$~J-1

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

Judgement reserved on: 27.09.2022
% **Judgment pronounced on: 10.05.2023**

\+ **RC.REV. 167/2019 and CM APPLs. 12491/2019, 33513/2019, 47464/2019, 41935/2022**

KAMAL RANA ..... Petitioner
Through: Ms. Anita Sahani, Adv.

versus

ANJU SINGH ..... Respondent
Through: Mr. Shiv Charan Garg and Mr. Rohit Kumar, Advs.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

SACHIN DATTA, J.

1. The present revision petition filed under section 25B (8) of the Delhi Rent Control Act, 1958 (*the 'DRC Act')* assails the order/judgement dated 17.01.2019 passed by CCJ cum ARC, Pilot Court (Central District) Tis Hazari Courts, Delhi *(the 'rent controller')* in eviction petition No. 930/2018, whereby the rent controller has dismissed the leave to defend application filed by the petitioner and allowed the eviction petition filed by the respondent.

2. The respondent/landlord filed the instant eviction petition under Section 14(1)(e) of the DRC Act to recover possession of one shop on the ground floor in premises bearing no. 29/24, Shakti Nagar, Delhi (*the 'tenanted premises'),* let out to the petitioner/tenant, on the ground of *bona fide* requirement of respondent's daughter to open a coaching institute for her livelihood.

3. It was stated in the eviction petition that the building in question consists of two floors. On the ground floor there are 9 shops, all of which are let out to different tenants. The tenanted premises is one of such shops. It was also stated that there are 3 rooms, one kitchen, and a toilet on the ground floor, however, entry towards those rooms is from the small lane/street and not from the front portion of the building. It is further stated that on the first floor there are 3 rooms, kitchen and toilet, and the same are being used by the respondent for residential purposes. It was stated that the respondent has no commercial accommodation available for her daughter to run a coaching institute.

4. A leave to defend application was filed by the petitioner, wherein, *inter-alia*, it was stated that no notice of the eviction petition was served upon the petitioner personally. It was contended that the petitioner had gone to her village in Meerut U.P. on 05.11.2018 where she fell ill and remained under medical treatment, and it was only when she returned to Delhi on 31.12.2018, that she became aware of the eviction petition and filed her application seeking leave to defend. It was stated that in any case, notice/summons mentioned the next date of hearing as 14.01.2019 and as such the husband/representative of petitioner who was served with the summons was under the impression that the petitioner was to enter

appearance by the said date. It was stated that the leave to defend application is filed within the statutory period after the petitioner attains the knowledge of the eviction petition.

5. It was averred in the leave to defend application that the respondent's daughter is financially independent, being already in employment and as such there is no possibility of her starting any coaching institute. It was further stated that the need of the daughter can be met from three rooms on the ground floor of the building, and for which a large door/opening /entrance can also be taken out from the gali/street side. It was further stated that the respondent has filed a false site plan. A site plan was filed by the petitioner contending that the respondent is already in possession of two shops on the ground floor, which as per the eviction petition are stated to be in possession of Mr. Afroj and another by Ms. Madhu Malik. Further, it was stated that in respect of one other shop, an eviction petition was filed by the respondent against the tenant/ Mr. Avtar Singh and the said eviction petition has already been allowed and the said tenant has already offered possession to the respondent, however, the respondent is not taking the possession of the same. It is contented that alleged *bona fide* need of the daughter can be met from the said shops.

6. The leave to defend application was accompanied with an application under Section 5 of the Limitation Act, 1963 read with Order 37 Rule 4 and Section 151 CPC seeking that the delay, if any, in filing the leave to defend application be condoned and the eviction petition be decided on merits. In the reply filed on behalf of the respondent to the said application, it was stated that legal position is well settled to the effect that an application for condonation of delay in filing the application seeking leave to defend

application is not maintainable and the same is liable to be dismissed. In rejoinder thereto filed by the petitioner, it was, *inter alia*, contended that Rule 22 of the Delhi Rent Control Rules 1959 contemplates that service of notice should be effected personally and/or through Registered Post, which was not effected upon the petitioner/tenant by the respondent.

7. The rent controller considered the respective contentions of the parties and held that the petitioner has failed to file the leave to defend application within the statutory time period. The relevant portion of the impugned judgement in the said regard reads as under:

> *"4. Summons were served upon the respondent on 28.11.2018, who appeared and filed leave to defend application alongwith another application under Section 5 of the Limitation Act r/w Order 37 Rule 4 and Section 151 CPC for condonation of delay in filing the leave to defend application. Both these applications have been filed on 03.01.2019 i.e. the application forleave to defend application within the statutory time as provided under Section 25B of the DRC Act.*
>
> *5. It is submitted by the respondent that she had gone to her village in Meerut, UP on or about 05.11.2018 for some treatment and she returned to Delhi on 31.12.2018. It is also stated that the summons were received by her representative i.e. her husband who was misled by the date mentioned on the summons i.e. 14.01.2019 and was under the impression that this is the date on which the respondent has to appear in the Court. It is prayed that since the summons were not served personally on the tenant / respondent, the delay if any in filing leave to defend application be condoned and the same be taken on record.*
>
> *6. Reply to the condonation of delay application has been filed on behalf of the petitioner wherein the averments made in the application have been denied. It has further been stated that there is no question of being misled as it is clearly mentioned on the summons that respondent has to file leave to defend application within 15 days of the service of the summons.*
>
> *7. Arguments on the applications were heard. Ld. Counsel for both the parties relied upon respondent is relying upon the case laws in support of their arguments. On rejoinder to the reply of the petitioner has also been filed by the respondent today i.e. when the listed for orders.*
> *Record perused.*

8. Ld. Counsel for respondent is relying upon the judgment Shri Hansraj v. Lakhiram AIR 2005 Delhi 87, Daula Ram v. Smt. Sajjan Kanwar RLW 2007 (4) Raj 3454, HDFC v. Anil Laul 85(2000) DLT 343, in support of his arguments. Perusal of these judgments shows that they are related to provision of Order 37 CPC and are not applicable to the facts of the present case. Ld. Counsel for respondent also seeks to rely upon the judgment PushpaSoni v. Sarbati Devi ILR (2001) I Delhi 200 in support of his arguments but the same is not applicable to the present case. He further relied upon Om Prakash v. Brijnath Sharma (1980) 18 DLT 313, Jor Singh v. Sanjeev Sharma RC Rev. 134/2013, Manoharan v. Sivarajan Civil Appeal No. 10581 of 2013 decided on 25.11.2013. However, in the present case, the respondent has already filed condonation of delay application alongwith the application for leave to defend application which both applications are being considered hereunder on merits.

9. In the present petition perusal of the report of summons dated 28.11.2018 shows that the summons were received on the tenanted premises by Shri Virender Singh Rana who told that he is the husband 'of respondent and received the summons on her behalf. The respondent has duly admitted that Shri Virender Singh Rana is her husband. It is further noted that the column of next date of hearing in the summons is blank. When already in the summons it has been specifically mentioned: "you are hereby summoned to appear before the Controller within 15 days of the service thereof and to obtain the leave of the Controller to contest the application for eviction on the ground aforesaid in default whereof the applicant will be entitled at any time after the expiry of said period of 15 days to obtain an order for your eviction from the said premises". Thus, it is highly improbable that the husband of the respondent would have been misled and assumed for himself the date of appearance to be 14.01.2019. It has been held in the case Shyam Sunder Wadhawan v. Vivek Arya RC REV No. 294/14 &CM No. 14886/2014 dated 09.09.2014 that merely because summons were addressed to the tenant but received by somebody else does not mean that in each and every such case the service is not a valid service. The fact that summons were served on identifiable property and person, who is the husband of the respondent/ tenant in this case, shows that the summons were duly served on the respondent on 28.11.2018 and the leave to defend application has been filed on 03.01.2019 i.e. long after expiry of statutory period of 15 days. In these facts and circumstances, it cannot be disputed that the respondent was duly served. In Prithipal Singh v. Satpal Singh (Dead) through hm LR's, (2010) 2 see 15, it has been held that the statutory time period of 15 days for filing of leave to defend application is inflexible and whatever has to be stated in the leave to defend application with respect to the facts and

> *events, which have happened prior to 15 days period, must be stated in the leave to defend application itself and not by way of subsequent affidavit or documents. In the present case, the respondent has failed to file the leave to defend application within the statutory time period. Moreover, specific provision under Section 25B of the DRC Act is to be followed for eviction petition filed under Section 14(l)(e) of the DRC Act. In Vipin Nanda v. Kusum Sharma CM (M) 1262/2011 and CM No. 19726-28/2011 dated 30.10.2011, it has been held that the provisions of Rule 23 of the DRC Rules, 1959 are not applicable in a petition under Section 14 (1) (e) of the DRC Act.*
>
> *10. Thus, CPC or the Limitation Act is not applicable till the adjudication of leave to defend application as provided under Section 25B of the DRC Act and Section 23 of the DRC Rules. Accordingly, the application under Section 5 of the Limitation Act r/w Order 37 Rule 4 and Section 151 CPC moved on behalf of the respondent for condonation of delay in filing the leave to defend application stands dismissed."*

8. The impugned judgment goes on to consider the matter on merits, taking into account the contentions raised in the application seeking leave to defend. As regards the *bona fide* need of the respondent, the impugned judgement holds as under:-

> *"12. Further it is contended that the daughter of the petitioner for whose bonafide requirement the present petition is filed is already in employment and working in Noida and Gurgaon. On the other hand the petitioner has categorically stated that her daughter is divorcee, residing with her and well qualified. She wants to open a coaching institute for her livelihood. In support of averments in the petition, petitioner has place on record the copy of B.Tech certificate. There is nothing stopping the daughter of the petitioner to start her own independent business/ coaching institute from the property owned by her mother. Moreover, the respondent has failed to give any address where the daughter of petitioner is presently working. Even if as alleged by the respondent, it is presumed that daughter of petitioner is working in Noida and Gurgaon then also she cannot be forced to remain in employment and commute from Shakti Nagar where she is presently residing upto Noida and Gurgaon for employment when she has ability as well as suitable accommodation in the form of tenanted premises to start her own business."*

9. With respect to assertion regarding vacant shops on the ground floor of the building in question, the impugned judgement holds as under:

> *"13. Furthermore, the respondent has challenged the site plan filed by the petitioner stating that she is filing, the correct site plan alongwith affidavit of leave to defend. Further it is submitted that the petitioner is already in possession of two shops / portions from where she is carrying on business of denting and painting in association of Mohd. Afrosh who is alleged to be a tenant, whereas he is employed on job basis by the petitioner. It is submitted that there is another shop alleged to be with Ms. Madhu which is factually incorrect as Ms. Madhu Malik is the sister in law of the petitioner who has been teacher in school and never done any business from the alleged shop which is lying vacant and the photographs of the said shop taken on different dates proved the said fact of the shop lying locked.*
>
> *14. Perusal of the record shows that the site plan filed by the respondent is same as that filed by the petitioner. Therefore, this contention of the respondent regarding the site plan are found to be false, vague and without any basis. As regards the another contention of the respondent regarding the availability of two shops with the petitioner, the petitioner has already categorically stated that there are nine shops on the ground floor and has also disclosed the name of the tenants who are occupying the said shops in the eviction petition itself. Further, the petitioner has filed the copy of counterfoils of the rent receipt in the name of the tenants occupying the said shops as Annexure G. Even though the respondent is relying on certain photographs showing some closed shutters however, it is not clear whether the said photographs are of the suit premises or not. Moreover, merely the shutter is closed does not mean that the said shop is not in the possession of the tenants. Thus, the respondent has failed to show any vacant shop on the ground floor of the suit property."*

10. With respect to assertion that there are some rooms available on the ground floor and first floor of the building in question, the impugned judgement holds as under:

> *"15. Further, it is contended by the respondent that the petitioner has concealed and suppressed that there was a tenant Shri Ajay Kumar on the first floor of the suit property who has vacated and ever since then the said portion is with the petitioner and her family and they have shifted to the first floor of the suit property. As such the three rooms which had been in their possession in the ground floor of the suit property became available. An opening/ entrance can be taken out from the gali side where the shops*

exist on either side thereof. The said portion can be also used by the petitioner for the alleged need of the daughter of the petitioner for even starting a Coaching Institute. The present petition is filed for additional accommodation.

16. It cannot be denied that business being run on the ground floor is always much more profitable as the footfall of the customers on the ground floor is much more as compared any other floor. Reliance may be placed upon the law laid down in Rajesh Jain v. QuaziSammin Ahmad 2015 (2) RLR 438 wherein it has been held that since eviction was sought for commercial. purposes, it was rightly held that ground floor of the property would be more suitable. Similar view has been taken in Surinder Singh v. Jasbir Singh 172 (2010) DLT 611. It has been held that with regard to the availability of basement or first floor, it is contended that these portion are not suitable for business, as tenanted shop is situated on the main road and that too on the ground floor. No customer would like to go to the basement or first floor. The premises or the space available at the basement or at the first floor, can in no way substitute the commercial space available at the ground floor of a given property.

17. As regards the contention regarding availability of three rooms on the ground floor the respondent himself has stated that in order to utilize the said rooms the petitioner is supposed to make certain improvements / renovations/ repairs in the form that an opening/ entrance has to be taken out from the gali side where the shops exist on either side thereof. The petitioner being landlord cannot be forced to make an opening on the side road in order to accommodate the respondent tenant on the main road. Any business run in a shop on the main road would be more profitable as compare to the business being run in room after making an opening on the side road."

11. In the present revision petition, the petitioner has again sought to justify the delay in filing the leave to defend application on the same contentions as raised before the rent controller. It is submitted that service of summons on the husband of the petitioner when the petitioner was not in Delhi cannot be said to be a valid service. It is further submitted that summons were neither addressed to any agent empowered to accept service on behalf of the petitioner, nor were they received by any agent empowered to accept service. It is further submitted that rent controller erred in not

appreciating that Rule 22 of Delhi Rent Control Rules, 1959 contemplates that service of notice should be effected personally upon the tenant. It was thus contended that the rent controller erred in holding that the petitioner was duly served with the summons and consequently finding that there was a delay in filing the leave to defend application. In support of the said contentions, the petitioner has placed reliance on the following judgements: ***Subhash Anand vs Krishan Lal***[1]***; Jor Singh vs Sanjeev Sharma***[2]***; KantaThapar VS Brij Nandan***[3]***; Sh. Hansraj vs Sh. Lekhi Ram***[4]***; and Director directorate of education &Anr. vs Mohd. Shamim &Ors.***[5]

12. On merits, it is further contended that the respondent has sufficient commercial space available to meet the alleged need of the daughter. It is contended that three shops on the ground floor of the building in question are in possession of the petitioner. It is submitted that Mohd. Afroz, alleged to be a tenant, in possession of one shop, is actually the employee of the respondent in respondent's "denting painting" business. It is submitted that another shop stated to be under tenancy of Ms. Madhu Malik is vacant and in possession of the respondent. It is submitted that another shop admittedly is in possession of the respondent being vacated by the tenant/ Mr. Avtar Singh upon the orders passed by a rent controller for the *bona fide* need of the respondent. It is further contended that three rooms, kitchen and bathroom on the ground floor and three rooms, kitchen and bathroom on the first floor are also available with the respondent. It is further contended that it is not possible to run any coaching centre from the tenanted premises

[1] (1985) 27 DLT 269
[2] (2013) 205 DLT 117
[3] MANU/DE/3810/2011
[4] AIR 2005 Delhi 87
[5] (2020) 266 DLT 1

being a small shop. It is thus contended that triable issues are raised. In this regard, reliance has been placed on the following judgments: ***R.S. Bakshi v. H.K. Malhari***[6]***; Mohd. Jafar v. Nasra Begum***[7]***; and Liaq Ahmed v. Habeeb-Ur-Rehman.***[8]

Analysis & Conclusion

13. At the outset, it would be apposite to refer to the judgment of the Supreme Court in the case of ***Abidul Islam vs. Inder Sen Dua***[9], delineating the scope of interference in revisional proceedings under Section 25B(8) of the DRC Act. In this regard, it has been held 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."*
>
> [emphasis supplied]

14. The contentions raised by the petitioner are required to be tested on the touchstone of the parameters laid down by the Supreme Court in the aforesaid judgment.

15. As regards the contention of the learned counsel for the petitioner with regard to the non service of summons on the petitioner, the impugned

[6] 2003 SCC OnLine Del 140
[7] 2012 SCC OnLine Del 3520
[8] (2000) 5 SCC 708
[9] (2022) 6 SCC 30

judgment has taken note of the factual circumstances, in particular the fact that the summons were admittedly received by the husband of the petitioner on 28.11.2018, and the fact that on the face of the said summons, there was no confusion as to the scope and import thereof, inasmuch as, it was clearly mentioned therein that the petitioner was required to file leave to defend within a period of 15 days of the service thereof. The impugned judgment also takes note of the judgment of this Court in ***Shyam Sunder Wadhawan v. Vivek Arya***[10]**,** wherein it has been held that "if the summons is addressed to the tenant, and if the same is received by a person other than the tenant, but with consent/or knowledge or direction of the tenant, then the service is as effective as the service on the tenant." Taking note of the same, the impugned judgment concludes that the application seeking leave to defend was filed beyond the stipulated time and that the delay in this regard could not be condoned in view of the decision of the Supreme Court in ***Prithipal Singh v. Satpal Singh***.[11]

16. The findings rendered in the impugned judgment being based on the appreciation of the relevant factual circumstances, there appears no justification to interfere with the same in exercise of revisional jurisdiction. Notwithstanding, however in any event, the impugned judgment itself proceeds to consider the petitioner's application seeking leave to defend on merits, and deal with each and every contention raised by the petitioner. As such, the issue as to whether the petitioner was duly served or not has become moot in the present case.

[10] (2014) 214 DLT 616
[11] (2010) 2 SCC 15

17. The findings rendered by the rent controller on the merits of the eviction petition also do not warrant any interference in exercise of revisional jurisdiction.

18. The plea of the petitioner that the tenanted premises is a small shop of dimensions 9"X 6" and as such it is not possible to run any coaching centre from the said tenanted premises is liable to be rejected in view of the settled position in law that the landlord is the best judge of his requirement and the tenant cannot dictate to the landlord as to how he should accommodate itself or dictate to the landlord his choice of accommodation. It is not for the tenant to dictate to the landlord as to how much space is adequate for landlord's proposed business. This position has been reiterated in numerous judgments of the Supreme Court. In ***Sarla Ahuja v. United India Insurance Co. Ltd***[12], it has been held as under:

> *"…it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself."*

18.1 In ***Prativa Devi (Smt.) v. T.V. Krishnan***[13], it has been held as under:

> "*The landlord is the best judge of his requirement. He has a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a standard of their own."*

18.2 In ***Anil Bajaj v. Vinod Ahuja***[14]**,** it has been held as under:

> *"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*

[12] AIR 1999 SC 100
[13] (1996) 5 SCC 353
[14] (2014) 15 SCC 610,

belonging to the landlord should be utilized by him for the purpose of his business."

18.3 In ***Balwant Singh v. Sudarshan Kumar***[15], it has been held as under:

"It is not for the tenant to dictate how much space is adequate for the proposed business venture or to suggest that the available space with the landlord will be adequate."

18.4 In ***Shiv Sarup Gupta v. Mahesh Chand Gupta (*Dr)**[16]**,** it has been held as under:

"Once the court is satisfied of the bona fides of the need of the landlord for the premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the court."

19. The plea of the petitioner that suitable alternative accommodations are available with respondent to meet the need of the daughter has been duly considered by the rent controller in para 12 to 17 of the impugned judgement (supra). It is notable that the eviction petition itself mentions the names of various tenants occupying the shops on the ground floor of the building in question. The respondent has also annexed the rent receipts issued to various tenants to show the factum of tenancy. The contention of the petitioner that one of the tenants/ Mohd. Afroz is actually the employee of the respondent in respondent's own business is a bald averment not supported with any cogent material. The contention of the petitioner that one of the shops in possession of tenant/ Ms. Madhu Malik, stated to be sister-in-law of the respondent, is vacant and in possession of the respondent, is also a bald averment. The photographs on the basis of which it is alleged

[15] 2021 SCC OnLine SC 114
[16] (1999) 6 SCC 222

that the said shop is vacant, shows 'all' the shops with shutter closed. The photographs do not even provide any information about the specific date and time when they were captured. The impugned judgement rightly notes that "merely the shutter is closed does not mean that the said shop is not in the possession of the tenants." It cannot be said that the petitioner has given facts or particulars which are required to be established by way of evidence.

20. It is settled law that leave to defend application cannot be granted on mere asking otherwise the very object of special provisions contained in Section 25B of the DRC Act will stand defeated. Bald averments made by a tenant in respect of landlord's ownership of other buildings are not to be considered sufficient for grant of leave to defend. In ***Rajender Kumar Sharma v. Smt. Leela Wati&Ors.***[17]**,** it has been held by this court as under:

> *"....Only those averments in the affidavit are to be considered by the rent Controller which have same substance in it and are supported by some material. Mere assertions made by a tenant in respect of landlord's ownership of other buildings and in respect alternate accommodation are not to be considered sufficient for grant of leave to defend. If this is allowed the whole purpose of Section 25-B shall stand defeated and any tenant can file a false affidavit and drag a case for years together in evidence defeating the very purpose of the statute."*

21. The petitioner has also contended that another shop, which has since been vacated by the tenant/Mr. Avtar Singh, is in possession of the respondent. The said shop has been vacated by Mr. Avtar Singh pursuant to a judgement/order dated 06.09.2018 passed by a rent controller in eviction petition no. 439/14/12. It is notable that said eviction petition was filed by the respondent on ground of *bona fide* need of starting a business for maintaining herself and members of her family dependent upon her while

[17] 155 (2008) DLT 383

the present eviction petition (in which impugned judgement is passed) is filed for the *bona fide* need of the respondent's daughter to run a coaching centre. The need pleaded in both the eviction petitions is thus different. It is not the case of the petitioner that the respondent and/or respondent's daughter does not intend to occupy the said tenanted premises/shops on recovering their possession. The DRC Act in any case under Section 19 of the Act provides a remedy to the tenant, in case the landlord does not occupy the premises or let out the premises to a third person after having recovered possession of the premises from the tenant in pursuance of an order made under Section 14(1)(e) of the Act. The alleged availability of the shop, vacated by Mr. Avtar Singh, with the respondent thus cannot satisfy the *bona fide* need of the respondent's daughter to open a coaching centre. As noticed above, the law is well settled that it is not for the tenant to dictate to the landlord as to how the landlord should accommodate himself or as to how the landlord should adjust himself in some other premises.

22. The plea of the petitioner that three rooms on the ground floor of the building in question are available to the respondent is again liable to be rejected. In the leave to defend application, it was stated "coaching institute which in any case can be started from the other portions on the ground floor of the property for which a large door can also be taken out from the other side gali of the property." The impugned judgement in para 17 thereof (supra) righty notes that as per the petitioner himself, certain improvements/renovations/repairs are required to be made in order to utilise the said rooms. Moreover, the said rooms on the ground floor were earlier used by the respondent for her residential accommodation and as such, it cannot be said that said rooms are suitable for commercial accommodation.

Therefore, the said rooms on the ground floor cannot be said to be suitable alternative commercial accommodation.

23. The plea of the petitioner that three rooms on the first floor of the building in question are available to the respondent, on being vacated by previous tenant/ Mr. Ajay Kumar, is again liable to be rejected. In the eviction petition, it was disclosed that rooms on the first floor are being used by the respondent for the residential purposes. Even in the leave to defend application, contention of the petitioner was that since the respondent and her family have shifted to the first floor of the building in question, the three rooms which had been in their possession on the ground floor of the building have become available. Thus, in the application seeking leave to defend application, it was never contended that three rooms on the first floor serve as suitable alternative accommodation. Even otherwise, the impugned judgement in para 16 thereof (supra) rightly notes that space available at the first floor, cannot be considered to be a substitute for the commercial space available at the ground floor of a given property. In this regard reference may also made to the judgement of this court in ***Mohd Saleem Vs Zaheer Ahmad***[18] wherein it has been held as under:

> *"19. ...It has been reiterated in number of cases that for the purpose of opening a shop or carrying out a business, premises on the ground floor are more suitable. In this regard, reference is made to judgment of the Supreme Court in* ***Uday Shankar Upadhyay v. Naveen Maheshwari, (2010) 1 SCC 503****, wherein it has been held as under:*
>
> *"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*

[18] 2023 SCC OnLine Del 1469 : 2023/DHC/001762

which floor he should use for his business; that is for the landlord himself to decide."

20. Likewise, in ***Dhannalal v. Kalawatibai****, (2002) 6 SCC 16 it has been held as under:*

"a shop on the first floor cannot attract the same number of customers and earn the same business as a shop situated on the ground floor would do."

21. In ***ViranWali v. Kuldeep Rai Kochhar****, (2010) 174 DLT 328 it has been held as under:*

"any business which is being run from the ground floor of the premises, will obviously attract more customers than the business being run from the basement. It is the settled law, that a tenant cannot dictate the landlord as to how and in what manner the landlord should use his own property."

24. Therefore, it cannot be said that the alleged alternate accommodation/s referred to by the petitioner, are reasonably suitable, in comparison with the tenanted premises wherefrom the respondent is seeking eviction.

25. The impugned judgement rightly reaches the conclusion that the petitioner herein has failed to raise any triable issue, which requires evidence to be adduced. As such, no infirmity is found in the impugned judgement dated 17.01.2019. The same does not call for interference in exercise of revisional jurisdiction under Section 25B (8) of the DRC Act.

26. In the circumstances, the present petition, along with pending applications, is dismissed, however with no orders as to costs.

SACHIN DATTA, J

SEPTEMBER 27, 2022/cl/hg