

IN THE COURT OF MS. SHEFALI BARNALA TANDON, ADMINISTRATIVE  
CIVIL JUDGE - CUM - ADDITIONAL RENT CONTROLLER (CENTRAL),  
DELHI

E-77829/16

In the matter of :-

1. Smt. Savitri Devi  
W/o Late Sh. Naval Singh  
R/o 8902, Shidipura,  
Karol Bagh, New Delhi-110005.
2. Smt. Indra  
W/o Sh. Harish Gautam  
D/o Late Sh. Naval Singh  
R/o 187, Pocket-II,  
Sector-13, Dwarka,  
New Delhi-110075.
3. Sh. Gopal Singh  
Through his LR's  
R/o 8902, Shidipura,  
Karol Bagh, New Delhi-110005.
4. Sh. Kailash Chand  
S/o Late Sh. Naval Singh  
R/o 8902, Shidipura,  
Karol Bagh, New Delhi-110005.
5. Smt. Sunita  
D/o Late Sh. Naval Singh  
R/o 8902, Shidipura,  
Karol Bagh, New Delhi-110005.
6. Sh. Parveen Kumar  
S/o Late Sh. Naval Singh  
R/o 8902, Shidipura,  
Karol Bagh, New Delhi-110005.

.....Petitioners/ Landlords

Versus

M/s Creative Exports,  
8902, Shidipura,  
Karol Bagh, New Delhi-110005.

.....Respondent/ Tenant

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Date of Institution : 08.08.2013  
Date of order when reserved : 10.06.2020  
Date of order when announced: 27.06.2020 (announced through  
video conferencing due  
to COVID-19)

JUDGMENT:

1. Vide this judgment, the undersigned shall dispose off the present eviction petition filed by the petitioners against the respondent/ tenant U/s 14 (1) (e) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'Act'), in respect of one shop along with a bathroom and latrine on the ground floor of property bearing No.8902, Shidipura, Karol Bagh, New Delhi-110005 (herein after referred to as "tenanted premises"). The site plan showing the tenanted portion in red colour is annexed with the petition as Annexure A.

2. The brief facts of the case, as mentioned in the petition are that Late Sh. Nawal Singh, husband of the petitioner No.1 & father of petitioner No.2 to 6 was the owner of the property bearing No.8902, Shidipura, Karol Bagh, Delhi-110005 and after his unfortunate death on 07.11.2011, all the petitioners became the sole & exclusive owner of the aforesaid property, being his legal heirs/ representatives.

The respondent is a tenant in respect of one shop along with one bathroom and one latrine on the ground floor of the aforesaid property ie. 'tenanted premises' at a monthly rent of Rs.500/- excluding the electricity and water charges. Since the petitioners have bonafide requirement of the 'tenanted premises', they terminated the tenancy of the respondent vide notice dated 11.01.2013 for the arrears of rent since 01.01.2011 and to vacate, which was duly served upon the respondent. Accordingly, he remitted rent till December, 2012 along with a false & frivolous reply dated 08.02.2013 to the legal notice, in which the respondent admitted the ownership of the petitioners over the 'tenanted premises' and his tendency under them but did not vacate.

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3. To explain their bonafide need, it is averred that the family of petitioners consist of nine members. All the petitioners except no.2, who doesn't reside in the 'tenanted premises', are in occupation of only four rooms in total i.e. one room, one store, one bathroom and a WC at the first floor; two rooms, one kitchen, one store, one bathroom and a WC on the second floor and one room, kitchen, bathroom, WC and open terrace on the third floor. Besides the above accommodation, there is another room at the first floor marked as MARK "M" in the site plan as Annexure A1, from where the petitioner No.3 was carrying on his small manufacturing business.

Petitioner No.2 resides in Dwarka being married but whenever, she along with her family visits the petitioners, they are unable to accommodate them due to space crunch. Further, the petitioners are not having any drawing room, dining room or pooja room. However, the petitioners obtained possession of two rooms, one kitchen, one store, one bathroom and WC situated on the second floor and a shop on the ground-floor in March, 2013 after settlement through Court with the tenant M/s Kochar Oil Mills Ltd, which the petitioner No.4, his wife and children are using for residence and the shop situated on the ground floor, he has started his business of sale and supply of footwear.

4. It has been further averred that petitioner No.6 got married on 28.06.2012 but he is not having any independent room. Petitioner No.3 has not got married till date due to paucity of accommodation. Therefore, the petitioners require at least 5 rooms i.e. one room for petitioner No.1, one room for petitioner No.3, one room for petitioner No.5 and two rooms for petitioner No.6 & his wife. Besides this, the petitioners also require one guest room, one drawing room and one dining room. Therefore, the 'tenanted premises' are required bonafidely by the petitioners as they or their family members do not have any other reasonably suitable residential accommodation in Delhi except H.No.8902, Shidipura, Karol Bagh, New Delhi, hence, this eviction petition has been filed with the same prayer.

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5. Accordingly, notice was served upon the respondent and vide order dated 20.11.2014, the application for leave to defend the petition of the respondent was allowed by the Ld. Predecessor of this Court on the ground that the sufficiency/insufficiency and suitability the existing accommodation in possession of the petitioners is a subject matter of trial and cannot be decided summarily.

6. Written statement was filed by the respondent, wherein the allegations levelled by the petitioner are denied in general and it is stated that the petition is bad for mis-joinder and non-joinder of parties, as the demised property was leased out in favour of three individuals namely Sh. Amarjeet Singh, Sh. Gurpal Singh and Mr. Abdul Rehman by the predecessors-in-interest of the petitioners vide rent agreement dated 15.12.1994, hence, the present application for eviction is not maintainable and shall be dismissed right away on the ground of mis-joinder & non-joinder of the parties. The averments made in the petition and the site plan appended thereto does not disclose total property in occupancy of the petitioners to fabricate a fanciful desire in the garb of bonafide requirement. The petitioners have abused the process of law by instituting the instant petition seeking eviction of the tenant by suppressing and concealing material facts, which thus is liable to be dismissed.

7. It has also been contented on merits in the written statement filed by the respondent that the site plan appended thereto does not disclose total property in occupancy of the petitioners to fabricate an artificial requirement. It is vehemently denied that the respondent is tenant in the 'tenanted premises' as it was leased out in favour of three individuals namely Sh. Amarjeet Singh, Sh. Gurpal Singh and Mr. Abdul Rehman by the predecessors-in-interest of the petitioners vide rent agreement dated 15.12.1994 He stated that he tried number of times to pay rent to the present petitioners but none of the LRs was ready and willing to acknowledge the rent receipt owing to dispute amongst

themselves after demise of landlord Sh. Naval Singh in whose share, the demised property had fallen.

8. That the notice dated 11.01.2013 was served upon him and which was duly replied vide notice dated 08.02.2013. It has also been contended that even in notice dated 11th January 2013 the petitioner has failed to show the bona fide requirement of the family, as required by the provisions of section 14(1)(e) of Delhi rent control Act, 1958 and in para (5) of the said notice it was mentioned that Shri Gopal Singh and Shri Praveen Kumar require the above shop ie tenanted premises bonafidely for carrying on business. However, in the present petition requirement for accommodation is shown for the visitors and guests, which makes it clear that the present petitioners do not want the demised property for the bonafide requirement but it is a mere fanciful desire to mint profits by letting it further.

9. It has been further contended that the entire first floor of suit property is in possession of the petitioners, as landlords which comprises three living rooms besides a small room with bathroom and WC. Likewise, the petitioners have same status of occupancy on the second floor of the suit premises, of which the small portion attached to the living rooms have been appropriated and utilised as a common kitchen, however with the motive to manipulate a hardship of occupancy the petitioners have tried to manipulate and point out one portion living room as a store on second floor of the property. Similarly the petitioners have ventured to mis-state a room in their occupancy as kitchen on the third floor. That the petitioners have eight living rooms of adequate size besides kitchen, three bathrooms, WC, common space and lobbies in their occupancy forming part of property in question. It is also vehemently denied that petitioner no. 3 was carrying on a small business of manufacturing in portion shown as "M" in the site plan, as it is not permissible being residential premises.

It is also contended that the petitioners have mischievously not disclosed of having other available accommodation, situated in vicinity to the

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demised property, as they are having a joint title and possession in respect of five residential properties constructed on plots bearing numbers 8881 to 8885 situated at Shidipura, Karol Bagh, New Delhi each admeasuring 50 sq. yards.

Hence, the present eviction petition is not maintainable against the respondent and the same may kindly be dismissed with exemplary cost.

10. Replication has been filed by the petitioners to the written statement of the respondent denying all the allegations levelled against the petitioners. It has also been denied that the tenanted property was let out to three persons namely Sh. Amarjeet Singh, Sh. Gurpal Singh and Mr. Abdul Rehman by the predecessor-in-interest of the petitioners. It is rather stated that in July, 1994 when the suit property bearing No.8902, Shidipura, Karol Bagh, New Delhi was jointly owned by Sh. Naval Singh, Sh. Mani Ram and Sh. Lal Chand, one shop situated at the front side on the ground floor of the aforesaid property, which was under the tenancy of Shakti Gun House was let out to the respondent. Further, in December, 1994, back/rear portion of the said shop including one toilet cum bath room, was also let out to the respondent. It has been further stated that at the time of letting out the rear portion, Sh. G.S. Sethi got the signatures of Sh. Naval Singh and Sh. Mani Ram on a rent agreement dated 15.12.1994, wherein the names of Sh. Amarjeet Singh, Sh. Gurpal Singh and Mr. Abdul Rehman were mentioned as tenants on the pretext Sh. Amarjeet Singh and Mr. Abdul Rehman are the partners of the respondent. However, Sh. Amarjeet Singh, Sh. Gurpal Singh and Mr. Abdul Rehman never remained tenants in the 'tenanted premises' in their individual capacity but it is the respondent, who is the tenant in the 'tenanted premises'. They again denied that the lease in respect of the demised property was created in favour of Sh. Amarjeet Singh, Sh. Gurpal Singh and Mr. Abdul Rehman by their predecessor-in-interest in the demised property vide rent agreement dated 15.12.1994 or that prior to execution of the rent agreement, the lease of the portions of the

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demised property were acknowledged by the landlords by submitting affidavits on 06.07.1994, as alleged.

11. In order to substantiate the case, one of the petitioners namely Sh. Kailash Chand filed his evidentiary affidavit, who is examined as PW-1 and tendered his evidence by way of affidavit, which is Ex.PW1/A, wherein he reiterated the averments made in the petition and also stated that in the month of September, 2006 when the suit property was partitioned amongst its erstwhile owners by virtue of registered Partition Deed and Sh. Naval Singh became absolute & exclusive owner of the portion under which the 'tenanted premises' fall, a fresh oral tenancy was created in respect of the same in favour of the respondent w.e.f 1st October 2006 at rate of Rs 500/- p.m. vide notice dated 9th May 2007 and according the respondent paid rent upto 31st May 2007 against receipt dated 26.05.07. Thus, the respondent became tenant under late Sh. Naval Singh. The respondent continued to pay rent at the same rate upto 30.06.11 and the office copy of the said legal notice dated 09.05.07, its postal receipts, A.D. card, counter foil of rent receipts is stated to be filed and relied as PW-1/2. He relied upon documents i.e. Ex.PW1/1, which is the site plan; Ex.PW-1/2 (colly- running into 4 pages) is the legal notice dated 09.05.07 its postal receipt, U.P.C and the rent receipts (Objected as to mode of proof); Ex.PW1/3 is the legal notice dated 11.01.2013 sent by the petitioner to the respondent for the claim of rent and termination of tenancy; Ex.PW1/4 is the postal receipt; Ex.PW1/5 is the A.D. Card and Ex.PW1/6 is the reply to the notice and Ex.PW1/7 (colly) is the certified copy of the order dated 20.03.2013.

12. During cross-examination of PW-1, he stated that he got recovered possession of the shop which is presently occupied by him from its erstwhile tenant Kochhar Oil Mills in the year 2013 and till that time, he had been taking orders to supply from the vendors, as per their requirement. He was getting the footwear manufactured from the manufacturers and was making supply

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thereof but after acquiring the possession of the said shop, he started using it for stacking the goods to meet the purchase orders. However, he had neither taken any licence for trading in footwear from any authority nor filed any document on record qua his trading activity for 8-10 years, as he is not in possession of any such document. He further stated that he started his venture to deal in novelty items w.e.f. April, 2016 and has applied for registration of his new firm titled as M/s Sunrise Enterprises, dealing in novelty items with the Sales Tax Authority. He has been given TIN number in this regard and he had also applied for the registration with Sales Tax Authority in June, 2016. He denied the suggestion that the registration with the Sales Tax Department was started by him to meet out the defence raised by the respondent in the present proceedings, opposing the prayer of eviction for bonafide requirement.

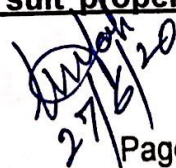
13. He further deposed that besides the said shop, the petitioners also recovered possession of two rooms, one kitchen, one latrine and one bathroom situated on the second floor of the property, demised portion is a part. He admitted that the said portion situated on the second floor, is being used by the family for dwelling purposes and is not being appropriated for any commercial purpose. However, he failed to tell the size of rooms and stated that it was measured by the draftsman at the time of preparation of the site plan after visiting the suit property. When asked, he denied the suggestion that the site plan submitted in the suit is a fabricated document, which had been prepared by the Draftsman on his instructions to meet out and establish his bonafide needs to claim possession of the demised property. He further denied the suggestion that the the size of different portion forming part of the property under his occupancy are fabricated and false but again said that the measurement of the demised property was taken from the partition deed by virtue of which the property of which the demised property is a part, has fallen in share of his father. Volunteered, that the measurement was taken from outside. He further stated that he has not filed the partition deed by virtue of



which the property in question of which the demised portion in the part had fallen in share of his father in the instant proceedings, however, he has filed the the document showing tenancy created in favour of the respondent w.e.f. 01.10.2006 in the present matter. Further, he has not filed any document on record except one notice issued in May, 2007 wherein the aforesaid fact of partition was mentioned. He denied the suggestion that the tenancy in respect of demised portion prior to October 3006 was created in writing. He voluntarily said that the tenancy was originally created by the co-owners of the property and in terms of understanding amongst the owners, the rent in respect of the demised portion was being tendered by the respondent to the other co-owners namely Late Sh. Mani Ram & Sh. Lal Chand and vide aforesaid notice issued in May, 2007, the rent was claimed by his father.

14. He also stated that no agreement was executed between his father Naval Singh and respondent regarding creation of tenancy in respect of demised premises, commencing w.e.f. 01.10.2006, but voluntarily stated that the same was so narrated in the notice given by his father after partition of property in September, 2006 claiming rent in respect of demised property, being its owner and landlord of the property, which since was paid, the fresh tenancy in respect of demised premises is assumed by the aforesaid conduct of parties. Thereafter, the rent was being tendered by the respondent to his father and to this effect, he has filed the rent receipts issued by Sh. Naval Singh which are already exhibited as PW1/2. He admitted that the receipts filed by him purported to be issued by Sh. Naval Singh forming part of Ex.PW1/2 does not bear the signatures of tenant on the aforesaid receipt except Ex.PW1/RW1 where the signatures of Mr. Sethi at point A.

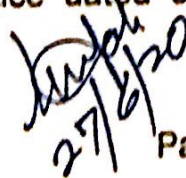
15. He also deposed that as a matter of fact, the respondent has taken possession of of part of the demised property from erswhile occupant/tenant M/s Shakti Gun House in July, 1994 and thereafter, took possession of rear portion forming part of the suit property from the

  
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tenant Smt. Raj Rani in December, 1994 unauthorisedly and without consent of the landlord and had thereafter, had merged the rear portion of the demised property in front portion, made it a single unit and thereafter had managed the rent receipt from Sh. Lal Chand. He again said that in December, 1994 since aforesaid Lal Chand Ji had expired, as such, the receipt of rent in respect of rear portion of the demised property was taken from the LRs of Sh. Lal Chand. No complaint was made to any authority in respect of the aforesaid illegal possession of the demised property taken by the respondent. He stated that no document other than the rent receipt issued in the name of the respondent's firm was executed between the respondent and the co-owners namely Sh. Mani Ram and Sh. Lal Chand qua the demised property, however volunteered that the respondent Creative Exports is a firm run by three partners, but he has not seen any such rent receipt issued by Lal Chand, Mani Ram or that by LRs of Late Sh. Lal Chand in respect of demised property in favour of the respondent. He denied the suggestion that the tenancy in respect of the demised property was created with the conscious participation of his father and for that reason neither his father nor him or any other legal heir of Sh. Naval Kishore ever raised protest as to creation of tenancy in favour of three partners of M/s Creative Exports. He has not challenged the authentication of documents produced by the respondent, claiming rent note, etc. Marked as Mark A and B either before this Court or any other Form/ Court till date.

16. He stated that he has not filed copy of rent agreement executed by his father and Mani Ram on 15.12.1994 on urge of Sh. G.S.Sethi, as deposed in para 15 of his affidavit Ex PW-1/A. He also stated that he has not seen the said agreement and also he cannot say when and how he come to know about the rent agreement. He had also not mentioned about the rent agreement in the petition or legal notice as there was no such rent agreement in existence at that time. By way of legal notice dated 09.05.2007, the

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previous tenancy was terminated and after that a partition had taken place and thereafter, a new tenancy was created. He admitted that the respondent is in continuous possession of the demised property since inception of tenancy in the year 1994. He admitted that ground floor of the entire lane in which the demised property is situated, is being used for commercial purpose. He has been also using the portion of the ground floor of the said property of which the demised property is a portion for commercial purpose and had never used it for residential purpose for his and his family members since the same was got vacated by the earlier tenant. He further admitted that passage shown as A to D is being used by the tenants since inception of rent note executed in their favour in the year 1994 and there is no access to the Latin and bathroom at point E except through passage A to D.

No other witness has been examined on behalf of the petitioner and petitioner's evidence was closed vide order dated 25.01.2019

17. In rebuttal, respondent No.1 being represented by Sh. G.S. Sethi, one of the partners of the respondent firm, tendered his evidence by way of affidavit, which is Ex.RW1/A, wherein he re-iterated the averments made in the petition and also stated that he along with Sh. Amarjeet, Abdul Rehman and his brothers were inducted as tenants in respect of the 'tenanted premises' in July,1994 and the rear portion was let out to them in December,1994. No rent one was prepared however the tenancy and possession was admitted and acknowledged by the then landlords vide affidavits dated 06-07-1994, copy of which is filed on record. He relied upon documents i.e. Ex.RW1/1 to Ex.RW1/3 (OS &R) which are affidavits of the then landlords qua the tenancy dated 06-07-1994, Ex RW-1/4 the rent agreement dated 15th December,1994 and Ex.RW1/5 is the site plan of the suit property.

18. RW-1 was thereafter cross-examined, the relevant portion is reproduced hereinafter. During the said cross-examination, he admitted that at the time of

execution of affidavit Ex.RW1/1, Sh. Naval Singh was one of the co-owner and the rear portion of the property in his possession was let out on 15.12.1994 by virtue of Ex.RW1/4, which is being used by M/s Creative Exports. He did not visit the portion of the property in possession of petitioners before preparation of the site plan, therefore, he does not know how many rooms are in the possession of the petitioners and that the site plan has been prepared on basis of assumptions. He admitted that the family members of petitioners are residing on the first, second and third floor of the property in question and petitioner No.4 along with petitioner No.6 are having possession of one shop at the ground floor from where they are running their products of Novelty Products in the name and style of M/s Sunrise Enterprises. He further admitted that there were three owners of the demised premises but after partition the property in question came to the share of Sh. Naval Singh. He admitted his address and signatures of his son on Ex. PW-1/2. Further, that as per Ex.PW1/R1, M/s Creative Exports paid rent to Sh. Naval Singh and as per his reply to notice Ex. PW-1/6, the respondent Creative Exports has paid rent to the petitioners by way of money orders, however it was tendered by all three persons who took the 'tenanted premises' on rent. He admitted that the attachment of rent by the House Tax Department was paid by the respondent and proved as RW-1/P1. He denied the suggestion that the rent receipts were issued only in the name of M/s Creative Exports and filed 11 rent receipts issued in individual name of partners and proved the same as Ex.RW1/P2.

No other witness has been examined on behalf of the respondents and respondents' evidence was closed vide order dated 08.01.2020.

19. The undersigned heard the oral final arguments adduced on behalf of both the parties. Written final arguments/synopsis have been filed on record on behalf of both the parties. The entire case file has been perused carefully including the written synopsis and the case laws filed and relied by both the Ld. counsels.

20. Now, before appreciating the present facts of the case, let's discuss the basic law on the point. The essential ingredients which a landlord/ petitioner is required to prove for the purpose of getting an eviction order for bona fide need are;

- (i) the petitioner is the owner and landlord of the suit premises,
- (ii) the suit premises are required bona fide by the landlord for himself or any of his family members dependent upon him, and
- (iii) the landlord or such other family members has no other reasonable suitable accommodation.

21. Let's now discuss each ingredient in detail :-

**(i) Ownership as well as existence of landlord-tenant relationship :-**

It is the case of the petitioners that Late Sh. Nawal Singh, husband of the petitioner No.1 & father of petitioner No.2 to 6 was the owner of the property bearing No.8902, Shidipura, Karol Bagh, Delhi-110005 and after his unfortunate death on 07.11.2011, all the petitioners became the sole & exclusive owner of the aforesaid property, being his legal heirs/ representatives. The respondent is a tenant in respect of one shop along with one bathroom and one latrine on the ground floor of the aforesaid property ie. 'tenanted premises' at a monthly rent of Rs.500/- excluding the electricity and water charges

However, the respondent firm represented through one of its partners contended in the written statement that the petition is bad for mis-joinder and non-joinder of parties, as the demised property was leased out in favour of three individuals namely Sh. Amarjeet Singh, Sh. Gural Singh and Mr. Abdul Rehman by the predecessors-in-interest of the petitioners vide rent agreement dated 15.12.1994, hence, the present application for eviction is not

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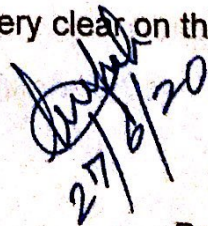
maintainable and shall be dismissed right away on the ground of mis-joinder & non-joinder of the parties. T

In rebuttal through replication, the petitioners denied that the tenanted property was let out to three persons namely Sh. Amarjeet Singh, Sh. Gurpal Singh and Mr. Abdul Rehman by the predecessor-in-interest of the petitioners. It is rather stated that in July, 1994 when the suit property bearing No.8902, Shidipura, Karol Bagh, New Delhi was jointly owned by Sh. Naval Singh, Sh. Mani Ram and Sh. Lal Chand, one shop situated at the front side on the ground floor of the aforesaid property, which was under the tenancy of Shakti Gun House was let out to the respondent. Further, in December, 1994, back/rear portion of the said shop including one toilet cum bath room, was also let out to the respondent.

Ultimately the RW-1 representing the respondent, being one of the partners, admitted during his cross-examination that at the time of execution of affidavit Ex.RW1/1, Sh. Naval Singh was one of the co-owner and the rear portion of the property in his possession was let out on 15.12.1994 by virtue of Ex.RW1/4, which is being used by M/s Creative Exports. He also admitted that there were three owners of the demised premises but after partition the property in question ie 'tenanted premises' came to the share of Sh. Naval Singh. He admitted the receipt of legal notice dated 09.05.2007 by admitting his address and signatures of his son on it proved Ex. PW-1/2. Further, that as per Ex.PW1/R1, M/s Creative Exports paid rent to Sh. Naval Singh and as per his reply to notice Ex. PW-1/6, the respondent Creative Exports has paid rent to the present petitioners by way of money orders, hence the landlord-tenant relationship is admitted between the petitioners and respondent. Reliance is also placed upon the judgments relied on behalf of the petitioner specifically in Rajender Kumar V. Leelawati, 155 (2008 DLT 383

As far as the contention of non-joinder of other other tenants, being partners of the respondent is concerned, Law is very clear on this point that all

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the partners are JOINTLY and SEVERALLY liable, as per section 25 of the Partnership Act, 1932.

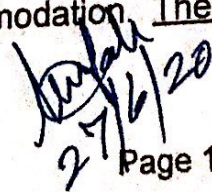
Hence, the first essential that there is landlord-tenant relationship between the petitioners and the respondent stands proved and satisfied.

22. Coming to the second ingredient that (ii) the landlord requires the tenanted premises bonafidely for himself or any member of his family depended upon him.

It is the case of the petitioners that they require the 'tenant premises' as residence due to their bonafide requirement as the family of petitioners consist of nine members. All the petitioners except no.2, who doesn't reside in the 'tenanted premises', are in occupation of only four rooms in total i.e. one room, one store, one bathroom and a WC at the first floor; two rooms, one kitchen, one store, one bathroom and a WC on the second floor and one room, kitchen, bathroom, WC and open terrace on the third floor. Besides the above accommodation, there is another room at the first floor marked as MARK "M" in the site plan as Annexure A1, from where the petitioner No.3 was carrying on his small manufacturing business.

Further, that the petitioner No.2 resides in Dwarka being married but whenever, she along with her family visits the petitioners, they are unable to accommodate them due to space crunch. Further, the petitioners are not having any drawing room, dining room or pooja room. However, the petitioners obtained possession of two rooms, one kitchen, one store, one bathroom and WC situated on the second floor and a shop on the ground-floor in March, 2013 after settlement through Court with the tenant M/s Kochar Oil Mills Ltd, which the petitioner No.4, his wife and children are using for residence and the shop situated on the ground floor, he has started his business of sale and supply of footwear.

It has been further averred that petitioner No.6 got married on 28.06.2012 but he is not having any independent room. Petitioner No.3 has not got married till date due to paucity of accommodation. Therefore, the

  
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petitioners require at least 5 rooms i.e. one room for petitioner No.1, one room for petitioner No.3, one room for petitioner No.5 and two rooms for petitioner No.6 & his wife. Besides this, the petitioners also require one guest room, one drawing room and one dining room. Therefore, the 'tenanted premises' are required bonafidely by the petitioners as they or their family members do not have any other reasonably suitable residential accommodation in Delhi except H.No.8902, Shidipura, Karol Bagh, New Delhi, hence, this eviction petition has been filed with the same prayer.

23. However, the respondent has denied the bonafide requirements of the petitioners and has contended that the averments made in the petition and the site plan appended thereto does not disclose total property in occupancy of the petitioners to fabricate a fanciful desire in the garb of bonafide requirement. It has also been contended that in notice dated 11th January 2013 the petitioner has failed to show the bona fide requirement of the family, as required by the provisions of section 14(1)(e) of Delhi rent control Act, 1958 and in para (5) of the said notice it was mentioned that Shri Gopal Singh and Shri Praveen Kumar require the above shop ie tenanted premises bonafidely for carrying on business. However, in the present petition requirement for accommodation is shown for the visitors and guests, which makes it clear that the present petitioners do not want the demised property for the bonafide requirement but it is a mere fanciful desire to mint profits by letting it further.

It has been further contended that the entire first floor of suit property is in possession of the petitioners, as landlords which comprises three living rooms besides a small room with bathroom and WC. Likewise, the petitioners have same status of occupancy on the second floor of the suit premises, of which the small portion attached to the living rooms have been appropriated and utilised as a common kitchen, however with the motive to manipulate a hardship of occupancy the petitioners have tried to manipulate and point out one portion living room as a store on second floor of the property. Similarly the



petitioners have ventured to mis-state a room in their occupancy as kitchen on the third floor. That the petitioners have eight living rooms of adequate size besides kitchen, three bathrooms, WC, common space and lobbies in their occupancy forming part of property in question. It is also vehemently denied that petitioner no. 3 was carrying on a small business of manufacturing in portion shown as "M" in the site plan, as it is not permissible being residential premises.

24. During cross-examination of one of the petitioners as PW-1, he failed to tell the size of rooms of his own premises and stated that it was measured by the draftsman at the time of preparation of the site plan after visiting the suit property. However, when asked, he denied the suggestion that the site plan submitted in the petition is a fabricated document, which had been prepared by the Draftsman on his instructions to meet out and establish his bonafide needs to claim possession of the demised property. He further denied the suggestion that the the size of different portion forming part of the property under his occupancy are fabricated and false **but again said that the measurement of the demised property was taken from the partition deed by virtue of which the property of which the demised property is a part, has fallen in share of his father. Volunteered, that the measurement was taken from outside.** Admittedly, the partition deed vide which Sh. Naval Singh became the owner of the suit property and from which, the site plan has been prepared proved as Ex.PW1/1 has not been filed on record by the petitioners. The first and foremost requirement by the petitioners to show their bonafide requirement was to correctly show the accommodation in their possession presently. The site plan filed by the petitioners proved as Ex.PW1/1 has been disputed by the respondent and it has been stated that an incorrect site plan has been prepared by the petitioners to show the space crunch.

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25. Further, PW-1 admitted during his cross-examination that the portion situated on the second floor, is being used by the family for dwelling purposes and is not being appropriated for any commercial purpose. He admitted that ground floor of the entire lane in which the demised property is situated, is being used for commercial purpose. He has been also using the portion of the ground floor of the said property of which the demised property is a portion for commercial purpose and had never used it for residential purpose for his and his family members since the same was got vacated by the earlier tenant.

26. Admittedly, the 'tenanted premises' are commercial in nature which is situated on the ground floor of the suit property. The 'tenanted premises' is a shop alongwith latrine and bathroom. As per admission of PW-1, there are only shops at the ground floor of the suit premises which are being used for commercial purpose only and has never been used as residence. Even in the notice given to the respondent by the petitioners proved by PW-1 as Ex.PW1/6 it has been stated that the 'tenanted premises' are required by the petitioner No.3 namely Sh. Gopal Singh and petitioner No.6 namely Sh. Parveen Kumar for commercial purpose, however, in the present petition, the bonafide requirement of the petitioners is for residential purpose, though the petition is based on legal notice for termination which is Ex.PW1/6. Further, during pendency of the present proceedings, petitioner No.3 Sh. Gopal Singh has expired, therefore, the rooms stated to be occupied by him marked as Mark-M used for commercial purpose also fell in the possession of remaining petitioners and hence, his bonafide requirement ended.

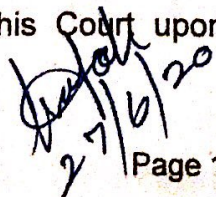
27. At this stage, reliance is placed by this Court upon judgments delivered by Hon'ble Supreme Court of India in Sarwan Dass Bange Vs. Ram Prakash, 167 (2010) DLT 80 = 2010 IV AD (Delhi) 252, and Baldev Singh Bajwa Vs. Monish Saini, VIII (2005) 12 SCC 778, wherein it has been quoted as under :-

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"...It was held that these restrictions and conditions inculcate inbuilt 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 the 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 requirements shall be presumed to be genuine and bonafide. It was further held that a heavy burden lies on the tenant to prove that the requirement is not genuine. 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 bona fide 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."

However, after careful scrutiny of cross-examination of PW-1, as already relevant portion reproduced above, it has also surfaced that there are lot of contradictions in his own statements qua the bonafide need/ requirement of the petitioners with respect to the 'tenanted premises' vis-a-vis the tenant premises and its tenancy. The witness has constantly changed stands qua creation of tenancy and other material particulars including the preparation of the site plan, which plays a pivotal role in this petition. He does not appear to be a reliable witness and does not inspire the confidence of this Court. Further, in view of the aforesaid discussion in detail, there seems to be malafide intention on the part of the petitioners seeking possession of the 'tenanted premises' and their bonafide need does not appear to be genuine. The strong presumption in their favour has been rebutted on many grounds. The requirement of the petitioners seems to be their mere wish or desire than a bonafide requirement. Reliance is placed by this Court upon judgment

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delivered in case titled as Raghunath G. Panhale Vs. Chaganlal Sundarji & Co., (1999) 8 SCC 1 wherein it was held that ".....the word "reasonable" connotes that the requirement or the need is not fanciful or unreasonable but need not also be a "compelling" or "absolute" or "dire necessity". A reasonable and bonafide requirement was held to be something in between a mere desire or wish on the one hand and a compelling or dire or absolute necessity on the other hand."

28. In view of the aforesaid discussion, this Court is of the considered opinion that the petitioners are not able to prove the second essential that their requirement is bonafide and genuine, hence, discussion on the third ingredient about having alternate accommodation is futile.

29. Accordingly, the present petition u/s. 14 (1)(e) of DRC Act filed by the petitioners against the respondent in respect of 'tenanted premises' ie. one shop alongwith bathroom and latrine on the ground floor of property bearing No.8902, Shidipura, Karol Bagh, New Delhi-110005 stands dismissed. Parties to bear their own costs.

File be consigned to Record Room.

Announced through VC  
on 27.06.2020

  
(SHEFALI BARNALA TANDON)  
Administrative Civil Judge -cum-  
Additional Rent Controller (Central) Delhi

(This judgment contains 20 pages in total)