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

Reserved on: 28th January, 2026
Pronounced on: 9th April, 2026

\+ RC.REV. 294/2023 & CM APPL. 55270/2023

BATLIBOI LTD .....Petitioner

Through: Mr. Alok Kumar, Sr. Adv. with Mr. Akshay Ringe, Mr. Rambhakt Agarwal, Ms. Megha Mukherjee, Mr. Suyash D. Mr. Ravi Sharma, Mr. Anjum Singh, Mr. Amit Kr. Singh, Mr. Varun Maheshwari, Mr. Manan Soni, Advs.

versus

KIRAN SHARMA .....Respondent

Through: Mr. Sunil Mittal, Sr. Adv. with Mr. Amit Sharma, Mr. Sourav Kumar, Mr. Praveen Tanwar & Ms. Kashish Jain, Advs.

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present petition under Section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the "**DRC Act**"), seeks the following prayers: -

"The Petitioner humbly prays before this Hon'ble Court:

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i. That the impugned order dated 27.04.2023 passed in RC ARC no. 5026 of 2015 titled Kiran Sharma Vs. Batliboi Ltd. be reversed and the eviction petition be dismissed;

ii. Pass any other or further orders in favour of the petitioner and against the respondent as this Hon'ble Court may deem fit in the facts and circumstances of the case."

2. The present petition assails the order dated 27.04.2023 (hereinafter referred to as the "**Impugned Order**"), passed by the learned Senior Civil Judge-cum-Rent Controller, South East District, Saket Courts, New Delhi (hereinafter referred to as the "**Learned ARC**"), in RC ARC No. 5026/15 (hereinafter referred to as the "**Eviction Petition/Eviction Proceeding**"), whereby, eviction petition under Section 14(1)(e) read with Section 25B of the DRC Act, preferred on behalf of Mr. Kiran Sharma, *i.e.*, the present Respondent, against M/s Batliboi Ltd., *i.e.*, the present Petitioner, was allowed and an eviction order was passed *qua* the present Petitioner.

3. Relevant facts, necessary for adjudication of the present petition are as under: -

i. The property bearing Plot No. N-197-A, Greater Kailash-1, New Delhi (hereinafter referred to as the "**Tenanted Premises**") was acquired by the mother of the Respondent, namely Mrs. Sumitra Devi Sharma, by virtue of a Registered Sale Deed dated 20.01.1961. Thereafter, after her demise on 20.07.1991, the tenanted premises devolved upon her legal heirs, *i.e.*, the Respondent along with his brother and sister;

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ii. The tenanted premises were let out by the mother of the Respondent, to the present Petitioner, *vide* a lease deed dated 02.11.1976 at a monthly rent of INR 1150/-;

iii. It was stated that the Petitioner had stopped paying rent for the tenanted premises after the year 1997 and because of successive defaults in payment of rent, the Respondent had preferred an eviction petition under Section 14(1)(e) of the DRC Act, in the year 1997. It was further stated that since the Respondent and the other co-owners of the tenanted premises were residing in Malaysia, the said eviction petition could not be pursued diligently and the same was dismissed in default for non-prosecution in the year 2000;

iv. It was further stated that a legal notice dated 06.06.2012 was issued by the Respondent to the Petitioner for terminating the tenancy and seeking vacation of the tenanted premises. Thereafter, a reply dated 12.07.2012 to the said notice was received by the Respondent, whereby the Petitioner had refused to vacate the tenanted premises;

v. A Civil Suit bearing No. 247/2014 was preferred by the Respondent before the Court of learned ADJ, South East District, Saket Courts, New Delhi, against the Petitioner, seeking ejectment of the latter from the tenanted premises. The said Civil Suit was dismissed *vide* order dated 02.02.2015, being barred by Section 50 of the DRC Act, and thereafter, the present eviction petition was preferred by the Respondent against the Petitioner;

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vi. The *bona fide* requirement as stated by the Respondent was that the tenanted premises are required by the Respondent and his daughter, as they wanted to settle in Delhi and further the Respondent required the tenanted premises, not only for his family, but also for his brother and sister and their family members, as when they visited India, they had no residence to stay;

vii. An application seeking leave to defend was preferred by the Petitioner in the eviction proceeding, wherein several grounds were taken by the Petitioner. The said application was dismissed by the learned ARC *vide* order dated 15.10.2015, resultantly granting an order of eviction in favour of the Respondent. The said order was then challenged before this Court in RC. REV. 111/2016. The learned Predecessor Bench of this Court, *vide* order dated 18.04.2018, while disposing of the said petition, had set aside the order dated 15.10.2015 and remanded the matter back for further proceedings.

viii. Thereafter, the Petitioner had filed its written statement and evidence was led by both the parties in the eviction proceedings, and consequently, the impugned order was passed by the learned ARC.

SUBMISSIONS ON BEHALF OF THE PETITIONER

4. At the outset, learned Senior Counsel appearing on behalf of the Petitioner submitted that though the Respondent had sought to settle in Delhi, his need had changed mid-way into the litigation, as the Respondent had

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initially stated in his evidence by way of affidavit that he required the tenanted premises as and when he visited Delhi, and thus, the need had been significantly watered down. It was further submitted that the Respondent had projected the *bona fide* need for his daughter, *i.e.*, Ms. Sarita Sharma, in order for her to start practicing as an Advocate in India. However, it was stated by Ms. Sarita Sharma, in her evidence by way of affidavit that she would require the tenanted premises only when she would be visiting India for her profession as a lawyer.

5. Attention of this Court was further drawn to the cross-examination of the Respondent dated 30.05.2022, to contend that the Respondent had admitted that there was no need of the tenanted premises for his daughter as on 07.04.2015, *i.e.*, the date of filing of the eviction petition. The relevant portion of the said cross-examination is reproduced as under: -

> "The need in the petition dated 07.04.2015 was for me and on behalf of my brother and sister and not my daughter specifically record at the time of filing of present petition, there was no requirement of my daughter for the demised premises. I do not remember if my daughter was a practicing advocate or not in 2015. I also do not remember the time and period when my daughter was appearing before courts in Malaysia."

6. It was further submitted by the learned Senior Counsel that as of now, no foreign national is allowed to practice law in India, unless and until rules are framed in this regard with that foreign country on a reciprocal basis, and that particular individual of Indian origin is allowed, on a case to case basis, by the Bar Council of India to practice in India, and therefore, the need of the Respondent is an impossibility as of today.

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7. It was further contended that the Respondent had produced evidence of only two visits to India, and the same was done to pursue the present litigation, and in absence of any evidence, it was not open for the Respondent to claim that his need was for visiting Delhi. Attention of this Court was further drawn to the cross-examination of the Respondent dated 30.05.2022, wherein it had been admitted by the Respondent that when he visits India, he does not visit Delhi. The relevant portion of the said cross-examination is reproduced as under: -

> "At this stage, witness is shown site plan Ex.PW1/4 and asked to point out the portion where he used to stay on his visit to the suit property. I used to stay in master bedroom with an attached bathroom in the suit property but I am not able to point the master room in site plan Ex.PW1/4 today as I used to stay a long time ago in the suit property. To the best of my knowledge, I stayed in that portion of the suit property in year 1997 or 1998. 1 do not remember my visit to India after 1998 but I have visited many times after 1998.
>
> It is wrong to suggest that I have not stayed in any portion of suit property after 1997. After 1998 when I visited India, I did visit Delhi. On every trip to India, I do not visit Delhi. I do not recall when I visited Delhi after 1997. After 1997 1 went to the premises but I was refused entry. I do not remember the month or the year in which I was refused entry."

8. Learned Senior Counsel further submitted that the other siblings for whom the Respondent had pleaded *bona fide* requirement in the eviction petition, did not appear before the learned ARC, and thus, the Respondent failed to prove any of their respective *bona fide* needs. It was further contended that once a landlord projects any need and does not prove it, the failure casts a very long shadow on the credibility of the entire eviction

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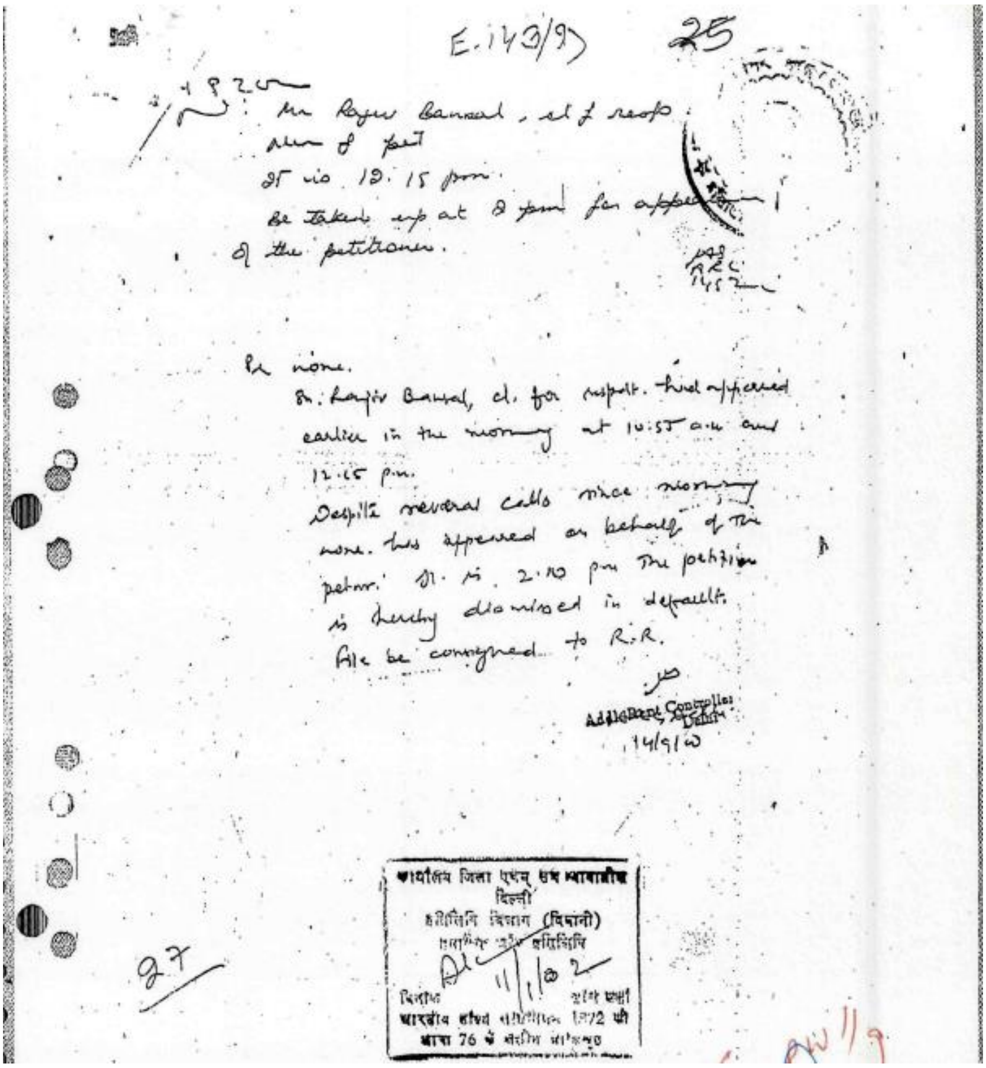
petition, and in the present case, the eviction petition had been filed on false grounds, as the projected need was for the Respondent, his brother and his sister, and both of his siblings failed to appear before the learned ARC.

9. It was further contended that the Respondent had previously filed an eviction petition being E-143/1997, and the same was dismissed *vide* order dated 14.09.2000, and thus, the very same grounds cannot be pleaded in the present eviction petition, without change in circumstances, and thus, the present eviction petition is hit by the principles of *Res Judicata*. The said order of dismissal is reproduced as under: -


E. 143/97 25

: Mr Rajiv Bansal, ld. for respt.
None for petr.
Ld. SC 12.15 pm
Be taken up at 2 pm for appearance of the petitioner.

Pr none.
Sh. Rajiv Bansal, cl. for respdt. had appeared earlier in the morning at 10:55 a.m. and 12.15 p.m.
Despite several calls since morning none has appeared on behalf of the petnr. At 2.10 pm the petition is hereby dismissed in default.
File be consigned to R.R.

Addl. Rent Controller, Delhi
14/9/10

कार्यालय जिला एवम् सत्र न्यायाधीश
दिल्ली
प्रतिलिपि विभाग (दिवानी)
भारतीय साक्ष्य अधिनियम 1872 की
धारा 76 के अधीन

10. Learned Senior Counsel had further submitted that it is only incumbent upon the landlord to prove its *bona fide* need, but also the conscience of the Court has to be satisfied as to the genuineness of the need being projected. It was argued that the Respondent had issued a notice dated 06.06.2012 to the Petitioner, demanding a rent of INR 1,00,000/-, and thus, the Respondent wanted to encash upon the demised premises and nothing else. The relevant portion(s) of the said notice is reproduced as under: -

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"13. You are holding the arrears of the rent as stated herein above illegally hence liable to pay the above said amount on account of the rent alongwith interest at the rate of 18% P.A. to our client.

14. That our client is a resident of Malaysia and none of the legal heir of Mrs Sumitra Devi Sharma is residing in India and thus you the addressee are taking advantage of their alibi and is enjoying the prime property at a meager rent of Rs. 1,265/- per month for single storey house at N 197 -A, Greater Kailash 1, Now Delhi consisting of two bed rooms, one dining cum drawing room, two baths, one kitchen and one servant room with W.C.

15. That the area rent of locality such as Greater Kailash fetches a rent of Rs. 1,00,000/-per month for the ground floor portion given in lease and under your possession and hence you are not interested in vacating the same.

xxx xxx xxx

17. That if you want to remain in the premises further for a period of one year then the same may be allowed by our client of a rent of Rs. 1,00,000/- per month after executing a fresh lease deed with our rent on certain terms after termination of tenancy on 30.06.2012."

11. It was further submitted that the Respondent is a citizen of Malaysia and is well established over there, having his own properties, and his daughter, Ms. Sarita Sharma, is also a well-established lawyer in Malaysia, having her own independent practice and a separate residence. It was argued that the earlier rules and even the fresh Bar Council of India Rules (Gazetted by the Union of India on 13.03.2023) prohibits foreign nationals to practice in India, unless registered with the Bar Council of India and the fresh rules further prohibits setting up of an office in India unless registered, and admittedly, Ms. Sarita Sharma is not registered with the Bar Council of India and is not eligible to practice law in India. It was further contended that the

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daughter of Respondent is not dependent upon him for any sort of accommodation. It was further argued that the Respondent had disclosed the said details in the eviction petition, but however, the daughter of the Respondent in her cross-examination dated 31.05.2022, had acknowledged that she has her own residence in Malaysia. The relevant portion of the said cross-examination is reproduced as under: -

> "I am aware of the contents of my affidavit. The address as mentioned in my affidavit is not my permanent address. I am not owner of any residential property in Malaysia. Vol. I live in a mortgaged residential property in Malaysia presently. My present address in Malaysia is B-13 A-3 A, Viva Residency, 378, Jalan Ipoh, 51200 Kuala Lumpur, Malaysia. The ownership documents of this property in Malaysia reflects my name as mortgagor of the said property and the bank as the mortgagee."

12. Learned Senior Counsel had further submitted that the daughter of the Respondent had admitted in her cross-examination that the need of the tenanted premises had only arisen recently, in past 5-6 years only, and thus, no cause of action arose on the date of institution of the present eviction petition. It was further argued that the said fact of the ostensible need being changed only in the evidence by way of affidavit, and without any corresponding amendment in the pleadings, could not have been relied upon by the learned ARC, and the Respondent could not have altered his stand without any amendment in the eviction petition.

13. Attention of this Court was drawn to the evidence by way of affidavit of Ms. Sarita Sharma, to contend that in paragraph 12 of the said affidavit, she had stated that she wanted to settle in Delhi, whereas in paragraph 5, it was

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stated by her that she wanted a place to stay, when she was visiting Delhi. The relevant portion of the said affidavit is reproduced as under: -

> "5. I say that I am in need of the property bearing the address of N 197 – A, Greater Kailash–I, New Delhi and the need is bonafide as I intend to reside in the said property whenever I am in India either for visits or for stay in Delhi.
>
> xxx xxx xxx
>
> 12. I say that the Petitioner has no other residential accommodation in India or in Delhi except the suit property. The Petitioner and myself as his daughter i.e. the Deponent wants to settle in Delhi and thus the Petitioner requires the suit premises for his and family members bonafide residential use."

14. It was argued by the learned Senior Counsel that the existence of admitted suitable alternate accommodation at L-26, Kailash Colony, Delhi, had been totally ignored by the learned ARC. The Respondent during his cross-examination on 30.05.2022, had been confronted with the said accommodation and the Respondent had not been able to explain as to how the said accommodation was not available to him and the learned ARC had failed to consider the said aspect while rendering the impugned order. The relevant portion of the said cross-examination is reproduced as under: -

> "Q. Witness is shown 4th page of Ex. PW1/2 i.e. Sale deed of suit property. I put it to you that the property mentioned in the sale deed showing address of L- 26, Kailash colony, New Delhi, was another property belonging to your mother?
>
> A. It is incorrect. My mother never owned any property except the suit property.

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> It is wrong to suggest that the above mentioned Kailash colony property belonged to my mother or that the said property now belongs to me after death of my mother. It is wrong to suggest that I am also the owner of property bearing no. 42, Birbal Road, Jangpura, Ext. New Delhi."

15. It was further argued that the Respondent, in paragraph 9 of his evidence by way of affidavit, had accepted that he is the co-owner and co-sharer of the property at 42, Birbal Road, Jangpura. It was further pointed out that during the cross-examination of the Respondent, he was confronted with an alternate accommodation being L-26, Kailash Colony, Delhi, and thus, two alternate accommodations were available with the Respondent at the time of filing the eviction petition and the projected need was not *bona fide.* The relevant portion of the said affidavit is reproduced as under: -

> "9. It is stated that neither myself nor my family members ever owned or occupied or possessed the property bearing 42, Birbal Road, Jangpura Extension, New Delhi 110014 as falsely stated by the respondent. It is stated that one person namely Sh. Gagan Anand was residing/working in the property bearing 42, Birbal Road, Jangpura Extension, New Delhi 110014 and this fact is known to the respondent and further I as the Petitioner have only used the address for my correspondence and intimation. The respondent has not filed any document related to the right, title or interest of the Petitioner in the said property, this clearly shows that a vague plea in order to delay the proceedings has been taken by the respondent. I as the Petitioner am the owner and co-sharer of the Property and have the full right to write his permanent address therefrom."

16. Attention of this Court was drawn to the impugned order passed by the learned ARC, and particularly on the following paragraph(s): -

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"25. One of the contentions raised by the respondent is that the petitioner has an alternative accommodation available in the form of one property at 42, Birbal Road, Jangpura Extension, New Delhi. It has been claimed by the respondent that petitioner has been using the said property and therefore, has an alternate accommodation available for their use in Delhi. The same is disputed and denied by the petitioner who has claimed that except for demised premises, the petitioner and his family members do not have any other property in Delhi. The petitioner has explained that the said property no. 42 was owned by some other person known to the petitioner and he has consented to allow the petitioner to use the said property as a correspondence address only. In cross-examination of PW1 also, this fact has been duly explained by PW1. He has deposed ".... and one of my friends was living at 42, Birbal road and therefore, with his permission I had used the said address for my correspondence in India. (VOL. I authorized my advocate to search from property records to establish that I am not owner of 42, Birbal road at any point of time). My advocate never found any document in my name as owner of 42, Birbal Road, New Delhi".

xxx xxx xxx

29. The respondent has also claimed that there is no bonafide requirement of the petitioner or his family members for the demised premises. It has been claimed that the bonafide requirement of the petitioner is projected to be the requirement for daughter of the petitioner to start her business as a qualified lawyer in India. It has been argued that the daughter of petitioner may be qualified as a lawyer to practice in Malaysia but whether her educational qualification is recognized for practicing as an advocate in India or not, has not been stated anywhere in the petition. It has been claimed that lawyers having foreign degrees are permitted to practice only for limited purpose and therefore the alleged bonafide requirement is not a true statement made by the petitioner.

30. In the present petition, the bonafide requirement stated by the petitioner is not in respect of his daughter's requirement for a place to start her business in India. As the petition was instituted in the year 2015, it is possible that daughter of petitioner became qualified during pendency of the present petition and her requirement for the

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demised premises also arose during pendency of this petition, but the bonafide requirement, which is to be adjudicated upon is not the bonafide requirement of daughter of petitioner, rather the bonafide requirement as disclosed in the petition filed in the year 2015. In the present petition, the bonafide requirement disclosed by the petitioner is the requirement for a residential accommodation for the petitioner and his daughter in Delhi/India as they want to settle in Delhi. Further, the bonafide requirement claimed is on behalf of the brother and sister of the petitioner and their family members who require a place to stay when they visit India. It is on these grounds of bonafide requirement, that the present petition is to be tested.

xxx xxx xxx

32. This particular proposition of the petitioner that he and his daughter want to settle in Delhi, has not been challenged by the respondent anywhere during-trial. The respondent has not produced any material to show that the claim of the petitioner that he intends to shift along with his daughter to Delhi is not a genuine claim. Even in cross-examination of petitioner and his daughter i.e. PW1 & PW2, the respondent has not been able to establish that they do not intend to shift to Delhi and reside at the demised premises. As already noted above, availability of alternative accommodation has not been established by the respondent. Thus, the desire of the petitioner and his daughter to shift to Delhi is practically possible only if demised premises is vacated by the respondent. Furthermore, it is also the claim of respondent that legal notice dated 06.06.2012 issued by the petitioner clearly establishes his intention to evict the respondent for the purpose of increasing rent for the demised premises. This has also been put to the petitioner in his cross-examination and he has duly explained the demand for increased rate of rent in legal notice dated 06.06.2012. he has categorically stated that as shifting from Malaysia to Delhi would have approximately taken time of one year, therefore, the respondent was given the choice to renew tenancy at an increased rate of rent. He has deposed “Fresh tenancy at Rs. 1 lac was offered to the respondent only because it was not practical for me and my family to immediately shift from Malaysia to the suit Property and keeping in mind the time required for shifting i.e. approximately one year, fresh tenancy for that period was offered to the

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> respondent. I cannot say now if approximately period of one year would still be required as on date to shift from Malaysia to the suit property. VOL. In case I get Possession, I will make full efforts to shift at the earliest".”

17. It was argued that the learned ARC had also erred in accepting the alleged *bona fide* requirement of the Respondent, without any supporting evidence. During the course of the trial, the Respondent had sought to project a vague need of visiting Delhi occasionally, whereas the eviction petition had projected an entirely different case of permanently settling in Delhi. Instead of requiring the Respondent to substantiate the case as pleaded in the eviction petition, the learned ARC had *suo moto* accepted the alleged requirement of settling down in Delhi as genuine, despite there being complete absence of evidence on record to support such a claim.

18. It was argued that the impugned order was vitiated by complete absence of any discussion of the examination-in-chief and cross-examination of the Respondent and his witnesses. The learned ARC had failed to analyse the evidence on record, and had instead proceeded on presumptions, unsupported by the trial record.

19. It was submitted by the learned Senior Counsel that the learned ARC had rejected the alleged OCI status of the Respondent and his daughter and in the absence of such status, neither the Respondent nor his daughter would have been legally entitled to carry on commercial activities in India, thereby rendering the alleged intention of shifting to Delhi wholly untenable.

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SUBMISSIONS ON BEHALF OF THE RESPONDENT

20. *Per contra*, learned Senior Counsel appearing on behalf of the Respondent submitted that the present petition had been filed by the Petitioner, on wholly frivolous and untenable grounds, with the sole intention to prolong the litigation between the parties and deprive the Respondent of the use and enjoyment of his own property. The Respondent is a senior citizen, aged about 71 years, and he had been struggling since 1997 in order to recover possession of the tenanted premises, for his *bona fide* residential requirements.

21. It was further contended that the Petitioner had himself admitted during his cross-examination dated 14.12.2022, that the tenanted premises had originally been taken on lease for residential purposes. It was further admitted that permission for commercial electricity connection was obtained only in the year 2015, long after the demise of the original landlady, *i.e.*, Late Smt. Sumitra Devi Sharma on 20.07.1991, and thus, these admissions clearly demonstrated that the tenancy continued even after the death of the landlady, and that the Petitioner had misused the premises for commercial purposes contrary to the terms of tenancy. The relevant portion of the said cross-examination is reproduced as under: -

> "At this stage witness is shown rejoinder to reply to application seeking lead to defence dated 07.09.2015, to which witness admits his signature at point A and the said rejoinder is Ex. RWI/Pl. It is correct that there are electricity bill annexed with the rejoinder, which is already as marked as Ex. PWI/Dl (colly). Rakesh Bagga was the General Manager of the respondent company and has since

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> then retired. It is correct that Ex. PWI/Dl is in the name of respondent company. (Vol. I did not recall the name due to lapse of time.) I do not know if the respondent company had taken permission/NOC from land lady or her legal heirs prior to taking electricity connection at the demised premises as per energization date of 19.06.2015 in Ex. PWI/Dl. In usual course the general manager of the respondent company would have ask for permission/NOC from the land lord."

22. It was further submitted that the Petitioner had failed to lead complete evidence during the course of trial. The cross-examination of RW-1 revealed several material admissions, including that the Petitioner had not paid rent since the year 2007 and had been using the tenanted premises for commercial purposes, despite the tenancy being residential in nature. It was averred that the Petitioner had also admitted the site plan and failed to produce any document to substantiate the plea of adverse possession.

23. It was argued that the Petitioner admittedly entered the tenanted premises as a tenant, and therefore, could not raise a claim of adverse possession against the landlord, in view of Section 116 of the Indian Evidence Act. It was contended that the settled principle of law that "once a tenant, always a tenant" squarely applies to the facts and circumstances of the present case.

24. Attention of this Court was further drawn to the eviction petition filed by the Respondent before the learned ARC and particularly on the following portion: -

8.	Details of accommodation available together with	The property in question was let out by the mother of petitioner in the year 1976 at a

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	particulars as regards ground area garden and out house, in any. (Plan to be attached)	rate of 1150/- consisting of two bed room one dining cum —drawing room, one baths, one kitchen, one Servant room with W.C. **However after the death of the mother of the petitioner in the year 20.07.1991, one front bed room with attached bath room is also in possession of the respondent. Now the tenant is holding over the entire built up property as per site plan attached as Annexure 1.**

25. Learned Senior Counsel further drew attention of this Court to the eviction petition, to contend that the Respondent had no other alternative residential accommodation available in India, or in Delhi, except the tenanted premises and that the Respondent, along with his daughter, intends to settle in Delhi. The relevant portion of the eviction petition is reproduced as under: -

> "That the petitioner has no other residential accommodation in India/Delhi except the suit property. The petitioner and his daughter namely Ms. Sarita wants to settle in Delhi and thus the petitioner requires the suit premises for his and family members bonafide residential use.
>
> The petitioner not only requires the suit property not only for his and his family but also for his brother and sister and their family members also who more often visit India and have no residence to stay except the suit premises. But due to non availability of their own residence, they have to stay at Hotel."

26. It was further submitted that the Petitioner had taken inconsistent pleas with respect to the existence of alternative properties, allegedly available with the Respondent. The Petitioner had failed to place on record any documentary proof regarding the properties at Birbal Road or Kailash Colony, and such pleas had not even been taken in the leave to defend application or written

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statement. The said allegations were therefore clearly afterthoughts, raised only to delay the eviction proceedings.

27. It was further submitted that the Respondent had earlier initiated eviction proceedings being E-147/1997 under Section 14(1)(e) of the DRC Act, and the same was dismissed in default for non-prosecution, and not on merits. Therefore, the Respondent was fully entitled to institute fresh proceedings for eviction on the ground of *bona fide* requirement.

28. It was further contended by the learned Senior Counsel that the Respondent had issued a legal notice dated 06.06.2012, demanding possession of the tenanted premises, which was replied by the Petitioner on 12.07.2012. In the said reply, the Petitioner had admitted that the entire property had been taken on rent by the Petitioner, thereby completely demolishing the subsequent plea of adverse possession as raised by the Petitioner. The relevant portion of the said reply is reproduced as under: -

> "2. That the contents of para 2 of your notice are a matter of record as property No. N-197A, Greater Kailash, Part-1, New Delhi was leased out to my client M/s. Baltiboi Ltd. Having their Branch Office at the relevant time at Jeevan Vihar Building, Parliament Street, New Delhi for three years.
>
> 3. That the contents of para 3 of your notice are not correct. The entire house constructed at N-197A, Greater Kailash Part-1, New Delhi consisting of three bed room, one drawing dining room, one kitchen, two bath rooms and one servant room are leased out to my above said client at Rs. 1150/- per month for a period of three years. After three years my clients M/s. Baltiboi remained as tenant till the death of Smt. Sumitra Devi on 20.07.1991 and thereafter continued to be in possession of the entire House No. N-197A,

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Greater Kailash, Part-l, New Delhi without any interference or disturbance from any person till today.

4. In reply to of para of your notice it is submitted that it is incorrect to say that Smt. Sumitra Devi Sharma had kept one attached bed room for her use. In fact the possession of the entire house was handed over to my above said client at the time of creation of the tenancy and after the death of Smt. Sumitra Devi Sharma in 1991, my client has exclusive uninterrupted possession of the entire house till date.

5. In reply to para 5 of your notice it is submitted that the total tenure of my client was not limited to 30th October, 1982. In fact they continue to remain as tenant till the death of Smt. Sumitra Devi Sharma on 20th July, 1991 and after her death the tenancy of my above said client came to an end as none of the legal heirs of Smt. Sumitra Devi Sharma contacted them for creation of fresh tenancy. My client has acquired absolute right of ownership by virtue of law of adverse possession.

6. In reply to contents of para 6 of the notice it is submitted that Smt. Sumitra Devi Sharma W/o Shri Khushi Ram Sharma expired on 20th July, 1991 at Kaulalumpur, Malasiya is not denied. However, it is specifically denied that she left behind her 3 person as her legal heir because till date none of the legal heir has approached my client with the authentic proof of their being successor of Smt. Sumitra Devi Sharma.

7. That the contents of para 7 of your notice are not correct and denied. It is specifically denied that my above said client has taken possession of one room with attached bath room without the consent of legal heirs of Smt. Sumitra Devi Sharma in 1991. In fact, the entire house was leased out to my above said client by late Smt. Sumitra Devi Sharma in 1976 and since then the entire house is in possession of my above said client. The possession of entire House No. N-197A is with my client since 1976 without any interference from any person.

xxx xxx xxx

10. That the contents of para 3 of your notice are matter of record. In reply to this para it is submitted that that the above said petition

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> for eviction filed by your client was dismissed by the learned Additional Rent Controller twelve years back and no application for restoration or any appeal against that order was filed by your client to get it restored/ set aside from the Appellate Court till date and the said order of dismissal has become final and binding."

29. It was further pointed out that a civil suit being CS No. 247/2014 had earlier been preferred by the Respondent, wherein *vide* order dated 02.02.2015 the learned Civil Court had categorically held that the learned Rent Controller had jurisdiction to decide the dispute between the parties. The relevant portion of the said order is reproduced as under: -

> "In these circumstances, plaintiff failed to place on record any facts which suggests that how the last admitted rent (by the plaintiff), @- Rs.1,150/- is increased and come to Rs,3,810/-.
>
> So, in these circumstances, from all the facts on record it can be safely concluded that as per the admission of the plaintiff the last paid rent appears to be Rs.1,150/-.
>
> It is also admitted fact by the plaintiff that the parties to the Suit are related to each other as landlord and tenant.
>
> It is also admitted by the plaintiff that the tenanted premises is situated in Delhi and was given on lease vide lease deed dated 02.11.1976.
>
> In these circumstances, I think the suit of the plaintiff comes within the purview of DRC Act and thus beyond the purview of the jurisdiction of this court.
>
> So, the suit of the plaintiff is barred in view of Sec.50 of DRC Act and thus plaint is rejected u/o 7 r 11 CPC.
>
> However, this expression is made on the basis of material of this case and in no way affects the case of the parties, if decided on merits, by the Rent Controller.

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File be consigned to Record Room."

30. It was further submitted that the eviction petition had been adjudicated upon by the learned ARC after a complete trial, and a reasoned eviction order dated 27.04.2023, *i.e.*, the impugned order, had been passed in favour of the Respondent, which shows that the Petitioner had failed to dislodge the Respondent's case, even after a complete trial.

31. It was argued by the learned Senior Counsel that the present petition is nothing, but an attempt of the Petitioner to prolong the litigation between the parties, and the dispute between the parties had already seen multiple rounds of litigation, including proceedings before this Court and the Hon'ble Supreme Court of India, all of which had affirmed the jurisdiction of the learned ARC to adjudicate the matter.

32. Learned Senior Counsel further drew attention of this Court to the impugned order, and particularly on the following paragraph(s), to contend that the learned ARC had rightly rejected the plea of adverse possession as raised by the Petitioner: -

> "16. Ownership of the demised premises has been challenged by the respondent, despite admitting that initially, respondent came into possession of demised premises as tenant of mother of petitioner. Payment of rent for the demised premises is admitted by the respondent till the year 1997. It is not disputed by the respondent that the petitioner is not the son of Sumitra Devi or a legal heir of Sumitra Devi. The respondent has not disclosed who is the landlord of the demised premises after coming to know about death of Sumitra Devi in 1997. It is also admitted fact by the respondent that previously a petition under Section 14 (1)(e) DRC

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> Act was instituted by the petitioner in 1997 and a civil suit for recovery of possession was instituted by the petitioner in 2014. It is also not in dispute that the respondent is a company and juristic entity.
>
> 17. In this factual backdrop of various admissions of the respondent, the respondent has claimed ownership over the demised premises by way of adverse possession. How a juristic entity can claim ownership by way of adverse possession is not explained by the respondent. The first ingredient required to establish ownership by way of adverse possession, is actual physical possession of any property. The respondent, being a juristic entity only, is incapable of being in actual physical possession of the demised premises. Furthermore, adverse possession can be established only when the possession has been open and hostile to the actual owner. In the instant case, when previous suits/petitions have been filed by the petitioner to reclaim possession of the demised premises, how can it be claimed by the respondent at that the respondent has been in possession, openly hostile to the petitioner. The petitioner has been pursuing his remedies since 1997, available under law to recover possession from the respondent. Such proactive approach of the petitioner completely belies the claim of adverse possession of the respondent."

33. It was further submitted that the learned ARC, after perusing the material available on record, had rightly disregarded the plea of the Petitioner with respect to availability of alternative accommodation. The relevant portion of the impugned order is reproduced as under: -

> "26. On the other hand, in cross-examination of respondent witness, it has clearly come on record that the respondent never even bothered to find out about ownership of said property no. 42. RW1 has deposed "*I do not know in whose name the property bearing no. 42, Birbal Road, Jangpura Extension, New Delhi-14 is registered. My knowledge regarding this property has been derived from the pleadings filed by the petitioner but I cannot specify in which Pleading has this Property been mentioned by the petitioner. I cannot produce any document to show property bearing no. 42, Birbal Road, Janpura Extension, New Delhi- 14 belongs to the*

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> *petitioner or their family members.....The respondent company did not carry out any documents search for the said Property before any authority. I cannot say if any other alternative Property in Delhi is available to the petitioner..... I have not made any online search regarding ownership of property bearing no. 40 & 42, Birbal Road, Jangpura Extension, New Delhi*"."

34. Learned Senior Counsel further argued that the *bona fide* requirement in the present case had to be examined on the basis of the pleadings contained in the eviction petition filed in the year 2015, and the requirement pleaded therein was not in respect of the daughter of the petitioner, but was specifically for residential accommodation for the Respondent and his daughter, who intended to settle in Delhi. Reliance was placed on the following portion of the impugned order: -

> "30. In the present petition, the bonafide requirement stated by the petitioner is not in respect of his daughter's requirement for a place to start her business in India. As the petition was instituted in the year 2015, it is possible that daughter of petitioner became qualified during pendency of the present petition and her requirement for the demised premises also arose during pendency of this petition, but the bonafide requirement, which is to be adjudicated upon is not the bonafide requirement of daughter of petitioner, rather the bonafide requirement as disclosed in the petition filed in the year 2015. In the present petition, the bonafide requirement disclosed by the petitioner is the requirement for a residential accommodation for the petitioner and his daughter in Delhi/India as they want to settle in Delhi. Further, the bonafide requirement claimed is on behalf of the brother and sister of the petitioner and their family members who require a place to stay when they visit India. It is on these grounds of bonafide requirement, that the present petition is to be tested."

35. Learned Senior Counsel had further drawn attention of this Court to the impugned order, and particularly on the following paragraph, to contend that

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the Petitioner had failed to place any material on record to demonstrate that the *bone fide* requirement, as stated by the Respondent, was not genuine: -

> "32. This particular proposition of the petitioner that he and his daughter want to settle in Delhi, has not been challenged by the respondent anywhere during trial. The respondent has not produced any material to show that the claim of the petitioner that he intends to shift along with his daughter to Delhi is not a genuine claim. Even in cross-examination of petitioner and his daughter i.e. PW1 & PW2, the respondent has not been able to establish that they do not intend to shift to Delhi and reside at the demised premises. As already noted above, availability of alternative accommodation has not been established by the respondent. Thus, the desire of the petitioner and his daughter to shift to Delhi is practically possible only if demised premises is vacated by the respondent. Furthermore, it is also the claim of respondent that legal notice dated 06.06.2012 issued by the petitioner clearly establishes his intention to evict the respondent for the purpose of increasing rent for the demised premises. This has also been put to the petitioner in his cross-examination and he has duly explained the demand for increased rate of rent in legal notice dated 06.06.2012. he has categorically stated that as shifting from Malaysia to Delhi would have approximately taken time of one year, therefore, the respondent was given the choice to renew tenancy at an increased rate of rent. He has deposed "*Fresh tenancy at Rs. 1 lac was offered to the respondent only because it was not practical for me and my family to immediately shift from Malaysia to the suit Property and keeping in mind the time required for shifting i.e. approximately one year, fresh tenancy for that period was offered to the respondent. I cannot say now if approximately period of one year would still be required as on date to shift from Malaysia to the suit property.* ***VOL. In case I get Possession, I will make full efforts to shift at the earliest***"."

36. Attention of this Court was further drawn to the evidence by way of affidavit of PW-2, *i.e.*, Ms. Sarita Sharma, and particularly on the following paragraph(s): -

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> "6. I also want to use my ancestral property for my personal as well as for my professional requirements and the tenant has no right to interfere in the bonafide need of the landlord and his family. It is further stated that whenever I visited India I was constrained to remain in hotels only and having to spend large sums of money on stay despite our property in India.
>
> xxx xxx xxx
>
> 9. I say that I am lawyer by profession who has obtained a Law degree from a foreign university and am a person of Indian origin has been allowed by the Bar Council of India to practice subject to certain terms.
>
> 10. I say that since all these preparations require long term stay in India which is quite expensive as the Petitioner and I are constrained to stay in hotels and thus the same is not feasible.
>
> xxx xxx xxx
>
> 13. I say that the need of the Petitioner for suit premises for residential premises is bonafide as he and other relatives have no other residential property other than the suit premises."

It was contended by the learned Senior Counsel that the aforesaid testimony of PW-2, clearly established the *bona fide* requirement as pleaded in the eviction petition. It was submitted that PW-2 had clearly deposed that she intended to utilize the tenanted premises for her personal, as well as professional requirements, and that despite having their own property in India, she and the Respondent were compelled to stay in hotels during their visits, thereby incurring substantial expenses.

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REJOINDER SUBMISSIONS ON BEHALF OF THE PETITIONER

37. Learned Senior Counsel further drew the attention of this Court to the Bachelor of Law degree of Ms. Sarita Sharma, to contend that she had obtained the said degree on 29.06.2007, *i.e.*, much prior to the institution of the eviction petition in the year 2015. It was further submitted that the professional qualification of Ms. Sarita Sharma was well within the knowledge of the Respondent at the time of filing of the eviction petition, and it was not a case where such development had arisen during the pendency of the proceedings and the requirement arising from her professional background could not have been be said to be a subsequent development.

FINDINGS AND ANALYSIS

38. Heard learned Senior Counsels for the parties and perused the records.

39. One of the primary contentions raised by the learned Senior Counsel for the Petitioner was that the Respondent could not prove the *bona fide* requirement of the tenanted premises. It had been contended that the *bona fide* requirement by the Respondent was projected to be for his daughter, to start her venture, as a qualified lawyer in India, which is not possible in view of the prevalent rules of the Bar Council of India, whereby the lawyers having foreign degrees are permitted to practice in India for limited purpose and that too on a reciprocal basis. It was similarly contended that the Respondent had proved the evidence of only two visits to India, which was done to pursue the

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litigation and in absence of any other evidence to demonstrate that the Respondent or his daughter was regularly visiting India, the very basis of *bona fide* requirement disappears.

40. Another contention raised by the learned Senior Counsel for the Petitioner was that prior to filing of the eviction petition, the Respondent had issued a legal notice dated 06.06.2012 demanding a rent of INR 1,00,000/-, and therefore, the so-called *bona fide* requirement for his daughter is again not believable. It would be apposite to refer to the cross-examination dated 30.05.2022 of the Respondent, and the relevant portion of the same is reproduced as under: -

> "Witness is shown para 17 of legal notice dated 06.06.2012, Ex. PW 1/15
>
> Q. I put it to you that you have offered for fresh execution of a lease deed @ of Rs. 1,00,000/- per month no bona fide need existed at that time or even now?
>
> A. It is incorrect. Fresh tenancy at 1,00,000/- was offered to the respondent only because it was not practical for me and my family to immediately shift from Malaysia to the suit property and keeping in mind the time required for shifting that is approximately one year, fresh tenancy for that period was offered to the respondent.
>
> I cannot say now if approximately a period of one year would still require as on date to shift from Malaysia to the suit property. Vol. In case I get possession, I will make full efforts to shift at the earliest."

The Respondent in his cross-examination had explained that some time would be required, in order for him to shift from Malaysia to Delhi, and therefore, the Petitioner was given the choice to renew the tenancy at an

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increased rent. The said explanation was duly accepted by the learned ARC in the impugned order. In these circumstances, this Court finds no reason to interfere with the said finding of the learned ARC.

41. At this stage, it would be apposite to refer to a portion of the evidence by way of affidavit filed on behalf of PW-2, Ms. Sarita Sharma, daughter of the Respondent herein. The relevant portion(s) of the said affidavit are reproduced as under: -

> "6. I also want to use my ancestral property for my personal as well as for my professional requirements and the tenant has no right to interfere in the bonafide need of the landlord and his family. It is further stated that whenever I visited India I was constrained to remain in hotels only and having to spend large sums of money on stay despite our property in India.
>
> 7. I say that with the advent of technology and requirements, I want to explore the possibility of setting up a law office/firm/consultancy business in Delhi because I am a professionally qualified lawyer. The setting up of a law office/firm/consultancy premises in Delhi can only happen while residing there as this requires substantial time and effort and connections and renovation in setting up the office in the premises. However, without the eviction of the tenant the same cannot happen. To set up the same I would be required to live in Delhi which is a costly affair now as I will have to remain in a hotel as the property is still not vacated by the respondent tenant.
>
> 8. It is stated that I have acquired Overseas Citizen of India ("OCI") status and that as an OCI holder who obtained a foreign law degree, I would be able practice law but with riders as per Bar Council of Delhi. However there is no bar to set up a consultancy in the premises either by any authority or any law against the owner/landlord in the suit premises.

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9. I say that I am lawyer by profession who has obtained a Law degree from a foreign university and am a person of Indian origin has been allowed by the Bar Council of India to practice subject to certain terms

10. I say that since all these preparations require long term stay in India which is quite expensive as the Petitioner and I are constrained to stay in hotels and thus the same is not feasible."

42. The cross-examination dated 31.05.2022 of the said witness, for the sake of completeness, is reproduced as under: -

"31.05.2022

PW-2

Statement of Ms. Sarita Sharma, aged about 37 years, R/o 15, Jalan SS21/13, Damansara Utama, Petaling Jaya, 47400, Selangor, Malaysia. (recalled for cross examination after 30.05.2022)

On SA

XXXXXXX by Sh. Rambhakt Aggarwal, i/b Ms. Megha Mukherjee, Adv. for respondent.

I am aware of the contents of my affidavit. The address as mentioned in my affidavit is not my permanent address. I am not owner of any residential property in Malaysia. Vol. I live in a mortgaged residential property in Malaysia presently. My present address in Malaysia is B-13 A-3 A, Viva Residency, 378, Jalan Ipoh, 51200 Kuala Lumpur, Malaysia. The ownership documents of this property in Malaysia reflects my name as mortgagor of the said property and the bank as the mortgagee.

Q. Have you paid any consideration qua the above said property in Malaysia?

A. I have paid some consideration as monthly payment for the said property.

Q. Do you have any independent office in Malaysia?

A. No.

Q. What is your area of specialization in law?

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A. I am working in financial and banking industry specifically in treasury and global markets.

Q. When did the purported need for the suit premises for conduct of your practice arise?

A. I have been working in the banking and financial industry for more than 10 years. In the last 5-6 years I have gathered sufficient expertise in the said field on account of which I wish to enter into consultancy business in India and Malaysia.

Q. Does this mean you will be continuing practice in Malaysia?

A. Yes. Off and on. I intend to bring some clients from Malaysia to India and take some clients from India to Malaysia.

Q. In paragraph 2 of the affidavit you state that your uncle and Aunt have authorized your father to do certain acts towards the suit property. What is your source of knowledge?

A. The power of attorneys provided by both my uncle and aunt in favor of my father and they have also told me.

Q. In para 4 of your affidavit you have stated that you are one of the legal heirs of the petitioner. Under Malaysian law can any person be a legal heir of a living person?

A. I do not know the Malaysian law on this point but what I stated in my affidavit is only that I am entitled to inherit interest of the petitioner.

Q. In the last 5 to 6 years how many times have you visited India towards furtherance of your practice and what have been your duration of stays in
Delhi?

A. About 2 to 3 times. The duration of stay in Delhi has been 1 to 2 weeks.

Q. Do you have document to show the number of visits to India and stay in Delhi?

A. Presently I am not carrying such documents.

It is wrong to suggest that I am not entitled to practice law in India as on date.

Q. When you will be in Malaysia how will you be able to cater to purported clients in India?

A. In order to cater to clients in India I need the suit property so that I can physically come to Delhi, stay in the suit property for the purpose of my professional requirement.

Q. How will you cater to Malaysian clients while in India?

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A. My Malaysian clients have shown interest to do business in India and I already answered that I will travel back and forth to cater to both clients- sets.

Witness is shown the para 7 of her affidavit.

Q. I put to you that you can easily conduct business in India while being physically in Malaysia by use of tools like Video Conferencing and therefore suit property is not required.?

A. Use of video conferencing is possibility for business but nothing replaces face to face meetings for conducting better business.

It is wrong to suggest that I am deposing falsely and that I have no bona fide requirement of the suit premises.

RO & AC"

43. The Bar Council of India has come out with rules regarding Entry, Rules and Regulations of Foreign Lawyers and Law firms in India, and the press release dated 19.03.2023, which would make a useful reference in the present case, is reproduced as under: -

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E-mail : bciinfo21@gmail.com
info@barcouncilofindia.org
Website : www.barcouncilofindia.org

Tel. :(91) 011-4922 5000
Fax :(91) 011-4922 5011

भारतीय विधिज्ञ परिषद्
BAR COUNCIL OF INDIA

(Statutory Body Constituted under the Advocates Act, 1961)
21, Rouse Avenue Institutional Area, Near Bal Bhawan, New Delhi - 110002

Press Release Dated 19.03.2023

"True Facts about BCI's Rules regarding Entry, Rules and Regulations of Foreign Lawyers and Law firms in India"

There are some misgivings in circulation about the recently published Gazette notification by BCI regarding entry of Foreign lawyers and law firms in India. BCI, therefore deems it appropriate to clarify the issue and place the following facts for the information of all Advocates and general public, so that there is no scope of any misapprehension or misinformation.

1. Foreign lawyers and Law Firms shall be allowed to advise their clients about Foreign laws and International laws only.

2. They would render advisory work about such laws for their foreign clients only.

3. Foreign lawyers and law firms shall be allowed to function in non litigation areas only.

4. Foreign lawyers and law firms shall not be allowed to appear in any Court, Tribunal, Board, before any Statutory or Regulatory Authority or any forum legally entitled to take evidence on oath and/or having trappings of a court.

5. Entry of foreign lawyers would be on reciprocal basis only i.e. lawyers of only those countries would be permitted in India, where Indian lawyers are also permitted to practice.

6. Foreign lawyers would be allowed to appear for their clients in International Commercial Arbitration.

Experience and facts show that MNCs and foreign commercial entities, in case of International Commercial Arbitration, don't

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prefer India as a venue of Arbitration Proceedings, because they are not allowed to bring lawyers and law firms from their own countries to advise them in International Commercial Arbitration Proceedings, thus, making them to prefer London, Singapore, Paris etc. as the venue for Arbitration Proceedings. BCI's rules will, now, encourage India being preferred as a venue for such International Arbitration Proceedings, thus, helping India become a hub of International Commercial Arbitration.

7. The SC on 13th March 2018 in BCI vs A K Balaji & Ors had desired the BCI or Govt Of India to frame rules about entry and regulation of Foreign Lawyers and Foreign Law Firms.

8. The directions of Supreme Court were to be followed.
BCI, therefore, stepped in to bring out these rules allowing foreign lawyers entry in a very restricted sphere which is not going to impact at all Advocates practicing in India.

BCI stands committed to protect and safeguard interest and welfare of Advocates in the Country and requests the entire Advocate's fraternity to welcome these rules in National Interest.

9. It is to be noted that this rule should not be misconstrued to allow any non lawyer or any BPO/ etc. any agent, to come to India and start practising in any sphere, and/or under any trading style, if in pith and substance, it amounts to practise of law as held in A.K.Balaji & Ors. Moreover reciprocity is the very essence of the Rule, which may be kept in mind.

(Srimanto Sen)
Secretary
Bar Council of India

44. The aforesaid press release would demonstrate that foreign lawyers, except for those practising before Courts, which would require reciprocity, are otherwise permitted to function and advise their clients about Foreign laws and International laws. As per the aforesaid document, they would also be permitted to render advisory work about such laws for their foreign clients. In these circumstances, the contention on behalf of learned Senior Counsel for the Petitioner that under no circumstances could the daughter of Respondent

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work in India is completely untenable. The contention on behalf of learned Senior Counsel for the Petitioner that daughter of the Respondent is not dependent upon him and therefore there is no *bona fide* requirement for her to use the tenanted premises for her work is again not acceptable.

45. Learned Senior Counsel for the Petitioner drew attention of this Court to the cross-examination dated 30.05.2022 of PW-1/Mr. Kiran Sharma, wherein he admitted that the need at the time of filing of petition in the year 2015, was for his brother, his sister and himself and not his daughter specifically. He further deposed that he could not remember if his daughter was a practicing advocate or not in the year 2015. In these circumstance, attention of this Court was drawn to the law degree of the daughter of the Respondent dated 29.06.2007, and therefore, it was contended that at that relevant point of time, when the eviction petition was filed, the daughter of the Respondent was admittedly a law graduate, and still, there was no mention of her requirement to come to India and practice law, however, in the cross examination of the said date it was further recorded as under: -

> "Qns. What was the reason that your daughter wanted to shift her practice from Malaysia to India?
>
> Ans. Earlier my daughter has gained a lot of experience in Malaysia by working with law firm and subsequently with banks. With her experience, specifically in last 5-6 years, she feels a possibility of expanding her profession in India as India is one of the upcoming economy in the world. Vol. She is presently not practicing in India. She is working as a consultant in India.
>
> My daughter has come to India 2-3 times in between 2018 to 2020. Vol. She has not come as a consultant only."

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46. It is pertinent to note that the Respondent, in the eviction petition, had taken the following stand(s): -

> **"**That the petitioner has no other residential accommodation in India/Delhi except the suit property. The petitioner and his daughter namely Ms. Sarita wants to settle in Delhi and thus the petitioner requires the suit premises for his and family members bonafide residential use.
>
> The petitioner not only requires the suit property not only for his and his family but also for his brother and sister and their family members also who more often visit India and have no residence to stay except the suit premises. But due to non availability of their own residence, they have to stay at Hotel.
>
> The need of the petitioner for suit premises for residential premises is bonafide as he and other relatives have no other residential Property other than the suit premises.
>
> That if the respondent is evicted it would not suffer any hardship because it being a Public Limited Company. The petitioner issued a legal notice dated 06.06.2012 through their counsel for the termination of lease deed dated 02.11.1976 which is annexed as **Annexure-10.** The legal notice issued on behalf of the petitioner was duly received by the respondent who replied the same vide reply dated 12.07.2012. The copy of reply given by the respondent is annexed as **Annexure 11.**
>
> The contention and intention of the respondent were very clear and were against the interest of the petitioner as expected which clearly shows the bad intention of the respondent towards the interest of the property of petitioner.
>
> That the respondent paid the rent till 1997 and since then the respondent has not paid any rent.
>
> Moreover the petitioner required the premise for his bonafide personal and family need as he has no other residential property in Delhi or in India and the family of the petitioner used to come to Delhi being Indian but are constrained to remain in Hotel

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> or at some other place which causes harassment and mental torture on the part of respondent since last so many years."

47. Thus, the requirement of the tenanted premise for his daughter was also pleaded by the Respondent, although, not specifically with regard to her professional requirements. Thus, the contention of learned Senior Counsel for the Petitioner that the aforesaid could not have been taken into consideration, without a formal amendment, is not acceptable. The fact remains that if the daughter of the Respondent has to come to India, the requirement of the subject premises would still be in existence. Even otherwise, the learned ARC while disposing of the petition had categorically observed as under: -

> "30. In the present petition, the bonafide requirement stated by the petitioner is not in respect of his daughter's requirement for a place to start her business in India. As the petition was instituted in the year 2015, it is possible that daughter of petitioner became qualified during pendency of the present petition and her requirement for the demised premises also arose during pendency of this petition, but the bonafide requirement, which is to be adjudicated upon is not the bonafide requirement of daughter of petitioner, rather the bonafide requirement as disclosed in the petition filed in the year 2015. **In the present petition, the bonafide requirement disclosed by the petitioner is the requirement for a residential accommodation for the petitioner and his daughter in Delhi/India as they want to settle in Delhi. Further, the bonafide requirement claimed is on behalf of the brother and sister of the petitioner and their family members who require a place to stay when they visit India. It is on these grounds of bonafide requirement, that the present petition is to be tested.**"
>
> **(emphasis supplied)**

48. With respect to the aforesaid *bona fide* requirement of the Respondent and his family, it had been contended by learned Senior Counsel for the Petitioner that the Respondent in his cross-examination dated 30.05.2022, had

admitted that whenever he visits India, he necessarily does not visit Delhi. It was further pointed out that the brother of the Respondent, Mr. Ajay Sharma, and his sister, Ms. Usha Sharma, both did not appear before the learned ARC to lead the evidence to show that the requirement, as pleaded by their brother, *i.e.*, the Respondent, was a genuine and *bona fide*. Learned Senior Counsel for the Petitioner has further placed reliance upon the copy of the passport of the Respondent, to contend that the Respondent has no intention to stay in India. During the course of the proceedings, the Respondent had also placed on record immigration stamps showing the Respondent's entry into India, as well as multiple Visas. The aforesaid contention was dealt by the learned ARC in the following manner: -

> "33. The above testimony is clear and categorical about the bonafide requirement of the petitioner for the demised premises. Additionally, the respondent has the protection under Section 19 of DRC Act. In case, the petitioner does not utilize the demised premises for the purpose of his and his daughter's residence, then the respondent can seek restoration of possession. In this regard, reliance is placed upon the judgment of Hon'ble Supreme Court of India in ***Baldev Singh Bajwa v. Monish Saini (2005) 12 SCC 778.***
>
> 34. It has been also claimed by the respondent that the petitioner or his family members are not regular visitors to Delhi as claimed in the petition and therefore, the bonafide requirement for the demised premises is an artificial requirement. The respondent has claimed that copies of hotel bills and passport of the petitioner clearly Shows that the petitioner is an infrequent visitor to Delhi and such irregular visits does not merit evicting the respondent from the demised premises, who is a protected tenant."
>
> 35. As already noted above, the main bonafide requirement disclosed by the petitioner is for his and his daughter's residence in the demised premises as they intend to shift to Delhi. Hence prior to their actual shifting to Delhi, the regularity of their visits to Delhi does not negate their bonafide requirement for a residential

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> accommodation in Delhi. Furthermore, it cannot be said that the petitioner or his family members would have anticipated their bonafide requirement for the demised premises, that arose in the year 2015, prior to 2015 and thus would have saved evidence of their regular visits like hotel bills etc. to be used in petition of this nature. Furthermore, it is admitted by the respondent that one portion of the demised premises was retained for use of deceased mother of the petitioner. In cross examination of PW-1 he has categorically stated that he used to stay in that portion of the demised premises during his visits to Delhi from 1976 to 1991, Only thereafter, did the need arise for hotel accommodations as the respondent trespassed into that portion of the demised premises also. Hence, even if it is assumed to be correct that the petitioner and his family members are mere irregular visitors to Delhi, it does not negate the bonafide requirement for the demised premises for the petitioner and his family to shift their residential base from Malaysia to Delhi."

The relevant part of the cross-examination dated 30.05.2022, which is relied upon by the learned Senior Counsel for the Petitioner, in which the Respondent had answered to the following effect: -

> "…After 1998 when I visited India, I did visit Delhi. On every trip to India, I do not visit Delhi. I do not recall when I visited Delhi after 1997."

The Respondent had, although, said that he does not remember any visit to India after the year 1997, but the fact remains that his cross-examination is of 30.05.2022 and he was admittedly present in India at that time.

49. At this stage, it would be apposite to refer to judgments passed by learned Benches of this Court, in respect of *bona fide* requirement of a

landlord who was residing abroad and was desirous to come and stay in his premises situated in India. The said judgments are as under: -

i. Hi-Bred (India) (P) Ltd. v. Ravi Kumar[1];

ii. Saroj Khemka v. Indu Sharma[2];

iii. Sumitra Devi v. Raj Rani Sehdev[3];

iv. Harminder Singh Koghar v. Ramnath Exports Private Ltd[4].

49.1. In **Hi-Bred (India) (P) Ltd.** (***Supra***), the learned Single Judge of this Court was adjudicating upon a civil revision preferred on behalf Petitioner-tenant therein, assailing the eviction order passed by the Rent Controller against the latter. Arguments were advanced by the Petitioner-tenant therein, that *bona fide* requirement of the Respondent-landlord therein was a sham as he was a Green Card holder. The learned Single Judge of this Court had held that neither the Court nor the tenant, can dictate to the landlords not to come back to their own country and live in their own house. Relevant portion(s) of the said judgment is reproduced as under: -

> "**3.** The facts, in brief, are that the respondent No. 1 and his wife respondent No. 2 were employed and were working at Sharjah, but respondent No. 1 had to resign his job as he developed some serious ailment and respondent No. 2 also resigned her job. She is M.B.B.S. Both of them are Green Card Holders from United States of America and in 1984 they went to America and the case set up was that the respondents have now decided to live in Delhi permanently in the house in question. At the time of the filing of the petition, the sons of the respondents were studying in Delhi, but admittedly now they have been sent to United States of America for

[1] **1988 SCC OnLine Del 243**
[2] **1999 SCC OnLine Del 159**
[3] **2002 SCC OnLine Del 645**
[4] **2015 SCC OnLine Del 11597**

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higher education. It is the case of the respondents that they have not taken any employment in America and they want to live in India. The Additional Controller believing the statement made by respondent No. 1 on oath held that the respondents have proved that they bona fide require the premises in question for their residence. The Counsel for the petitioner-tenant has vehemently argued that both the respondents hold Green Cards of U.S.A. which should have led the Court to come to the conclusion that in fact they are not at all keen to settle in Delhi and the testimony of respondent No. 1 in Court that they wanted to live permanently in Delhi should not be believed when the factum of their holding greencards shows that they have the intention of living permanently in United States of America. The Counsel for the petitioner has drawn my attention to the various provisions of the United States Code Service, Titles 8 to 9 pertaining to Aliens and Nationality and the provisions of American Jurisprudence, 2d, pertaining to the same subject in order to show that the Green Cards are given by the United States of America to some special category of persons who have intention to live permanently in that country. **The mere fact that the landlords have obtained the Green Cards in United States of America, which enabled them to live in America without the necessity of their seeking frequent permission after expiry of some time, would not lead to any inference that they have no bona fide need to come over to India and live in India. After all it was for the landlords to make up their minds as to where they would like to live in India. After all it was for the landlords to make up their minds as to where they would like to live and at one point of time they have for convenience sake obtained the Green Cards from the Government of United States of America would not throw any doubt on the resolve made by them subsequently that they would like to live in their own country.** It has been argued that if the landlords are to disclose their intention of living permanently in India to the authorities in the United States of America, their green cards may be liable to be cancelled. **The question which is necessary to be decided is whether they have taken a bona fide decision to live in India. The mere fact that their sons are receiving higher education in U.S.A. also does not, in my opinion, throw any doubt regarding the intention of the landlords to live in India in their own house. Neither the Court nor the tenant can dictate to the landlords not to come back to their own country and live in their own house. No mala**

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> **fide motive was imputed to the landlords to show that they have sought eviction of the tenant for some ulterior motive.** The Additional Controller has believed the testimony of petitioner No. 1 landlord, I see no reason to interfere. I find no merit in this Civil Revision which dismiss in limine."
>
> (**Emphasis supplied**)

49.2. Similarly, in **Saroj Khemka** (***Supra***), a civil revision was preferred by the Petitioner-tenant therein, against the order passed by the Rent Controller, thereby rejecting the leave to defend filed on behalf of the Petitioner-tenant therein. The learned Single Judge of this Court, while dealing with the issue of *bona fide* requirement of a landlord living abroad and visiting India for a short duration, had held and observed as under: -

> "Let us examine the plea of petitioner in the application for leave to defend. **A statement made in the counter affidavit that the owner while staying in U.S.A. and the income of the husband of the owner-landlady was enormous and they are accustomed to the lifestyle of U.S.A. and respondent was only coming in a year for couple of days to meet its relatives and, therefore, the requirement of the petitioner for their stay in Delhi does not amount to bona fide requirement. It is not denied that the owner had not any other place to stay in Delhi or anywhere else except the house of the relatives/parents.** Along with the petition, present respondent/owner landlady had filed on record before the Trial court bills from Hotel Vasant Continental showing that they had to stay in a Hotel. Respondent-landlady has also filed the letter from Centre for Policy Research dated 4.6.1995, inter alia, granting internship to the daughter of the respondent to start her assignment in or around September' 1994 wherein it was specifically mentioned that the daughter of the respondent would have to provide her own housing and transportation arrangements and as no accommodation was available to the daughter, Charunidhi Sharma, she could not join Centre for Policy Research. **I do not see any force in the arguments of the learned counsel for the petitioner that even if the petitioner visits India, she cannot have her own house for her casual stay as her residence and she has to go to the house of the relatives or has to stay in a hotel in spite of the**

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> **fact she has a flat of her own in Delhi. No Court can compel a person to stay in a house of a relative or a hotel and because the said person is staying abroad, he/she has no right to stay in his/her own premises. That will be totally negating the provisions of Section 14(1)(e) of the Act. If a person is residing abroad, he/she owns a flat or a house in Delhi, he/she wants to spend a few weeks or a few months then he/she must be allowed to stay in his/her own house.** I do not find any infirmity with the finding recorded by learned Additional Rent Controller on this score also."
>
> (**Emphasis supplied**)

49.3. In **Sumitra Devi** (***Supra***), the learned Single Judge of this Court, while deciding a civil revision preferred by the Petitioner-tenant therein, assailing the eviction order passed against the latter, had categorically held that the desire of the landlord to come back to one's own county gives rise to *bona fide* need. Relevant paragraph(s) of the said judgment is reproduced as under:-

> "**7. The plea of the petitioner that the respondent and her family is settled in U.K. for the last about 35 years and have become citizens and green card holders and as such have no intention to shift to India, requires consideration for the reason that the Courts exercising powers under Section 14(1)(e) read with Section 25-B of the Act have to ensure that no unscrupulous landlord is able to evict a tenant on a false and frivolous plea of bona fide requirement. However, the Courts also have to ensure that no landlord/owner is kept deprived of his property, in the hands of a tenant, inspite of the fact that he bona fide needs the same for his own residence and the residence of his family members.** The respondent who appeared as AW 1 made a statement on oath that she wanted to shift to India. AW 2 Varinder Kumar Sahdev, son of the respondent-landlady also stated that he was unemployed for the last about 10 years and he alongwith his wife were desirous of shifting to India. According to him his younger brother was also interested in coming back to India. **The respondent-landlady, who is suffering from various ailments including some problems in the backbone appears to be keen to come back to India and it is not unnatural also for**

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the reason that all those who move out of their own country for the sake of business or career, at one stage or the other feel like going back to their roots so that towards the end of their lives they are in their own country and with their own people. In such cases the desire to come back to one's own country gives rise to bona fide need and cannot be out right rejected as mala fide unless there is some positive evidence to show that the desire is a hoax and real motive is somethingelse. The respondent and her family, even if they do not shift to India permanently require the premises for use and occupation in the course of their visits and as such the plea of the learned counsel for the petitioner that the plea of bona fide need as set up by the respondent should be rejected cannot be sustained.

8. In Sri Kempaiah's case (supra) the Apex Court while dealing with a case of eviction on the ground of bona fide requirement emphasised that a mere wish or desire on the part of the landlord is distinguishable from "bona fide requirement" and a duty is cast upon the Court to satisfy itself in regard to the bona fide of the requirement. **The emphasis is this judgment was that Courts should not be influenced by mere wish or desire but try to look for something more to know as to whether the plea of requirement is oona fide or not. It may be stated that in cases like the present one requirement is preceded by a wish or desire to shift to one's own country and if there is nothing on record to show that the wish or desire on the part of the owner is sham or mere pretence to make out a case of bona fide requirement the existence of such wish or desire assists the Court in ascertaining the bona fides of the plea of requirement.** The plea of the petitioner that the respondent wants to sell off or let out the premises on a higher rent after evicting the petitioner cannot be accepted for the reason that there is no evidence on record to suggest even that the respondent is going to sell or let out the premises in question after evicting the petitioner. Moreover such apprehension can be echoed by every tenant to oppose an eviction petition, but as rightly observed by learned ARC, Section 19 of the Act takes care of such apprehensions.

9. A Single Judge of this Court in *T.D. Dhingra* v. *Pritam Rai Khanna*, 48 (1992) DLT 208 upheld the claim of bona fide requirement by a landlord-owner who had acquired British

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> citizenship but was claiming eviction on the ground of bona fide requirement for his stay in India. In the present case the respondent-landlady and her two sons have deposed on oath before the Trial Court that they intend to return to India. Nothing could be brought out in their cross-examinations to falsify them on this issue. The petitioner inspite of raising a plea that the respondent intends to sell the property in question has not produced any evidence to establish that the respondent has been negotiating with some one in regard to sale of this property. The fact that the respondent had never let out the first floor portion and had kept in with her sister for so many years fully corroborates her plea that she is not interested in any monetary gain and she genuinely intends to come back to India with her one or two sons and stay here. The respondent being an old lady and suffering from so many ailments and physical problems is unable to use the first floor portion and as such is in bona fide need of premises in possession of the petitioner. In view of the status, life style, habits, size of family of the respondent and her sons their need for the ground floor as well as first floor of the building in question for residential use is neither unreasonable nor exaggerated. This Court does not find any good ground for holding that the plea of bona fide need as raised by the respondent is a pretence only and the respondent does not require the premises in question for residential use."
>
> (**Emphasis supplied**)

49.4. In **Harminder Singh Koghar** (***Supra***), the Petitioner-landlord therein had assailed the orders of dismissal passed in the eviction petitions filed by him before the Rent Controller. The Petitioner-landlord therein was non-resident Indian settled in Thailand, and was running his business from there. It was the case of the Petitioner therein that the suit property was *bona fidely* required by him and his family, as they had decided to set up their business in Delhi. The learned Single Judge of this Court, while holding that if the landlord is settled outside India, and was frequently visiting for his need and temporary stay, the same has to be judged as *bona fide* need. Further, the learned Single Judge, while relying upon **Saroj Khemka** (***Supra***), had

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dispelled the argument of the Respondents-tenants therein that temporary stay in Delhi for a person settled abroad would not constitute *bona fide* requirement. It was further held by the learned Single Judge that a mere belief/opinion that the landlord is well settled abroad and there is not even remotest chance of him and his family coming back and living in India is irrelevant. The relevant portion of the said judgment is reproduced as under: -

> "**32.** The main reason why the learned ARC dismissed the eviction petitions was that there were negotiations for sale of the suit property on the basis of evidence as noted above and thus there was no bonafide requirement of Harminder Singh Koghar for the suit property. It may be noted that this was an assertion of fact by the respondents who were required to prove the same. RW-1 Vivek Lall in his cross-examination stated that he accepted the down payment which he returned, however he admitted that this fact was beyond the pleadings and he had led no evidence to prove the same to show that down payment had been made. As a matter of fact the two witnesses he stated about were also not produced in the witness box. These suggestions were denied by Harminder Singh Koghar. Further no material particulars as to when and where the meetings took place have been stated by RW-1 to show that the petitioner did not intend to set up the business in Delhi rather wanted to sell the property. The assertion of RW1 in his evidence by way of affidavit that "the family of the petitioner is so well established in Thailand/Singapore/abroad, that there is not even a remotest chance of the petitioner and his family coming back and living in India, neither the petitioner nor his family members will shift to India and will never set up their residence in India" is only a belief/opinion and not an assertion of fact and thus not relevant. Moreover it is not even the case of petitioner that he and his family are permanently shifting to Delhi. They want to set up a residence in the suit property to be available as and when they come."

50. At this stage, it would be apposite to refer to a judgment relied upon by the Respondent, passed by the learned Single Judge of this Court in **S.P.**

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Kapoor v. Kamal Mahavir Prasad Muraka & Others[5], pertaining to the *bona fide* requirement of a landlord/owner of the premises in Delhi, despite being a permanent resident of Mumbai, whereby it was held and observed as under: -

> **"10.** After considering the submissions made by learned counsel for the parties, this Court is of the considered view that Section 14(1)(e) of the Act nowhere provides that the bona fide need of a landlord/owner in respect of his residential premises should be for a permanent residence only. If a landlord/owner is permanently settled outside Delhi but his visits to Delhi are frequent his need even for temporary stay in his own premises has to be viewed as bona fide need. No landlord/owner, inspite of having his own property in Delhi, can be compelled to live here and there and face inconvenience. It is true that a Single Judge of this Court in Chander Sain Berry's case (supra) held that mere desire of a landlord/owner cannot be equated with bona fide need and as such leave to defend ought to be granted to a tenant so that he may show that there is no bona fide need but the facts of the said case were entirely different in as much as it was not clear from the material on record that the desire of the landlord/owner to shift to India was genuine. However, in a case where the facts and circumstances clearly suggest that the desire of landlord/owner isnot a mere pretence or a made up plea to evict a tenant, the prayer for bona fide need may be accepted and leave to defend declined with a view to accomplish the underlying object to Section 14(1)(e) read with Section 25-B of the Act.
>
> **11.** In *Calcutta Film Library & Associates* v. *Dr. Shila Sen* (supra) a Single Judge of the Calcutta High Court upheld the plea of the landlady regarding her *bona fide* requirement in respect of a house in Calcutta although she was permanently settled at Delhi. The learned Single Judge was of the view that the Courts could not suggest to a landlord/owner that he should hire another accommodation or should stay with his relatives. It was held that even during temporary visits a landlord may require his own premises and could not be suggested to stay in some Hotel or in

[5] **2002 SCC OnLine Del 527**

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some friends or relative's house. Learned Single Judge was further of the view that it was not necessary that the need should not permanent or continuous. His Lordship Hon'ble Mr. Justice B.N. Kirpal (as his lordship then was), in *Mehra & Mehra* v. *Dr. (Mrs.) Sant Kaur Grewal* (supra) upheld a claim under Section 14(1)(e) of the Act, by a landlord who was living at Srinagar and wanted her premises in Delhi only to pass winter months, holding that it was her *bona fide* need. It was held that since the landlady had no other alternative accommodation available to her in Delhi her need was to be treated as *bona fide.* In *Saroj Khemka's case* (supra) a Single Judge of this Court upheld an order of the Controller, rejecting leave to defend application, in case of a landlord/owner who was living abroad and wanted his premises at Delhi for stay in India for short durations. It was categorically observed that an owner can not be compelled to stay at a Hotel or have an alternative accommodation.

12. In the case in hand it is satisfactorily shown on record that the respondent No. 1 the landlord/owner of the premises in question, although a permanent resident of Mumbai has to visit Delhi off and on in connection with his political and business matters. He is a man of status who needs sufficient accommodation even in the course of his short visits to Delhi so that he may live comfortably and discharge his social and business obligations effectively. It is true that his two daughters are already married but the averment in the petition is that they may also stay in the premises in question during their visits to Delhi. This demand is neither unjust or unfair. He has no other suitable alternative accommodation available to him at Delhi. The Courts have no justification to insist that he should either live in Hotels or hire some other accommodation merely for the sake of protecting the tenancy of the petitioner. The respondent No. 1 owner/landlord cannot be asked to face inconvenience and adjust in smaller accommodation here and there in the course of his visits to Delhi. This Court, therefore, has no hesitation in concluding that the claim of respondent No. 1 in regard to his *bona fide* need of the premises in question for his residential use was reasonable and *bona fide.* The plea of the petitioner that this plea is not *bona fide* or a mere pretence to evict him is unfounded and does not give rise to any triable issue for grant of leave to defend to him.

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> **13.** The respondent No. 1 had neither made any concealment nor any mis-statement of facts in his eviction petition so as to suggest that he was acting *mala fide* and his need was not *bona fide.* He had clearly mentioned in his petition that he had earlier filed an eviction petition against the petitioner for fixation of standard rent and thereafter had filed a petition under Section 14(1)(d) of the Act also which was not pressed as it was shown that the petitioner/tenant was living in the premises in question. He had also not made any mis-statement in regard to his family and had categorically stated that his both the daughters were married out of Delhi. Their need was not set up for permanent residence in the premises in question and the suggestion was they may also use the premises during their visits to Delhi. The respondent No. 1 had impleaded other co-owners also as proforma respondents and as such no arguments have been addressed on the question of *locus* of respondent No. 1 to file the eviction petition. The hotels bills placed on record by respondent No. 1 even if ignored on the principle of '*post litem motam'* the affidavit filed by respondent No. 1 in regard to his political and business engagements in Delhi can be safely accepted to hold that respondent No. 1 needs the premises in question *bona fide* for his residential use during his visits to Delhi The leave to defend application and affidavit filed by petitioner did not disclose that respondent No. 1 was not visiting Delhi off and on as pleaded. This Court is therefore, of the considered view that the learned ARC was fully justified in refusing leave to defend to the petitioner and passing an eviction order under Section 14(1) (e) of the Act in favour of respondent No. 1."

51. Similarly, in **Dr. Jain Clinic Pvt. Ltd. Vs. Sudesh Kumar Jassal**[6], learned Single Judge of this Court, while relying on the aforesaid judgment, **S.P. Kapoor** (***supra***), had observed and held as under: -

> "**23.** Section 14(1)(e) of the Act nowhere provides that the bonafide need of the landlord/owner should be in respect of residential premises for a permanent residence only. It is settled law that if the landlord/owner is settled outside India but his visit to India are frequent, his need even for temporary stay in his own premises has

[6] **2013:DHC:4119**

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to be judged as bonafide need. Therefore, he inspite of having his own property in Delhi cannot be compelled to live in the places other than his own property and to face inconvenience. His lordship Hon'ble Mr. Justice B.N. Kirpal (as his Lordship then was), in ***M/s Mehra & Mehra vs. Dr. (Mrs.) Sant Kaur Grewal***, 21 (1982) DLT 196 upheld a claim under Section 14(1)(e) of the Act, by a landlord who was living at Srinagar and wanted her premises in Delhi only to pass winter months, holding that it was her bonafide need. It was held that since the landlady had no other alternative accommodation available to her in Delhi, her need was to be treated as bonafide. In the case of ***Saroj Khemka vs. Indu Sharma***, reported in 1999 (49) DRJ 719, a Single Judge of this Court upheld an order of the Controller, rejecting leave to defend application, in case of a landlord/owner who was living abroad and wanted his premises at Delhi for stay in India for short durations. It was categorically observed that an owner cannot be compelled to stay at a Hotel or have an alternative accommodation.

24. Reliance can also be placed upon the case titled as ***Sarla Ahuja vs. United India Insurance Co. Ltd.,*** reported in AIR 1999 Supreme Court 100. The facts of this matter were that the petitioner who was a widow wanted to shift her residence from Calcutta to New Delhi to occupy her own building which was in the possession of her tenant M/s United India Insurance Company Limited. Though she got an order of eviction from the Rent Controller under Section 14(1)(e) of the Delhi rent Control Act 1958 (for short "the Act"), a single Judge of this Court non-suited her by reversing the order which she challenged before the Supreme Court by way of Special Leave to Appeal. It was held by the Supreme Court that:-

> ".....The crux of the ground envisaged in clause (e) of Section 14(1) of the Act is that the requirement of the landlord for occupation of the tenanted premises must be bona fide. When a landlord asserts that he requires his building for his own occupation the Rent Controller shall not proceed on the presumption that the requirement is not bona fide. When other conditions of the clause are satisfied and when the landlord shows a prima facie case it is open to the Rent Controller to draw a presumption that the requirement of the landlord in bona fide. It is often said by courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust

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> 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."
>
> In ***S.P.Kapoor Vs. Kamal Mahavir Prasad*** Murarka ***and Ors.,*** 97 (2002) DLT 997, this Court had observed that even the requirement of the landlord to have his premises vacated for his frequent visits to Delhi and for temporary stay in his own premises has to be viewed as bonafide requirement."

52. In view of the aforesaid judgments, as well as the observations rendered by the learned ARC, it is evident that the mere fact that the Respondent and his family members are residing abroad or are irregular visitors to Delhi, cannot, by itself, negate their *bona fide* requirement. The law is well-settled that neither the Court nor the tenant can dictate to a landlord as to where he should reside, and the desire of a landlord to return to India or to establish a residence here, constitutes a legitimate and *bona fide* need, unless shown to be a mere pretext. In the present case, no material has been brought on record to demonstrate that the requirement set up by the Respondent is sham or *mala fide*. Hence, even if it is assumed that the Respondent and his family members were not frequent visitors to Delhi in the past, the same does not dilute or discredit their *bona fide* requirement for the tenanted premises.

53. The other two pleas taken by the Petitioner before the learned ARC and in the written submissions filed before this Court was availability of alternate accommodation with the Respondent and of adverse possession. So far as the plea of availability of alternate accommodation is concerned, the learned ARC had dealt with the same in the following manner: -

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"25. One of the contentions raised by the respondent is that the petitioner has an alternative accommodation available in the form of one property at 42, Birbal Road, Jangpura Extension, New Delhi. It has been claimed by the respondent that petitioner has been using the said property and therefore, has an alternate accommodation available for their use in Delhi. The same is disputed and denied by the petitioner who has claimed that except for demised premises, the petitioner and his family members do not have any other property in Delhi. The petitioner has explained that the said property no. 42 was owned by some other person known to the petitioner and he has consented to allow the petitioner to use the said property as a correspondence address only. In cross-examination of PW1 also, this fact has been duly explained by PW1. He has deposed *".... and one of my friends was living at 42, Birbal road and therefore, with his permission I had used the said address for my correspondence in India.*
(VOL. I authorized my advocate to search from property records to establish that I am not owner of 42, Birbal road at any point of time). *My advocate never found any document in my name as owner of 42, Birbal Road, New Delhi".*

26. On the other hand, in cross-examination of respondent witness, it has clearly come on record that the respondent never even bothered to find out about ownership of said property no. 42. RW1 has *deposed "I do not know in whose name the property bearing no. 42, Birbal Road, Jangpura Extension, New Delhi-14 js registered. My knowledge regarding this property has been derived from the pleadings filed by the petitioner but I cannot specify in which Pleading has this Property been mentioned by the petitioner. I cannot produce any document to show property bearing no. 42, Birbal Road, Jangpura Extension, New Delhi-14 belongs to the petitioner or their family members..... The respondent company did not carry out any documents search for the said Property before any authority. I cannot say if any other alternative Property in Delhi is available to the petitioner..... I have not made any online search regarding ownership of property bearing no. 40 & 42, Birbal Road, Jangpura Extension, New Delhi"."*

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> 27. In light of above testimonies of PW1 and RW1, it is clearly established on record that petitioner has nothing to do with property no. 42.
>
> 28. The respondent has made a bald averment with respect to ownership of property no. 42. No document has been produced to substantiate the claim that an alternative accommodation is available to the petitioner. It is now well settled that respondent cannot resist his eviction only on allegations made in the pleadings, but only if some, cogent material is also produced by the respondent to show that he has material to non suit the landlord. In this regard, reliance is placed upon the judgment of ***Baldev Singh Bajwa vs. Monish Saini (2005) 12 SCC 778.*** Reliance is also placed upon the judgments of Hon'ble Delhi High Court in ***Ram Swaroop v. Viney Kumar Mahajan dated 24th July, 2017 in RC Rev. No. 112/2016 and Lalta Prasad Gupta v. Sita Ram dated 2nd August, 2017 in RC Rev. No. 352/2017.*** When the tenant does not produce any document at all before the Court on the basis whereof there is any chance of the tenant proving what he has stated about availability of an alternative accommodation, the only inference is that the facts disclosed are not capable of being proved and/or not capable of dis-entitling the landlord from obtaining an order of eviction under Section 14 (1) (e) of the Rent Act."

Nothing has been produced by the Petitioner before this Court to contradict the aforesaid findings of the learned ARC, and therefore, the said findings need not be interfered with. Reliance placed by the learned Senior Counsel on the portion of the affidavit of the Respondent is misplaced, as the same has been explained by him in his cross examination, and even the cross-examination of the Petitioner's witness as RW-1, demonstrates that the plea of alternate accommodation could not be substantiated by them.

54. So far as the issue of adverse possession is concerned, the same had been dealt with by the learned ARC in the following manner: -

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"19. The claim of adverse possession is also not tenable on account of categorical and clear admission of the respondent that initial possession was in the capacity of a tenant only. Once possession has been admitted to be in the capacity of a tenant, then without execution of any proper sale documents as per applicable laws, ownership cannot be claimed merely on the strength of long possession. Possession as a tenant is permissive possession only and can never be said to be hostile to the ownership of the actual owner. This is also Strengthened by the fact that there is no dispute qua the petitioner being one of the legal heirs of his deceased mother Sumitra Devi. Respondent has disputed ownership claim of the petitioner on the ground that there is no Will in favor of the petitioner by Sumitra Devi for the demised premises. As the demised premises is located in India, its devolution shall also be in accordance with the laws of succession applicable in India. In India, succession is in accordance with personal laws and succession for Hindus is governed by Hindu Succession Act. The respondent has not showed by any material that Hindu Succession Act would not be applicable on the deceased mother Sumitra Devi or the petitioner. Respondent has also not produced any material during the entire trial to show why the laws of succession as applicable in India, be not applied to the demised premises, As it is not disputed that petitioner is son of Sumitra Devi, then even without any Will in his favour, he is entitled to inherit share in the demised premises as per applicable laws of succession. Having so held, it is necessary to deal with objection of the respondent qua the general power of attorney issued by the other legal heirs in favor of the petitioner, at this stage itself. The petitioner has claimed to be authorized by the other legal heirs to deal with demised premises and to take all necessary steps in respect of the demised premises, by way of general power of attorneys executed in his favour by the other legal heirs. Even if it is presumed that no such general power of attorney was ever executed by the other legal heirs in favour of the petitioner, then also the maintainability of the present petition cannot be challenged. It is now well settled that an eviction petition under Section 14(1)(e) DRC Act is maintainable even by one of the legal heirs/co-owners of the demised premises and consent/authority of other legal heirs/co-owners is not necessary. Reliance is placed upon ***Kanta Goel vs. D.P. Pathak, 1979 (1) RCR (Rent) 485; (1977) 2 Supreme Court cases 814, Pal Singh vs. Sunder Singh 1989 (2) RCR (Rent) 331; (1989) 1 Supreme Court***

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cases 444; Seshasyana Rao & Ors Vs. Manuri Venkatesa Rao & Ors AIR 1954 Madras 531, Sri Ram Pasricha V. Jagannath & Ors (1976) 4 SCC 184. Infact, in ***M/s Indian Umbrella Manufacturing Co. & Ors. vs. Bhagabandei Agarwalla (Dead) by LRS Smt. Savitri Agarwalla & Oks., AIR 2004 1321***, the Hon'ble Supreme Court went a step ahead and opined that even if no prior no objection is obtained from the remaining co-sharers then also the petition is maintainable.

20. In view of the above, it is clear that being son of Sumitra Devi, the petitioner has inherited co-ownership in the demised premises and is entitled to pursue the present petition under Section 14(1)(e) DRC Act.

21. Even from the cross examination of RW-1, it is clearly coming on record that the respondent was never in hostile possession of the demised premises, after death of mother of petitioner. In his cross examination dated 14.12.2022, RW-1 has admitted one electricity bill for demised premises Ex.PW1/D1, which is in the name of respondent. He further stated that he was not aware if any permission/NOC was taken prior to obtaining electricity connection as evidenced by Ex.PW1/D1. Thereafter, he goes on to state that in general course the general manager of respondent would have asked for such permission/NOC from the landlord. He has deposed:

> "I do not know if the respondent company had taken permission/NOC from land lady or her legal heirs prior to taking electricity connection at the demised premises as per energization date of 19.06.2015 in Ex.PW1/D1. In usual course the general manager of the respondent company would have asked for permission/NOC from the landlord".

22. In view of this testimony of RW-1, it is clear that some permission/NOC must have been sought from the landlord in the year 2015 by the respondent. If respondent is owner by way of adverse possession, then there would have been no requirement of seeking any permission/NOC. Furthermore, despite claiming that in usual course such permission/NOC would have been taken, the respondent has failed to disclose the name of the landlord from whom such permission/NOC was sought.

> 23. It is admitted case of the respondent that there is no ownership document in favour of the respondent for the demised premises. On the other hand, the petitioner has produced the ownership record in favour of his deceased mother, lease agreement between deceased mother and the respondent, admission of the fact that petitioner is son of the deceased mother who was the previous owner of the demised premises, are sufficient to establish a better title in favour of the petitioner than the respondent. It is well settled that in a petition under Section 14(1)(e) DRC Act, the ownership of demised premises is not to be examined as in a title suit. Landlord merely has to show a better title to the demised premises to seek eviction of the respondent. Reliance is placed upon ***Dr. Jain Clinic Pvt. Ltd. Vs. Sudesh Kumar Dass in RC Rev. No. 136/12, decided on 22.08.2013 (Delhi HC), Shanti Sharma Vs. Smt. Ved Prabha [AIR 1987 SC 2028], Ramesh Chand Vs. Uganti Devi reported as 157 (2009) DLT 450, Sheela and ors Vs. Firm Prahlad Rai Prem Parkash, (2002) 3 SCC 375 and Sushil Kanta Chakarvarty Vs. Rajeshwar Kumar, 79 (1999) DLT 210."***

Again, nothing has been brought on record by the Petitioner to contradict the aforesaid findings rendered by the learned ARC, and therefore, there is no ground to interfere with the same.

55. Hon'ble Supreme Court in **Sarla Ahuja v. United India Insurance Co. Ltd.**[7]**,** and **Abid-Ul-Islam v. Inder Sain Dua**[8], held that the scope of interference by this Court, in exercise of its revisional jurisdiction under Section 25B (8) of the DRC Act, is limited. Such jurisdiction is confined to examining whether the impugned order suffers from any error apparent on the face of the record. The Revisional Court cannot reappreciate evidence or substitute its own view, unless the impugned order is shown to be arbitrary, perverse, or vitiated by material impropriety. In the absence of such

[7] **(1998) 8 SCC 119**
[8] **(2022) 6 SCC 30**

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infirmities, there remains narrow scope for interference with the impugned order.

56. Having regard to the aforesaid discussion, no interference with the impugned order dated 27.04.2023 passed by the learned ARC is called for, and the same is accordingly upheld.

57. Interim order dated 04.01.2024 passed by the learned Predecessor Bench of this Court, stands vacated.

58. The Petitioner-tenant is directed to vacate and hand over vacant, peaceful and physical possession of ***Plot No. N-197-A, Greater Kailash-1, New Delhi 110048***, to the Respondent-landlord, *forthwith*, as the benefit of *six months'* period as per Section 14(7) of the DRC Act has already lapsed.

59. In view of the aforesaid, the present petition is dismissed and disposed of accordingly.

60. Pending application(s), if any, also stands disposed of.

61. Judgment be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA
(JUDGE)

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