

**(2013) 11 DEL CK 0032**

**In the Delhi High Court**

**Case No :** Rc. Rev. No. 222 of 2013 and CM No. 9850 of 2013

Davinder Pal Singh and Others

APPELLANT

Vs

M/s. Pritam Prakash Dawar and Sons (HUF)

RESPONDENT

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**Date of Decision :** 06-11-2013

**Acts Referred:**

**Citation :** (2013) 11 DEL CK 0032

**Hon'ble Judges :** Manmohan Singh, J

**Bench :** Single Bench

**Advocate :** Sudhir Nandrajog, Mr. Preet Pal Singh, Ms. Payal Juneja and Ms. Priyam Mehta, for the Appellant; Gurmeet Singh Narula and Mrs. Kiran Bhardwaj, for the Respondent

**Final Decision :** Disposed Off

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## **Judgement**

Manmohan Singh, J.—Both these revisions petitions have been filed by two set of tenants u/s 25B of the Delhi Rent Control Act, 1958 (hereinafter referred to as the "DRC Act") against the order dated 24th January, 2013 passed by the Additional Rent Controller (South), Saket Courts, Delhi, whereby the leave to defend applications filed by the petitioners/tenants in both the matters were dismissed. The revision petition bearing No. 222/2013 has been filed by Davinder Pal Singh and two others, in respect of a Shop bearing Private No. 1 in property No. J-II/24B, Front Portion, Lajpat Nagar, New Delhi (in short, called the "Tenanted Premises No. 1"). Similarly, another revision petition bearing No. 223/2013 has been filed by Krishan Kumar Bhasin and three others also against the order dated 24th January, 2013 in respect of a Shop bearing Private No. 2 in the same property (in short, called the "Tenanted Premises No. 2"). As the facts and law points in both the petitions are same and admittedly, the landlord of both the tenanted premises is the same so as the grounds of eviction sought by him, therefore, both the petitions are being decided by a single common order. Common facts in both the matters as per the eviction petitions which were recorded, are as follow:-

(a) The respondent No. 1 which is an HUF has filed the two eviction petitions through its Karta Sh. Pritam Prakash Dawar.

(b) So far as the revision petition bearing No. 222/2013 is concerned, the facts are that the respondent-HUF is the owner/landlord of the tenanted premises No. 1 which was given on rent to Sh. Jagjit Singh and one Sh. Gurbax Singh, father of petitioners No. 1 & 3 and also respondents No. 2 & 3 herein (who were petitioners No. 1 & 5 before the learned trial Court) and husband of petitioner No. 2 vide Rent Deed dated 30th October, 1962 by the previous landlord Sh. Darbara Singh. Jagjit Singh, before his death on 14th August, 1998 parted possession of the said shop to Gurbax Singh. Since then, respondent No. 2 Harminder Singh was looking after the business of his father in the name and style of M/s. Sundarta Cloth House and the petitioners claim to be tenants being the legal heirs of Late Sh. Gurbax Singh. Respondent No. 4 herein claims himself to become a sub-tenant in the tenanted premises on the basis of partnership deed with respondent No. 2 herein without the written permission of the respondent-HUF on 1st April, 2007. The present rent is Rs. 55/- per month excluding electricity and other charges.

(c) As far as the revision petition bearing No. 223/2013 is concerned, the facts are that the respondent-HUF is the owner/landlord of tenanted premises No. 2 who was given on rent to Late Sh. Prakash Chand Bhain, father of petitioners No. 1 to 3 and husband of petitioner No. 4 vide Rent Deed dated 1st November, 1967 by the previous landlord Sh. Darbara Singh. The respondent-HUF purchased the said property in August, 1979 by way of a registered sale deed and the present rent is Rs. 66/- per month excluding electricity and other charges. The petitioners are doing the business from the tenanted premises No. 2 under the name and style of M/s. Krishna Opticals.

(d) Common facts are that the respondent-HUF (Hindu Undivided Family) through its Karta Sh. Pritam Prakash Dawar further stated that respondent-HUF is doing its business under the name and style of M/s. Kamaldeep as proprietorship from a rented shop J-II/23A, Lajpat Nagar, New Delhi having taken the same on rent from Sh. Ashwani Kumar and the Sh. Ashwani Kumar had also filed an eviction suit against the respondent-HUF in respect of J-II/23A, Lajpat Nagar, New Delhi.

(e) The Karta of respondent-HUF is also doing the same business at J-II/24A, Lajpat Nagar, New Delhi which is the personal property of the Karta. The Karta has two sons, namely, Chanchal Dawar and Anil Dawar. Chanchal Dawar has two sons, namely, Deepak Dawar aged 26 years and Lakshya Dawar aged more than 22 years at present. Sh. Chanchal Dawar is running his business in a separate portion in the backside of suit shop in the name and style of M/s. Sapna Agencies since 2005 due to non-availability of suitable premises for running the said business. The entrance gate of M/s. Sapna Agencies is opened in the middle of the shop of the respondent-HUF because of which the customers cannot approach the said shop easily which created difficulty to Chanchal Dawar to run

his business. Further, the other son of the Karta, Sh. Anil Dawar runs his business at LG-29, Crown Plaza, at 29th KM Stone, Sector 15A, Faridabad, Haryana and paying a rent of Rs. 20001/- per month excluding electricity and other charges since May 2005 due to non availability of the premises and the landlord of Anil Dawar had warned Anil Dawar to vacate the said premises as the said tenancy of Anil Dawar expired in May, 2011.

(f) The elder grandson of the Karta, namely, Sh. Deepak Dawar aged 26 years is of marriageable age, unemployed and is unable to do separate independent business because of non-availability of suitable premises and the other grandson Lakhsya Dawar aged more than 22 years and a graduate is also capable to handle separate business but cannot open any business due to non-availability of separate premises.

(g) All family members of respondent-HUF are dependent upon the Karta for the commercial purposes and the respondent-HUF needs the tenanted premises for the bonafide requirement for opening a showroom for sale of clothes and other business for their livelihood. Further, the petitioners have sub-let the tenanted premises despite a stay obtained by the respondent-HUF in a Civil Suit No. 504/08 and one Ved Prakash and Mohd. Anzum were doing independent and separate business in the suit shop.

(h) The respondent-HUF has received summons from the Court of Sh. Sandeep Yadav, Learned Rent Controller, Saket Courts, New Delhi in the eviction petition filed by Sh. Ashwani Kumar in respect of shop No. J-II/23A, Lajpat Nagar, New Delhi wherein he is a tenant.

2. The applications for leave to defend in both the matters were filed by the tenants who are petitioners herein, raising various pleas/grounds for grant of leave to defend. However, the learned Additional Rent Controller after completion of the pleadings in the applications for leave to defend and after having dismissed the applications, inter-alia, on the following grounds:-

(i) The learned trial Court on the issue of ownership of the tenanted premises noted that the relationship of landlord-tenant between the parties was admitted, however, it was contented by the petitioners that apart from the sale deed, there was no document placed on record by the respondent No. 1 to show the existence of the HUF. It was observed by the learned trial Court that the registered sale deed clearly showed that the said property is owned by respondent-HUF acting through its Karta and that the source of funds of the said HUF, the date and mode of the creation of the said HUF did not have any connection with the eviction petition. Further, it was opined that the two grandsons were naturally the members of the HUF and there was no requirement of leading any evidence in that regard.

(ii) With regard to the plea of res-judicata in respect of the earlier eviction petition filed by the respondent-HUF for the same property, it was observed that respondent-HUF at the outset of the eviction petition had categorically mentioned

that the petition had been filed under Order VII, Rule 13 CPC and since, the earlier petition was dismissed for want of cause of action, if the respondent-HUF is able to satisfy the requirements of Section 14(1)(e) of the DRC Act, the petition is not hit by principle of res-judicata.

(iii) With regard to the issue of the petition being hit by Order 2, Rule 2 CPC, it was observed that Order 2, Rule 2 CPC applies to cases where a plaintiff omits to sue a portion of the cause of action on which the suit is based either by relinquishing the cause of action or by omitting a part of it. The provision, therefore, had no application to cases where the petitioner based his petition on separate and distinct cause of action.

(iv) On the question of bonafide requirement and alternative suitable accommodation, it was observed in paras 27 and 28 of the order while deciding the eviction petition bearing No. E-21/11 as under:

27. The shop of Sh. Chanchal Dawar which is on the back side of the suit shop opens on the back lane which is a service lane whereas the suit shop is on the main road and it is matter of common knowledge that customers invariably flock to shops on the main road side. The need for connectivity of the back side shop with the front main road cannot be stated to be malafide. Further, the two grandsons Sh. Lakshay and Deepak Dawar have come of age and their requirements for independent commercial space to do the business cannot be stated as flimsy or sham. Further, the karta of petitioner Sh. Pritam Prakash Dawar himself have suffered an eviction order regarding his business being done in shop no. J-II/23 Lajpat Nagar and his need for space for re-adjustment of his business cannot be stated to be false. Even considering the fact that Sh. Pritam Prakash Dawar who is doing his business at J-II/24A which is a shop of 100 sq. Yards, it need to be noted that the same is the personal property of Karta. Petitioner has placed on record the copy of registered sale deed dated 16.07.68 which shows that Sh. Pritam Prakash Dawar is the owner of the shop no. J-II/24A, Lajpat Nagar, New Delhi in his personal capacity.

28. The petition has been filed by the karta on behalf of the members of HUF. It is a known fact that in a HUF property, there is community of interest and unity of possession. The individual property of the karta cannot be treated as part of the HUF property and cannot be equated to that of the HUF. Apart from the suit shop and the adjoining shop which is also subject matter of another eviction petition in which leave to defend is also being decided today, the respondents have failed to point out any other property belonging to the HUF. The other properties mentioned by the respondents admittedly do not belong to the HUF. Even otherwise, taking the said properties into account as well, it is clear that the family of the petitioner need more space to settle two grandsons. The contention of the respondent that first and second floor of the adjoining shop no. J-2/24A are lying vacant with the petitioner can't be accepted as it is not for courts to tell the landlord as to how and what he should do with his property to save the tenant from eviction. The court has to see that the requirement of the

landlord is bonafide. The difficulty faced by Sh. Anil Dawar in the tenanted premises at Crown Plaza who is paying a rent of Rs. 20001/- cannot be lost sight off. Further, the property K-II/42, Lajpat Nagar which was acquired by the petitioner during the present petition is a residential property as the petitioner has placed on record the copy of the sale deed which shows the same to be the residential premises. Further, the said property has been purchased by the petitioner in his personal capacity and that too is a residential property at first floor which cannot be stated to be available to the petitioner to meet the bonafide requirement of his sons and grandsons.

(v) On the contention of the petitioners that the karta of the respondent-HUF is running a partnership with one Smt. Shashi Bala from C-33, Amar Colony, New Delhi, it was observed by the learned trial Court that the conducting of a partnership business by the karta of the respondent-HUF along with someone conducting the same from different location does not in any manner affect the requirement of the respondent-HUF. Similarly, it was observed that the conducting of business by wife of Anil Dawar from a shop in GK-I did not in any manner provide suitable alternative accommodation to satisfy the bonafide need of the respondent and his sons and grandsons.

It was observed by the learned trial Court in para-31 as under:

31. The petitioner which is a HUF requires the suit shop along with the adjoining shop for the bonafide requirement of providing proper and direct access to the shop of one of its members Sh. Chanchal Dawar which is at the back of the suit shop and for need of settling the two grandsons of the Karta of the petitioner and for the need of Sh. Anil Dawar who is doing business from a tenanted premises in Faridabad and also or relocation of the own business of the karta on account of eviction order suffered by the karta of the petitioner in E-26/11 vide order dated 21.04.12 in respect of nearby shop no. J-II/23A, Lajpat Nagar, recently. Therefore, the said shop of Smt. Poonam Dawar cannot be said to be suitable alternative accommodation available with the petitioner HUF for the bonafide requirement of the members of the HUF. Accordingly, it is held that petitioner has no other suitable alternative accommodation available to satisfy the bonafide need of the members of the HUF.

3. With these observations, the impugned eviction orders were passed and aggrieved thereof, the petitioners have challenged the said orders in the present two petitions on the grounds, mainly, that the same suffer from legal infirmities and are contrary to the facts and the settled law.

4. Scope of interference in the revision petition:

The issue before this Court is, whether said findings call for any interference by this Court in revisionary jurisdiction in view of the facts and circumstances of the present case or not. It is settled law and it has been held from time to time by various courts that the revision u/s 25B 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. In other words, this Court has only to see whether the learned Rent Controller has committed any jurisdictional error and has passed the order on the basis of material available before it.

5. I have heard the learned counsel for the parties who have made their respective submissions in support of their respective cases.

6. In nut-shell, the case of the petitioners is that at the stage of deciding the application for leave to defend, the learned trial Court ought to have taken a prima-facie view, whether the grounds stated by the petitioners have triable issues or not and in case, the tenants make a strong case whereby the landlord is disentitled for obtaining the eviction order, then normally, the trial is necessary in the matter. A mere wish or desire is not a ground for bonafide plea. It was the case of the petitioners/tenants before the learned trial Court that the need of the landlord in the present case is neither genuine nor bonafide as there is more than sufficient accommodation lying vacant and unused in the possession of the respondent-HUF which is for commercial use. Therefore, the present cases are the cases of additional accommodation.

7. In case, the entire eviction petitions are read in a meaningful manner, it appears clearly that the requirement of the tenanted premises of the front shops, i.e. Shops No. 1 & 2 by the landlord are for his grandsons, as according to him, they have completed the studies and want to start their business. Overall, the case of the petitioners is as under:-

a) The respondent-HUF is the owner of adjoining property No. J-24/A, Lajpat Nagar, New Delhi wherein the same is doing the business under the name and style of the firm M/s. Kamal Deep and his son Chanchal Dawar is doing his independent business under the name of the firm M/s. Sapna Agency in the same premises No. J-II/24-A Lajpat Nagar, New Delhi and the area on the ground floor of the said property is 100 sq. yds., where the shops are being run by the father and son independently from each other.

b) There is a first and second floor of an area of about 100 sq. yds. Above the said shop No. J-24/A, Lajpat Nagar, New Delhi and also the second floor of almost having the same area above the said shop are commercial and are in the occupation of the respondent-HUF and are lying vacant since long under the possession of the respondent as the first and second floor were earlier with the tenants who vacated and thereafter the entire first and second floor having an area almost of the same size on each floor as that of the ground floor shop are lying unused vacant with the respondent-HUF.

c) The respondent-HUF has also got one more ground floor and other upper floor on the back of the suit premises bearing No. J-24-B, Lajpat Nagar, New Delhi and are also lying vacant unused in the possession of the respondent i.e. also meant

for commercial use and mostly in several shops on the back side on this road the back portion are being used for commercial purposes. The entire road on which this property No. J-II/24B Lajpat Nagar, New Delhi situated have been declared as commercial from ground to the top floor vide Urban Development Department Notification dated 15th September, 2006.

d) Sh. Pritam Prakash Dawar and Smt. Shashi Bala wife of Shri Roop Kishore Dawar are doing the partnership business under the name and style of M/s. Dawar and Sons and this business is being done in property No. C-33, Amar Colony, New Delhi.

e) Sh. Pritam Prakash Dawar has purchased another property bearing No. K-II/24 First Floor, Lajpat Nagar, New Delhi vide sale deed dated 26th August, 2011 and has the physical vacant possession of the area of the first floor measuring 100 sq. yds. (900 sq. ft. approx.), which is freehold property is now in possession of the respondent-HUF.

The total area of all these properties now in possession of the respondent-HUF is approx. 3600 sq. ft. (J-24A: ground floor, first floor and second floor of 900 sq. ft. each, newly purchased property K-II/24 of 900 sq. ft.) and also area of 500 sq. ft. approx. in the property at Amar Colony, New Delhi.

8. The petitioners have also filed documentary proof in support of the grounds raised in the applications for leave to defend. They have admitted that Sh. Pritam Prakash Dawar who is the Karta of the respondent-HUF along with his son Sh. Chanchal Dawar and his family members is residing at House No. 247, Sukhdev Vihar, New Delhi. His other son, Sh. Anil Dawar is residing in House No. 74-A, Sukhdev Vihar, New Delhi. The voting list showing their respective residences was placed on the record. It is stated by the petitioners that Sh. Anil Dawar is doing his independent business for the last number of years in Faridabad and it has come to the knowledge of the petitioners recently that his father has disowned him way-back in the year 1991. Copy of the public notice dated 24th December, 1991 in Hindustan Times is placed on record. The elder son of Sh. Pritam Prakash Dawar, namely, Sh. Chanchal Dawar is doing business jointly in the Shop No. J-2/24-A, Lajpat Nagar, New Delhi with his father and the customers of both come from the front side of the shop and both the father and son are very conveniently doing their business having the entrance from the front. The specific averments have been made by the petitioners that the entire road on which the Shop No. J-2/24-A, J-11/24-A and K-42, Lajpat Nagar, New Delhi are situated, has been declared as commercial from the ground to top floor. The petitioners have filed the notification dated 15th September, 2006 issued by the Urban Development Department, Government of NCT, Delhi.

9. Mr. Sudhir Nandrajog, learned Senior counsel appearing on behalf of the petitioners has not disputed the preposition of law. However, his main submission is that the present case is admittedly the case of additional accommodation sought by the respondent-HUF, thus, the learned trial Court ought to have

granted the leave to defend. Mr. Nandrajog argues that the learned trial Court has wrongly applied the decisions rendered by the Apex Court as well as passed by this Court. He further submits that it is also the case of fanciful desire of the respondent-HUF who has sufficient commercial properties to adjust all dependent person, thus, bonafide requirement is not genuine. Even otherwise, the issues raised by the petitioners are triable issues. Therefore, the present petition is liable to be granted in view of the grounds raised.

10. The following decisions are referred by Mr. Nandrajog, learned Senior counsel in support of his submissions on additional accommodation:-

a) In the case of Santosh Devi Soni Vs. Chand Kiran, (2001) 1 SCC 255, wherein the Supreme Court observed on similar lines in relation to the case of the additional accommodation in the following words:

3. The short question is whether in the light of requirement put forward by the respondent-landlady who is who is a widow and is in occupation of the first floor of the building in which the suit premises are situated, leave to defend to the defendant/appellant could have been refused. As this is the case of additional accommodation and looking to the facts and circumstances of the case, especially in the light of the additional accommodation which is subsequently made available to the respondent as mentioned by the appellant. The question of the respondent's need was required to be thrashed out on merits by a full fledged trial. This court in the case of Dr. S.M. Misra v. D.D. Malik in Civil Appeal no. 120 of 1990 decided on 11.1.1990 has ruled that in the cases where additional accommodation is asked for in the proceedings under Delhi rent control Act, normally leave to defend should not be refused.

(Emphasis Supplied)

This court has already approved the view of the Supreme Court in Santosh Devi (supra) in number of cases decided recently including the case of M/s. S.K. Seth and Sons Vs. Vijay Bhalla, by observing that in the case which is seemingly of additional accommodation, the leave to defend should be granted in such a case.

b) Prahlad Rai Mittal vs. Rita Devi, 196 (2013) DLT 703, relevant para 15 reads as under:

15.....There is also no dispute that it is not open for the Court or the tenant to dictate what the landlord must do with his premises, but, at the same time, the landlord is required to demonstrate that the projected need of tenanted premises is genuine and authentic, and is not his mere wish and desire. It is not the subjective decision of the landlord alone, which would entitle him straight eviction order against the tenant, but the objective assessment by the Controller of the bona fide requirement of the landlord. It is not that whatever landlord would say, in every case, would be taken to be as gospel truth. If that was so, then, on the mere asking of every landlord that he needs the premises for doing his business and he is the judge and master of his decisions and choices, the

statutory protection afforded to the tenant, would become meaningless. That is not the intent of the legislation. The applicability of above proposition is only after the landlord is able to demonstrate that his assertion of requirement of the tenanted premises is authentic and genuine. If he is able to show and demonstrate so, then certainly neither the tenant nor this Court could dictate terms upon him as to how and in what manner he should utilize his premises. The projected requirement of the tenanted premises, based on his subjective decision, is required to be tested by the Court.

c) Ganga Dass Vs. D.N. Singhal and Another, , relevant para 7 reads as under:

7. Moreover, it is not the case of the petitioner that he is not in possession of any other alternate property. Admittedly, the petitioner runs a "dhaba" from a shop in the premises. Hence, this effectively becomes a case of requirement of additional accommodation. It is settled legal position that in such cases, the leave to defend must ordinarily be accorded to the tenant. In Santosh Devi Soni vs. Chand Kiran 2000 AIR SCW 4916, it has been held that when it is a case of additional accommodation for the landlord, leave to defend should normally be not refused to the tenant. Hence, the order of the Id. ARC cannot be faulted with.

d) Jagdish Lal Khorana Vs. Hemant Arora, , relevant para 9 reads as under:

9. I am aware of the fact that there is no dispute with regard to the proposition that a landlord is entitled and also under an obligation to help his sons to set up their businesses and make them available accommodation and could seek eviction of the tenant on this ground, but, at the same time, this requirement of the landlord is required to be assessed objectively by the Controller. It is not just the fanciful desire of the landlord that in every case, the projected requirement for such purposes would be taken to be as genuine and authentic. In view of the fact that both the sons of the petitioner are independently settled in their businesses and undisputedly, not living with the petitioner, but away from him alongwith their families, this aspect would be required to be tested as to whether they are dependent upon him for accommodation or not. Further, it was also required to be tested as to whether they really and genuinely intended to have their regional and marketing offices, and further, as to whether the suit shops were suitable for the same or not. All these aspects would be required to be evaluated, examined and adjudicated by the Controller. Similarly, for the same reasons, the projected requirement of the grandsons for opening retail outlets, would also be required to be objectively tested by the Controller. Except the mere asking of the petitioner/landlord, there is nothing on record to substantiate his projected requirement of the suit shops for his sons and grandsons.

11. Mr. Gurmeet Singh Narula, learned counsel for the respondent-HUF argued that there is no infirmity in the impugned orders. There is no force in the submissions of the petitioners which are raised by them as to the bonafides of the respondent-HUF. The impugned orders hold that there exists no disputed question of law which is required to be examined in the trial. Therefore, this

Court should not interfere with the findings of the learned Addl. Rent Controller merely by taking a different view when the order is passed in accordance with law.

12. Learned counsel for the respondent-HUF has also relied upon the following decisions in support of his submissions:-

- a) Amar Chand Jain Vs. Dewan Sales Corporation, RC. Rev. No. 525/2011 decided on 6th August, 2012.
- b) Ragavendra Kumar Vs. Firm Prem Machinery and Co.,
- c) Rajender Kumar Sharma and Others Vs. Smt. Leela Wati and Others,
- d) S. Harbant Singh Sahni and Another Vs. Smt. Vinod Sikari,
- e) Subhash Chand Gupta Vs. Yoginder Kumar Raj Kumar,
- f) Sh. Surinder Singh Vs. Sh. Jasbir Singh,
- g) Kharati Ram Khanna and Sons Vs. Smt. Krishna Luthra,
- h) Vijay Aggarwal Vs. Emirates Bank International,
- i) Adarsh Electricals and Others Vs. Sh. Dinesh Dayal Karta Dinesh Dayal HUF,

13. It is clear from the Scheme of the DRC Act that the Proviso (e) to Section 14(1) is a special provision which has been enacted by the legislature for the purpose of providing the benefit to the landlords who require the premises genuinely and their requirement is bonafide if they do not have any suitable accommodation. Two essential ingredients for attracting the proviso (e) of the Section 14(1) are:

- a) The said premises are bonafide required by the landlord either for himself or for his family member.
- b) The landlord or the family member has no other reasonable suitable accommodation.

In the absence of even one of the said ingredients clearly makes the said provision inapplicable and normally, leave to defend is also to be granted at the first instance itself.

14. The satisfaction of the two requirements bonafide need and no reasonably suitable accommodation has been time and again emphasized by the Supreme Court of India in several cases and more recently in the case Deena Nath Vs. Pooran Lal, wherein the Supreme Court observed thus:

The Legislature in enacting the provision has taken ample care to avoid any arbitrary or whimsical action of a landlord to evict his tenant. The statutory mandate is that there must be first a requirement by the landlord which means that it is not a mere whim or a fanciful desire by him; further, such requirement

must be bonafide which is intended to avoid the mere whim or desire. The "bonafide requirement" must be in presenti and must be manifested in actual need which would evidence the Court that it is not a mere fanciful or whimsical desire. The legislative intent is made further clear by making the provision that the landlord has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned. This requirement lays stress that the need is pressing and there is no reasonably suitable alternative for the landlord but to get the tenant evicted from the accommodation. Similar statutory provision is made in sub-section (e) of Section 12(1) of the Act in respect of accommodation let for residential purposes. Thus, the legislative mandate being clear and unambiguous, the Court is duty-bound to examine not merely the requirement of the landlord as pleaded in the eviction petition but also whether any other reasonably suitable non-residential accommodation in his occupation in the city/town is available. The judgment/order of the court/authority for eviction of a tenant which does not show that the court/authority has applied its mind to these statutory requirements cannot be sustained and the superior court will be justified in upsetting such judgment/order in appeal/second appeal/revision. Bonafide requirement, on a first look, appears to be a question of fact. But in recording a finding on the question the court has to bear in mind the statutory mandate incorporated in Section 12(1)(f). If it is found that the court has not applied the statutory provisions to the evidence on record in its proper perspective then the finding regarding bonafide requirement would cease to be a mere finding of fact, for such erroneous finding illegally arrived at would vitiate the entire judgment.

(Emphasis Supplied)

15. The wordings "reasonably suitable accommodation" are to be examined by the Courts from the eyes of common person's prudence. It should be seen as to whether in the particular case a person has a reasonably suitable accommodation or not to reside or to carry on business. If the answer comes in affirmative, then no matter what the landlord says in order to evict the tenant that the provisions of Section 14(1)(e) of the Act does not get attracted. In other types of cases where the answer is negative, then no matter what the tenant states to refute the reasonableness and suitability of the accommodation, the eviction has to follow. These factors are merely inclusive and not exhaustive which may enable to court to arrive at the finding as to what can constitute the reasonably suitable accommodation. There is no straight jacket formula to determine what can be reasonably suitable accommodation available with the landlord and it cannot be certainly only depends upon the demands of the landlord. Thus, one cannot really say that one proposition, which may hold good in one case can be equally applied to another case with equal strength without seeing the difference in the facts of the case. Where there is a doubtful case whether a particular accommodation can or cannot act as reasonably suitable accommodation in such cases too, the Courts should postpone the decision making of reasonableness and suitability of accommodation as a fact finding to the trial rather than to evict

the tenant by granting the leave to defend.

16. It is not the thumb rule that in every case the landlord always is the best judge and the court is helpless by not scrutinizing the stand of the tenant while testing the reasonableness and suitability of the alternative accommodation. Actually it depends upon case to case basis. The Courts in many cases have held that even though the landlord is the best judge to decide his needs and he cannot be compelled by the tenant to accommodate at the place which is lesser in any way than the place which is sought to be evicted, still the court would examine the reasonableness and suitability of the existing accommodation by weighing what is available with the landlord vis-?-vis the plea of the tenant.

In the case of P.S. Devgun Vs. P. Walia, this Court observed thus:

Although the landlord is entitled to be more comfortable by occupying his own house and in deciding his needs the social customs, habits, etc. cannot be completely ruled out, the landlord has to establish to the satisfaction of the controller that firstly, he requires the residential premises bonafide for occupation as a residence for himself and/or for any member of his family dependent upon him and secondly, there is no other reasonably suitable accommodation available with him. The landlord cannot urge that he is an arbiter of his needs. The required satisfaction must be done objectively and cannot be left entirely to the subjective will or mind of the landlord.

(Emphasis Supplied)

17. The Supreme Court in the case of M.M. Quasim Vs. Manohar Lal Sharma and others, which is a three bench decision passed by the court speaking through Hon"ble Desai, J. (as His Lordship then was) has categorically flawed this approach of mechanically stating that the landlord is the best judge without applying a judicious approach in the matter. In the words of Hon"ble Desai, J. it was observed thus:

Before turning to the next topic, a word about the judicial approach to the question of personal requirement of the landlord under the Rent Act would not be out of place. The learned judge of the first appellate court while upholding the claim of personal requirement of respondent 1 has observed as under:

It is for the plaintiffs to decide whatever they think fit and proper. It is not for the defendant to suggest as to what they should do. The defendant has led evidence to show that the plaintiffs have got some more houses at Giridih....The defendant appellant has also filed certified copy of judgment of one suit No. 47/73 which is Ext. only to show that plaintiffs have got a decree for eviction with respect to the other house at Giridih. I have already pointed out earlier that it is for the plaintiffs to decide which of the houses is suitable for them. It is not for the defendant to suggest that the house which will fall vacant in the near future is most suitable house for the plaintiffs.

This approach betrays a woeful lack of consciousness relatable to circumstances

leading to enactment of Rent Acts in almost all States in the country. The time honoured notion that the right of re-entry is unfettered and that the owner landlord is the sole judge of his requirement has been made to yield to the needs of the society which had to enact the Rent Acts specifically devised to curb and fetter the unrestricted right of re-entry and to provide that only on proving some enabling grounds set out in the Rent Act the landlord can re-enter. One such ground is of personal requirement of landlord. When examining a case of personal requirement, if it is pointed out that there is some vacant premises with the landlord which he can conveniently occupy, the element of need in his requirement would be absent. To reject this aspect by saying that the landlord has an unfettered right to choose the premises is to negative the very *raison d'être* of the Rent Act. Undoubtedly, if it is shown by the tenant that the landlord has some other vacant premises in his possession, that by itself may not be sufficient to negative the landlord's claim but in such a situation the Court would expect the landlord to establish that the premises which is vacant is not suitable for the purpose of his occupation or for the purpose for which he requires the premises in respect of which the action is commenced in the Court. It would, however, be a bald statement unsupported by the Rent Act to say that the landlord has an unfettered right to choose whatever premises he wants and that too irrespective of the fact that he has some vacant premises in possession which he would not occupy and try to seek to remove the tenant. This approach would put a premium on the landlord's greed to throw out tenants paying lower rent in the name of personal occupation and rent out the premises in his possession at the market rate. To curb this very tendency the Rent Act was enacted and, therefore, it becomes the duty of the Court administering the Rent Act to bear in mind the object and intendment of the legislature in enacting the same. The Court must understand and appreciate the relationship between legal rules and one of necessities of life-shelter-and the way in which one part of the society exacts tribute from another for permission to inhabit a portion of the globe. In "The Sociology of Law", edited by Pat Carlen, the author examines the rent and rent legislation in England and Wales and observes as under: "The prevailing paradigms of neo-classical economics and empiricist political theory have determined the conceptual insularity of law and legal institutions, with the result that they and other social events appear as random existences independent of their historical formation. The force of any theory of law must of course lie in its explanatory power, and this in turn depends on the wider image of social relations which produces it.

(Emphasis Supplied)

18. In the present case, the Family Tree (Dawar's HUF Members) is as under:-

19. Learned counsel for the respondent-HUF has not denied that Sh. Pritam Prakash Dawar who is the Karta of the respondent-HUF has ground floor of front shop (commercial space) at J-24-A, Central Market, Lajpat Nagar-II, consisting of 900 sq. ft. area. He has also not denied that the first floor and the second

floor are in the possession of Sh. Pritam Prakash Dawar. According to the respondent, the first floor and second floor of the said property can be used for residential purposes. Counsel stated that the said property is the individual property of Sh. Pritam Prakash Dawar who is running the business under the name and style of M/s. Kamal Deep from the ground floor. He has also admitted that Sh. Chanchal Dawar son of Sh. Pritam Prakash Dawar is running the business under the name and style of Sapna Agencies in the middle shop from the backside, therefore, he is facing problem in the business as customers could not approach directly.

20. With regard to the other properties, i.e. J-II/24-B, Central Market, Lajpat Nagar-II, New Delhi, it is admitted by the respondent that the said property is owned by Sh. Pritam Prakash Dawar and the HUF where the petitioners are using the tenanted premises from the Shops No. 1 & 2 of front side. The respondent has not denied that the respondent has been using the ground floor at the backside of the said property as well as the basement which is being used for storage. The respondent has also not denied that recently, Sh. Pritam Prakash Dawar has purchased another property, i.e. K-42, First Floor, Lajpat Nagar-II, New Delhi. However, the reason given by him is that it is not a commercial, though the case of the petitioners is that the said area is a commercial property. The respondent had denied that even C-33, Amar Colony, Lajpat Nagar is a commercial property. With regard to carrying on business by Smt. Poonam Dawar, it is stated by the petitioners that she is doing the business from the rented premises for the last many years.

21. It is also the case of the respondent that the petitioners in the revision petition bearing No. 222/2013 has inducted sub-tenant in the tenanted premises in their occupation. The details of the same are also given in the eviction petition.

22. It is well settled that the scope of the enquiry of the controller who is seized of the application seeking leave to defend is confined to see the affidavit and enquire as to whether there is tenable ground which has been made out which can casts doubts as to the bona fide need or the availability of the alternative accommodation requiring trial in the proceedings. If yes, the controller is bound to grant the leave to defend as per the statutory mandate and otherwise no. While deciding the leave to defend, the controller is not expected to examine the success or failure of the plea raised but has to examine merely a tenable case. The controller is estopped in view of settled law from recording a finding as to disputed questions of fact. All the above stated propositions of law has been laid down in the case of Charan Dass Duggal v. Brahma Nand, (1983) 1 SCC 301 speaking through Hon''ble Desai, J. observed thus:-

5. What should be the approach when leave to defend is sought? There appears to be a mistaken belief that unless the tenant at that stage makes out such a strong case as would non-suit the landlord, leave to defend cannot be granted. This approach is wholly improper. When leave to defend is sought, the tenant must make out such a prima facie case raising such pleas that a triable issue

would emerge and that in our opinion should be sufficient to grant leave. The test is the test of a triable issue and not the final success in the action (see *Santosh Kumar v. Bhai Mool Singh*). At the stage of granting the leave parties rely in support of their rival contentions on affidavits and assertions and counter-assertions on affidavits may not afford such incontrovertible evidence to lead to an affirmative conclusion one way or the other. Conceding that when possession is sought on the ground of personal requirement, an absolute need is not to be satisfied but a mere desire equally is not sufficient. It has to be something more than a mere desire. And being an enabling provision, the burden is on the landlord to establish his case affirmatively. If as it appears in this case, the landlord is staying at Pathankot, that a house is purchased, may be in the name of his sons and daughters, but there may not be an apparent need to return to Delhi in his old age, a triable issue would come into existence and that was sufficient in our opinion to grant leave to defend in this case.

In the same judgment, in para 7 it is further observed:-

7. The genesis of our procedural laws is to be traced to principles of natural justice, the principal amongst them being that no one shall suffer civil or evil or pecuniary consequence at his back without giving him an adequate and effective opportunity to participate to disprove the case against him and provide his own case. Summary procedure does not clothe an authority with power to enjoy summary dismissal. Undoubtedly wholly frivolous defence may not entitle a person leave to defend. But equally a triable issue raised, enjoins a duty to grant leave. Maybe in the end the defence may fail. It is necessary to bear in mind that when leave to defend is refused the party seeking leave is denied an opportunity to test the truth of the averments of the opposite party by cross-examination and rival affidavits may not furnish reliable evidence for concluding the point one way or the other. It is not for a moment suggested that leave to defend must be granted on mere asking but it is equally improper to refuse to grant leave though triable issues are raised and the controversy can be properly adjudicated after ascertainment of truth through cross-examination of witnesses who have filed their affidavits. Burden is on the landlord to prove his requirements and his assertion is required to be tested more so when it is shown that for long he is staying outside Delhi, that he has a building albeit standing in the names of his sons and daughters where he is staying and at which place he receives his normal correspondence. If in such a situation one can say that a triable issue is not raised, one is at a loss to find out where, when and in what circumstances such an issue would arise. We are, therefore, satisfied that this is a case in which triable issues were raised and both the learned Rent Controller and the High Court were in error in refusing to grant the leave.

(Emphasis Supplied)

23. At the stage of application for leave to defend the learned court is only to see *prima facie* whether the grounds stated by the petitioners therein raises triable issue and not to see that the tenant has a strong case to make the landlord

disentitled from obtaining an eviction order and not to have a full trial on merits.

24. In nut-shell, the case of the respondent/landlord is that he requires the tenanted premises for his grandsons, namely, Lakshay Dawar and Deepak Dawar who are aged 22 years and 26 years respectively and are capable to work independently but they are unable to do so, on account of shortage of space. It is denied by the respondent that the first and second floors of the adjoining shop No. J-II/24-A can be used for commercial purposes by the respondent. However, it was specifically alleged by the petitioners that the first and second floors of the said property have been declared as commercial and even earlier the respondent's tenants were using the same for commercial purposes who have now handed over the possession of the said floors to the respondent.

25. The learned Additional Rent Controller held that the source of funds of HUF from the date and mode of creation of the HUF do not have any connection with the present case and there is no requirement of leading any evidence in this regard and this is not a triable issue. It is argued by the petitioners that on the face of the specific plea taken by the petitioners that excepting in the sale deed of the year 1979 where the word HUF has been mentioned, there is no other document on the record to show that the property in suit is HUF property and the learned trial Court was not correct in not accepting the plea of the petitioners. It was argued before the learned trial Court that HUF can be formed by two ways either the property is ancestral which is not applicable to this case, it has not been alleged that HUF had some business and from the funds of HUF business the property in suit was purchased nor there is any such averment on record about this fact and secondly HUF can be created by filing a declaration before the Income Tax Department giving the names of family members who would be the members of that HUF and there is no such document filed on the record to show how the HUF was created and who are the members of the HUF.

It was pleaded that the requirement of the suit premises in this case is for two grandsons, named, Deepak Dawar and Lakshay Dawar who are the sons of Sh. Chanchal Dawar, the son of Sh. Pritam Parkash Dawar alleged Karta of HUF. It is stated in the petition for eviction that they will earn and will help the respondent financially as these two grandsons for whom the accommodation is required were not even born when this suit property was purchased. There is nothing on record to show that the said grand sons are members of HUF and who are the members of the said HUF. It was argued that no document from Income Tax Department has been filed on the record to show that the said two grandsons are members of the alleged HUF for whose requirement the premises in suit are required.

26. In view of the above said averments made by the petitioners and as per the facts and circumstances of the case, the following issues are required to be tested at trial:

a) Whether the grandsons of Pritam Prakash Dawar are the members of respondent's HUF and are dependent upon the respondent.

b) Whether accommodation available with the respondent at the first and second floors of property No. J-II/24-A can be used for commercial purposes or the accommodation lying with the respondent at present is sufficient or not.

c) Whether the need of the respondent was/is genuine or bonafide or merely a desire.

d) Whether the entire road on which property No. J-24/A, J-24/B, Lajpat Nagar and K-42 are situated have been declared as commercial from the ground to top floor as per notification dated 15th September, 2006 issued by Urban Development Department.

e) In the revision petition, being RCR No. 222/2013, it is to be tested as to there are allegations against the petitioners raised by the respondent about the sub-tenancy created by the tenant to the tenanted premises.

27. The learned Controller erred in not testing the case of both the parties on the objective standards which is the requirement of the law for examining the reasonableness and suitability of the alternative accommodation. The learned controller ought not to have just simply observed that the landlord is the best judge to decide his requirement but failed to consider the plea of the petitioners of reasonable accommodation vis-à-vis the accommodation which the respondent is enjoying presently.

28. It is well settled principle of law by the Apex Court as well as this Court in catena of cases that in the cases where the eviction is sought by the landlord on the ground of the bonafide need and in case after seeing the material available on the record, it is found that the case in hand is essentially of the additional accommodation rather than having no alternative reasonably suitable accommodation, it becomes a doubtful case which requires the fact finding in the trial and the court should normally grant the leave to defend in such cases so that the question of the genuineness of the need can be thrashed out completely in the trial.

Applying the ratio of Santosh Devi (supra) to the instant case, it can be safely said that when the need of the respondent is broad based as the grandsons want to start the business after completion of studies in the future or likely to do their independent business or to join the business of the respondent, i.e. other members of the family who are already carrying on business. At present, they always can join them, therefore, the requirement qua the front portion of two shops, i.e. Private No. 1 & 2 at J-II/24-B, Lajpat Nagar, New Delhi becomes a case of additional accommodation rather than not having a reasonably suitable accommodation to carry out the business and thus becomes a doubtful case. Thus, it was improper to reject the leave to defend application at the summary stage.

29. The learned controller while ignoring the said proposition of law that wherever there are accommodations available with the landlord for the same

purpose, the seeking of eviction of the property, it becomes a case of additional accommodation which can cast doubts on the need or if not need then on the availability of reasonably suitable alternative accommodation clearly erred in law in testing the case of the parties while deciding the leave to defend application. The impugned orders arrive at the finding that there is no reasonably alternative accommodation, ignoring the principle of law governing the grant of the leave to defend in the doubtful cases involving the additional accommodation and thus, apparently suffers from legal infirmity and is not passed in accordance with law warranting the interference of this Court.

30. In the present cases, so far as the need of the grandsons is concerned, the said need or requirement is not felt in presenti which is the requirement of the law but is the need basing upon the likelihood in future which is again contrary to the judgments of the Supreme Court including *Dina Nath* (supra). Thus, the learned Controller ought not to have simply ignored the need of the respondent despite of the case of the respondent which casts doubts on the requirement of the respondent.

31. In view of the aforementioned discussion, it can be said that the order passed by the learned controller is not in accordance with law as the entire approach of the learned controller is legally flawed wherein the learned controller overlooks the availability of the alternative accommodation, ignores the principle of law governing the grant or non grant of leave to defend in the cases of additional accommodation, does not look at the broadly worded need which raise some doubts, do not weigh the case of the competing parties on objective standards while deciding the aspect of bonafides of the need, also records the findings on the disputed questions of facts which are impermissible in law as per the well settled position in law. Accordingly, the impugned order is not sustainable in law and warrants interference of this Court in view of triable issues raised by the petitioners.

32. Even, in the case of *Siri Pal Jain Vs. Brij Ksihore and Others*, , it has been held that in the case of eviction filed against the sub-tenants, the controller has to grant the leave to defend as it is upon the landlord to prove in the trial as to whether the said eviction order which has been sought against the tenant shall also be binding upon the other sub-tenants or not. The said issue is involved in the case bearing RC. Rev. No. 222/2013.

33. As I have arrived at the finding that the impugned order is not passed in accordance with law, I do not agree with the submission of Mr. Narula that this court is interfering merely to arrive at the different view or acting as a court of appeal on facts. I have already pointed out that there are number of legal infirmities in the order which vitiates the entire approach adopted by the learned controller while deciding the leave to defend application which clearly makes the order passed not in accordance with law.

34. In the result, the impugned orders dated 24th January, 2013 are set-aside.

The applications for leave to defend of the petitioners are allowed. The matters are directed to be listed before the concerned Additional Rent Controller on 19th December, 2013. In the meanwhile, the petitioners are allowed to file their written statement within four weeks from today. Replication thereto, if any, be filed within two weeks thereafter. The trial Court proceedings are directed to be expedited. The petitions are accordingly disposed of.