

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

E-78194/16

In the matter of :-

Sh. Vijay Kumar Jain,
S/o. Late Sh. Shambhu Nath Jain
(Through his legal heirs since deceased)

- i) Smt. Rama Jain,
widow of Sh. Vijay Kumar Jain
- ii) Sh. Sharad Jain,
Son of late Sh. Vijay Kumar Jain
- iii) Sh. Saurab Jain,
Son of late Sh. Vijay Kumar Jain

All resident of C-135, Pushpanjali,
Delhi-110092.

- iv) Smt. Ritu Gupta,
W/o. Sh. Ajay Gupta,
R/o. 20/15, Shakti Nagar, New Delhi.
- v) Smt. Rachna Lodha,
W/o. Sh. Alok Lodha.
R/o. 2, Park Avenue, Maharani Bagh,
New Delhi.
- vi) Smt. Annu Jain,
W/o. Sh. Rajnish Jain,
R/o. 5A/28, Ansari Road,
Darya Ganj, Delhi.

.....Petitioners

Versus

M/s. Jai Dayal Kapoor Distributing Co.
Ground Floor of property bearing No. 65 & 68,
Ward No. IX, Chawri Bazar, Delhi-110006.

.....Respondent/Tenant

Date of Institution	: 18.07.2012
Date of order when reserved	: 23.09.2020
Date of order when announced	: 05.10.2020

J U D G M E N T

1. Vide this judgment, the undersigned shall dispose off the present eviction petition filed by the petitioner against the respondent/ tenant U/s 14 (1) (e) of the Delhi Rent Control Act, 1958 (hereinafter referred to as '*the Act*'), in respect of a shop with mezzanine situated at ground floor of property bearing No. 65 & 68, Ward No. IX, Chawri Bazar, Delhi (herein after referred to as "*tenanted premises*"). The site plan showing the tenanted portion in red colour is annexed with the petition.

2. The brief facts of the case, as mentioned in the petition is that the '*tenanted premises*' were let out to the respondent by the father of the petitioner namely Shri Shambhu Nath Jain @ Rs.275/- p.m. excluding electricity charges. After the demise of Sh. Shambhu Nath Jain, the earlier petitioner had become the exclusive owner/landlord of property in dispute vide registered Will of his father dated 10.11.1966. It is averred that the petitioner urgently requires the '*tenanted premises*' bonafidely for himself and his younger son, namely Sh. Saurabh Jain for wholesale trading of paper merchant for enhancing financial needs of their family members. The '*tenanted premises*' is most suitable for the said business as the same is situated in the wholesale paper market of Chawri Bazar, Delhi.

3. It is pertinent to mention that during the pendency of the present eviction petition, the petitioner stated to have expired on 04.04.2015 and vide order dated 22.12.2015, the application U/o. 22 Rule 3 r/w section 151 CPC was allowed. Accordingly the LRs of deceased petitioner were brought on record. However, one of the legal heirs of the deceased petitioner namely Smt. Rama Jain also expired on 26.06.2017 and her surviving legal heirs stepped into her shoes, who were already on record.

4. Accordingly, summons were served upon the respondent and vide order dated 29.09.2014, the leave to defend application of the respondent was allowed by the Ld. Predecessor of the Court, as respondent has been able to raise number of triable issues with regard to availability/ownership of the other suitable premises by the petitioner and business of Sh. Saurabh Jain for whom it

it is stated to be required.

5. Written statement has been filed on behalf of the respondent, wherein it has been contended that the petitioner has not disclosed the details or the name of the business, which he avers to be doing. It has been further contended that the petitioner owns various other suitable residential as well as commercial properties in Chawri Bazar, Chitla Gate and Vidya Market which includes ground floor and first floor of property No. 367, Chitla Gate, Delhi, 2395-96 at Vidya Market, Chawri Bazar, Delhi. The petitioner is also owner of the first floor and second floor of property bearing No. 65-68, Ward No. IX, Chawri Bazar, Delhi and of property bearing no. 701-702, Chawri Bazar, Delhi. It has been contended that the basement of the property bearing No. 65 & 68, Ward No. IX, Chawri Bazar, Delhi has been recently sold to the tenant, who was in occupation of the same. Further, the younger son of the petitioner, namely, Saurabh Jain is not dependent upon the petitioner in any manner. It is contended that petitioner has not stated in the petition that he along with his elder son Sh Sharad Jain and younger son Saurabh Jain is carrying on a well settled jewellery business under the name and style of M/s. Rudrakash Jewellers, 1194/211, Keshav Market, Maliwara, Delhi. That neither the petitioner nor his younger son is engaged in any kind of business of wholesale trading and paper merchant and the only intention of the petitioner to fetch a higher rent. The petitioner is also owner of property bearing No. 135, Pushpanjali, Delhi. Several other eviction petitions have also been filed by the petitioner against the tenants at the ground floor and the second floor of the property bearing No. 65 & 68, Ward No. IX, Chawri Bazar, Delhi. Lastly., the petitioner is not the exclusive owner of the suit property as Late Shambhu Nath Jain had more than 2 sons and 2 daughters. Thereafter, the pleadings stood completed.

6. In order to substantiate their case, the petitioners examined two witnesses. **PW-1 Sh. Saurabh Jain** re-iterated the averments made in the petition and relied upon the documents i.e. site plan which is exhibited as **Ex. PW-1/1**; **Ex. PW-1/2** is the certified copy of Will dated 10.11.1966 executed by Late Sh. Shambhu Nath Jain; **Ex. PW-1/3** is the death certificate of Sh. Vijay Kumar Jain; **Ex. PW-1/4** is the copy of Will dated 26.01.2010 executed by Late Sh. Vijay Kumar Jain, bearing his signatures at mark A and B; **Ex. PW-1/5** is the

certified copy of Release Deed dated 07.07.2015; **Ex. PW-1/6** is the certified copy of Release Deed dated 04.06.2015; **Ex. PW-1/7 to Ex. PW-1/12** are the copies of rent receipts dated 03.08.2015 in respect of portions of property bearing no. 2392-2403; **Ex. PW-1/13** is the certified copy of affidavit of Smt. Rama Jain filed in another petition bearing No. 138/12. **Ex. PW-1/14** is the certified copy of affidavit of Sh. Sharad Jain filed in another petition bearing No. 138/12; **Ex. PW-1/15 to Ex. PW-1/17** are the certified copies of affidavit of Smt. Ritu Gupta, Smt. Rachna Lodha and Smt. Anu Jain filed in another petition bearing No. 138/12 & **Ex. PW-1/18** is the copy of sale deed in respect of shop bearing No. 211, situated at Second Floor of property bearing No. V/1194, Mali Wara, Chandni Chowk, Delhi, measuring about 8.64 sq. mtrs.

7. During the cross examination of PW-1, it is stated that the shop bearing No. 211, Keshav Market, Maliwara, Chandni Chowk, second floor was purchased with the joint funds of his father and both the brothers. M/s. Rudraksh Jewellers is proprietorship concern of his elder brother Sh. Sharad Jain, which is being run by him. However, he admitted that he has not filed any income tax return on the record. He has denied the suggestion that the Will dated 26.01.2010 of his father Sh. Vijay Jain is false and fabricated will or the same was not executed by his father Sh. Vijay Jain. He also denied the suggestion that he is not engaged in the jewellery business with his brother and sharing the profits out of the sales. He denied that the property bearing no. 701-702, Chawri Bazar, Delhi, no. 367-368, Chitla Gate, Delhi and 2393, Chatta Shaji, Delhi belonged/ owned by his father.

8. **PW-2 Smt. Ritu Gupta** deposed on the same lines as averred in the petition and also exhibited the documents i.e. **Ex. PW-2/1** is the copy of death certificate of Smt. Rama Jain & **Ex. PW-2/2** is the copy of Will of Smt. Rama Jain, which bears her signature as attesting witness at point D and the signature and thumb impression of Testatrix at point A to C.

The witness stood the test of cross-examination and nothing came to demolish her stand.

9. No other witness was examined on behalf of the petitioner and petitioner's evidence was closed vide order dated 24.09.2018. However, vide order dated 23.09.2020, additional affidavit of the petitioner has been taken on

record to the fact that respondent has tendered arrears of rent w.e.f. 01.02.2015 to 31.05.2017 @ Rs.275/- p.m. by way of a cheque bearing No. 410951 dated 01.09.2020 for a sum of Rs.8,820/- to the petitioner Sh. Saurabh Jain.

10. In rebuttal, one of the partners of the respondent firm namely Sh. Rakesh Kapoor examined himself as DW-1, who tendered his evidence by way of affidavit proved as Ex.DW1/A and deposed almost on the same lines, as contended in the written statement while relying upon an authorisation slip proved as **Ex. RW-1/1**; 6 photographs collectively as **Ex. RW-1/2**; Mark A (Collectively) are the copies of electricity & telephone bills & **Ex. RW-1/4** are the photographs of Rudraksh Jewellers.

11. During cross-examination DW-1, it is deposed that his firm M/s. Jai Dayal Kapoor Distributing Co. is not doing any work from the premises in dispute. It is admitted that the property in dispute was earlier owned by Sh. Shambhu Nath Jain and was taken on rent from grandfather of the present owner. It is stated that he has never seen the **property No. 701-702, Ward No. 2, Chawri Bazar, Delhi** and failed to know who is the owner of the said property. He has also deposed that he has not seen the **property bearing No. 367-368, Chitla Gate, Chawri Bazar, Delhi** and failed to know about its owner or who is in possession of ground floor of property bearing No. 367-368, Chitla Gate, Chawri Bazar, Delhi or whether the ground floor of the said property is in possession of two tenants namely Satpal Suneja and Balwinder Singh and they are using the same for godown purpose. He even failed to know if petitioner Sh. Vijay Jain or his legal heirs do have any personal right, title and interest in the property bearing No. 367-368, Chitla Gate, Chawri Bazar, Delhi or the said property solely belongs to Aggarwal Jain Dharmshalal Aushdhalaya (Turst) or that Sh. Vijay Jain or any of his legal heirs possess any portion in property bearing No. 367-368, Chitla Gate, Chawri Bazar, Delhi. He states to have never visited the **property No. 2395-2396, Chhata Shaji, Vidhya Market, Chawri Baar, Delhi-6** and failed to know as to who is in possession of both the shops.

12. No other witness has been examined on behalf of the respondents and respondents' evidence was closed vide order dated 12.09.2019.

13. The Court has heard the final arguments and perused the evidence and other material placed on record as well as gone through the written submission filed on behalf of both the parties, wherein the facts have been reiterated. The case laws relied have been perused.

14. Now, before appreciating the facts of the present 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 that:

- (i) the petitioner is the owner/ 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.*

15. Lets discuss each of the ingredient in detail in the context of the present facts and circumstances :-

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

In the present eviction petition, the respondents initially disputed the ownership of the petitioner over the suit premises/tenanted premises stating that the owner of the '*tenanted premises*' namely Sh.Shambhu Nath Jain had more than 2 sons and 2 daughter, however, during cross-examination of DW-1, he has categorically admitted that the property was taken on rent by the grand father of the present owner Sh. Saurabh Jain. Further, the petitioners have filed documents **Ex. PW-1/2** to **Ex. PW-1/6** qua their ownership over the '*tenanted premises*'/ suit property. Even PW-2 Smt,. Ritu Gupta corroborates that the deceased petitioner Sh. Vijay Kumar Jain executed a Will dated 18.05.2017 in favour of the petitioner. The other legal heirs of the deceased petitioner Sh. Vijay Kumar Jain, had executed Release Deed in favour of the one of the petitioner Sh. Sharad Jain and it is well settled law that co-owner can file the eviction petition. Further, reliance is also placed by this Court upon judgment delivered by our Hon'ble High Court in **Rajendra Kumar Sharma & Ors Vs. Leelawati & Ors 155 (2008) DLT 383** wherein it has been held that, "*landlord is not supposed to prove absolute ownership as required under Transfer of Property Act. He is*

required to show only that he is more than a tenant”.

Furthermore, the respondent has also sent a cheque for sum of Rs.8,820/- favouring in the name of one of the petitioners Sh. Saurabh Jain towards the rent w.e.f. 01.02.2015 to 31.05.2017 @ Rs/275/- p.m. alongwith interest, brought on record through additional affidavit of the petitioner, which clearly shows that petitioner Sh. Saurabh Jain is admitted to be the owner of the ‘tenanted premises’ and respondent has admitted his tenancy under him. Hence, the ownership as well as landlord-tenant relationship between the parties stands established.

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

It has been averred in the petition that the petitioner bonafidely requires the ‘tenanted premises’ for himself and his younger son namely Shri Saurabh Jain for running wholesale trading of paper merchant as the ‘tenanted premises’ are the most suitable for the said business, being situated in the wholesale paper market of Chawri Bazar, Delhi. Further, there is no suitable commercial accommodation available with them for the said business.

The respondent has contended that the petitioner Saurabh Jain along with his elder brother Sh Sharad Jain is carrying on a well settled jewellery business under the name and style of M/s. Rudrakash Jewellers, 1194/211, Keshav Market, Maliwara, Delhi. That is not engaged in any kind of business of wholesale trading and paper merchant and the only intention of the petitioner is to fetch a higher rent after evicting the respondent. However, during examination of Sh. Saurabh Jain as PW-1, he specifically deposed that M/s. Rudraksh Jewellers is proprietorship concern of his elder brother Sh. Sharad Jain which is being run by him and he is not engaged in any jelly business with his brother. The respondent could not prove anything contrary on the record.

17. From the record, there seems no malafide intention on the part of the petitioner seeking possession of the ‘tenanted premises’ and his bonafide need appears to be genuine. Reliance is placed by this Court upon judgments delivered by Hon'ble Supreme Court of India as follows :-

In Sarwan Dass Bange Vs. Ram Prakash, 167 (2010) DLT 80 =

2010 IV AD (Delhi) 252, observations made by Hon'ble Supreme Court in **Baldev Singh Bajwa Vs. Monish Saini, VIII (2005) 12 SCC 778**, have been quoted as under :-

“...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 ejectment of the tenant, unless his need is bonafide - no unscrupulous landlord in all probability, under this section, would approach the Court for ejectment 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.”

Hon'ble Supreme Court in **Dattatraya Laxman Kamble Vs. Abdul Rasul Moulali Kotkunde, (1999) 4 SCC 1** held that the phrase “reasonably and bona fide required by the landlord” is not to be tested on par with “dire need” of a landlord because the latter is a much greater need. Hence, the second ingredient also stands fulfilled in the present matter.

18. Now coming to last ingredient (iii) **Non-availability of reasonably suitable alternative accommodation with the petitioner.**

It has been the averment of the petitioner that he requires the 'tenanted premises' for starting business of wholesale trading of paper merchant and they do not have any other suitable alternate accommodation and the 'tenanted premises' is most suitable accommodation for starting the said business.

The respondent has contended in his written statement that the petitioners have other suitable alternative accommodations, which are lying

vacant and can be used for commercial purposes. These are as follows :-

1. Ground & first floor of property bearing No. 367, Chitla Gate, Delhi.
2. Property bearing No. 2395-96 at Vidya Market, Chawri Bazar, Delhi.
3. Property bearing No. 701-702, Chawri Bazar, Delhi.
4. Property bearing No. 2393, Chhatta Shahji, Chawri Bazar, Delhi.
5. First floor and Second floor of property bearing No. 65 & 68, Ward No. IX, Chawri Bazar, Delhi.
6. Property bearing No. C-135, Pushpanjali, Delhi-110092

However, the respondent has not filed any documentary evidence to show that the alleged properties are lying in the name of the petitioners.

19. From the testimony of PW-1, it has surfaced on record that the deceased persons Sh. Vijay Kumar Jain was the owner of the following immovable properties only ie.

- Residential House bearing No. C-135, Pushpanjali, Delhi-110092.
- Property bearing No. 65 & 68, Chawri Bazar, Ward No. IX, Delhi (property in dispute)
- Half share in property bearing No. 3728, Churi Walan, Chawri Bazar, Ward No. 9, Delhi-110006 (stated to be owned by Sharad Jain at present)
- Portions of property bearing No. 2392 to 2403, Chhatta Shahji, Chawri Bazar, Delhi-110006, which are in possession of old tenants.

20. During the cross examination of DW-1, he failed to know who is the owner of the property bearing No. 367-368, Chitla Gate, Chawri Bazar, Delhi or that the petitioner Sh. Vijay Jain or his legal heirs does have any personal right, title and interest in the said property. He also deposed to have never visited the property bearing No. 2395-2396, Chhatta Shahji, Vidhya Market, Chawri Bazar, Delhi-6 and failed to know who are in possession of the shops.

Reliance being placed upon judgment delivered in a case titled as ***Ramesh Chand Vs. Uganti Devi, 157 (2009) DLT 405***, it has been clearly held that *“a tenant who alleges that landlord has at his disposal other accommodation has to place before the Controller, some material to show that the landlord has a specific alternative accommodation at his disposal”. Mere bald allegation with respect to availability of additional accommodation with the petitioner does not hold any basis and cannot be a basis to deny the petitioner of his right to vacate*

the tenanted premises for his bonafide requirement”.

21. Further, it is settled law that the landlord is master of his choice and tenant or the court cannot compel a landlord to choose a particular place against his choice. Reliance is also placed upon judgment delivered by Hon'ble Supreme Court in **“Ragavendra Kumar Vs. Firm Prem Machinery & Company”, AIR 2000 SC 534**, it was observed by Hon'ble Supreme Court that it is settled position of law that the landlord is best judge of his requirement for residential or business purpose and he has got complete freedom in the matter (reliance placed upon **“Prativa Devi Vs. T.V. Krishnan, (1996) 5 SCC 353**).

Even during cross examination of DW-1/Sh Rakesh Kapoor, he categorically stated that his firm i.e. Jay Dayal Kapoor Distributing Co. is not doing any work from the premises in dispute.

22. With this background, it seems that the petitioners do not have any reasonably suitable alternative accommodation for the said business purpose except the *'tenanted premises'*, being in the market specialised in the said business and the other accommodations available are either residential in nature or occupied by the old tenants.

23. In view of the aforesaid discussion, this Court is of the considered opinion that the petitioners has proved all the necessary ingredients of Section 14 (1) (e) of Delhi Rent Control Act, 1958. **Accordingly, an eviction order is passed U/s 14 (1) (e) of DRC Act in favour of the petitioners and against the respondent** in respect of the shop with mezzanine situated at ground floor of property bearing No. 65 & 68, Ward No. IX, Chawri Bazar, Delhi (herein after referred to as *“tenanted premises”*). The site plan showing the tenanted portion in red colour is annexed with the petition. **This order shall not be executable before the expiry of six months from the date of this order as provided U/s 14 (7) of DRC Act.** Parties to bear their own costs. File be consigned to Record Room.

Announced through video
Conferencing on 05.10.2020

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

(This judgment contains 10 pages in total)