in the case of Charan Dass Duggal vs. Brahma Nand, reported in 1983(1) SCC301as well as the decision of Precision Steel And Engineering vs Prem Deva Niranjana Deva Tayal, 1983 SCR (1) 498.

17. As regards the decisions referred by the learned Senior counsel are concerned, it is necessary that 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 if prima facie case is shown, the Court should grant the leave to defend. And it is not necessary at this stage to make out such a strong case by the tenant which would non-suit the landlord or which if proved would disentitle the landlord from seeking the possession. The tenants affidavit alone at this stage is relevant document and the controller must confine himself to the averments in the affidavit while examining the question whether there was a proper case for granting the leave.

18. Let me examine the petitioners case in view of the facts in the present case and law laid down by the Supreme Court in the cases referred by the learned Senior counsel as to whether the petitioner has made out such a prima facie case in the application/affidavit filed for leave to defend. If the answer is yes, no doubt the petitioner would be entitled to leave to contest otherwise, no interference in the impugned order is called for.

19. The case of the respondent before the learned trial Court was that he required the tenanted shop for himself and his family for bonafide need. It was stated that the tenanted shop is nearby to the residence of the respondent as it is located on the ground floor of the property. It was also stated that neither does the respondent nor his son have any other commercial and/or residential accommodation which is available to them. It was stated that the respondent is doing business from a rented shop bearing No.3613, Idgah Road, Singara, Delhi-110006 and a rent receipt thereof was also filed.

20. The learned Trial Court while dismissing application for leave to defend vide the impugned eviction order observed with regard to the issue of ownership that it was observed that since the respondent had placed on record the photocopy of

the sale deed dated 29 th March 1993 executed in favour of the deceased father of the respondent, the petitioner being the tenanted of the deceased father of the respondent could not be permitted to dispute the title of the property in favour of the respondent as per Section 116 of the Indian Evidence Act. Furthermore, it was not disputed that the respondent was the son of Late Sh. Madan Lal Sehgal and thus, there was no material on record to disbelieve the version of the respondent that he was one of the co-owners of the tenanted shop and that the other co-owners had no dispute of any nature qua inheritance of the property.

21. It was further the case of the respondent that he has inherited the property along with other legal heirs of his deceased father and not in any manner transfer. There is no prima-facie contrary evidence to show that the respondent has not inherited the property. The similar issue has been decided in the case of Onkar Singh & Anr. Vs. Saheb Ditta Mal Kohli, 1970 AIR Delhi 15. The petitioner has not disclosed as to who is the owner/landlord of the property in question. His objection is not supported by any proof. It is merely an assertion. Admittedly, on one hand, the plea of the petitioner is that rent of the suit premises has been enhanced from time to time, and on the other hand, the petitioner has not disclosed the third party being the owner/landlord of the suit property. The said defence in view thereof is apparently moonshine.

22. In V.N.Sarin vs. A.K.Poplai, AIR 1966 SC432 the Supreme Court held as under:

Having regard to the object intended to be achieved by this provision, we are not inclined to hold that a person who acquired property by partition can fall within the scope of its provision even though the property which he acquired by partition did in a sense belong to him before such transfer. Where a property belongs to an undivided Hindu family and on partition it falls to the share of one of the coparceners of the family, there is no doubt a change of the landlord of the said premises, but the said change is not of the same character as the change which is effected by transfer of premises to which S. 14 (6) refers. In regard to the cases falling under S. 14 (6), a person who had no title to the premises and in that sense, was a stranger, becomes a landlord by virtue of the transfer.

It was further held that We are satisfied that it would be unreasonable to hold that allotment of one parcel of property belonging to an undivided Hindu family to an individual coparcener as a result of partition is an acquisition of the said property by transfer by the said coparcener within the meaning of Section 14(6)

23. In *Hindustan Lever Ltd. vs. Smt. Rajeshwari Pandey*, 75 (1998) DLT238 this Court observed as under:

17. In *Dr. R.C.Sakhuja and others Vs. R.P.Kholi and another* 1970 (2) Rent Control Reporter 226 it was held that the devolution of property in the normal way by succession, whether testamentary or non-testamentary, was not intended to be covered by the expression "acquired by transfer" as used in sub-section (6) of Section 14 of the Act. Paragraph 3 of the judgment may be reproduced as follows:

In this Court, the main argument pressed by Shri Avadh Behari on behalf of the appellants is that a will is a transfer and, Therefore, is covered by section 14(6) of the Act, I am wholly unable to sustain this submission. A will really means the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death. It regulates the devolution of property of the testator on his death. It is in my opinion not a transfer as is contemplated by Section 14(6). This sub-section appears to me to have been placed on the statute-book with the object of discouraging or making ineffective mala fide transfer of premises for the purpose of evicting tenants on the ground specified in clause (e) of the proviso to subsection (1) of section 14. It is for this purpose that a transferee from a landlord is debarred from maintaining an application for ejectment for the period specified in subsection (6). The devolution of property in the normal way by succession, whether testamentary or non-testamentary, is in my opinion, not intended to be covered by the expression "acquired... by transfer", as used in the sub-section in question. The decision of the Andhra Pradesh High Court in *Ollala Ambiah Vs. Avdhnula Mallanna* in my opinion, does not help us in construing the word "transfer" as used in section 14(6) of the Act. In this connection, it may be remembered that the purpose and object of a legislative enactment has always to be looked at for guiding the meaning of the words used therein, when those words are capable of both narrow and wide

meaning. It is true that the decision of the Punjab High Court in V.N.Sarin Vs. A.K.Poplai and the judgment of the Supreme Court on appeal in the same case reported as V.N.Sarin Vs. A.K.Poplai cited on behalf of the respondents, does not directly deal with the case of a will, as it is concerned with the partition of joint Hindu family, but the devolution of property by operation of law, such as on death cannot in my opinion be assumed to have been intended the Parliament to be covered by the word "transfer" as used in the sub-section in question. It was the mischief sought to be done to the tenants by the landlords by utilising by transfer involves some other person better circumstanced for the purpose of evicting the tenant, which was intended to be remedied Bald literal meaning, divorced from the purpose, object and scheme of the statutory provision, is likely to be misleading in the present case. The intention of the Legislature is best gathered by construing the word "transfer" in the background of the legislative purpose. No persuasive argument of any cogency has been addressed at the Bar to persuade me to hold that devolution of property by a will could have been intended by the Parliament to fall within the purview of section 14(6). No principle has been relied upon in support of the appellants' submission and of course no precedent has been cited. The argument is, therefore, repelled.

18. In Shri Onkar Singh and another Vs. Shri Saheb Ditta Mal Kohli 1970 (2) RCR18it was held that an acquisition of the property by inheritance can by no stretch of imagination be said to be such a voluntary transfer even if the property comes to the heir by means of a Will. Paragraph 5 of the judgment reads as under:

It is clear from the language particularly in view of the background of the object of sub-section (6) that the transfer must be by a voluntary act of the landlord who transfers. An acquisition of the property by inheritance can by no stretch of imagination be said to be such a voluntary transfer even if the property comes to the heir by means of a will. According to the argument advanced, even in a case where the landlord filed a petition on the ground of personal bona fide requirement and died during the pendency of the petition wherein his heirs are brought on the record as his legal representatives, the petition will be defeated because the heirs have obtained the property by transfer and will not have completed the requisite period of five years after acquisition of the property. In my opinion, the word

transfer in sub-section (6) of section 14 of the Act contemplates only a voluntary transfer and not a transfer by inheritance. That being so, there is no substance in the objection as to the maintainability of the petition by the respondent before the expiry of five years from the date when he acquired the property by inheritance.

19. In J.C.Gupta and another Vs. The District Judge, Dehradun and others 1979 (1) R.C.J.

239 the learned Single Judge of Allahabad High Court held that an oral family settlement can be entered into by a member of the family to put an end to a dispute amongst themselves. Such a family settlement does not amount to a transfer inasmuch as by the settlement no interest in the property is created.

20. The learned Single Judge of this Court in Shrimati Nand Kaur and others Vs. Pt. Taleshwar Ji 1972 (4) R C R924also held that relinquishment of right by a co-owner in favor of other co-owners is not a transfer of the nature contemplated by Section 14(6) of the Act. Paragraph 9 of this judgment reads as follows:

Mr. G.N.Aggarwal contended that under section 14(6) "where a landlord has acquired any premises by transfer, no application for recovery of possession of such premises shall lie under subsection (1) on the grounds specified in clause (e) of the provision thereto, unless a period of five years has elapsed from the date of the acquisition". Clause (e) of the proviso deals with the bona fide requirement of the premises by the landlord for occupation as a residence for himself or members of his family dependent on him. The learned counsel contended that after the death of Balwant Singh, the original owner, his widow, his sons and all his daughters inherited his property. Three of his married daughters, namely, Bhagwati Devi, Shanti Devi and Krishna Kumari relinquished their rights in the property in favor of the appellants on November 4, 1959. The appellants, Therefore, acquired the share of the aforesaid three married daughters of Balwant Singh in the premises in dispute on that date. The relinquishment was nothing else than a transfer of the right, title and interest of the said daughters of Balwant Singh. No application for recovery of possession of the said premises could lie under section 14(6) until after a period of five years elapsed from November 4, 1959. The present eviction petition was filed on June 9, 1964, i.e. before the

period of said five years had elapsed. The contention of the learned counsel is, however, incorrect. The transfer referred to in sub-section (6) of section 14 of the Act cannot be considered to include the case of relinquishment by a co-owner in favor of the other co-owners. The appellants were co-owners of the said property along with the said three married daughters of Balwant Singh. The property had not been partitioned between them by metes and bounds. They were, Therefore, owners of the entire property in proportion to their shares. With the relinquishment executed by the aforesaid three married daughters of Balwant Singh, the appellants became full owners of the entire property. This cannot be said to be a transfer of the nature contemplated by sub-section (6) of section 14 of the Act. The contention of the learned counsel, Therefore, is without any substance.

24. With regard to non-production of any Will, Letter of Administration or Probate or registered family settlement admittedly, the respondent is the son of late Sh.Madan Lal Sehgal and after his death, under the operation of law, the respondent has become owner of the suit property along with other legal heirs. There are pleadings/affidavit filed by the respondent that after the death of Sh.Madan Lal Sehgal, all his legal heirs filed the suit for partition in the Court of Sh.Rakesh Kumar, Addl. District Judge-03 (Central), Delhi, being Suit No.287/2011 titled as Ravi Sehgal vs. Vipin Sehgal & Anr., which has been decreed and the same has been registered in pursuance of the Court directions. Therefore, apparently, the objection of the petitioner in this regard is not permissible. (See Munni Devi vs. Manmohan Verma & Ors., 134 (2006) DLT298.

25. As regards the objection taken by the petitioner that the property in question is a leasehold property of DDA and the respondent cannot be the exclusive owner of the suit property, the said objection is also not tenable in view of the settled law in this regard in the case of Ramesh Chand vs. Uganti Devi, 157 (2009) DLT450 and Shanti Sharma vs. Ved Prabha, 1987 RLR526SC, wherein it was held that it is not the concern of the tenant as to how the landlord acquired the property.

26. The other objection of the petitioner is also without any force that the sale deed dated 29th March, 1993 is a sham document. The petitioner cannot object the history of ownership of the suit property in view of the provisions of Section 116 of

the Indian Evidence Act, as the tenant has no right to challenge the ownership of the landlord as he has not a contender to the suit property.

27. In the case of Bharat Bhushan Vij vs. Arti Techchandani, 2008 (153) DLT247in paras 4 and 5 it was held as under :

4. The concept of ownership in a landlord-tenant litigation governed by the Delhi Rent Control Act, has to be distinguished from the one in a title suit. If the premises was let out by a person and after his death, the premises has come in the hands of beneficiary under a Will, the tenant has no right to challenge the title of such a beneficiary. If on the death of the original owner the tenant has any doubt as to who was the owner of the premises, he is supposed to file an interpleader suit impleading all the legal heirs of the deceased and ask the Court to decide as to who shall be the landlord/owner after the death of the original owner. Where no interpleader suit is filed by the tenant and the tenant continues in possession after death of the original owner without demur and without raising an objection against the person, who claims to have inherited the property under the Will, he later on cannot challenge the ownership of such a person. It is not the domain of the tenant to challenge the Will of the deceased landlord. If a landlord is able to show that there is a testament in his/her favour, he/she is deemed to have discharged his/her burden of proving the ownership under the Act. If the tenant takes a frivolous objection about ownership, such an objection cannot be entertained unless the tenant comes forward as to who was the landlord/owner of the premises and to whom he has been paying rent after the death of the original owner.

5. This Court in Ram Chander v. Ram Pyari 109 (2004) DLT388and Plashchemicals Company v. Ashit Chadha and Anr., 114 (2004) DLT408have laid down the law that it was not for the tenant to challenge the Will of the landlord and any such challenge made by the tenant is a baseless and frivolous challenge. I, therefore, consider that even if the learned Additional Rent Controller did not dwell upon this point, such a challenge made by the tenant would not result into non suiting the landlord. Moreover, the evidence led by the landlady in this case makes it clear that she inherited the property, in question, on the basis of Will left by her

father in law. There is no other person who has claimed ownership over the property and this objection was raised just for the sake of raising objection.

Issue of bonafide requirement 28. The learned trial court in the present case has dwelled upon the issue of bonafide requirement at length. It was the case of the respondent that he had been running his business from a rented shop bearing No.3613, Idgah Road, Singara Chowk, Delhi-110006 with his son. However due to old age, the respondent is unable to go to his business place and wanted to settle his business near his residence which was situated on the first floor of the tenanted shop. It has not come on record on behalf of the petitioner even prima facie that the respondent is not carrying on its business from the tenanted shop at Idgah Road alongwith son. The petitioner has also not shown anywhere in its pleadings and even produced single document that the respondent is having any alternative accommodation acquired by him or his son from where he can carry on his business from his own premises.

29. i) In the case of Sudesh Kumar Soni & Anr. v. Prabha Khanna & Anr. 153 (2008) DLT652 it was observed that it is not for the tenant to dictate the terms to the landlord as to how else he can adjust himself without getting possession of tenanted premises- suitability has to be seen for convenience of landlord and his family members and on the basis of circumstances including their profession, vocation, styles of living, habit and background. ii) In the case of Labhu Lal v. Sandhya Gupta, 2010 (173) DLT318 it was held that The requirement of the respondents son and daughter-in-law for expanding their clinic being run in the premises in question is most bona fide and genuine since they are dependant for accommodation on the respondent. iii) In the case of Ram Babu Aggarwal v. Jay Kishan Das, 2009 (2) RCR455 the court recognized the right of the landlord for possession of his property for setting up a business for his son. iv) Kharati Ram Khanna & Sons v. Krishna Luthra, 172 (2010) DLT551 it was observed that the landlords requirement of two separate shops for running business by her two sons separately and independently is bonafide and genuine requirement.

30. It is alleged that the son of the respondent is dependent upon the respondent for his livelihood who has filed the eviction petition for bonafide requirement of

tenanted shop to set up a business of his son to find a source of income and set in his life. On the face of it, the case of bonafide requirement is made out.

31. In view of the above said discussion and the principle of law applicable to the present case I find that the impugned order does not suffer from any infirmity. No triable issue is raised by the petitioner. Leave to defend application has been rightly rejected by the learned trial court. The petition is therefore dismissed.

32. In the case of Mohd. Ayub Vs. Mukesh Chand, (2012) 2 SCC155 it was observed that the hardship Appellants would suffer by not occupying their own premises would be far greater than the hardship the Respondent would suffer by having to move out to another place. We are mindful of the fact that whenever the tenant is asked to move out of the premises some hardship is inherent. We have noted that the Respondent is in occupation of the premises for a long time. But in our opinion, in the facts of this case that circumstance cannot be the sole determinative factor. That hardship can be mitigated by granting him longer period to move out of the premises in his occupation so that in the meantime he can make alternative arrangement.

33. Considering the hardship of the petitioner, coupled with the fact that it is a commercial property which is being used by the petitioner for the last many years and in the interest of justice, equity and fair play, the petitioner is granted one years time from today to vacate the suit property i.e. shop bearing No.1, Ground Floor, 51/02, New Market, New Rohtak Road, Karol Bagh, New Delhi subject to the following terms: i) During this period, the petitioner shall not sublet or create any third party interest in the tenanted property. ii) After the expiry of said period, the petitioner shall hand over the peaceful and vacant possession of the tenanted premises to the respondent and he shall not make any request for extension of time.

34. The present petition is accordingly disposed of with these directions.

35. No costs. (MANMOHAN SINGH) JUDGE FEBRUARY04 2014