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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment reserved on: 23.09.2026***
Judgment pronounced on: 06.11.2026

CNR No. DLHC010609032024

\+ RC.REV. 254/2024, CM APPL. 53917/2024 (Stay) & CM APPL. 65495/2026 (Seeking direction filed on behalf of the petitioners)

SANJAY GOEL & ORS. ....Petitioners
Through: Mr. Jawahar Raja and Mr. Abhey Narula, Advocates

versus

MANJU SURI & ORS. .....Respondents
Through: Mr. O.P. Aggarwal, Advocate for R-1

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Rent Control Revision Petition has been preferred by the Petitioners under the proviso to Section 25B(8) of the **Delhi Rent Control Act, 1958**[1], assailing the **Order dated 13.05.2024**[2] passed by the **learned Additional Rent Controller (Central), Tis Hazari Courts, Delhi**[3] in RC ARC No. 796/2019, whereby the Application seeking leave to defend filed by the Petitioners in the Eviction Petition instituted by the Respondent No. 1 under Section

[1] DRC Act
[2] Impugned Order
[3] Learned ARC

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14(1)(e) read with Section 25B of the DRC Act was dismissed, resulting in an Order of eviction in respect of **Shop No. 5564, situated on the ground floor of Property bearing Municipal Nos. 5561–5564, Nai Sarak, Delhi-110006, measuring approximately 16 ft. × 6 ft**[4].

BRIEF FACTS:

2. The Respondent No. 1 instituted the **Eviction Petition dated 16.10.2019**[5], seeking eviction of the Petitioners from the subject premises on the ground of *bona fide* requirement. The Respondent No. 1 asserted that she was the owner/landlady of Property bearing Municipal Nos. 5561–5564, Nai Sarak, Delhi-110006, having purchased the same *vide* registered Sale Deed dated 24.09.1999. The subject premises had been let out to Smt. Kishan Devi, the predecessor-in-interest of the Petitioners, and the tenancy was stated to have devolved upon her legal heirs following her demise.

3. The Respondent No. 1 pleaded that the property comprised four shops on the ground floor, apart from accommodation on the upper floors. It was her case that, following the vacation of two shops by the tenants, Shop Nos. 5562 and 5563 had been converted into a single shop, which was being used by her son, Mr. Nikhil Suri, for carrying on the business of musical instruments under the name and style of *M/s Anand Musical Store*. The Respondent No. 1 further pleaded that she was carrying on tailoring work from her residential premises and required the subject premises, situated on the main road, for running her own tailoring business and earning her livelihood. She asserted that the subject premises was the most suitable shop for the said

[4] Subject Premises
[5] Eviction Petition

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Signing Date:06.11.2026 17:40:23

purpose and that no other alternative accommodation was available to her.

4. The Respondent No. 1 had earlier instituted eviction proceedings under Section 14(1)(e) of the DRC Act, being E. No. 277/2008, against the predecessors-in-interest of the Petitioners in respect of the subject premises. In the said proceedings, the Respondent No. 1 had pleaded a *bona fide* requirement for herself as well as her son. An Eviction Order was passed on 14.02.2013, which was assailed before this Court in RC. REV. No. 235/2013. During the pendency of the Revision Petition, the Respondent No. 1 sought permission to withdraw the earlier eviction proceedings on account of certain technical mistakes in the Petition. The earlier proceedings were accordingly disposed of on 28.08.2019, with permission to withdraw the aforesaid Eviction Petition.

5. Thereafter, the Respondent No. 1 instituted the present Eviction Petition on 19.10.2019, pleading a *bona fide* requirement of the subject premises for her own tailoring business. The Petitioners contested the Eviction Petition and filed an Application seeking leave to defend, raising objections to the *bona fides* of the requirement pleaded by the Respondent No. 1 and asserting the availability of alternative accommodation. The Petitioners, *inter alia*, contended that the requirement earlier pleaded in respect of the Respondent No. 1's son stood satisfied, as he was already carrying on his musical-instrument business from the shop created by combining Shop Nos. 5562 and 5563. They further disputed the Respondent No. 1's assertion that the subject premises was required for her own business,

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Signing Date:06.11.2026 17:40:23

pointing out that she was already carrying on tailoring work from her residence.

6. The Petitioners also questioned the assertion that no suitable alternative accommodation was available to the Respondent No. 1. In this regard, they relied upon the other shops situated in the same property, the accommodation on the upper floors and certain other commercial properties which, according to them, belonged to the Respondent No. 1. The Respondent No. 1 disputed the availability and suitability of the premises relied upon by the Petitioners and maintained that the subject premises was required for her own *bona fide* commercial requirement.

7. The learned ARC, upon consideration of the pleadings and the material placed on record, dismissed the Application seeking leave to defend *vide* the Impugned Order dated 13.05.2024, holding that the Petitioners had failed to raise any triable issue warranting grant of leave to defend. Consequently, an Order of eviction was passed in favour of the Respondent No. 1 in respect of the subject premises. Aggrieved by the Impugned Order, the Petitioners have preferred the present Revision Petition.

SUBMISSIONS ON BEHALF OF THE PARTIES:

8. Though the present Revision Petition assails the Impugned Order on various grounds, the submissions advanced by learned counsel for the parties before this Court have been confined to the *bona fide* requirement pleaded by the Respondent No. 1 and the availability of reasonably suitable alternative accommodation. Accordingly, the discussion herein is restricted to the aforesaid aspects.

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Signing Date:06.11.2026 17:40:23

9. Learned counsel appearing on behalf of the Petitioners submits that the learned ARC failed to properly appreciate the material placed on record while rejecting the Application seeking leave to defend. It is contended that the *bona fide* requirement pleaded by the Respondent No. 1 in the present Eviction Petition was liable to be examined in the context of the earlier eviction proceedings, wherein the requirement of the Respondent No. 1 as well as her son had been projected. Learned counsel submits that the requirement relating to the son stood satisfied, as he had been carrying on his musical-instrument business from the shop formed by combining Shop Nos. 5562 and 5563.

10. Learned counsel for the Petitioners further submits that the Respondent No. 1 admittedly carries on tailoring work from her residential premises and has not demonstrated why the subject premises is indispensable for the said purpose. It is contended that the mere preference for a shop situated on the main road cannot, by itself, conclude the enquiry into the bona fides of the requirement, particularly when the Respondent No. 1 is already engaged in the same line of work from her residence. Learned counsel submits that the learned ARC failed to adequately consider the aforesaid circumstances while rejecting the Petitioners' plea that the requirement projected in the Eviction Petition was not *bona fide*.

11. On the issue of alternative accommodation, learned counsel for the Petitioners submits that the Respondent No. 1 had recovered possession of Shop Nos. 5561, 5562 and 5563, besides having access to other accommodation in the larger property. It is contended that the availability and suitability of the said premises ought to have been examined in conjunction with the Respondent No. 1's pleaded

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Signing Date:06.11.2026 17:40:23

requirement. Learned counsel also relies upon municipal records concerning other properties allegedly owned by the Respondent No. 1 and submits that the learned ARC failed to properly appreciate the documentary material relied upon by the Petitioners. It is, accordingly, contended that the objections raised by the Petitioners disclosed triable issues warranting grant of leave to defend.

12. ***Per contra***, learned counsel appearing on behalf of the Respondent No. 1 supports the Impugned Order and submits that the requirement pleaded in the present Eviction Petition is distinct from the requirement projected in the earlier proceedings, as the subject premises is now sought for the Respondent No. 1's own tailoring business and livelihood. It is contended that the fact that the Respondent No. 1 presently carries on tailoring work from her residence does not negate her *bona fide* requirement of a commercial premises situated on the main road. Learned counsel submits that the Respondent No. 1 is the best judge of her requirements and that the Petitioners cannot dictate the manner or place in which she ought to carry on her business.

13. Learned counsel for the Respondent No. 1 further submits that the Petitioners have failed to establish the availability of any reasonably suitable alternative accommodation. It is contended that the other shops and portions of the property relied upon by the Petitioners were either being utilised for existing commercial purposes or were otherwise unsuitable for the requirement pleaded in the Eviction Petition. The Respondent No. 1 also disputes the inference sought to be drawn from the municipal records relied upon by the

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Signing Date:06.11.2026 17:40:23

Petitioners and submits that such records, by themselves, do not establish the present availability of suitable premises.

14. It is, therefore, contended that the learned ARC rightly concluded that no triable issue had been disclosed and that the Impugned Order does not warrant interference in revisional jurisdiction.

15. No other submissions were advanced on behalf of the parties.

ANALYSIS:

16. This Court has heard learned counsel for the parties at length and, with their able assistance, perused the relevant documents as also the Impugned Order.

17. Before proceeding to examine the rival submissions, it is necessary to delineate the scope of the jurisdiction exercised by this Court under the *proviso* to Section 25B(8) of the DRC Act, 1958. The jurisdiction exercised thereunder is supervisory in nature and does not permit a reappraisal of the material on record as in an appeal. Interference is warranted where the impugned order suffers from an error of law, material irregularity or perversity, or where a material aspect bearing upon the determination of the application seeking leave to defend has been overlooked.

18. The scope of the aforesaid jurisdiction stands elucidated by the Hon'ble Supreme Court in ***Abid-Ul-Islam v. Inder Sain Dua***[6], wherein it was reiterated that the High Court, while exercising revisional jurisdiction under the *proviso* to Section 25B(8) of the DRC Act, is required to examine the legality of the decision-making process

[6] (2022) 6 SCC 30

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Signing Date:06.11.2026 17:40:23

and cannot convert such jurisdiction into a regular appellate proceeding. The Hon'ble Supreme Court observed as under:

> "**23.** The proviso to Section 25-B(8) gives the High Court exclusive power of revision against an order of the learned Rent Controller, being in the nature of superintendence over an inferior court on the decision-making process, inclusive of procedural compliance. Thus, the High Court is not expected to substitute and supplant its views with that of the trial court by exercising the appellate jurisdiction. Its role is to satisfy itself on the process adopted. The scope of interference by the High Court is very restrictive and except in cases where there is an error apparent on the face of the record, which would only mean that in the absence of any adjudication per se, the High Court should not venture to disturb such a decision. There is no need for holding a roving inquiry in such matters which would otherwise amount to converting the power of superintendence into that of a regular first appeal, an act, totally forbidden by the legislature."

19. At the stage of considering an application for leave to defend, the Court is required to determine whether the facts disclosed by the tenant, if established, would disentitle the landlord from obtaining an order of eviction. A defence raising a *bona fide* triable issue cannot be rejected merely because the landlord disputes it; equally, objections which do not disclose a legally tenable defence do not warrant a trial. The Impugned Order is required to be tested against this standard.

Bona Fide Requirement

20. The relevant findings recorded by the learned ARC in the Impugned Order on the issue of bona fide requirement are extracted hereinbelow:

> "**Bonafide Requirement**
> 19. It is stated in the application for leave to defend that the need disclosed by the petitioner is not bonafide, as at the ripe age of 60, it would not be possible for her to run a boutique from the demised premises. It is stated that the residence of the petitioner is at Ghaziabad and that would make it unfeasible for her to start her business from the demised premises. In the considered opinion of this Court, it is not open to the tenants to contest the bonafide nature of the requirement disclosed by the petitioner on such

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Signing Date:06.11.2026 17:40:23

flimsy grounds. It is trite that the bonafide of the requirement disclosed by the landlord is to be presumed. ***(Ref: Sarla Ahuja Vs. United India Insurance Co. Ltd. (1998) 8 SCC 119)***. The respondent has to show facts which would make the requirement of the petitioner malafide. Merely stating that she stays some distance away from the demised premises and her old age would be a hindrance to her setting up her own business is not a 'fact' in terms of Section 25-B (4) of the DRC Act which would entitle the respondents to grant of leave to defend the eviction petition. With respect to the argument pertaining to the age of the petitioner specifically, it is the considered opinion of this Court that requirement disclosed by the petitioner cannot be considered to be malafide merely because she is over 60 years old, and she cannot be denied a chance to start her own business at such an age if she so willing. Reliance at this juncture can be placed on ***Brij Mohan Singh Vs. Tulsi Ram, 2019 (2) RCR (Rent)***. In the said case, it was held by the Hon'ble High Court of Delhi that age is no bar for a person wanting to open his business, and a senior citizen cannot be knocked out of an eviction petition merely because of his old age.

20. The fact that petitioner is running a tailoring business from her residence at present would not make her petition for seeking 'additional accommodation', in as much as she wants to shift her business to demised premises. Her doing some work at present from her residence does not mean that the residence can be considered as constituting her primary place of business.

21. It is seen that petitioner had filed a prior petition under Section 14 (1) (e) of DRC Act to obtain vacant possession of shops bearing no. 5561, 5562 and 5563, besides the room and tin-sheds on the second floor of the larger property. The basis of petition was her requirement for one shop for her boutique business, one shop for her son, and another shop for storage purposes. In the said petition itself, she had disclosed requirement for four shops. As such, the fact that eviction order was passed against Sh. Anil Singh for three shops and some portion of building which can be used for storage reasons only does not make the instant petition infructuous. It is also worthwhile that the said eviction petition was allowed on 19.09.2011, more than 15 years removed from now.During the said period, petitioner chose to combined shops bearing no. 5562 and 5563, so that her son could run his business therefrom. This act of the petitioner cannot prejudice her at this stage, as the petitioner is the best judge of her own requirements. As such, filing of instant petition for eviction of respondents from the demised premises cannot be considered to be malafide. This is moreso in view of the fact that petitioner has also stated that shop no. 5561 was not available with her at the time of filing of the instant petition, since the same was destroyed in a fire which had engulfed the larger property prior to the filing of the subject proceedings, destroying

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Signing Date:06.11.2026 17:40:23

all the upper portion of the building. Petitioner placed on record photographs of the building reflecting the same fact.

To controvert this, respondents reasserted on oath in the rejoinder filed by them that shop no. 5561 as well as the room and tin sheds on the second floor of the larger property are available with the petitioner. However, the photographs filed by the respondent of a room where several musical instruments (harmoniums and tablas) have been stacked itself shows that the same is in dilapidated condition. The said photograph infact supports the case of the petitioner, despite the fact that respondent nowhere stated as to exactly which floor of the larger property the said photograph pertains to. Furthermore, even if the said shop on the first or second floor of the larger property was available with the petitioner, the same could not constitute alternate accommodation available with her, in view of the fact that petitioner has stated that she requires the demised premises for opening her own business, which she could not have reasonably done from a shop on the first or second floor of the building as profitably as from the demised premises situated on ground floor.

22. It has been contended by the respondents that the fact that need of the petitioner was fulfilled when vacant possession of shop no. 5561-5563 was granted to her was also taken note of by the Hon'ble High Court which was seized of the Revision Petition bearing no. 235/2013 arising out of the eviction proceedings filed by the petitioner against their predecessors-in-interest. It was argued by the respondents that when the Hon'ble High Court was seized of the fact, the petitioner chose to withdraw her eviction petition. Bare perusal of the order of the Hon'ble High Court of Delhi dated 28.08.2019 reveals that the petitioner was permitted simpliciter to withdraw the proceedings, and it was categorically noted therein that the contention that the need of the petitioner is still subsisting or had grown or had been eclipsed by the petitioner obtaining vacant possession of the other shops was not considered by the Hon'ble High Court. In such a situation, the fact that petitioner had filed a petition against the predecessors-in-interest of the respondent, which was later withdrawn by her, does in no manner prejudice her in the instant case.

23. By way of an additional affidavit, the respondents brought on record the fact that during the pendency of the instant petition, 'M/s. Anand Musical Store' has been shifted to the first floor of the building which has been duly repaired by petitioner, making combined shop no. 5562-5563 available with her. It is stated that in the premises which were earlier occupied by the son of petitioner, another business of Sherwanis in the name of 'M/s. Royal Sherwani' has been started by the petitioner along with her son. Photographs of newly renovated premises have also been placed on record, showing that 'M/s. Anand Musical Store' is now being run on the first floor of the building, and with petitioner's son as the

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Signing Date:06.11.2026 17:40:23

proprietor, 'M/s. Royal Sherwani' is being run in the combined shop no. 5562 and 5563, Nai Sarak, Delhi-110006. It has been contended by the respondents that shop bearing no. 5562-5563 has been put to use by petitioner for her own business, which she runs with her son. It is stated that the requirement of the petitioner stands completely eclipsed, and there is no outstanding bonafide requirement of the petitioner to seek vacant possession of the demised premises.

24. In the considered opinion of this Court, such a proposition is merely to be urged to be rejected. It is trite that crucial date for deciding the bonafide of the requirement of landlord is the date of the application for eviction. The fact that during judicial process which was protracted for reasons beyond the control of the landlord, not each subsequent event that transpires needs to be considered as having eclipsed the need of the landlord completely. While the Courts are required to be cognizant of the subsequent events, given the principles of natural justice, it is well settled that only such subsequent events are to be given credence which would completely overshadow the genuineness of the requirement shown by the landlord. Reliance at this juncture can be placed on the judgment of the Hon'ble Apex Court titled ***Gaya Prasad vs Shri Pradeep Srivastava Appeal (civil) 1071 of 2001 Appeal (civil) 1072 of 2001*** DoD 07.02.2001. Reliance can also be placed on the recent pronouncement of our own parent Hon'ble High Court titled ***Laxmi Narain & Ors vs Vishal Moondhra& Ors dated 18.01.2024 in RC Revision 333 of 2019***. In this case, similar to the facts of the case instant, it was urged that the landlord has acquired the vacant possession of two shops adjacent to the demised premises during the pendency of the eviction petition. It was held by the Hon'ble High Court of Delhi that the demised premises / demised premises can cater to the needs of only one of the three landlords / respondents and even after taking into consideration the availability of two additional shops, the need of the respondent / landlord will not be fulfilled without the demised premises. It was held therein:

> "14.2 The Supreme Court in the Gaya Prasad case relying on the Pasupuleti Venkateswarlu v. Motor and General Traders1,2, has however cautioned that in the field of rent control litigation, cognizance of subsequent events should be taken with care so that the rules of fairness are available to both parties.
>
> 14.3 Since the process of litigation is slow, by the time litigation reaches its final stages, there are likely to be several subsequent events. However, only some are 'subsequent' events of such nature, that would completely overshadow the genuineness of a landlord's requirement.
>
> 14.4 The need as set forth in the Eviction Petition by the Respondents/landlords, who are three brothers, is that each

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Signing Date:06.11.2026 17:40:23

> of them requires one or more shops. Each of the three Respondents/landlords are doing separate businesses and have set up and need for their respective businesses which is set forth in paragraph 3.1 above. The demised premises can, at best, cater to the requirement of one of the Respondents/landlords only. Even after taking into consideration the availability of two additional shops (the subsequent event), the need of the Respondents/landlords is not fulfilled - at least not without the demised premises."
>
> When this legal position is applied to the facts of the case instant, it would become amply clear that the bonafide requirement of the petitioner still subsists. Essentially, during the pendency of the petition, which was filed five years removed from now, the petitioner or her son expended efforts in getting the upper floors of the larger property renovated again, and made more shops on the upper floors of the same functional. As per petitioner's version, her son shifted his business from the ground to the first floor thereafter, and his wife started running a business of sherwanis on the ground floor in the premises earlier occupied by her husband. There is some dispute on record as to exactly who is the proprietor of 'M/s. Royal Sherwani'. As per the photographs filed by the respondent, it is Mr. Nikhil Suri, and as per petitioner, it is her daughter-in-law who runs it.
>
> In the considered opinion of this Court, even if it is conceded that it is the son of petitioner and not her daughter-in-law that is running the business of 'M/s. Royal Sherwani', the same would still not be considered an event of such a nature as would eclipse the need of the petitioner in its entirety. If the petitioner is made to accommodate herself in the shop no. 5562-5563 earlier used by her son, her son and daughter-in-law will be left with no accommodation to run a Sherwani business from, in addition to the business of musical instruments. They would then be constrained to file an eviction petition afresh. Neither petitioner, nor her son can be prejudiced in such a manner. The need of petitioner cannot be considered to be eclipsed due to the subsequent renovation of larger property by petitioner.
>
> 25. No triable issue has been raised by respondent qua this criteria as well."

21. The principal contention advanced on behalf of the Petitioners is that the *bona fide* requirement pleaded by Respondent No. 1 is not genuine, inasmuch as she is already carrying out tailoring work from her residence at Ghaziabad. It is further contended that the requirement pleaded in the earlier eviction proceedings, which

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Signing Date:06.11.2026 17:40:23

included the need of her son, stood satisfied upon the latter commencing his musical instruments business from Shop Nos. 5562 and 5563, and that the subsequent availability and utilisation of the said premises ought to have weighed with the learned ARC while examining the present claim.

22. The aforesaid submissions must be considered in the context of the requirement actually pleaded in the present eviction petition. The earlier Eviction Petition, instituted in 2008, had been filed for the requirements of Respondent No. 1 as well as her son. The present Petition, instituted on 19.10.2019, proceeds on the specific plea that Respondent No. 1 herself requires the subject premises to carry on her tailoring business and earn her livelihood. Further, the Order dated 28.08.2019 passed in RC.REV. 235/2013 permitted withdrawal of the earlier proceedings; it did not adjudicate that the requirement now pleaded by Respondent No. 1 had been satisfied or had ceased to subsist. The withdrawal of the earlier proceedings, therefore, cannot, by themselves, furnish a basis to reject the distinct requirement pleaded by the Respondent No. 1 in the present Petition.

23. The Petitioners have also relied upon the subsequent use of Shop Nos. 5562 and 5563, including the business conducted therein under the name and style of *M/s Royal Sherwani*. The learned ARC considered the explanation furnished by the Respondent No. 1 regarding the use of the said shop and the redevelopment of the upper floors, and held that the subsequent developments did not extinguish the requirement pleaded in the present petition. In ***Gaya Prasad v. Pradeep Srivastava***[7], the Hon'ble Supreme Court held that the crucial

[7](2001) 2 SCC 604

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Signing Date:06.11.2026 17:40:23

date for assessing *bona fide* requirement is ordinarily the date of the eviction petition, and that subsequent events displace the pleaded need only where their nature and magnitude completely eclipse that requirement. Applying this principle, the mere fact that the combined shop came to be used for another business does not, by itself, establish that the Respondent No. 1's requirement for her own tailoring business had ceased to subsist or is not genuine. The relevant portion of the aforesaid Judgment is reproduced hereinbelow:

> "**10.**We have no doubt that the crucial date for deciding as to the bona fides of the requirement of the landlord is the date of his application for eviction. The antecedent days may perhaps have utility for him to reach the said crucial date of consideration. If every subsequent development during the post-petition period is to be taken into account for judging the bona fides of the requirement pleaded by the landlord there would perhaps be no end so long as the unfortunate situation in our litigative slow-process system subsists. During 23 years, after the landlord moved for eviction on the ground that his son needed the building, neither the landlord nor his son is expected to remain idle without doing any work, lest, joining any new assignment or starting any new work would be at the peril of forfeiting his requirement to occupy the building. It is a stark reality that the longer is the life of the litigation the more would be the number of developments sprouting up during the long interregnum. If a young entrepreneur decides to launch a new enterprise and on that ground he or his father seeks eviction of a tenant from the building, the proposed enterprise would not get faded out by subsequent developments during the traditional lengthy longevity of the litigation. His need may get dusted, patina might stick on its surface, nonetheless the need would remain intact. All that is needed is to erase the patina and see the gloss. It is pernicious, and we may say, unjust to shut the door before an applicant just on the eve of his reaching the finale, after passing through all the previous levels of the litigation, merely on the ground that certain developments occurred pendente lite, because the opposite party succeeded in prolonging the matter for such unduly long period.
>
> **11.**We cannot forget that while considering the bona fides of the need of the landlord the crucial date is the date of petition. In ***Ramesh Kumar* v. *Kesho Ram***[1992 Supp (2) SCC 623] a two-Judge Bench of this Court (M.N. Venkatachaliah, J., as he then was, and N.M. Kasliwal, J.) pointed out that the normal rule is that rights and obligations of the parties are to be determined as they

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Signing Date:06.11.2026 17:40:23

were when the lis commenced and the only exception is that the court is not precluded from moulding the reliefs appropriately in consideration of subsequent events provided such events had an impact on those rights and obligations. What the learned Chief Justice observed therein is this: (SCC pp. 626-27, para 6)

> "*6*. The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the court is not precluded from taking a 'cautious cognizance' of the subsequent changes of fact and law to mould the relief."

12. This Court reiterated the same principle in ***Kamleshwar Prasad* v. *Pradumanju Agarwal*** [(1997) 4 SCC 413] that the crucial date normally is the date of filing the petition. In that case, a two-Judge Bench (K. Ramaswamy and G.B. Pattanaik, JJ.) has held that even the subsequent event of death of the landlord who wanted to start a business in the tenanted premises is not sufficient to dislodge the bona fide need established by him earlier. This is what Pattanaik J. has observed for the Bench: (SCC p. 415, para 3)

> "That apart, the fact that the landlord needed the premises in question for starting a business which fact has been found by the appellate authority, in the eye of the law, it must be that on the day of application for eviction which is the crucial date, the tenant incurred the liability of being evicted from the premises. Even if the landlord died during the pendency of the writ petition in the High Court the bona fide need cannot be said to have lapsed as the business in question can be carried on by his widow or any other son."

13. In our opinion, the subsequent events to overshadow the genuineness of the need must be of such nature and of such a dimension that the need propounded by the petitioning party should have been completely eclipsed by such subsequent events. A three-Judge Bench of this Court in ***Pasupuleti Venkateswarlu* v. *Motor and General Traders*** [(1975) 1 SCC 770] which pointed to the need for remoulding the reliefs on the strength of subsequent events affecting the cause of action in the field of rent control litigation, forewarned that cognizance of such subsequent events should be taken very cautiously. This is what learned Judges of the Bench said then: (SCC pp. 772-73, para 4)

> "We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognizance of events and developments subsequent to the

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Signing Date:06.11.2026 17:40:23

> institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed."
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> **14.** The next three-Judge Bench of this Court, which approved and followed the above decision, in ***Hasmat Rai* v. *Raghunath Prasad*** [(1981) 3 SCC 103] has taken care to emphasise that the subsequent events should have "wholly satisfied" the requirement of the party who petitioned for eviction on the ground of personal requirement. The relevant passage is extracted below: (SCC pp. 113-14, para 14)
>
> > "Therefore, it is now incontrovertible that where possession is sought for personal requirement it would be correct to say that the requirement pleaded by the landlord must not only exist on the date of the action but must subsist till the final decree or an order for eviction is made. *If in the meantime events have cropped up which would show that the landlord's requirement is wholly satisfied then in that case his action must fail and in such a situation it is incorrect to say that as decree or order for eviction is passed against the tenant he cannot invite the court to take into consideration subsequent events*."
> >
> > (emphasis supplied)
>
> **15.**The judicial tardiness, for which unfortunately our system has acquired notoriety, causes the lis to creep through the line for long long years from the start to the ultimate termini, is a malady afflicting the system. During this long interval many many events are bound to take place which might happen in relation to the parties as well as the subject-matter of the lis. If the cause of action is to be submerged in such subsequent events on account of the malady of the system it shatters the confidence of the litigant, despite the impairment already caused."

24. Also, the fact that Respondent No. 1 is presently carrying out tailoring work from her residence at Ghaziabad does not, in itself, negate the requirement of a commercial premises for carrying on that activity. The question, therefore, is whether the fact that Respondent No. 1 is already carrying out tailoring work from her residence disentitles her from seeking the subject premises for the same purpose, particularly when the latter is situated on the main road and is claimed to be more suitable for her business. In ***Budh Singh & Sons v.***

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Sangeeta Kedia[8], the Hon'ble Delhi High Court considered an eviction petition in which the landlady was already carrying on the business of stitching suits and other apparel, yet sought a commercial premises for that business. The Court rejected the challenge to the dismissal of the tenant's application for leave to defend. The relevant portion of the aforesaid Judgment is reproduced hereinbelow:

> "**10.**The eviction petition has also clearly and categorically disclosed the bonafide need of the landlady Sangeeta Kedia. It has come on record that she is carrying on business since the last eight years and this has been supported by her income tax returns which had been filed along with the eviction petition as also the bills supporting her submission that she is carrying on the business of stitching of suits and other apparel. There is no doubt that on this eviction petition it has not been mentioned from where she is carrying on the said business; her need for the present premises (which is a shop measuring 9 ft × 21 ft on the ground floor of premises bearing No. 1855, Chandani Chowk, Delhi) is for running the business of ladies suits and garments which she is admittedly carrying on and is supported by her documents as aforenoted. In this factual scenario the submission of the tenant that the petitioner is only a housewife and is not doing any business is negatived. The premises in occupation of the respondent is also admittedly in a highly commercial area i.e. in the heart of the Delhi being on the main road of Chandani Chowk; the petitioner has also averred (unchallenged) that she has no other properties in her name and thus admittedly this disputed premises (being in a commercial area) from where she wishes to carry a business of ladies suits and garments would definitely be a viable and profitable business venture for her; her Todar Mal residence where she is residing is admittedly residential. In these circumstances mere fact that the landldady has not disclosed the address from where she is carrying on this business would not diminish her bonafide need.
>
> **11.** The present case is also not a case of additional accommodation. The judgment of *S.K. Mehra* (supra) and *Santosh Devi* (supra) were distinct on their facts. In the first case the landlord was occupying the ground floor as also entire second floor; the question was whether the landlord required the first floor as well. In the second case the landlady was in the possession of the first floor; certain additional accommodation was thereafter subsequently made available to the landlady; it was in these circumstances that the court thought it fit as being described as a case of additional accommodation for which a trial would be

[8]2011 SCC OnLine Del 4811

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Signing Date:06.11.2026 17:40:23

required. From these judgments relied upon by the petitioner are half page judgments; further facts cannot be deciphered; each case even otherwise has to be weighed in its own context. In fact if the submission of the learned counsel for the petitioner on this score is accepted, all cases where the landlord is living even in a one room tenement owned by him would become a case of additional accommodation raising a triable issue and leave to defend should have to be granted and to which query the leaned counsel has no answer. To say the least, this argument is wholly misplaced; this was definitely not the intent and purpose of the legislature while engrafting the provisions of Section 14(1)(e) of the DRCA which has to be read with Section 25 B of the DRCA wherein it has been reiterated time and again by the Supreme Court that this is a summary procedure which is available for effective and summary disposal of an eviction petition filed by the landlord on the ground of a bonafide need either for himelf or any member of his family dependent upon him. In fact if this argument of the learned counsel for the petitioner is accepted this entire procedure would have to be given a go by; this argument is thus rejected. The language of this section also clearly states that the need may be of the landlord or any member of his family dependent upon him and the landlord or such person has no other reasonably suitable accommodation.

12. In the judgment of ***Prithipal Singh* v. *Satpal Singh (dead) through legal heirs***, (2010) 2 SCC 15 : (2010) 1 SCC (Civ) 271 the Supreme Court has noted herein as below:

> "20. The scope of Chapter III-A of the Rent Act has been elaborately discussed in *Ravi Dutt Sharma* v. *Ratan Lal Bhargava* in which this Court duly discussed the object of the Rent Act and also the insertion of Chapter III-A of the same in the following manager:
>
> The dominant object of the act is to provide a speedy, expeditious and effective remedy for a class of landlords contemplated by Sections 14(1)(*e*) and 14A and for avoiding unusual dilatory process provided otherwise by the Rent Act. It is common experience that suits for eviction under the Act take a long time commencing with the Rent Controller and ending up with the Supreme Court. In many cases experience has indicated that by the time the eviction decree became final several years elapsed and either the landlord died or the necessity which provided the cause of action disappeared and if there was further delay in securing eviction and the family of the landlord had by then expanded, in the absence of accommodation the members of the family were virtually thrown on the road. It was this mischief, which the legislature intended to avoid by incorporating the new procedure in Chapter III-A. The legislature in its wisdom thought that in cases where the landlords required their

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Signing Date:06.11.2026 17:40:23

> own premises for bona fide and personal necessity they should be treated as a separate class along with the landlords covered by Section 14(A) and should be allowed to reap the fruits of decrees for eviction within the quickest possible time. It cannot, therefore, be said that the classification of such landlords would be an unreasonable one because such a classification has got a clear nexus with the objects of the Amending Act and the purposes, which it seeks to subserve. Tenants cannot complain of any discrimination because the Rent Act merely gave certain protection to them in public interest and if the protection or part of it afforded by the Rent Act was withdrawn and the common law right of the tenant under the Transfer of property Act was still preserved, no genuine grievance could be made.
>
> ……..
>
> 22. A challenge was thrown to Section 25B of the Rent Act in *Kewal Singh* v. *Smt Lajwanti*, questioning the classification held to be not in consonance with the objective sought to be achieved and the aforesaid provision must be held to be unconstitutional wherein this Court held that the special provision, namely, Section 25B of the Rent Act providing summary procedure for eviction while the landlord pleading bona fide personal requirement, separate classification of such landlords were held to be justified as such classification must be held to be in consonance with the objective sought to be achieved and provision not unconstitutional. Accordingly, in the aforesaid decision, this Court held that Section 25B does not suffer from excessive delegation. Keeping in view the aforesaid observations of this Court in this case and considering the special provisions made in Section 25B of the Act, we conclude that Section 25B of the Act is a complete code by which the entire procedure to be adopted for eviction of a tenant on the ground of bona fide requirement filed by the landlord in respect of a premises, shall be followed."
>
> **13.** In the instant case impugned order dismissing the application for leave to defend suffers from no infirmity."

25. The principle that the existence of an ongoing business does not, by itself, foreclose a landlord's right to seek possession of premises better suited to the proposed use also finds support in ***Anil***

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Signing Date:06.11.2026 17:40:23

Bajaj & Anr. v. Vinod Ahuja[9]. There, the landlord was carrying on business from a shop situated in a narrow lane, but sought possession of the tenanted premises situated on the main road. The Hon'ble Supreme Court held that the fact that the landlord was carrying on business from other premises could not foreclose his right to seek eviction, so long as he intended to use the tenanted premises for his own business. The Court further reiterated that it is not for the tenant to dictate how the landlord should utilise his property for the purposes of his business. The relevant portion of the aforesaid Judgment is reproduced hereinbelow:

> "**6.** In the present case it is clear that while the landlord (Appellant 1) is carrying on his business from a shop premise located in a narrow lane, the tenant is in occupation of the premises located on the main road which the landlord considers to be more suitable for his own business. The materials on record, in fact, disclose that the landlord had offered to the tenant the premises located in the narrow lane in exchange for the tenanted premises which offer was declined by the tenant. It is not the tenant's case that the landlord, Appellant 1, does not propose to utilise the tenanted premises from which eviction is sought for the purposes of his business. It is also not the tenant's case that the landlord proposes to rent out/keep vacant the tenanted premises after obtaining possession thereof or to use the same is any way inconsistent with the need of the landlord. What the tenant contends is that the landlord has several other shop houses from which he is carrying on different businesses and further that the landlord has other premises from where the business proposed from the tenanted premises can be effectively carried out. It would hardly require any reiteration of the settled principle of law that it is not for the tenant to dictate to the landlord as to how the property belonging to the landlord should be utilised by him for the purpose of his business. Also, the fact that the landlord is doing business from various other premises cannot foreclose his right to seek eviction from the tenanted premises so long as he intends to use the said tenanted premises for his own business.
>
> **7.** The grounds on which leave to defend was sought by the tenant and has been granted by the High Court runs counter to the fundamental principles governing the right of a tenant to contest the claim of bona fide requirement of the suit premises by the

[9](2014) 15 SCC 610

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Signing Date:06.11.2026 17:40:23

> landlord under the Delhi Rent Control Act, 1958. Even assuming the assertions made by the tenant to be correct, the same do not disclose any triable issue so as to entitle the tenant to grant of leave to defend."

26. The aforesaid principle is consistent with the decision in ***Sait Nagjee Purushotham & Co. Ltd. v. Vimalabai Prabhulal & Ors.***[10], wherein the Hon'ble Supreme Court recognised that a landlord's requirement to commence or carry on business from premises owned by him must be assessed in the context of the genuine requirement pleaded, and that the landlord cannot be compelled to indefinitely defer such use. The inquiry is not whether the landlord is managing to conduct some activity from another place, but whether the requirement for the premises in question is *bona fide* and whether reasonably suitable alternative accommodation is available. The same assessment must, however, remain anchored to the pleadings and material on record; the mere assertion of a commercial purpose cannot, by itself, dispense with scrutiny of the genuineness of the requirement. The relevant portion of the aforesaid Judgment is reproduced hereinbelow:

> "**4.** First of all we shall take up the question of bona fide need of the landlords. So far as the partition of the property and the present premises coming to the share of the landlords are concerned, there is no dispute that the portion of the building has come to the share of the landlords and they are the owners as a result of the partition of the family properties. But the question is whether the landlords who are the owners of the portion of the building have substantiated the allegation with regard to the bona fide need or not. We have gone through the findings of the trial court as well as that of the Appellate Authority and the High Court and after closely scrutinising the same, we do not think that the finding recorded by the appellate court and the High Court can be interfered with by this Court on the ground of being perverse or without any basis. The landlords have led evidence to show that one of their sons who had requisite qualification for starting a

[10](2005) 8 SCC 252

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Signing Date:06.11.2026 17:40:23

> computer institute wants to establish the same at Calicut and others for extension of their business. The trial court as well as the first appellate court and the High Court examined the statements of PWs 2 and 3 and after considering their evidence, the appellate court reversed the finding of the trial court and held that the need of the respondent landlords to start a business at Calicut, is bona fide and genuine. It was held that it cannot be said that a person who is already having a business at one place cannot expand his business at any other place in the country. It is true that the landlords have their business spreading over Chennai and Hyderabad and if they wanted to expand their business at Calicut it cannot be said to be unnatural thereby denying the eviction of the tenant from the premises in question. It is always the prerogative of the landlord that if he requires the premises in question for his bona fide use for expansion of business this is no ground to say that the landlords are already having their business at Chennai and Hyderabad therefore, it is not genuine need. It is not the tenant who can dictate the terms to the landlord and advise him what he should do and what he should not. It is always the privilege of the landlord to choose the nature of the business and the place of business. However, the trial court held in favour of the appellant tenant. But the appellate court as well as the High Court after scrutinising the evidence on record, reversed the finding of the trial court and held that the need of establishing the business at Calicut by the landlords cannot be said to be lacking in bona fides."

27. In the present case, Respondent No. 1 has categorically pleaded that she carries out tailoring work from her residence and requires the subject shop, situated on the main road at Nai Sarak, to carry on the said activity from a commercial location. The fact that she has been able to conduct tailoring work from her residence does not establish that the residential premises are reasonably suitable for the commercial purpose now pleaded. Nor does the fact that her son had carried on a different business from Shop Nos. 5562 and 5563 establish that Respondent No. 1's own requirement for the subject premises is fictitious. The Petitioners' reliance on the earlier proceedings and on the existing tailoring activity, without more, does not disclose a triable issue as to the genuineness of the requirement pleaded in the present petition.

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BHATIA
Signing Date:06.11.2026
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28. In view of the aforesaid principles and the findings recorded by the learned ARC, this Court finds no ground to interfere with the conclusion that the Petitioners had failed to raise a triable issue on the *bona fide* requirement. The earlier requirement relating to the son, the withdrawal of the earlier proceedings, and the Respondent No. 1's existing tailoring work from her residence do not, in the circumstances pleaded, establish that the present requirement is a mere pretence. The challenge to the Impugned Order on this ground is, accordingly, rejected.

Availability of Reasonably Suitable Alternative Accommodation

29. The Petitioners next contend that the learned ARC failed to properly appreciate the material placed on record demonstrating the availability of alternative commercial accommodation with Respondent No. 1. The properties specifically relied upon are Property No. 5533, Katra Rathi, Nai Sarak; Shop No. 5, Nai Sarak; and Shop No. 5559, Katra Rathi, Nai Sarak. Reliance has also been placed on the other portions of the larger property bearing Nos. 5561–5564, including Shops Nos. 5561, 5562 and 5563 and the accommodation on the upper floors.

30. The relevant observations of the learned ARC in the Impugned Order, while dealing with the objection regarding the availability of alternative accommodation, are extracted hereinbelow:

> "***Suitable Alternate Accommodation***
> 26. Respondents have also urged that petitioner owns sufficient alternate commercial accommodations, i.e., shop no. 5533, shop no. 5, and shop no. 5559 on Katra Rathi, Nai Sarak, Delhi and any of the said shops can be put to use by her for the requirement disclosed in the eviction petition.
> 27. With respect to shop no. 5533, it is the case of the respondents that at present one Mr. Rakesh Jain is occupying the same as a tenant since year 2018, and is since running his business

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Signing Date:06.11.2026 17:40:23

of ladies ethnic wear under the name and style of 'M/s. Salman Fashion' therefrom. The contention of respondents itself makes it amply clear that the said premises are not available to the petitioner for the requirement disclosed by her. As such, they cannot be said to constitute alternate accommodation available with the petitioner for the requirement disclosed by her.

28. Respondents have also contended that the second floor of this property no. 5533 has been handed over by petitioner to Mr. Anil Singh, son of Raghubir Singh.

In reply to this contention, the petitioner has stated that she has severed all ties with her husband Anil Singh, and therefore the said property is not available to her. Even this submission of the petitioner has been controverted by the respondents who have stated that the petitioner and Mr. Anil Singh are still living together as husband and wife. Even if that were the case, the second floor of the property bearing no. 5533, Katra Rathi, Nai Sarak, Delhi-110006 cannot constitute alternate accommodation to the demised premises, which is situated on the ground floor, and therefore would be more suitable for the requirement disclosed by the petitioner.

29. Respondents have stated that shop no. 5559, Katra Rathi, Nai Sarak, Delhi-110006, is also available with the petitioner, as also shop no. 5, Katra Rathi, Nai Sarak, Delhi-110006.

In reply to this, the petitioner has explained that in property bearing no. 5559, Katra Rathi, Nai Sarak, Delhi-110006, she had two shops bearing no. 4 and 5, but she sold the aforesaid shops in October 2009, and at present, has no concern therewith. It has been stated by her that she was constrained to sell the same because of financial exigencies faced by her. Then, to buttress their contention, respondents have placed on record receipts reflecting payment of property tax by the petitioner qua these premises in the year 2012-2013. It was argued that the payment of property tax itself reflect the ownership of petitioner over these premises. This contention was refuted by the petitioner who argued that it is only because the new owners of the property have not obtained the mutation of relevant records in their name is the reason why the property tax receipts are still being generated in the name of the petitioner. This argument of the petitioner does not seem to be without merit.

In the considered opinion on this court, if the respondent had to establish that the shops are available with the petitioner, they could have placed on record photographs of the said shops, alongwith the photographs of hoarding, etc. therein, which could have shown that the same are in some manner connected with the petitioner. But not to be. Property tax receipts do not reflect the title of the petitioner over the said shops, and when they are juxtaposed to the contention of the petitioner on oath to the effect that she had sold the shops way back in October 2009, this Court is

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Signing Date:06.11.2026 17:40:23

> impelled to raise an inference that the said shops are not owned by the petitioner at present.
>
> 30. In the considered opinion of this Court, the respondents have not been able to raise any triable issue as regards availability of alternate accommodation with the petitioner either."

31. The governing principle is that the mere existence of another property does not, by itself, defeat a claim for eviction under Section 14(1)(e) of the DRC Act. The alternative accommodation must be available to the landlord and reasonably suitable for the requirement pleaded. In ***M.M. Quasim v. Manohar Lal Sharma***[11], the Hon'ble Supreme Court held that where the tenant demonstrates the existence of vacant premises with the landlord, the Court must examine whether such premises are suitable for the purpose for which eviction is sought. The landlord's choice is not immune from scrutiny; equally, the tenant cannot succeed merely by identifying another property without establishing its availability and suitability in the context of the pleaded requirement. The relevant portion of the aforesaid Judgment is reproduced hereinbelow:

> "**17.** Once this subsequent event of landlord's interest in the property getting extinguished as the property in question is allotted as an exclusive owner to a sharer upon a partition amongst co-sharers, is properly evaluated, unless some proper explanation is offered by the landlords who are parties to the proceedings, the plaintiffs are liable to be non-suited. This does not require much of a discussion because plaintiffs sought possession for personal requirement of Respondent 1 Manohar Lal Sharma. Manohar Lal Sharma wanted to start his clinic, as he is a qualified medical practitioner, in the suit premises. Manohar Lal Sharma is neither an owner nor a co-owner nor has he any interest in the suit property since the date of partition effected by compromise between the co-sharers in Suit 4 of 1974. If action were to start today or a day after the decree for partition, could Manohar Lal Sharma ever file a suit for evicting the present appellant from the suit shop on the ground that he wanted to start his clinic in the suit shop? If Manohar Lal Sharma can bring such an action he can as well evict any tenant

[11](1981) 3 SCC 36

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Signing Date:06.11.2026 17:40:23

from any premises with which he has no connection. Even if at the commencement of the action Manohar Lal Sharma was a co-owner along with his brother and uncle and, therefore, he had a semblance of title to commence action for eviction, once the co-owner parted company, partitioned the property by metes and bounds and the suit property came to be allotted to Pyarelal as an exclusive owner, Manohar Lal Sharma cannot claim eviction of the tenant from such property in which he has no subsisting interest. And even if this event occurred subsequent to the passing of the decree by the trial court, this subsequent event should have been noticed at the appellate stage because the appeal is nothing else but a continuation of the suit and in a proceeding under the Rent Act the relief has to be moulded according to the situation on the date of the decree; the decree would mean the decree which is final and not correctible by any judicial proceeding. Manohar Lal Sharma, therefore, cannot seek to evict the tenant for his personal requirement. Therefore, the suit for eviction under Section 11(1)(*c*) would ordinarily fail on this ground. However, as the fresh evidence is being taken into consideration and as both the appellate courts and the High Court have erred in approaching the matter by ignoring the subsequent event, it would be presently pointed out that in order to do justice between the parties the matter will have to be remanded to the first appellate court.

18. 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 47 of 1973 which is Ex. D 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

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Signing Date:06.11.2026 17:40:23

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 the 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."

32. The Hon'ble Delhi High Court in ***Lalta Prasad Gupta v. Sita Ram***[12], further explained that a tenant raising a plea of alternative accommodation must furnish the particulars of the premises, the landlord's right or title thereto, their availability at the relevant time,

[12]2017 SCC OnLine Del 13026

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Signing Date:06.11.2026 17:40:23

and their suitability for the requirement pleaded. The tenant must also place material capable of substantiating the plea that the landlord has deprived himself of such accommodation by sale or letting. The standard at the stage of seeking leave to defend does not require conclusive proof of every assertion; however, the defence must rest on material particulars and not on a mere allegation that other properties exist. The relevant portion of the aforesaid Judgment is reproduced hereinbelow:

> **"17.** The word "discloses" in Section 25 B (5) of the Rent Act has to be understood as disclosing facts which if proved would disentitle the landlord from obtaining an order of eviction under Section 14(1)(*e*). Unless the words "discloses such facts" in Section 25B(5) are understood and interpreted as placing before the Rent Controller facts which when proved will result in dismissal of petition for eviction, the Rent Controller will be unable to apply summary procedure prescribed in Section 25B for such petitions for eviction. If it were to be held that every plea in the application for leave to defend, howsoever vague and without particulars and without anything in support thereof, should be permitted to be proved, the advocates for tenants, with their astute drafting skills, will not allow the summary procedure, prescribed by legislature to be followed for petitions for eviction of tenants on the ground of requirement of the landlord of the tenancy premises for self use, to be followed in any case and leave to defend will have to be granted and each case put to trial.
>
> **18.**Thus, if the tenant seeks leave to defend controverting the requirement pleaded by landlord on the ground of the landlord, though at the time of requirement having alternate premises, having not used the same and instead having commercially exploited the same, the tenant must plead (a) the particulars of such premises; (b) the right/title of the landlord to the same; (c) that the said premises were vacant and available for use at the time of the pleaded requirement of landlord; (d) how the said premises were suitable for the pleaded requirement; and (e) how the landlord has deprived himself thereof i.e. by sale or letting and support the said pleas with material on the basis whereof such pleas will be proved. I say that it is essential to place such material before the Rent Controller because the purpose of trial, resulting from grant of leave to defend, is to prove the said pleas and if the tenant has nothing from which he can possibly prove the said pleas, the trial also will not result in the landlord being "disentitled from obtaining an order for recovery of possession of premises on the

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Signing Date:06.11.2026 17:40:23

ground specified in Clause (e) of proviso to sub Section (1) of Section 14" of the Act, within the meaning of Section 25B(5) supra. This is not to say that the tenant should file fool proof documentary evidence at the stage of leave to defend. However there must be placed on record all the requisite particulars. The onus on the tenant, at the stage of seeking leave to defend, is thus somewhere in between fool proof documentary evidence and a totally vague, bereft of any particulars plea. Where, in between the said onus lies, depends on facts of each case.

19. Applying the aforesaid test, the petitioner/tenant is found to have not discharged the onus.

20. Even otherwise, sale, 3 or 4 years prior to the institution of the petition for eviction, does not entitle the petitioner/tenant to leave to defend.

21. The requirement pleaded by the respondent/landlord of the shop in the tenancy of the petitioner is that (a) he has a room along with the store room measuring 4′ 7″ × 5′ 8″ on the ground floor in his possession; the same is also borne out of Sale Deed in his favour; (b) that he was using the store room for his personal use before giving the same on rent to the petitioner/tenant; (c) that the respondent/landlord at that time had need for rent for Rs 1200 from the said store room; (d) however now after 13 years of letting of the said store room, the respondent/landlord required the same for use as a residence for himself and his expanding family members; (e) that the respondent/landlord has grown old and is suffering from Asthma and the wife of the respondent/landlord is also unable to move up to the first and second floor of the property; (f) that the respondent/landlord thus required the shop in the tenancy of the petitioner/tenant for his own use."

33. Applying the aforesaid principles, the objection concerning Property No. 5533, Katra Rathi, does not, on the material presently available, establish the availability of reasonably suitable alternative accommodation. The case of the Petitioners is that the property is owned by Respondent No. 1 and that its second floor was handed over to Mr. Anil Singh. Respondent No. 1, on the other hand, stated that the ground-floor premises were occupied by Mr. Rakesh Jain, who had been carrying on business there since 2018, and that the property was no longer available to her. The learned ARC accepted that the occupied ground-floor premises could not be treated as alternative

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Signing Date:06.11.2026 17:40:23

accommodation available for the pleaded requirement. The Petitioners have not demonstrated any material error in that finding. As regards the second floor, the mere allegation that it was handed over to Mr. Anil Singh does not establish that the said portion was available to Respondent No. 1 for carrying on her tailoring business. In any event, the accommodation relied upon is situated on an upper floor, whereas the requirement pleaded is for a commercial shop on the main road. The distinction in location and access is a relevant consideration in assessing reasonable suitability.

34. The Petitioners have also relied upon Shop No. 5, Nai Sarak, and Shop No. 5559, Katra Rathi, Nai Sarak. Respondent No. 1 asserted that the two shops had been sold in October 2009 and were no longer in her possession. The Petitioners relied upon municipal property-tax records reflecting payments in respect of the premises for the years 2012–2013, and emphasised that no sale deed had been produced by Respondent No. 1 to substantiate the alleged sale. The learned ARC held that the tax receipts, by themselves, did not establish ownership or present availability of the shops with Respondent No. 1. The absence of a sale deed in support of the plea of sale cannot, in isolation, establish that the premises continue to be owned by Respondent No. 1 or remain available for her use. Conversely, property-tax receipts do not, by themselves, conclusively establish title or present vacant possession. The material must be assessed cumulatively.

35. In the present case, although the Petitioners have identified the properties and relied upon municipal records, the material referred to in the Impugned Order does not establish that either shop was vacant

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and available to Respondent No. 1 at the time of institution of the eviction petition. Nor does the fact that tax payments were reflected in her name for an earlier period, without further material regarding possession or subsequent use, establish that the shops constituted reasonably suitable alternative accommodation on the relevant date. The plea of sale and the evidentiary value of the tax records must, therefore, be kept distinct from the question of actual availability. On the material relied upon before this Court, the Petitioners have not demonstrated that the learned ARC's conclusion on this aspect warrants interference in revisional jurisdiction.

36. The Petitioners have, even otherwise, failed to substantiate the plea concerning Shop No. 5, Nai Sarak, and Shop No. 5559, Katra Rathi, Nai Sarak, by placing on record any cogent material, such as photographs of the premises, hoardings or advertisements indicating their availability, a site plan depicting their location and layout, or any other documentary evidence establishing their present status, possession, accessibility and suitability for the commercial requirement pleaded by Respondent No. 1. As rightly observed by the learned ARC, the mere identification of these properties, without material demonstrating their actual availability and reasonable suitability for the stated purpose, does not suffice to sustain the objection of alternative accommodation.

37. The remaining objection concerns Shops Nos. 5561, 5562 and 5563 and the upper-floor accommodation forming part of the larger property. The record indicates that Shop No. 5561 and the room and tin sheds on the second floor were stated by Respondent No. 1 to be in use for storage, whereas Shop Nos. 5562 and 5563 had been combined

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and were being used for the business carried on under the name and style of M/s Royal Sherwani. It was further stated that, following renovation and redevelopment of the upper floors, an additional shop had been created on the first floor, from which the musical-instruments business of M/s Anand Musical Store was being conducted. The Petitioners rely upon these circumstances to contend that Respondent No. 1 has sufficient accommodation within the same property and that her requirement for the subject premises is, therefore, not made out.

38. The availability of other portions of the same property cannot be determined merely by counting the number of shops or floors. The inquiry is whether any identified portion is available to Respondent No. 1 and is reasonably suitable for the particular commercial use pleaded. The material on record indicates that the other shops and portions are being put to existing uses, including storage and businesses carried on by members of the family. The Petitioners have not demonstrated, at this stage, that these portions are vacant and available to Respondent No. 1 for the proposed tailoring business. Nor can the requirement for a ground-floor shop situated on the main road be rejected merely by assuming that an upper-floor portion or a shop presently being used for another business must necessarily serve as an adequate substitute. The principle recognised by the Hon'ble Supreme Court in ***Uday Shankar Upadhyay v. Naveen Maheshwari***[13], that the Court cannot ordinarily dictate to a landlord which floor should be used for a business, reinforces the need to assess suitability in the

[13](2010) 1 SCC 503

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context of the proposed use. The relevant portion of the aforesaid Judgment is reproduced hereinbelow:

> "**7.** In our opinion, once it is not disputed that the landlord is in bona fide need of the premises, it is not for the courts to say that he should shift to the first floor or any higher floor. It is well known that shops and businesses are usually (though not invariably) conducted on the ground floor, because the customers can reach there easily. The court cannot dictate to the landlord which floor he should use for his business; that is for the landlord himself to decide. Hence, the view of the courts below that the sons of Plaintiff 1 should do business on the first floor in the hall which is being used for residential purpose was, in our opinion, wholly arbitrary, and hence cannot be sustained. As regards the finding that the sons of Plaintiff 1 are getting a salary of Rs 1500 from the firm, in our opinion, this is wholly irrelevant and was wrongly taken into consideration by the High Court."

39. The Petitioners' reliance upon the alleged availability of Shop No. 5561, along with the room and tin-sheds situated on the second floor of the larger property, is devoid of merit. The parties have advanced rival contentions with respect to the damage allegedly caused by a fire. While Respondent No. 1 relied upon photographs placed on record to substantiate the condition of the premises, the Petitioners asserted on oath that the said accommodation continued to be available with Respondent No. 1. However, the learned ARC, upon consideration of the material on record, categorically observed that the photographs relied upon by the Petitioners themselves depicted the subject premises, where musical instruments were stored, to be in a dilapidated condition. Thus, even proceeding on the Petitioners' own reliance upon the photographs, the material on record does not support the contention that the premises constituted reasonably suitable alternative accommodation for Respondent No. 1. The determinative consideration is not merely whether the premises remained in her possession, but whether they were, in their existing condition, capable

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of being put to the commercial use for which eviction was sought. The mere assertion of availability, unsupported by material demonstrating the usability and suitability of the premises, cannot sustain the Petitioners' objection.

40. The Petitioners have further referred to the fact that the husband of Respondent No. 1 owns or occupies other properties in the vicinity and have questioned the explanation that the spouses are living separately. However, even otherwise, the mere ownership or occupation of property by the husband does not, without material establishing Respondent No. 1's right or access to such property, demonstrate that it is accommodation available to her for the purpose of Section 14(1)(e) of the DRC Act. The allegation concerning the husband's properties, in the absence of particulars establishing Respondent No. 1's entitlement to use them, cannot be treated as proof of alternative accommodation available to her.

41. Considered cumulatively, the material relied upon by the Petitioners identifies other properties and portions of the larger property, but does not establish that the same were available to Respondent No. 1 and reasonably suitable for the tailoring business for which the subject premises are sought. The learned ARC examined the specific properties relied upon, considered the explanation furnished by Respondent No. 1 and found that the Petitioners had not raised a triable issue on this ground. The Petitioners have, therefore, failed to raise a triable issue with respect to the availability of reasonably suitable alternative accommodation.

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CONCLUSION:

42. In view of the foregoing discussion, this Court finds that the Petitioners have failed to demonstrate any illegality, material irregularity or perversity in the Impugned Order dated 13.05.2024 passed by the learned ARC in Eviction Petition bearing RC ARC No. 796/2019, warranting interference in the exercise of the revisional jurisdiction of this Court under the proviso to Section 25B(8) of the Delhi Rent Control Act, 1958, and the present Revision Petition is consequently dismissed.

43. The Eviction Order passed in respect of Shop No. 5564, situated on the ground floor of property bearing Nos. 5561–5564, Nai Sarak, Delhi–110006, measuring approximately 16 ft. × 6 ft., is accordingly affirmed.

44. The Respondent No. 1 shall be entitled to seek execution of the Eviction Order in accordance with law, subject to the statutory protection under Section 14(7) of the DRC Act, if still applicable.

45. The Petition, along with pending Application(s), if any, stands disposed of in the above terms.

HARISH VAIDYANATHAN SHANKAR, J.

NOVEMBER 06, 2026/ma

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