

(2010) 10 DEL CK 0243

In the Delhi High Court

Case No : R.C. Rev. No. 195 of 2010 and C.M. No. 14898 of 2010

Adarsh Electricals and Others

APPELLANT

Vs

Sh. Dinesh Dayal Karta Dinesh Dayal HUF

RESPONDENT

Date of Decision : 25-10-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Delhi Rent Control Act, 1958 — Section 14(1), 14D, 25B, 25B(8)

Citation : (2010) 173 DLT 518

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : Ravi Gupta and Manu Bansal, for the Appellant; V.B. Andley Rajinder Mathur and Rajesh Baneya, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—Present petition u/s 25B(8) of Delhi Rent Control Act, 1958 (for short as "Act") has been filed on behalf of petitioners for quashing of order dated 23rd March, 2010 passed by Additional Rent Controller, Delhi (for short as "Controller") vide which petitioners' application seeking leave to contest the eviction petition was dismissed and eviction order has been passed u/s 14(1)(e) of the Act, in favour of the respondent and against the petitioners.

2. Brief facts as per eviction petition are that respondent (petitioner in the trial court) is the owner/landlord of property known as "Kundan Mansion" bearing No. 1769 to 1772 and 1783 to 1785 Bhagirath Palace, Chandni Chowk, Delhi.

3. Petitioner No. 1 (respondent No. 1 in the trial court) a partnership firm, is a tenant in the portion consisting of one hall, two rooms, two verandahs, latrine and open court yard, as shown in red in the site plan annexed with the eviction petition. The premises in question were let out for office-cum-showroom and godown purposes at a monthly rent of Rs. 980/-.

4. It is stated that premises are required bonafide by the respondent for himself

for setting up his professional office and he has no other suitable accommodation for this purpose. Respondent was enrolled as an Advocate in 1969. He practiced as an Advocate with Shri Vishnu Bhagwan Andley, Advocate, till he joined Delhi Judicial Service in 1973. He was working as Additional District & Sessions Judge, In-charge Karkardooma Court, at the time of his superannuation on February 29, 2008. Thereafter, respondent started his own practice as an Advocate. He now requires the premises to set up his professional office.

5. Thirty six tenants occupy the entire property known as "Kundan Mansions". Respondent sold some portions of the property during the period 2000 to 2004, as he had no need of the premises at that time. Premises in dispute are situated on the ground floor in a busy market and are most suitable for setting up an office. No other tenant on the ground floor in the property at Bhagirath Palace has sufficient or suitable space where the respondent could set up his professional office.

6. Respondent is residing at 9, Upper Bela Road, Civil Lines, Delhi, which is a purely residential property. Respondent does not have enough space to set up an office nor would he like to set up his professional office at his residence. Respondent has only one drawing room, one dining room, two bed rooms, one pooja room, kitchen, a store under the stair case, two bathrooms, one garage and a servant quarter. A portion of front verandah has been perforce converted into an ad-hoc study. It measures only 8" x 10" and has no separate entrance. As such it is wholly inadequate and unsuitable for use as professional office. The family of the respondent consists of himself and his wife. They have two married daughters who stay in Delhi and often come to stay with the respondent with their family, which includes their husbands and two children each. Respondent is already short of one bedroom. Thus, there is no space in the said property to set up an office.

7. Respondent is also the owner of Flat No. 1-E at First Floor, along with parking in the basement in DCM building, Barakhamba Road, New Delhi. This property has been in the tenancy of M/s Cottage Industries Expositions ever since the respondent purchased it, and at present it fetches a monthly rent of Rs. 70,000/-. Respondent cannot forego the substantial income received from the said property. The current lease of the said property is up to February 15, 2010. Even otherwise, the said flat is one of the several flats occupied by M/s Cottage Industries Expositions and flats on both sides of respondent's flat are in occupation of the said tenant.

8. In affidavit filed along with application for leave to contest, it is stated by the petitioners that the owner of premises is "Dinesh Dayal HUF", which is by itself a legal entity. Such an "entity" (i.e., somebody other than a natural person) is not entitled to prefer a petition u/s 14(1)(e) of the Act, for the need purported of its Karta. On this score alone, petitioners are therefore, ipso facto entitled to leave to defend the present eviction petition.

9. It is further stated that premises in suit are situated in a highly over-crowded and grossly congested area where there are acute restrictions on traffic - including parking of vehicles. The office of any successful professional cannot be located in such an area. The petition has been preferred by the respondent with a malafide intention to earn "pugree" from a commercial area which has enormous potential for "pugree" and intellectual property rights. Had the intention of the respondent been bonafide, he would have disclosed how much accommodation in this building is already with him, as also as to how respondent has dealt with the other portions of "Kundan Mansion" as also how he now intends to utilize the vacant portions of this building, which are lying locked under his own lock and key.

10. The facts relating to how many portions of this property have been sold or even let out by respondent after he became the Karta of HUF and to whom and for what consideration, having not been disclosed with accuracy only goes to show and establish that respondent has no intention to personally use the premises in suit. Had the particulars been disclosed and/or furnished, petitioners would have had an opportunity to verify the facts from the transferee(s) and would have been in a position to bring before the Court clear picture that the petition has not been moved bona fide. In absence of the clear and cogent facts it only goes to show without saying that the present petition is based on vague and indefinite averments. Due to the concealment of these relevant facts, present petition is not maintainable.

11. It is further alleged that respondent has malafide designs in getting the premises evicted under the garb of Section 14(1)(e) of the Act in view of the recent pronouncement of Supreme Court. Respondent has ill designs to convert the large area of the premises in suit and particularly the rear court yard into small shops, and then sell the same on huge prevailing "pugree".

12. Further, respondent landlord has deliberately not placed on record a correct and complete copy of the site plan of the extensive accommodation actually available to him and which is even today used and occupied by him.

13. It is further alleged that respondent, who is a practicing Advocate in the High Court intends to set up his professional office in the demised premises. Admittedly, respondent/landlord has recently sold several shops and offices in the vicinity of the premises in suit for astronomical amounts and has invested the said funds in lucrative investments and proposals, which are yielding him high returns. He has admittedly in the year 2007 let out prime office accommodation on the first floor of a very prestigious office building on Barakhamba Road, New Delhi, at a rental of Rs. 70,000/- per month.

14. It is further alleged that admittedly and apparently respondent has not furnished the details of the cases handled by him (as an Advocate) so far, after retirement. He has not annexed with the petition record of professional work if any, which he is discharging and which may justify that the purported need of

respondent for professional activity is bona fide. In the absence of details and due particulars in the text of the eviction petition and particularly on admitted facts that respondent got enrolled afresh as an Advocate only on 24th March, 2008, petitioners are entitled to leave to defend to establish that on facts the alleged need of the respondent is neither immediate nor bonafide.

15. Lastly the accommodation-residential as well as non residential - available with respondent is not only sufficient, suitable and/or reasonable for his needs in the profession more so when his daughters are married and well settled. They are admittedly living separately and happily in their respectively matrimonial homes.

16. In reply to the leave application, respondent has controverted the averments made by the petitioners.

17. It is contended by learned Counsel for the petitioners that it is well settled law that where eviction is sought on the ground of bonafide requirement in respect of commercial property, then in that case requirement cannot be ascertained without proper trial in the matter because, the word "requires" as defined and understood u/s 14(1)(e) of the Act, involves something more than a "mere wish" and it has to necessarily have in it an element of genuine present need. The whole emphasis of the requirement is on the element of genuine need which has to be established.

18. It is further contended that where a tenant discloses on affidavit relevant facts, grounds and pleas which prima facie, establish a triable issue or a plausible defence, i.e., a cause which prima facie is not baseless and unreal, the Court is obliged to grant leave to defend his case against the eviction sought by the landlord. It is also settled law that the enquiry envisaged for the said purposes is a summary enquiry to prima facie find out the existence of reasonable grounds in favour of the tenant. In the present case, petitioners have raised various issues which clearly entitle the petitioners to the grant of leave to defend the eviction petition filed by the respondent. Thus, impugned order is liable to be quashed on this ground also.

19. Further, it is the admitted case that respondent had let out prime commercial premises situated at Barakhama Road in 2007 itself. Had the respondent any bonafide need for establishing an office, as alleged, or that he was seriously desirous of establishing his professional carrier, he would not have let out the said premises a few days before attaining superannuation. Otherwise also, the shop in question is situated in a commercialized area with poor accessibility and by no stretch of imagination a person having suitable sufficient accommodation at prime location and in heart of Delhi would like to have an office in area like Chandni Chowk for running a professional office. The market in which the premises in question is situated is a commercial area, where no offices are being run. There are only shops and godowns which are being run in the entire market. Further, the shop in question is situated on ground floor of the market from

where an office of a Lawyer, as proposed by respondent, cannot be run because the same is situated in a highly congested area where there is no parking facility, nuisance in the sense of noise, pollution, congestion and no office for any professional purpose can be run from at such location for want of ingress and egress.

20. It is further argued that on the first floor admittedly, only 2 shops have been sold to some third parties and ownership in respect of rest of the shops remains with respondent. On first floor, most of the shops are lying locked and the alleged tenants therein, if any, are not in actual need of the same. Had been any need in respect of running of an office, respondent could have filed a petition for eviction against the alleged tenants at First Floor, as most of the shops on first floor are admittedly lying locked. A large portion of area on second floor where one Mr. Shyam K. Gupta is an alleged tenant, is lying locked and has not been used for years and considering the congestion and noise on the ground floor in the area, the same portion on the second floor or first floor could be more beneficial for running an office.

21. Lastly, the eviction petition as per allegations at best discloses a desire and it does not disclose the bonafide requirement of the respondent to actually use the premises. Under these circumstances, petitioners are entitled to leave to contest since they have raised triable issue.

22. On the other hand, it is contended by the learned Counsel for respondent that there is no dispute with regard to the relationship of landlord and tenant between the parties as well as there is no dispute with regard to the ownership.

23. The respondent having retired from the Government Service now requires to practice as an Advocate, for which he wants to have a sufficiently large accommodation to accommodate his huge library of law books. He needs space for waiting area for clients, space for conference and consultation rooms. The premises at Upper Bela Road, Civil Lines, Delhi, is a residential one. As far as premises at Barakhamba Road, New Delhi are concerned, the same are under the occupation of a tenant and it fetches a rent of Rs. 70,000/- per month to the respondent. It is the choice of the landlord as to which premises he requires for his personal use and the tenant has got no right to dictate as to in which premises the landlord should have his office.

24. Other contention is that, respondent has never asked any of his tenant, either to increase the rent or vacate the premises and has never taken any premium or puggree from any person. Petitioners have failed to point out as to which portion in "Kundan Mansion" are lying vacant or in possession or control of the respondent. It is not for the tenant to ask how the landlord should deal with the property and which property is most suitable for his use.

25. In support of its contentions learned Counsel for respondent has cited a decision of this Court, Mukesh Kumar v. Rishi Prakash 2009 (2) RCR 485.

26. There is no dispute about relationship of landlord and tenant between the parties. As far as letting purpose is concerned, same is for non residential purpose. In Satyawati Sharma (Dead) by LRs. Vs. Union of India (UOI) and Another, Supreme Court has held.

The premises let out either for residential or commercial purposes can be got vacated by the landlord for bonafide requirement.

27. Present petition has been filed u/s 25B(8) of the Act. A Full Bench of this Court in Mohan Lal v. Ram Chopra and Anr. 1982 (2) RCJ 161 exhaustively considered the provisions of Section 25B of the Act. On the scope of the proviso to Sub-section (8) of this Section, after examining the judgment of Supreme Court in Hari Shanker and Ors. v. Rao Girdhari Lal Chowdhury AIR 1963 S.C. 698 and Bell and Co. Ltd. Vs. Waman Hemraj, it was laid down as follows:

In our opinion the jurisdiction of the High Court under proviso to Section 25B(8) has to be interpreted, keeping in view the legislative intent. The revision u/s 25B(8) cannot be regarded as a first appeal and nor can it be as restricted as the revisional jurisdiction u/s 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. 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.

28. Upon examination of above judgment it may safely be held that this Court in exercise of the powers vested by proviso to Sub-section (8) of Section 25B of the Act may reappraise the evidence only for a limited purpose of ascertaining whether the conclusion arrived at by the Rent Controller were wholly unreasonable that no reasonable person acting with objectivity could have reached on the material available to test the order of the Rent Controller on the touchstone of whether it is in accordance with law.

29. In Praveen Jain and Ors. (Shri.) v. Dr. Mrs. Vimla 2009 IV AD (Delhi) 653, this Court observed;

The powers of this Court u/s 25B(8) are not appellate powers and this Court has only to see that the Trial Court had acted in accordance with law and not transgressed the limits of its jurisdiction.

30. In Rajender Kumar Sharma and Others Vs. Smt. Leela Wati and Others, the court observed;

Section 25B was inserted by the legislature in Delhi Rent Control Act as a special provision for eviction of the tenants in respect of specified category of cases as

provided therein. Where a landlord seeks eviction on the basis of bonafide necessity, a summary procedure is provided and tenant has to seek leave to defend disclosing such facts which disentitled the landlord from seeking eviction.

31. In *Shri Nem Chand Daga Vs. Shri Inder Mohan Singh Rana*, it was held;

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

32. In *Frank Anthony Public School Vs. Amar Kaur*, it was held;

The legislature has devised a "special procedure for the disposal of the application for eviction on the ground of bonafide requirement". It is modelled on Order XXXVII of the Code of Civil Procedure. The object is to reduce delays in litigation. The object is to introduce a "summary trial" in place of full length trial.

33. In *Sarwan Dass Bange v. Ram Parkash* 2010 IV AD (Delhi) 252, observations made by Supreme Court in *Baldev Singh Bajwa Vs. Monish Saini*, have been quoted as under;

It was held that the legislative intent is of expeditious disposal of the application for ejectment of tenant filed on the ground of requirement by the landlord of the premises for his own occupation; a special category of landlords requiring the premises for their own use has been created; if there is any breach by the landlord, the tenant is given a right of restoration of possession; the landlord who evicts a tenant on the ground of own requirement is not only prohibited from letting out the premises or disposing of the same but also required to use the same for his own residence only. It was held that these restrictions and conditions inculcate in built strong presumption that the need of the landlord is genuine; the conditions and restrictions imposed on the landlord make it virtually improbable for the landlord to approach the Court for ejectment of tenant unless his need is bona fide - 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 requirement shall be presumed to be genuine and bona fide. It was further held that a heavy burden lies on the tenant to prove that the requirement is not genuine. 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.

34. Trial court in its impugned order observed;

Though the site plan filed by the petitioner is alleged to be farcical but, on the other hand respondent has not filed any counter site plan to contradict the correctness of the site plan of petitioner therefore, this plea does not carry any weight in the absence of any contrary material/document placed on record. In the circumstances, site plan filed by the petitioner only is to be believed as true and correct.

35. Trial court further held;

As per the petitioner, Flat No. 1-E at the DCM Building is already in tenancy of M/s Cottage industries Exposition. Now, even if the contention of Ld. Counsel for respondent be assumed as correct that the petitioner is having rental income of 70,000/- per month from the said property, then also it does not give any advantage to the respondent in these eviction proceedings, because as per law, the respondents have no right to argue over the income earned by the petitioner. Conversely, if the petition is earning a huge amount of Rs. 70,000/- from a property, then why he would prefer to get it evicted from the tenants instead of the premises in dispute of which the monthly rent is admittedly Rs. 980/- per month only. Besides, as per the petitioner, said tenant occupies the other properties situated on each side of the said flat of the petitioner, therefore, office of the petitioner would have been sandwiched making it uncomfortable for the petitioner.

36. Trial court further observed;

Further, it is submitted that petitioner has not furnished the details of the cases handled by him as an advocate so far after retirement. I find this plea ridiculous as in the eviction petition; the respondents/tenants have no right to ask for the petition's/landlord's assignments or his professional achievements as per settled law.

37. The Court further held;

In the present scenario, concept of law firms and team work has emerged due to bifurcation of the courts and specialization in the various legal areas e.g. intellectual property rights, cyber laws, corporate laws and arbitration etc. It requires a large space for different activities to be administered/handled in the separate portions like conference room, personal office, meeting room for arbitral proceedings etc;, staff room or small cabins for staff, rest/waiting room, pantry, toilet-bathroom etc. In these circumstances, I observe that petitioner has bonafide requirements for the use and occupation of the tenanted premises to start his legal profession.

38. Respondent/Landlord, in the eviction petition has categorically stated that;

Petitioner was enrolled as an Advocate in 1969 with enrolment No. D-177/69. He practiced as an Advocate with Shri Vishnu Bhagwan Andley Advocate till he

joined Delhi Judicial Service in 1973. He was working as Additional District & Sessions Judge, in-charge Karkardooma court at the time of his superannuation on Feb 29, 2008. Thereafter, the petitioner started his own practice as an advocate. He got his license renewed with the Delhi Bar Council and also became a member of the Delhi High Court Bar Association and his membership No. is 3885 dated 24-3-2008.

Petitioner now requires the premises to set up his professional office. He has not other reasonable suitable accommodation for the purposes of setting up his office. 36 tenants occupy the entire property known as "KUNDAN MANSION". The petitioner sold some portions of the property during the period 2000 to 2004 as he had no need of the premises at that time. Premises in dispute are situated on the ground floor in a busy market and are most suitable for setting up an office. No other tenant on the ground floor in the property at Bhagirath Palace has sufficient or suitable space where the petitioner could set up his professional office.

39. Respondent has further stated that he is residing at 9, Upper Bela Road, Civil Lines, Delhi of which he is the owner of half undivided share and this is a purely residential property and he does not have enough space nor would he like to set up his professional office at his residence.

40. With regard to no other suitable property, respondent has stated in the eviction petition that, though he is the owner of Flat No. 1-E, at First Floor in DCM Building at Barakhamba Road, New Delhi but this property is under tenancy and it fetches a monthly rent of Rs. 70,000/- and he cannot forego the substantial income being received from this property.

41. All the above averments made by respondent in the eviction petition, have nowhere been challenged by the petitioners in their affidavit filed along with the application for leave to defend.

42. Bare reading of above averments made in the eviction petition goes on to show that respondent requires the tenanted premises;

(i) For himself so as to set up his professional office;

(ii) He has no other reasonable accommodation for the purpose of setting of his office;

(iii) Thirty six tenants occupy the entire property in which disputed premises are situated;

(iv) The premises in dispute are situated on the ground floor in a busy market and are most suitable for setting up an office and no other tenant on the ground floor in the property at Bhagirath Palace has sufficient or suitable space where the petitioner could set up his professional office;

(v) Respondent is residing at 9, Upper Bela Road, Civil Lines, Delhi, which is a purely residential property and in that property respondent does not have

enough space to set up an office at his residence and

(vi) Lastly, the other accommodation owned by the respondent Barakhamba Road, New Delhi is already under the occupancy of the tenant.

43. Respondent in the eviction petition in clear and unequivocal terms has mentioned about his requirements. It is not only the "mere desire" of the respondent to get the premises vacated but he needs the same for above stated requirements. So, it cannot be said that respondent does not require the premises for himself for the purpose of opening an office.

44. The concept of alternate accommodation means that accommodation which is "reasonable suitable" for the landlord, which in this case is not, as that particular accommodation is a support of income to the family of the respondent. As to alternative accommodation disentitling the landlord to the relief of possession, it has been held time and again that it must be reasonably equivalent as regards suitability in respect to the accommodation he was claiming. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bonafide need or genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or too conservative or pedantic must be guarded against. It is to be observed that it would be incorrect to suggest that the question of accommodation, actually in possession of the landlord, being "reasonable suitable" is to be judged solely in the context of physical sufficiency of the accommodation and that the Court may hold that accommodation is insufficient having regard to various circumstances, such as, the social status of the family or traditions and customs observed by it. As long as the landlord is able to establish that he in good faith and genuinely wishes to occupy the premises in possession of the tenant and that good faith or genuineness is of a reasonable man, it would not be open to the Controller to weigh the claim of the landlord in a fine scale and that the viability of the other accommodation will have also to be considered from the stand-point of a reasonable landlord. It is further to be observed that the law does not require the landlord to sacrifice his own comforts and requirements merely on the ground that the premises is with a tenant and for deciding whether or not the alternative accommodation available to the landlord is suitable or not, the social customs, conventions and habits, usage and practices of the society cannot be completely ruled out and termed as irrelevant. The problem had to be approached from the point of view of a reasonable man and not that of a whimsical landlord.

45. In S.N. Kapoor (Dead) by his LRs. Vs. Basant Lal Khatri and ors, the Court observed;

No material has been brought on record and no proof has been made by the

tenant by any positive material that it is neither genuine nor bona fide or reasonable but a mere excuse to get rid of the tenant. Though the choice or proclaimed need cannot be whimsical or merely fanciful yet certain amount of discretion has to be allowed in favour of the landlady too and Courts should not also impose its own wisdom forcible upon the landlady to arrange her own affairs, according to their own perception carried away only by the interests or hardship of the tenant and inconvenience that may result to him in passing an order of eviction. In adjudging the claim u/s 14D what is required to be substantiated is that the landlady is a widow and that she wants the premises for her own residence and that the claim by her is bona fide and not a feigned one. So far as a claim u/s 14(1)(e) is concerned, the very requirement has to be shown not only to be bona fide but the move of the landlord/landlady to seek the eviction of the tenant must be genuine.

46. In *Sarla Ahuja Vs. United India Insurance Company Limited*, Apex court observed;

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

47. In *John Impex (Pvt.) Ltd. Vs. Dr. Surinder Singh and Others*, this Court held;

The conspectus of the aforesaid judgments shows that the broad principles have been set down of the requirement of a landlord not being a mere whim or fanciful but that it should be a genuine need of the landlord. It is only then that the requirement can be said to be bona fide within the meaning of u/s 14(1)(e) of the said Act. This would naturally require all the necessary matrix in terms of the factual averments and the evidence to be adduced in that behalf. Simultaneously it has to be kept in mind that the landlord is the best judge of his requirement and a tenant cannot dictate the terms on which the landlord should live. The bona fide requirement of the landlord would also depend on his financial status and his standard of living. The ARC found in favor of the landlord/owner and thus what has to be considered is whether there is any illegality or jurisdictional error in the impugned order and not to sit as an appellate court though the scope of scrutiny in a rent revision would be more than a revision petition u/s 115 of the Code of Civil Procedure, 1908.

48. In *Ram Babu Aggarwal v. Jay Kishan Das* 2009 (2) RCR 455, Supreme Court observed;

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

49. In *Mukesh Kumar* (Supra), this Court has observed;

A landlord, while seeking the eviction of a tenant on the ground of bona fide requirement for himself or his family members dependant upon him, is not expected to disclose the manner in which he is utilizing the accommodation available with him, if the accommodation with the tenant in respect of which he files the eviction petition is required by him for a purpose different from the purpose he is occupying and using the accommodation already available with him. For instance the extent of residential accommodation available with the landlord who seeks the eviction of the tenant from a purely commercial or industrial premises, is wholly irrelevant. Similarly, when in the present case, the requirement of the petitioner was for the purpose of setting up of the professional office of his son on the second floor of property No. 3649, it was not necessary for him to have disclosed in the eviction petition the fact that the ground floor, first floor, third floor and terrace floor portions of property No. 3649 were being utilized by him for the purpose of storing and stocking the goods in which he trades. The failure of the petitioner to disclose in the eviction petition itself, the manner in which the other portions of property No. 3649 were being occupied and used cannot ipso facto lead to the conclusion that the requirement of the landlord is not bona fide or that it raises a triable issue.

50. Thus, petitioners have failed to raise any triable issue in this case, which if proved might disentitle the respondent from getting an order of eviction in their favour. The trial court has given a detailed and reasoned order which does not call for any interference nor the same suffer from any infirmity or erroneous exercise of jurisdiction.

51. Present petition is hereby dismissed. Parties shall bear their own costs.

CM No. 14898/2010

52. Dismissed.