

**Ramesh Kumar Verma vs.kishore Kumar Arora**

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**SooperKanoon Citation :** [sooperkanoon.com/1209956](http://sooperkanoon.com/1209956)

**Court :** Delhi

**Decided On :** Oct-26-2017

**Appellant :** Ramesh Kumar Verma

**Respondent :** Kishore Kumar Arora

**Judgement :**

\* % + IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

26. h October, 2017. RC.REV. 384/2017 & CMs No.30392/2017 & 30394/2017  
RAMESH KUMAR VERMA .....

... Petitioner

Through: Mr. N. Hariharan, Sr. Adv. with Mr. Nitin Soni, Mr. Kewin Kunjappy and  
Mr. Aditya Vaibhav Singh, Advs. Versus KISHORE KUMAR ARORA .....

Respondent Through: Mr. Ankit Jain and Mr. Sarvesh Rai, Advs. CORAM:  
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW1 This Rent Control Revision  
Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the  
order [dated 24th March, 2017 in E No.1

(Regd. ID No.87/17) of the Court of Pilot Court (Central District), Tis Hazari Courts,  
Delhi]. of dismissal of the application of the petitioner for leave to defend the  
petition for eviction under Section 14(1)(e) of the Act filed by the respondent and  
the consequent order of eviction of the petitioner from shop bearing No.1641-A in  
property No.1639-1648, Dariba Kalan, Chandni Chowk, Delhi.

2. The petition came up first before this Court on 25th August, 2017 when on the contention of the senior counsel for the petitioner/tenant, with reference to the site plan of the property, that the respondent/landlord is in occupation of a large portion sufficient to commence business but had not RC.REV.384/2017 Page 1 of 15 commenced the business and that if the pleaded requirement was genuine, the respondent/landlord would have commenced business, notice of the petition was ordered to be issued.

3. The counsel for the respondent/landlord appears and the counsels have been heard.

4. The respondent/landlord instituted the petition for eviction from which this Revision Petition arises, pleading (i) that the petitioner is a tenant under the respondent/landlord in the shop aforesaid at a rent of 429.55 paise per month and is an old tenant; (ii) that the respondent/landlord acquired the property No.1639-1648, in shop No.1641A wherein the petitioner is a tenant, vide Sale Deed dated 8th November, 2007; (iii) that the ground floor of property No.1639-1648 comprises of 9 shops, two godowns and one room, of varying sizes; (iv) that of the 9 shops, 4 shops are occupied by tenants, including the petitioner; (v) that there is also an open space between the shops; (vi) that the first floor of the property is residential; (vii) that the respondent/landlord is doing business in jewellery and is running a jewellery shop under the name and style of Raj Kishore Jewellers from property No.A-22-A, Lajpat Nagar-II, Delhi; (viii) that the elder son namely Nikhil Arora of the respondent/landlord, aged 32 years is assisting the respondent/landlord in Lajpat Nagar shop and having 10 years experience in the business of jewellery; (ix) that the younger son namely Kinshuk Arora of the respondent/landlord aged 27 years is doing retail business of garments from property No.A-203, Lajpat Nagar-I, New Delhi; (x) that the elder son of the respondent/landlord wants to start his RC.REV.384/2017 Page 2 of 15 own independent big jewellery showroom in Dariba Kalan, Chandni Chowk, Delhi, which is the biggest jewellery hub in Delhi; (xi) that the elder son of the respondent/landlord is totally dependent upon the respondent/landlord for the purposes of income and accommodation; (xii) that the respondent/landlord requires the shop in the tenancy of the petitioner for his elder son to set up a

jewellery showroom; (xiii) that the respondent/landlord, after amalgamating all the shops and godowns on the ground floor along with open area on the ground floor, wants to establish a big jewellery showroom where his elder son can start his business independently; (xiv) that the respondent/landlord was also filing petitions for eviction against the tenants in the other three tenanted shops; (xv) that the respondent/landlord is possessed of sufficient funds to amalgamate all the shops and the open area and to start the jewellery showroom; (xvi) that the respondent/landlord has no other alternate suitable accommodation.

5. The petitioner/tenant, sought leave to defend pleading (a) that the first floor and second floor of the property are also commercial in nature and the upper floors of other properties in the locality in question are being used for commercial purposes; (b) that even as per the respondent/landlord, except for four shops which were tenanted, vacant possession of the entire remaining property was available to the respondent/landlord; (c) that nearly 85% of the ground floor portion was in vacant possession of the respondent/landlord, besides the first floor and the second floor; (d) that property No.A-22-A, Lajpat Nagar-I, New Delhi from where the respondent/landlord is carrying on jewellery business is also a multistoried property and the jewellery showroom of the respondent/landlord is a multistoried showroom fitted, with elevators; (e) RC.REV.384/2017 Page 3 of 15 that the elder son of the respondent/landlord is gainfully working with the respondent/landlord at the said big jewellery showroom; (f) that the respondent/landlord or his son, if had any intention to set up a jewellery showroom on the ground floor of the property in question, have sufficient space available to them therefor, as the said space is almost 400 sq. yds. and is more than enough; (g) that the respondent/landlord also owns property No.302, Dariba Kalan, Delhi which is lying closed for long, though has a sign board of Raj Kishore Jewellers i.e. the name in which the respondent/landlord is carrying on business in Lajpat Nagar; (h) that the respondent/landlord has bought the subject property at throw away prices and has thereafter been getting the same vacated; (i) that had the respondent/landlord any intention to open any jewellery showroom in the said property, he would have done so long ago; (j) that the intention of the respondent/landlord is to get the property vacated and to thereafter sell it; (k) that the respondent/landlord has no requirement for the shop in the tenancy of the petitioner.

6. The respondent/landlord, in his reply to the leave to defendant application, (I) has reiterated that the first and second floors of the property are residential; (II) stated that unless the four shops in occupation of the tenants are got evicted, a large showroom of the choice of the respondent/landlord and his elder son cannot be set up in the property; (III) stated that the remaining portion of the ground floor is not suitable for the requirement of the respondent/landlord, as the projected requirement cannot be fulfilled, unless the remaining four shops are vacated; (IV) stated that shop No.302, Dariba Kalan, Delhi is a tenanted shop and is in a dilapidated condition and is lying closed for last 20 years; RC.REV.384/2017 Page 4 of 15 the landlord of the said shop has already filed a suit against the father of the respondent/landlord, who is a tenant therein, for restraining repairs in the said shop and in which suit, the father of the respondent/landlord has been so restrained.

7. The Additional Rent Controller (ARC), vide the impugned order, has dismissed the application of the petitioner/tenant for leave to defend, reasoning (A) that since the younger son of the respondent/landlord is carrying on his separate business, the elder son of the respondent/landlord is also entitled to set up his own business and the petitioner/tenant cannot compel the elder son of the respondent/landlord to continue carrying on business with the respondent/landlord; (B) that the respondent being the landlord is then within his right to decide the area required by him and his son to open the business of jewellery showroom and the petitioner/tenant cannot dictate terms upon the respondent/landlord that he should set up the said business only in the portion of the property of which vacant possession is available with the respondent/landlord; (C) that the petitioner/tenant cannot also compel the respondent/landlord to have the showroom on the upper floors as a showroom on the ground floor will definitely attract much more customers than a showroom on upper floors; (D) that the elder son of the respondent/landlord cannot be forced to start his own business of jewellery from the same property in Lajpat Nagar from where the respondent/landlord is carrying on the said business; (E) that even otherwise, Dariba Kalan is the biggest jewellery hub of Delhi and the son of the respondent/landlord is well within his rights to start his jewellery showroom therefrom; (F) that the respondent/landlord had filed documents to show litigation between the father of the RC.REV.384/2017

Page 5 of 15 respondent/landlord and the landlord of shop No.302, Dariba Kalan, Delhi and thus it could not be said that the said shop was alternate, suitable accommodation available to the respondent/landlord; (G) that another property in Kinari Bazar, Delhi available to the respondent/landlord could not also be said to be alternate suitable accommodation, as the market of jewellery of which showroom was intended to be open, is in Dariba Kalan and not in Kinari Bazar.

8. The emphasis of the senior counsel for the petitioner/tenant in his contentions is that the respondent/landlord, if the requirement was bona fide and genuine, has enough place available in the property to set up his jewellery showroom therefrom and the factum of the respondent/landlord having not done the same till date is indicative of the requirement being not genuine.

9. The counsel for the respondent/landlord, on enquiry, as to why, the vacant portion of the property available to the respondent/landlord is not alternate suitable accommodation for the requirement pleaded and why, the respondent/landlord and/or his son have not commenced business from the vacant portion till now and why, the intention to set up jewellery business should not be required to be proved by granting leave to defend, has contended (i) that the entire property has one access; (ii) the four shops in the property in possession of tenants are an impediment to having a proper entry into the showroom and a security risk; (iii) that if the said four shops are also vacated, then the respondent/landlord can lock the main entry to the property; else, the respondent/landlord will be required to provide access from the main entry to the tenants to the shops in RC.REV.384/2017 Page 6 of 15 possession of the tenants and the respondent/landlord will be precluded from locking the main gate of the property; (iv) that the open courtyard in the center can be covered to the extent permissible only if there are no tenants in any of the shops surrounding the property.

10. Per contra, the senior counsel for the petitioner/tenant contended (a) that the respondent/landlord in his pleadings has not stated that the business of tenants is a security risk to the jewellery showroom; (b) that the shop in the tenancy of the petitioner does not prevent the respondent/landlord from amalgamating the remaining showroom; and, (c) that the respondent/landlord, to secure his

showroom, can shift the main gate to somewhere else in the property.

11. The senior counsel for the petitioner/tenant further contended that it is not as if the respondent/landlord and his elder son are without any vocation or sitting unemployed for an order of eviction to be passed urgently by denying leave to defend to the petitioner/tenant; that the respondent/landlords and his elder son, pleading whose requirement the petition for eviction has been filed, are carrying on business and will continue to carry on business from Lajpat Nagar, even if leave to defend is granted and evidence ordered to be led.

12. The senior counsel for the petitioner/tenant during the hearing drew attention to documents from the Registrar of Companies to say that the elder son of the respondent/landlord is also a Director in the company of the younger son of the respondent/landlord carrying on garment business.

13. The counsel of the respondent/landlord has contended that there is no plea to the said effect in the leave to defend application and merely RC.REV.384/2017 Page 7 of 15 because the elder son of the respondent/landlord is a Director in his younger brothers company will not mean that it is the elder son who is carrying on the business of garments and the petitioner/tenant has admitted in his leave to defend application that elder son of the respondent/landlord is working in the jewellery showroom of the respondent/landlord at Lajpat Nagar.

14. I have considered the arguments, perused the copies of the Trial Court record and considered the documents.

15. A perusal of the site plan shows (I) the ground floor of property No.1639-1648, Dariba Kalan, Delhi to be comprising of two large godowns; (II) shop No.1641-A in the tenancy of the petitioner admeasuring 22.4 X20.9; (III) shop No.1642-B admeasuring 9 X12.9; (IV) shop No.1642-A admeasuring 7.3 X12.8; (V) shop No.1643 admeasuring 15.9 X12.9; (VI) shop No.1644-A admeasuring 6 X12.9; (VII) shop No.1645-B admeasuring 6.6 X12.9; (VIII) shop No.1645-A admeasuring 7 X4; (IX) shop No.1645 admeasuring 7 X4; (X) another shop No.1645 admeasuring 7 X4; (XI) shop No.1640 and shop No.1639, both of very small size and measurements whereof are not even stated; (XII) two common WCs and two

staircases going to the upper floors; (XIII) all the said shops/godowns being constructed around an open courtyard admeasuring 32.6 X21; (XIV) all the shops/godowns having opening in the said courtyard and the shops otherwise being surrounded by properties of others; (XV) the courtyard having a common entrance from Dariba Kalan. RC.REV.384/2017 Page 8 of 15 16. Though my questioning of the counsel for the respondent/landlord as recorded above would indicate, I entertained doubt about the requirement pleaded by the respondent/landlord for the premises for the reason of the respondent/landlord inspite of having major vacant portion on the ground floor not having commenced jewellery business therefrom, but on further consideration of the site plan of the property with all shops/godowns opening in a common courtyard and with a common entrance to the property through the main courtyard, I am of the opinion that the requirement of the respondent/landlord is not doubtful or such which is required to be put to trial by granting leave to defend to the petitioner/tenant.

17. As far as the plea of the petitioner/tenant of the vacant possession of upper floors of the property being available to the respondent/landlord for setting up jewellery business is concerned, Supreme Court in Dhannalal Vs. Kalawatibai (2002) 6 SCC16 held that an alternative accommodation, to entail denial of the claim of the landlord, must be reasonably suitable, obviously in comparison with the accommodation wherefrom the landlord is seeking eviction. It was further held that the availability of another accommodation suitable and convenient in all respects as the accommodation from which the landlord is seeking eviction may have an adverse bearing on the finding as to bona fides of the landlord, if he unreasonably refuses to occupy the available premises to satisfy his alleged need. It was yet further held that the bona fides of the need of the landlord for the premises or additional premises have to be determined by the Court by applying objective standards and once the Court is satisfied of such bona fides, then in the matter of choosing out of RC.REV.384/2017 Page 9 of 15 more accommodation than one available to the landlord, his subjective choice shall be respected by the Court. It was yet yet further held that for the business which the landlord proposes to start, an accommodation situated on the first floor cannot be said to be an alternative suitable accommodation in comparison with the shops situated on the ground floor; a shop on the first floor cannot attract the same number of customers

and earn the same business, as a shop situated on the ground floor would do. Again, in *Uday Shankar Upadhyay Vs. Naveen Maheshwari* (2010) 1 SCC503 it was held that it is not for the Courts to say that the landlord should shift to the first floor or any higher floor as it is well known that shops and businesses are usually conducted on the ground floor, because the customers can reach there easily. It was reiterated that the Court cannot dictate to the landlord which floor he should use for his business and that is for the landlord himself to decide. Accordingly, the reasoning of the Courts below that the landlord should do business on the first floor was held to be wholly arbitrary and not sustainable.

18. I may also notice that from the site plan relied upon by the senior counsel for the petitioner/tenant also, the staircases going to the upper floors are found to be very narrow. Women of all ages are found to be the largest customer base of a jewellery showroom and judicial notice can be taken of the fact that they do not prefer to climb a narrow staircase as is the norm in that locality and are more prone to accessing the shops on the ground floor. RC.REV.384/2017 Page 10 of 15 19. The construction of the property, as evidenced from the site plan and as described by me hereinabove, does indeed show the ground floor of the property, though to be comprising of several shops but constructed as one. As long as any of the shops are in possession of an outsider, the respondent/landlord, inspite of being in possession of a major part of the property, cannot prevent access at all hours into the said common courtyard of any person and of common use of such open courtyard by that person. When I put that to the senior counsel for the petitioner/tenant, he states that provision can be made for providing a separate passage to the shop of the petitioner/tenant and for locking of the portion of the property in possession of the respondent/landlord. However, the plea of the landlord of requirement is not to be judged by considering the possibility by which the tenant may be allowed to continue in the premises. The requirement is to be judged on the basis of the property as it stands and not by commanding the landlord to make structural changes therein, to somehow or the other accommodate the tenant. Supreme Court in *Siddalingamma Vs. Mamtha Shenoy* (2001) 8 SCC561 held that the concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life; an approach either too liberal or too conservative or pedantic must be guarded against. If the landlord

wishes to live with comfort in a house of his own, the law does not command or compel him to squeeze himself and dwell in lesser premises, so as to protect the tenants continued occupation in tenancy premises.

20. Thus, if it is found applying such a pragmatic approach that, notwithstanding the respondent/landlord having large part of the portion of the ground floor available to him, allowing the tenant to continue in the RC.REV.384/2017 Page 11 of 15 premises in occupation of one of the shops in the premises would result in loss of privacy and security to the portion of the property in possession of the respondent/landlord and making it inconvenient for the respondent/landlord to beneficially use rest of the property, the tenant cannot be allowed to say that the said difficulties of the respondent/landlord can be cured by making structural changes to the property.

21. In the present case, the peculiar construction of the property, which I may notice originally appears to have been constructed as a single residence but over the years and with commercialization of the locality, has shops and godowns surrounding the courtyard, lends credence to the requirement pleaded of the respondent/landlord, of the entire property and the vacant portion in possession of the respondent/landlord being not alternate suitable accommodation. It is not open to the petitioner/tenant to dictate to the respondent/landlord how he should make do in the rest of the premises.

22. That brings me to the argument of the petitioner/tenant, of the respondent/landlord not having the requirement pleaded for the reason of the respondent/landlord having not commenced business using the available accommodation therefor.

23. Though the argument is attractive but not found to have any basis in law. Supreme Court in *Mattulal Vs. Radhe Lal* (1974) 2 SCC365 held that litigation in India takes a long time in reaching final conclusion and then also it is uncertain as to how it will end and with what result; unless the landlord could be reasonably sure that he would, within a short time be RC.REV.384/2017 Page 12 of 15 able to recover possession and start business therefrom, it will be too much to expect from him that he should make preparations for starting new business-it will be

foolish on his part to make arrangements for investment of capital, obtaining of permits when the landlord does not know, whether he will ultimately succeed in the litigation and after how many years. In *Raghunath G. Panhale Vs. Chaganlal Sundarji and Co.* (1999) 8 SCC1 it was held that it is not necessary for the landlord to adduce evidence that he had money in deposit in a bank nor proof of funds to prove his readiness and willingness, as required in a suit for specific performance. It has been held in *Dattatraya Laxman Kamble Vs. Abdul Rasul Moulali Kotkunde* (1999) 4 SCC1 *Mohinder Prasad Jain Vs. Manohar Lal Jain* (2006) 2 SCC724 *Shamshad Ahmad Vs. Tilak Raj Bajaj* (2008) 9 SCC1 and *Ram Babu Agarwal Vs. Jay Kishan Das* (2010) 1 SCC164 and all noticed by me in judgment dated 28th July, 2017 in RC.REV. No.301/2016 titled *Chaman Lal Nayyar Vs. Daya Chand*, that when a landlord expresses a desire to commence business from the premises earlier let out by him, his said desire cannot be disbelieved for the reason of his not having carried on any business till then or having no experience therein.

24. Here, the respondent/landlord admittedly has experience in jewellery business. If the respondent/landlord is desirous of setting up a large showroom, using entire space available on ground floor, then as per aforesaid judgments, his requirement cannot be disbelieved for the reason of having till now not commenced the jewellery showroom in whatever space is available on ground floor. RC.REV.384/2017 Page 13 of 15 25. It cannot be lost sight of that the son of the respondent/landlord is in the prime of his life and has the support of his father, the respondent/landlord and from the pleas of the petitioner/tenant himself, the family appears to be affluent. If in such circumstances, the respondent/landlord wants to set up a large showroom for his son in the entire premises and when according to the petitioner/tenant himself, the jewellery showroom at Lajpat Nagar of the respondent/landlord is also multistoried, the petitioner/tenant cannot doubt the intention of the respondent/landlord and this Court on such doubt, grant leave to defend to the petitioner/tenant.

26. Rather, I have wondered, as to what purpose grant of leave to defend in such a situation, would serve. On grant of leave to defend also, the respondent/landlord and his son, in addition to, merely stating on affidavit their aforesaid requirement, will face cross-examination. The respondent/landlord has already on affidavit

pleaded the said requirement. The leave to defend of the petitioner/tenant does not disclose any such fact within the meaning of Section 25B(5) of the Act, on which being proved in cross-examination, the intention of the respondent/landlord and his son will stand falsified. Even then, the only question to be determined by the Court would be, whether in the aforesaid circumstances, the respondent/landlord has requirement for the premises or not.

27. I may also notice that of all the shops around the common courtyard, the shop in possession of the petitioner/tenant is the largest.

28. As far as the plea of petitioner/tenant, of availability of shop No.302, Dariba Kalan, besides the factum as evident from documents, of RC.REV.384/2017 Page 14 of 15 the same being in tenancy of father of respondent/landlord, I have in judgment dated 27th July, 2017 in RC.REV. No.134/2016, following earlier judgments, held that tenanted accommodation is not alternate suitable accommodation within the meaning of Section 14(1)(e) of the Act.

29. As far as the plea of petitioner/tenant, of the respondent/landlord having purchased the property in 2007, merely to resell the same, is concerned, Supreme Court in Faruk Ilahi Tamboli Vs. B.S. Shankarrao Kokate (2016) 15 SCC431 from the factum of the landlord having purchased a property fetching meager rent, held the same to be indicative of the landlord having purchased the property, not for earning rent therefrom but for purpose of running business therefrom.

30. In view of the aforesaid, I am unable to hold the impugned order of the ARC to be not in accordance with law, which is the only parameter on which this Court can, in exercise of revisional jurisdiction under Section 25B(8) of the Act, interfere.

31. There is thus no merit in the petition. Dismissed. No costs. RAJIV SAHAI ENDLAW, J.

OCTOBER26 2017 bs (corrected & released on 29th January, 2018)  
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