

PETITIONER:
M/S. RAHABHAR PRODUCTION PVT. LTD.

Vs.

RESPONDENT:
RAJENDRA K. TANDON

DATE OF JUDGMENT: 26/03/1998

BENCH:
S. SAGHIR AHMAD, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S. SGHIR AHMAD, J.
Leave granted.

2. Ground floor of premises G-47, Kirti Nagar, New Delhi was let out in November, 1963 by Daulat Rai Tandon, father of the present respondent, to the appellant for the residence of its employee, Shri K.K. Chaudhry, who, subsequently, vacated the premises and shifted to his own flat at C-II/29-C, DDA Flats, Janak Puri, Pankha Road, New Delhi and since then, the premises are in occupation of Shri Raj Chaudhry, another employee of the appellant, against whom eviction proceedings, on the ground of sub-letting, are pending.

3. The respondent was employed as Deputy Chief Engineer in Northern Railway and retired from service, while posted at Delhi, on 23.7.87. He filed a petition under Section 14C of the Delhi Rent Control Act, 1958 (for short, 'the Act') for eviction of the appellant, but the petition was dismissed by the Rent Controller on 4.5.93. The Revision filed against that order was dismissed by the High Court. The respondent, then, approached this Court in Civil Appeal No. 10475 of 1996 (arising out of SLP(C) No.8337 of 1994) which was allowed and the case was remanded to the Rent Controller for a fresh decision in the light of the Judgment in Anand Swaroop Vohra vs. Bhim Sen Bahri & Anr., (1995) 5 SCC 372.

4. On the initiation of remand proceedings, the appellant moved an application under Section 25B(4) and (5) of the Act, before the Rent Controller, for leave to contest the eviction proceedings but the leave was refused and the appellant was directed to hand-over possession of the premises in question to the respondent. This order was challenged by the appellant in a Revision filed before the Delhi Court High Court which, by the impugned judgement dated 15.10.97, dismissed the Revision giving him time till 31st December, 1997 to vacate the premises and deliver possession to the respondent. That is how the matter is in this Court.

5. Mr. Gopal Subramaniam, learned Senior Counsel for the appellant, has vehemently contended that an order for eviction of the tenant cannot be passed by the Rent Controller under Section 14C of the Act unless it is found, as a fact, that the premises were bona fide required by the landlord for his own use and occupation. It is contended that the law does not allow the Rent

Controller or the High Court to act mechanically on the application of the landlord and grant him the relief of eviction merely on his asking through an application under Section 14C of the Act. It is also contended that the discretion of the Rent Controller and that of the High Court to allow or not to allow the eviction petition against a sitting tenant cannot be taken away by any legislative measure and unless "bona fide requirement" of the landlord or, for that matter, of any member of his family, is established on the material placed on record, the application cannot be allowed and the tenant cannot be evicted even under that provision of the Act.

6. Mr. Harish Salve, learned Senior Counsel appearing for the respondent contends in reply that in proceedings under Section 14C of the Act, "bona fide requirement" is not required to be established by the landlord as the words, "bona fide requirement" do not occur in that Section in contradistinction to the provisions contained in Section 14(1)(e) of the Act under which also eviction proceedings can be initiated against a tenant but only on the ground of "bona fide requirement". It is contended that absence of these words in Section 14C indicates the legislative intent to obviate the difficulty of a landlord by enabling him to get immediate possession of his premises in occupation of a tenant provided he (landlord) was in the service of Central Government of Delhi Administration and has either retired or was about to retire.

7. Senior Counsel on both sides have put forward before us in their own inimitable style attractive arguments compelling us to decide which argument is real attractive and which of the arguments looks to be artificially attractive under a mask of "distinguishable" or "not applicable" decisions.

8. The Act which was brought on the Statute book in 1958 is a composite legislation in the sense that while providing protection to the tenants who, under common law, including Transfer of Property Act, could be evicted from the premises let out to them, at any time by the landlord on the termination of their tenancy, it restricts the right of the landlords to evict the tenants at their will. The Act is thus beneficial as also restrictive in nature. The Courts are, therefore, under a legal compulsion to harmoniously read the provisions of the Act so as to balance the rights of the landlord and the obligations of the tenant towards each other keeping in mind that one of the objects of the legislature while enacting the Act was to curb the tendency of the greedy landlords to throw out the tenants, paying lower rent, in the name of personal occupation and rent out the premises at the market rate.

9. Section 14 of the Act contains a specific prohibition that a court or Rent Controller shall not pass any order or decree for recovery of possession from tenants in respect of the premises in their occupation. The Proviso appended to Sub-section (1) of Section 14, however, carves out certain exceptions and sets out the grounds on which the Controller may make an order for the recovery of possession. One such ground is contained in clause (e) thereof which reads as under :

"(e) that the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation.

Explanation -- For the purposes of this clause, "premises let out for residential purposes" include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes."

10. This Clause gives a right to the landlord to seek eviction of the tenant from the premises let out to him for residential purposes, provided such premises are bona fide required by the landlord for his own occupation. It is under this provision that the landlords, generally, approach the Rent Controller for eviction of the tenants for their personal bona fide requirements.

11. By the Delhi Control (Amendment) Act, 1976 (18 of 1976), which came into force with effect from 1.12.1975, Section 14A was introduced in the Act which gave special rights, to recover immediate possession, to a landlord who, being a person in occupation of any residential premises allotted to him by the Central Government or by any local authority, is required to vacate such residential accommodation on the ground that he already owns, in the Union Territory of Delhi, a residential accommodation either in his own name or in the name of his wife and dependent child.

12. The Act was further amended by the Delhi Rent Control (Amendment) Act, 1988 (57 of 1988) with effect from 5.10.1988 when three new Sections, namely, Section 14B, 14C & 14D were introduced in the Act.

13. Under Section 14B, right to recover immediate possession has been given to a released or retired person from any Armed Forces, if the premises let out by him are required for his own residence. Similarly, under Section 14C, right to recover immediate possession has been given to a retired or likely to retire employee of the Central Government or of the Delhi Administration. Under Section 14D, as widow, if the premises were let out by her or by her husband, has also been given the right to recover immediate possession of the premises.

14. The amendments introduced in 1976 and 1988 thus created a class of landlords who were bestowed with special rights to recover immediate possession from tenants occupying their premises provided such premises were required by them, except the landlord under Section 14A, for their own occupation. Section 14C, with which we are concerned in the present case, provides as under :-

"14C. Right to recover immediate possession of premises to accrue to Central Government and Delhi Administration employees :

(1) Where the landlord is a retired employee of the Central Government or of the Delhi Administration, and the premises let out by him are required for his own residence, such employee may, within one year from the date of his retirement or within a period of one year from the date of commencement of the Delhi Rent Control (Amendment) Act, 1988 whichever is later apply to the Controller for recovering the immediate possession of such premises.

(2) Where the landlord is an employee of the Central Government

or of the Delhi Administration and has a period of less than one year preceding the date of his retirement and the premises let out by him are required by him for his own residence after his retirement, he may, at any time within a period of one year before the date of his retirement, apply to the Controller for recovering the immediate possession of such premises.

(3) Where the landlord referred to in sub-section (1) of sub-section (2) has let out more than one premises, it shall be open to him to make an application under that sub-section in respect of only one of the premises chosen by him."

15. This Section intends to provide a house to a landlord who becomes homeless on retirement. It is for this reason that it is further provided in Sub-Section (3) of Section 14C that if the landlord had let out more than one premises, he shall indicate his choice for the premises which he intends to occupy. If this is done by him and the choice is indicated for a particular premises, it will not be open to the tenant either to say that the landlord owns another house or to contend that the landlord should have sought eviction of the tenant occupying the other house particularly as the indication of "choice" will be in consonance with the legislative intent reflected in Section 14C to provide immediately a house to a retired employee without the issue relating to the "other house" being permitted to be raised. This principle is directly related to a landlord who becomes or is likely to become homeless on retirement but not to landlords who are already in occupation of a house, owned by them, and seek eviction of the tenant from their other house, or, where the landlord is in occupation of a part of his own house and seeks eviction of the tenant from the other part. In such a case, the tenant may raise objections with respect to the landlord's requirement, particularly as the requirement, on retirement of likely retirement, cannot possibly, not in all cases, become urgent overnight. To repeat, the purpose is to provide a home to a homeless so that he may lead a peaceful and quiet life after retirement.

16. We may now proceed to consider the contentious issue relating to omission of the words "bona fide requirement" in Section 14C as against Section 14(1)(e) where these words do prominently occur.

17. The proceedings under the two provisions, though common in nature, in the sense, that both relate to eviction of tenants, are basically different. While under Section 14(1)(e), a tenant can be compelled to vacate the premises to make room for the landlord who genuinely and bona fide requires it, under Section 14C, the landlord has to have a particular legal status or character, namely, that he should have either retired from service or was about to retire within a year of initiation of the eviction proceedings. Under Section 14(1)(e), an enquiry into the "bona fide requirement" of the landlord has to be necessarily held as eviction of the tenant cannot be ordered unless that requirement is established as a fact. Whether enquiry into this vital factor is also required to be held under Section 14C is the question which has to be answered keeping in view the fact that the legislature, while enacting this provision, manifestly intended that a landlord who has retired from service or is likely to retire who has retired from service or is likely to retire, would immediately require a house for his own occupation.

18. The phrase "Bona fide need" of Bona fide requirement" occurs not only in the Delhi Rent Control Act but in the Rent Control legislation of other States also. What is the meaning of this phrase has been considered innumerable times by various High Courts as also by this Court and requires no citations to explain its legal implications. Even then reference may be made to the decision of this Court in Ram Das vs. Ishwar Chander & Ors. (1988) 3 SCC 131 = AIR 1988 SC 1122, in which it was indicated that "bona fide need" should be genuine, honest and conceived in good faith. It was also indicated that landlord's desire for possession, however honest it might otherwise be, has, inevitably, a subjective element in it. The "desire" to become "requirement" must have the objective element of a "need" which can be decided only by taking all relevant circumstances into consideration so that the protection afforded to a tenant is not rendered illusory or whittled down. These observations were made in respect of the provisions contained in E.P. Urban Rent Restriction Act, 1949.

19. The distinction between "Desire" and "Need" was also considered in Amarjit Singh vs. Khatoon Qamarain, (1986) 4 SCC 736, which construing Section 14(1)(e) of the Act.

20. In Section 14(1)(e) as also under Section 14C, it is the requirement of the landlord which constitutes the basis for tenant's eviction. If the requirement has to be genuine and bona fide, under Section 14(1)(e), can it be said that because the words "bona fide" have not been used in Section 14C, the requirement of the landlord may not be bona fide or genuine. This meaning, obviously, cannot be given to Section 14C. No landlord, and even a landlord under Section 14C, can be permitted to come to Court for eviction of the tenant for his requirement which is not real, genuine or bona fide. The tenant cannot be evicted on a false plea of requirement or "feigned requirement". The omission of the words "bona fide", therefore, does not make much of a difference.

21. Applications of the landlords for eviction of tenants on the ground of bona fide requirement under Section 14(1)(e) or for recovery of possession under Section 14A to 14D are disposed of in the manner indicated in Chapter IIIA which is headed as "Summary Trial of Certain Applications". The procedure set out in Section 25B, occurring in that Chapter, indicated that when an application is made to the Rent Controller and summons are issued to the tenant, the latter, namely, the tenant cannot contest the application of the landlord for his eviction unless he obtains Leave under Section 25B(4), Sub-sections (4), (5) and (6) of Section 25B, which are relevant for purposes of this case, are reproduced below :

"(4) The tenant on whom the summons is duly served (whether in the ordinary way or by registered post) in the form specified in the Third Schedule shall not contest the prayer for eviction from the premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided; and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to the admitted by the tenant and the applicant shall be

entitled to an order for eviction on the ground aforesaid.

(5) The Controller shall give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in clause (e) of the proviso to sub-section (1) of section 14 or under section 14A.

(6) Where leave is granted to the tenant to contest the application, the Controller shall commence the hearing of the application as early as practicable."

22. These provisions indicate that in order to obtain leave to contest the application of the landlord, the tenant has to file an affidavit stating the grounds on which he proposes to contest that application. If that affidavit discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession, the Controller would grant leave to the tenant. Once the leave is granted, the application is required to be disposed of in accordance with the practice and procedure applicable to a Court of Small Causes. The order of the Rent Controller finally allowing or dismissing the application of the landlord for recovery of possession, has not been made appealable, but a Revision has been provided against that order under Sub-section (8) of Section 25B.

23. Section 25B thus provides a uniform procedure for disposal of the applications filed either under Section 14(1)(e), or by the "classified" landlords under any of the Sections, namely, 14A, 14B, 14C or 14D.

24. As against the right of the landlord to seek his tenant's eviction under Section 14C of the Act, the extent of right available to such tenant, in defending those proceedings, may now be considered.

25. We have already seen that Section 25B provides a uniform procedure for both categories of tenants, namely, those whose eviction is sought under Section 14(1)(e) and those who are sought to be evicted under Section 14A to 14D. In both the cases, the tenant has to seek the leave of the Controller to defend the proceedings by filing an affidavit, setting out the grounds on which he proposes to contest the application of the landlord.

26. Concentrating on Section 14C alone and not travelling to other cognate Section, namely, 14A, 14B and 14D, a tenant while seeking permission of the Controller to defend the eviction proceedings, under Section 25B of the Act, can legitimately raise the plea, for example, that the landlord has either not retired or was not likely to retire from service within one year of the initiation of proceedings or that the landlord, after retirement, has taken up employment elsewhere or has been given any other lucrative assignment including the facility of a "Quarter" or an assignment commensurate with his earlier status and, therefore, may say that the landlord does not require the premises for his own occupation. The tenant may also indicate that the landlord, in order to augment his income after retirement, wanted only to let out the premises again on higher rent and to save sufficient portion of rental earnings, the himself had chosen or might choose to live in a tenanted accommodation on cheaper rent. These pleas (may be, many more such pleas, as human ingenuity knows no bounds) would definitely touch the "bona fides" of the landlord and, therefore, cannot be denied to a tenant on the ground that

the landlord, having retired from service or likely to retire, has to be presumed to require the accommodation for his own occupation.

27. Integrating these two factors together, namely, the right of the landlord to recover immediate possession and the right available to a tenant to raise pleas in defence to indicate that the premises, in spite of retirement of likely retirement of the landlord, are not required by him, what emerges out is that while the landlord has to establish his "requirement", which means "real" and not "feigned", the tenant can show that it is not so.

28. In *Surjit Singh Kalra vs. Union of India*, (1991) 2 SCC 87, a Three-Judge Bench of this Court laid down as under :-

"20. The tenant of course is entitled to raise all relevant contentions as against the claim of the classified landlords. The fact that there is no reference to the word bona fide requirement in Section 14-B to 14-D does not absolve the landlord from proving that his requirement is bona fide or the tenant must be a bona fide one. There is also enough indication in support of this construction from the title of Section 25-B which states "special procedure for the disposal of applications for eviction on the ground of bona fide requirement."

29. This decision, therefore, concedes to the tenant his right to defend the proceedings initiated under Section 14C by showing that the requirement of the landlord was not bona fide.

30. In the above case, an earlier decision in *Busching Schmitz Private Limited vs. P.T. Menghani*, (1977) 2 SCC 835, which dealt with the scope of Section 14A of the Act was considered and the view expressed therein was reiterated by observing as under :-

"The social setting demanding summary proceedings, the nature of the subject matter and, above all, the legislative diction which has been deliberately designed, differ in the two provisions. The Controller's power to give leave to contest the application filed under Section (14)(1)(e) or Section 14-A is cribbed by the condition that the 'affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified' in the respective sections. Needless to state, therefore, if an application is filed under Section 14-B or 14-C or 14-D, the tenant's right to contest the application is narrowed down and is restricted to the parameters of the respective sections. He cannot widen the scope of his defence by relying upon Section 14(1)(e). We find nothing contrary to our view in *Precision Steel & Engineering Works v. Prem Deva Niranjana Deva Tayal*. Sub-

section (5) of Section 25 is self-contained and Order 37 Rule 3 CPC has no part to play there. We, therefore, reiterate the views expressed in *Busching Schmitz Private Limited case*."

31. The Court thus restricted the defence of the tenant to the parameters of Section 14C and placed a further restriction that the tenant cannot widen the scope of his defence by relying upon Section 14(1)(e).

32. In another case, namely, *E.M.C. Steel Ltd., Calcutta vs. Union of India & Another*, (1991) 2 SCC 101, while considering the provisions of Section 14D under which a widow has a right to recover immediate possession of the premises in occupation of a tenant, it was laid down as under:-

"Section 14-D makes no distinction between the landladies who become widows before and after letting out of the premises. It merely says that where the landlady is a widow and the premises are let out by her or by her husband, are required by her for her own residence, she may apply to the Controller for recovering the immediate possession of such premises. The language of the section in that respect is very clear. The premises might have been let out by her as a widow or they might have been let out by her husband or even by herself before she had become widow. The legislature wanted to give a special privilege to the landlady who is a widow notwithstanding whether the premises were let out before or after she became widow. Such conferment of special benefit on a widow-landlady is permissible even under the provisions of Article 15(3) of the Constitution which is an clauses (1) and (2) of that article. It states that nothing in the said article shall prevent the State from making any special provision for women and children. A widow is undoubtedly a vulnerable person in our society and requires special protection. We further see no merit in the contention that if the benefit given by Section 14-D is allowed to be availed of by widows, they may make a business of it. There is no warrant for such apprehension. For, in the first instance, the right to recover possession under Section 14-D can be availed of by the widow only once. That is a sufficient guarantee against the abuse of the privilege granted by the section. Secondly, she has to prove her bona fide need for the occupation of the premises in question for her own residence like any other landlord."

Thirdly, the provisions of Section 19 of the Act come into play in her case also, when the order for possession on the ground of bona fide requirement for occupation as residence is made in her favour."

33. The Court, in the above case, did not accept the contention of the tenant that the privilege given to the widow may be abused by her and she may make a business of it. The Court held that the right available to a widow under Section 14B can be availed of only once. The Court also held that the widow like any other landlord, has to prove here bona fide need for the occupation of the premises for her own residence. The Three-Judge Bench thus reiterated it twice, once in proceeding under Section 14B and again in proceeding under Section 14D, that even the classified landlords have to prove their genuine need for the requirement of the premises in question for their own occupation.

34. The decision in Surjit Singh Kalra's case (supra) was considered by this Court in Anand Swaroop Vohra vs. Bhim Sen Bahri and another, (1994) 5 SCC 372 and was followed explaining, in the process, an earlier decision in Narain Kahmman vs. Pradumar Kumar Jain, (1985) 1 SCC 1, by observing that under Section 14A, the right to recover immediate possession can be exercised by the landlord as soon as he is served with a notice to vacate the government accommodation allotted to him. In such proceedings, the landlord, in view of the language employed in that Section, has not to show that the premises are required for his own residence. On the contrary, the right available to a landlord under Section 14B to 14D is dependent upon the requirement to show that the premises shall be occupied by the landlord for his own residence. The Court did not, therefore, digress from the view propounded in Surjit Singh Kalra's case (supra) that while the landlord has to show and establish his bona fide need, the tenant can plead and prove that the premises were not bona fide required by the landlord.

35. In V. Rajaswari vs. Bombay Tyres Intl. Ltd., (1995) Supp. 3 SCC 172, the Court held that under Section 15B, the tenant has practically no defence whatsoever and has to yield possession if it is proved that (i) that the landlady is a widow; and (ii) the premises are required by her for her own residence.

36. In J.P. Hingorani vs. Ash ok Kharbanda and another, (1995) Supp. 3 SCC 185, it was laid down that if a landlord, on retirement, lets out the premises to a tenant, he cannot initiate proceedings for the eviction of that tenant under Section 14C but has to approach the Rent Controller under Section 14(1)(e) as the fact that the premises were let out after retirement indicates that the immediate need of the landlord has vanished and the premises were not required by him for immediate occupation.

37. In view of the statutory provisions discussed above, specially in view of the fact that while introducing Section 14A to 14D in the Act, no amendment was made in Section 25B, we may summarise the legal position relating to eviction in proceedings landlord under Section 14C, as under :

- (1) Proceedings under Section 14C can be initiated by a landlord who was in the service of the Central Government or Delhi Administration and has retired from service or is likely to retire within one year of the initiation of proceedings, but the retirement or likely retirement of the landlord does not give rise to a presumption that the premises

are bona fide required by him. The landlord has also to plead and show that after retirement or likely retirement, no fresh assignment has been taken up or is likely to be taken up by him with the facility of a residential "Quarter".

- (ii) Possession can be recovered by the landlord only for real, genuine and bona fide need and not for "feigned" need.
- (ii) Proceedings under Section 14C can be contested only when leave to contest is granted by the Rent Controller; whether leave would be granted or refused would depend upon the nature of pleas raised of circumstances shown by the tenant in his affidavit filed before the Rent Controller.
- (iv) Section 25B does not place any restriction on the right of the tenant to raise pleas in defence within the parameters of Section 14C, namely, that he can plead and prove that notwithstanding the retirement or likely retirement of the landlord, the premises are not required by him for his own residence. No plea regarding the size of the landlord's family or the tenant's own family, whether it was likely to increase with son's marriage or decrease with daughter's marriage, can be raised by the tenant nor can be raise any plea as to the extent of accommodation or floor area or comparative hardship of partial eviction etc. as these are considerations which are not relevant under Section 14C. If, however, the landlord is already in occupation of his own house, part of which is in occupation of a tenant (as in the instant case) or where whole of the house, owned by the landlord, is in his personal occupation and he makes an application for eviction of a tenant occupying another house, the need of the landlord, with reference to his family strength and the extent of accommodation, at his disposal, will have to be examined vis-a-vis his requirement.

- (v) Expeditious enquiry need be held or else the landlord, if he has already retired from service will be literally on the "street" during the pendency of the proceedings which, undoubtedly, take long to conclude particularly as one party, namely, the tenant, is inherently interested in delayed disposal. If the tenant was allowed to contest Section 14C application also with that attitude, giving him the liberty to place all possible obstacles to retard the pace of the proceedings, legislative intent of providing immediate possession of the house to a retired, or likely to retire landlord, would be frustrated.

38. Let us now examine this case in the light of the above principles.

39. The facts established in this case indicate that the respondent was a Central Government employee. He was last posted at Delhi as Dy. Chief Engineer, Northern Railway and retired from service on 23rd July, 1987. He filed the application under Section 14C within time. He indicated his choice for the premises in question comprising of the ground floor, first and second floors. The ground floor is in occupation of the appellant while the first and second floors are in occupation of the respondent. The respondent has sought eviction of the appellant from the ground floor on the ground that the entire premises are required by him, particularly as the accommodation at his disposal on the first and second floors is insufficient. It is pleaded that while he requires three bed rooms separately for his son, daughter and for himself and his wife, another room is required for his office where he proposes to carry on consultancy work after having retired as Deputy Chief Engineer from the Northern Railway. He also requires another room for his guests, specially his three sisters who, though married, quite often visit the respondent, who is their only brother and after the death of their parents, their brother, namely the respondent is the only nearest relation whom they visit on all possible occasions. For these reasons, the entire accommodation on the ground floor is needed by the respondent by way of additional accommodation. The respondent also owns another house in Delhi. He has explained and established his need for this particular premises for which he has also indicated his "choice". Apparently, the need appears to be a need falling under Section 14(1)(e), but the fact remains that the need for additional accommodation of one room or the ground floor, which would also include the facility of car-parking, which the respondent, otherwise, has been parking on the road, has arisen on his retirement.

40. We have also examined the facts set out by the appellant in his affidavit filed before the Rent Controller for leave to defend the present proceedings. The pleas, in our opinion, do not disentitle the landlord from recovering possession of the premises in question particularly when the respondent has clearly set out in his petition that although he owned one more house, he wanted this particular premises

for his own need. The choice, and, sufficient reasons in support thereof, having thus been indicated by the respondent, the plea of the appellant about alternative accommodation being available to the landlord cannot be sustained.

41. We have, ourselves, examined the facts here to avoid the agony of a protracted litigation by remanding the case to the Rent Controller, particularly as we see no justification to interfere with the judgment passed by the High Court by which the appellant has been required to hand-over vacant possession to the respondent. We, however, provide that before possession is actually delivered to the respondent, he shall file an affidavit before the Rent Controller stating, in the form of an undertaking, that no part of the premises in question comprising of ground floor, first floor and the second floor shall be let out by him for one year from the date of taking over possession. In case of breach of that undertaking, the tenant would become entitled to regain the possession of the premises on an application made by him before the Rent Controller.

Subject to the above observations, the appeal is dismissed without any order as to costs.