**DELHI HIGH COURT**

Mohan Lal

Vs.

Tirath Ram, (Delhi)

Civil Revision No. 1012 and 1013 of 1980

(Prakash Narain, C.J., S.S. Chadha, and B.N. Kirpal, JJ.)

14.5.1982

**ORDER**

**B.N. Kirpal, J.**

1. The main question which arises for consideration before this Bench is as to under what circumstances should leave to contest be granted to the tenant under Section 25B(5) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') when an application for eviction under proviso(e) to sub-section (1) of Section 14 read with Section 25B of the Act is filed against him by the landlord. This judgment will dispose of Civil Revision No. 1012 and Civil Revision No. 1013 of 1980 as the facts are identical and they, in fact, arise fro the.....same order.

2. The respondents (hereinafter referred to as the landlords) are the owner of House No. 518, Gali Ram Nath, Joshi Road, *Karol Bagh,* New Delhi. The two respondents are brothers. An application for eviction was filed by them on 7.4.1980 under Section 14(1)(e) read with Section 25B of the Act. It was contended in the application that respondent No. 1 was aged about 68 years and was residing in a rented premises at Tagore Garden, New Delhi. It was further stated that the said premises had been taken by respondent No. 1 on rent for a period of 1-1/2 years with effect from 1st March, 1979 up to 31st August, 1980 after permission had been granted under Section 21 of the Act by the Additional Rent Controller by order dated 28th February, 1979. It was also mentioned that the said house at Tagore Garden has to be vacated by 31st August, 1980 and, therefore, the premises in dispute were requires *bonafide* by respondent No. 1 with regard to respondent No. 2 it was stated that he was employed in Bombay but had retired and had been granted extension. This extended period of his

employment was expiring on 19th July, 1980 and thereafter he would settle in Delhi along with his family.

3. On summons being served, the tenant filed an application for leave to contest the eviction application. The application was supported by a detailed affidavit containing grounds on which leave was sought.

4. The principal grounds which were raised by the petitioners for the grant of leave to contest mainly were:

(1) That all the heirs of the late father of the landlord had not been imp leaded/made parties and that the landlords were not the only owners of the premises is question.

(2) Respondent No. 2, namely, Pyare Lal Chopra, had been residing in Bombay since 1947 where he was also working and he did not *bonafide* require the accommodation in Delhi.

(3) That the other landlord, namely, Tirath Ram Chopra, had voluntarily vacated an accommodation which was under his tenancy accepting high and valuable consideration and his alleged requirement of the premises in question was not *bonafide* ;

(4) Tirath Ram Chopra had tried unsuccessfully to increase the rent of the premises in dispute and thereafter negotiated to sell the house to the tenants for Rs. 50.000 but the deal fell through for want of complete title of the landlords;

(5) The requirement of the landlords was not *bonafide* and had been got up by Tirath Ram having vacated the previous residence and taking on limited tenancy with the *mala fide* object of misleading the Court;

(6) The premises were situate in slum area and permission for filing the eviction petition had not been obtained by the landlord;

(7) Neither of the landlords require the premises for themselves or for members of the family as neither of them have any members dependent upon them and, in fact, they was to sell the house at a huge price after getting the same vacated;

5. The landlords filed a reply to the aforesaid affidavit. The grounds raised by the tenants were denied and it was reiterated that the premises in question were required by them *bonafide* for their residence and for the residence of their

family members. With regard to ownership it was stated that the house belonged to their father Shri Behari Lal Chopra having been purchased vide a sale deed dated 1.12.1975, and after his death the landlords and their mother became the owners thereof. It was further stated that the mother had executed a will in their favor and after her death on 1.10.1973 they had become exclusive owner thereof. This Will was stated to have been registered with the Sub-Registrar, and after the death of their mother the mutation was effected in the Principal records and in the records of the Delhi Development Authority in their favor. It was also contended that Pyara Lal Chopra was retiring from his employment on 19.7.1980 and he wanted to settle down in Delhi where his brother and sisters as well as other relatives lived. It was specifically averred that he did not have any relative in Bombay and his relatives, including his brother, were solace for each other and depended upon each other at the time of need. With regard to the previous premises occupied by Tirath Ram Chopra, it was contended that the owner-landlord of house No. 746 Gali Gurpershed, Joshi Road, *Karol Bagh,* New Delhi, where Tirath Ram Chopra previously resided, had instituted proceedings with a view to evict him. The said landlord had started harassing him in many ways and he was thereupon compelled to vacate the said premises and shift to another house No. 52, Tagore Garden, New Delhi. These premises were taken by him after having obtained permission under Section 21 of the Act and Tirath Ram had to vacate the same by 31st August, 1980. The allegations that the landlord wanted to increase the rent or sell the premises were also specifically denied.

6. By order dated 29th July, 1980 the Rent Controller, Delhi held that the tenants had no defense and had not been able to disclose any fact or raise any defense which may even raise a tribal issue or which, when presumed to be correct, might have disentitled the landlords from obtaining the recovery of possession. While coming to this conclusion the Rent Controller, *inter alia*, observed that (a) the landlords had given details showing as to how they had become the exclusive owners of the property;(b) the tenants had not filed any document showing any agreement to sell, and even if it be assumed that in 1978 an offer to sell the house was made, the same could not come in the way of *bonafide* requirement as in March, 1979 one of the landlords had taken premises on rent under Section 21 of the Act and that period of tenancy was to expire on 31st August, 1980;(c) as the period of limited tenancy was to expire on 31st August, 1980 the requirement of the landlord was genuine, honest and

had an element of necessity;(d) the landlord Tirath Ram Chopra, whose limited tenancy was to expire on 31st August, 1980 was 68 years of age, and this had not been disputed by the tenants;(e) Pyare Lal Chopra retired on 19.7.80 and after retirement from service he had a right to move to his own house. The mere fact that he had been working in Bombay since 1947 did not mean that he should continue to live in Bombay even after retirement ;(f) it was for the landlords to choose where they wanted to settle down in life. Pyare Lal Chopra was 63 years of age, and the very age of the two landlords was sufficient circumstance for their claiming eviction of the tenants on ground that they both want to live separately, along with their families, and that they required the entire house for themselves and they did not have any other reasonably suitable residential accommodation in Delhi.

7. The leave to contest having been refused, the Rent Controller allowed the landlords' application under Section 14(1) proviso (e) and order the eviction of the tenants.

8. Against the aforesaid order of the Rent Controller dated 29th July, 1980 the present revision petitions were filed by the tenants under Section 25B(8) of the Act. At the time of the hearing before a single Judge a number of decisions of this Court were referred to by counsel for the parties. In view of the fact that there were very large number of cases under Section 14(1) proviso (e) of the Act which were pending, and which were being tried according to the procedure, laid down under Section 25B, and as there appeared to be conflict in some of the decisions of this Court, the case was referred to this Bench.

9. During the pendency of these petitions the tenants have filed C.M. Nos. 911 of 1982 for leave to bring to the notice of this Court subsequent events which are stated to have taken place after the filing of the eviction petition, and which are stated to have relevance for the decision of the present petition. It is not necessary, at this stage, to refer to the subsequent events which are alleged in these application because one of the points which will be considered later is as to whether such an application is maintainable or not.

10. Section 14(1) of the Act gives protection to the tenants from being evicted from the premises in their occupation. This protection is given notwithstanding there being anything contrary thereto which may be contained in any law or contract. This Section makes a serious inread into the right of a landlord to evict

his tenant from the premises which have been let by the landlord. The right of the tenant not to be evicted is, however, not an absolute right. Under certain circumstances the landlord is entitled to move an application to the Rent Controller for an order for recovery of the possession being passed against the tenant. The grounds on which the Controller can pass such an order are contained in the proviso to Section 14(1). In the present case we are concerned with clause (e) of the proviso to Sub-section(1) of Section 14. The relevant provision of Section 14(1)(e) reads as follows :-

"14 (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favor of the landlord against a tenant :

Provided that the Controller may, on an application made to him in the prescribed manner make an order for the recovery of possession of the premises on one or more of the following grounds only, namely :-

xxx xxx xxx xxx

.... .... .... ....

(e) that the premises let for residential purposes are required *bonafide* by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation; Explanation for the purposes of this clause "premises let for residential purposes" include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes;"

A mere reading of clause (e) to were the proviso to sub-section(1) of Section 14 shows that a landlord will be entitled to an order for the recovery of possession under the said clause if he is able to prove that (a) the premises in question were let for residential purposes, (b) that he is a landlord and an owner of the said premises, (c) the premises are required *bonafide* by him for occupation as a residence for himself or for any member of his family dependant upon him or for any person for whose benefit the premises are held, and (d) that the landlord or such other person has no other reasonably suitable residential accommodation.

11. The proceedings for the eviction of the tenant are initiated by filing an application in the prescribed form. Section 37 of the Act requires that no order which prejudicially affects any person shall be passed by a Controller without giving that person a reasonable opportunity of showing cause Sub-section (2) of Section 37 requires a Controller, while he is holding an enquiry in any proceeding before him, to follow, as far as may be, the practice and procedure of a Court of Small Causes, including the recording of evidence. The reason for enacting Section 37(2) was that the proceeding under the Rent Control Act should not be unduly delayed and hardship, if any, could be mitigated only if the applications are expeditiously disposed of by the Rent Controller.

12. Though the intention of the Act was that there should be a speedy disposal of cases, in actual practice application for the recovery of possession under Section 14(1) used to take a long time before they could be disposed of. The Legislature felt that serious prejudice and hardship was being caused to those landlords who *bonafide* required the premises for their own occupation. Experience showed that even in cases where eviction was sought under clause(e) of proviso to Section 14(1) the application could not be finally decided within a reasonable period of time. Realizing the injustice which was being caused to the landlords, by reason of the laws delays, the Legislature intervened, and by Delhi Rent Control (Amendment) Act, 1976 Chapter IIIA was inserted in the Act containing Sections 25A, 25B and 25C. Besides this, some amendments were also made in the definition of the word "tenant" in Section 2(1) of the Act, with which we are not concerned in his case. Apart from this, a new section, namely, Section 14A was also inserted. By Section 14A right to recover immediate possession of residential accommodation was conferred on those persons who were in occupation of any residential accommodation allotted to them by the Central Government or any local authority and where the said landlords were required to vacate the allotted accommodation or, in default, to incur certain obligations on the ground that the landlord owned a residential accommodation in Delhi. The Act was preceded by an Ordinance which had been issued on 1st December, 1975 and the Act was, therefore, given retrospective effect from that date i.e. from 1.12.1975.

13. Section 25A provides that the provisions of Chapter IIIA, or any rules made there under, shall have an overriding effect notwithstanding anything inconsistent therewith being contained in the Act or in any other law. Section

25B, with which we are concerned, provides a special procedure for the disposal of applications for eviction on the ground of *bonafide* requirement filed under the newly inserted Section 14A or under clause (e) of the proviso the Section 14(1). This provision reads as follows :-

"25B(1) Every application by a landlord for the recovery of possession of any premises on the ground specified in clause(e) of the proviso to sub-section(1) of Section 14, or under Section 14A, shall be dealt with in accordance with the procedure specified in this section.

(2) The Controller shall issue summons, in relation to every application referred to in sub-section(1), i.e. the from specified in the Third Schedule.

(3)(a) The Controller shall in addition to, and simultaneously with, the issue of summons for service on the tenant, also direct the summons to be served by registered post, acknowledgement due, addressed to the tenant or his agent empowered to accept the service at the place where the tenant or his agent actually and voluntarily resides or carries on business or personally works for gain and may, if the circumstances of the case so require, also direct the publication of the summons in a newspaper circulating in the locality in which the tenant is last known to have resided or carried on business or personally worked for gain.

(b) When an acknowledgement purporting to be signed by the tenant or his agent is received by the Controller or the registered article containing the summons is received back with an endorsement purporting to have been made by a postal employee to the effect that the tenant or his agent had refused to take delivery of the registered article the Controller may declare that there has been a valid service of summons.

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

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

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

(7) Not withstanding anything contained in sub-section (2) of Section 37, the Controller shall while holding an inquiry in a proceeding to which this Chapter applies, follow the practice and procedure of a Court of Small Causes including the recording of evidence.

(8) No appeal or second appeal shall lie against an order for the recovery of possession of any premises made by the Controller in accordance with the procedure prescribed in this section. Provided that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this section is according to law, call for the records of the case and pass such order in respect thereto as it thinks fit.

(9) Where no application has been made to the High Court on revision, the Controller may exercise the powers of review in accordance with the provisions of Order 47 of the First Schedule to the Code of Civil Procedure, 1908.

(10) Save as otherwise provided in this Chapter, the procedure for the disposal of an application for eviction on the ground specified in clause(e) of the proviso to sub-section(1) of Section 14, or under Section 14A, shall be the same as the procedure for the disposal of applications by Controllers.

Section 250 states that the Act is to have effect in a modified form in relation to certain person with whom we are not concerned in this case.

The effect of the insertion of Section 25B and 25A is that whenever any application for eviction of a tenant is filed by a landlord under Section 14A, or under clause (e) of proviso to sub-section (1) of Section 14, the same was not to be tried according to the procedure laid down in Section 37 of the Act but, was to be tried according to the procedure laid down in Section 25B. Though the proviso to Section 14(1) contained a number of grounds on the basis of which the landlord could ask for the eviction of the tenant, the Legislature, however,

thought it proper to carve out a special procedure for the eviction of tenants only in respect of those cases where the landlord required the residential premises *bonafide* for his own use. This special treatment was given to the applications filed under Section 14(1)(e) and Section 14A because the Legislature felt that such applications should be disposed of expeditiously. In the statement of objects and reasons it was, *inter alia*, stated that the amendment was being made "for simplifying the procedure for eviction of tenants in case the landlord requires the premises *bonafide* for personal occupation".

15. Sub-section(1) of Section 25B provides that every such application for eviction on the ground of *bonafide* requirement under Section 14A or under clause(e) of proviso to sub-section(1) of Section 14 shall be dealt with in accordance with the procedure specified in the said Section. Sub-section (2) requires the Controller to issue summons in the form specified in the Third Schedule in relation to every application which is so filed. Sub-section (3)(a) of Section 25B enjoins upon the Controller to direct summons to be served by registered post, acknowledgement due, in addition to the issue of summons for service in the normal manner. The said Sub-section further empowers the Controller to direct, if the circumstances so require, publication of the summons in a newspaper circulating in the locality in which the tenant is last known to have resided or carried on business or personally worked for gain. Sub-section (3)(b) of Section 25B states under what circumstance the Controller declare that there has been a valid service of summons. On the summons having been duly served, sub-section (4) of Section 25B, *inter alia*, states that a tenant shall not contest the prayer for eviction from the premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction. The said sub-clause further provides that if there is a default in the appearance on the part of the tenant, or if such leave is not obtained, then the statements made by the landlord in the application for eviction are to be deemed to have been admitted by the tenant and the landlord is, thereupon, entitled to an order for eviction on the ground of *bonafide* requirement. Sub-section(5) provides that the leave to contest would be granted by the Controller if the affidavit filed by the tenant disclosed such facts as would disentitle the landlord from obtaining an order for recovery of possession on the ground of *bonafide* requirement. If leave is granted, sub-sections (6) and (7) provide that the hearing will commence as soon as possible and the Controller is to follow the practice and procedure, while hearing such an eviction petition, of a Court of Small Causes.

Sub-section (8) of Section 25B takes away the right of appeal which is conferred on tenant under Section 38 (to the Tribunal) and under Section 39 (to the High Court against the order of the Tribunal) of the Act. The proviso to sub-section (8), however, enables the High Court to call for the records for the purposes of satisfying itself that the order made by the Controller under Section 25B is in accordance with law, and the High Court is entitled to pass such orders in respect thereto as it thinks fit. Sub-section (9) gives and alternative remedy to the tenant. If the tenant chooses not to approach the High Court under sub-section (8) of Section 25B, the tenant can approach the Controller requiring him to exercise his powers of review in accordance with the provisions of Order 57 of the Code of Civil Procedure Sub-section (10) states that, save as otherwise provided in Chapter IIIA, the procedure for disposal of an application for eviction, on the ground of *bonafide* requirement, shall be the same as the procedure for the disposal of the application by the Controller.

Reading the aforesaid provisions of the Act, it appears to us, that the landlord, when he initiates proceedings for eviction on the ground of *bonafide* requirement has to plead and state all the material facts which are required to be stated under clause (e) to the proviso to Section 14(1) or Section 14A, as the case may be, which would entitle him to get and order of eviction. Mere reproduction of the words used in the statute is not enough. The petition must disclose a cause of action based on the bundle of material facts for in the event of the leave being refused, the statements made by the landlord in the application for eviction are to be deemed to be admitted by the tenant. The statement of fact may be as elaborate as the landlord may desire to make, but it will be enough for the landlord to state, in an application of eviction, that he is the landlord and owner of the premises and that the same were let for residential purposes. These are averments of facts, it is not necessary for him to state as to how he became the owner, either by sale, gift, transfer, or by will or a family arrangement etc. The law requires the disclosure of all material facts in the pleadings and not the evidence by which they have to be proved. It is for this reason that it is not necessary for the owner of a property to state as to how he became the owner thereof. But as *bonafide* requirement of the landlord or absence of other reasonably suitable accommodation has to be inferred from all the facts and circumstances, he must plead all such facts and circumstances in his application. He has to show as to how the need for getting the recovery of possession of the premises exists. In this connection he may have to plead the

accommodation available with him, the non-existence of any alternative suitable accommodation, the extent of the members of the family dependent upon him and the extent of the need of alternative of additional accommodation. Once such an application is filed the landlord would be entitled to an order for eviction at an early date, on the ground of *bonafide* requirement if the tenant does not appear or does not obtain leave to contest. After the tenant does not appear or does not obtain leave to contest. After the service of summons it is for the tenant to disclose such facts as would disentitle the landlord from obtaining an order for recovery of possession. For the purposes of Sub-sections (4) and (5) of Section 25B the affidavit filed by the tenant disclosing such facts would be, in a way, original proceedings independent of the application of the landlord for eviction on the ground of *bonafide* requirement. It will be for the tenant to disclose facts which would disentitle the landlord from obtaining an order for recovery and if he fails to disclose such facts the Controller is bound to refuse leave, whereupon an order for eviction is to follow. We may notice here that though Section 25B(4) does not contemplate any application for leave to contest being filed by the tenant but the form of the summons, set out in the Third Schedule to the Act, requires the tenant to obtain leave on his filing an application supported by an affidavit. It appears, therefore, that a formal application for leave has to be filed, which may even be a brief application, but the grounds on which have to contest is sought have to be set out in detail in the affidavit. Section 25B does not specially provide for the landlord being given and opportunity to file a reply to the affidavit filed by the tenant. Under sub-section (5) the Controller can pass an order granting leave to contest. The passing of such an order would, obviously be to the prejudice of the landlord. Can it be envisaged that such an order can be permitted to be passed without affording the landlord an opportunity of rebutting the allegations made by the tenant in his affidavit? In our opinion the answer to this must necessarily be in the negative. Our jurisprudence does not postulate the possibility of an order being made against a party without affording him an opportunity of meeting the case of the opposite party. The consideration of the affidavit of the tenant without having given an opportunity to the landlord to file a reply would be clearly contrary to the principles of natural justice. We are, therefore, firmly of the belief that a landlord had to be given and opportunity of filing a reply. In exceptional circumstances the Controller may even give further opportunity to the tenant to file a rejoinder, but such an opportunity has to be a limited one and

restricted to enable the tenant to give an answer to what is stated by the landlord in his reply i.e. in the rejoinder the tenant cannot raise any new grounds or state fresh facts.

16. The difficult question which arises while construing Section 25B is as to what are the principles on the basis of which the Controller should grant leave. Another question which arises in this connection is as to whether the Controller is entitled to see any affidavit which is filed by the tenant under sub-section (4) of Section 25B. Different views have been expressed by different Judges of this Court in aspect of the matter. It will be proper, at this stage, to refer to some of the decisions of this Court which were cited at the Bar before us.

17. In *Smt. Bejoli Roy Chowdhry v. Amar Kumar and others,* [1] it was observed that mere denial by the tenant of the ground contained in the application under Section 14(1)(c) would not be enough for the grant of leave to contest. It was nevertheless observed by the learned Judge that it was not open to the Controller to subject any material which was available on the record to scrutiny. In *Delhi Cloth and General Mills Co. Ltd. v. Shri T.S. Bhatia,* [2] it was observed by H.L. Anand, J. that it was not open to the Controller to consider the documents filed by the landlord and nor was it open to decide the question of fact in controversy between the parties. Rajinder Sachar, J. in *Jitendar Singh v. Manmohar Lal,* [3] observed that leave to contest should be granted if the objections raised are not vague and can be decided only on evidence. It was, however, observed that if the objections about notice or ownership appeared without merit then the tenant should not be allowed to raise these objections. A similar view has been expressed in *Moti Lal v. Manjit Singh* [4] It was also held that disputed questions of fact should be set down for hearing and not decided on the basis of affidavit. Some of the other cases where it was held that if disputed questions arose, leave should be granted are *Mr. N.N. Khanna v. Mrs. Leela Malhotra, D.L.T.* [6] *Dr. Shiv Nath Singh v. Piyare Lal Sharma,* [6] *Shri R.C. Jain v. Shri S.K. Gupta and others,* [7] *M/s Union Carbides India Ltd. v. Sh. Dalip Singh,* [8] and *D.N. Gupta v. Jaswant Singh,* [9] . In *M/s Jai Nath Gupta and Company v. Shri Mahabir Prasad,* [10] it was held that the tenant, in his affidavit, should disclose some worthwhile and solid points and his merely asserting and controverting the averments made by the landlord was not sufficient in law to enable him to the grant of leave to contest. In *Leela Wati v. Ganga Devi,* [11] Dalip K. Kapur, J. held that "the principle to be applied in

ascertaining whether leave is to be granted is not to require the proof of the fact to be given before the fact is put to trial and to find out if there is a point which requires trial". It was further observed by him that outrageous defences could be summarily rejected by the Controller but if there was a plausible defence which was raised then it was the duty of the Controller to put the matter to trial and allow leave to contest. In *Rishi Raj Verma and another v. Smt. Veena Kumar etc.,* [12] *R.L.R. 3*, S.B. Wad, J. after referring to the case of *Menaka Gandhi v. Union of India, AIR 1978 Supreme Court 597*, observed that "it has now been held that even if there are no express words to that effect, the requirement of natural justice would be insisted upon by courts of law. The provision of Section 25 has, therefore, to be viewed in the light of the said law". It was held that the tenant should have a fuller opportunity to adduce evidence and to cross-examine the landlord for verification of the truth of the averments made by the landlord. In that case of *J. Mahajan v. Smt. Lila Wati Kapoor,* [13] leave was granted, *inter alia,* for the reason that the tenant's affidavit raised a triable defense. In *D.S.S.I. Industries (P) Ltd. v. Shri G.S. Sial, 1981(1) R.C.R. 61 : 1981(1) R.L.R. 496* it was held that at the time of granting leave the Controllers to refer to the eviction application, the documents referred to therein and the application for leave to defend supported by an affidavit. The reply of the landlord, it was observed, could be referred to but if the landlord made new allegations, which he had not made in the eviction application, then disputed question would arise and the same could not be decided without recording evidence and, therefore, leave, to

contest should be granted. It was, of course, observed that leave to contest is not to be granted if the disputes raised are sham or frivolous or *mala fide*.

18. Reference may now be made to three other decisions of this Court wherein somewhat different approach was adopted to the problem. In the case of *Smt. V.L. Kashyap v. R.P. Puri,* [14] , B.C. Misra, J. had an occasion to consider the provisions of sub-section (4) of Section 25B. It had been contended before him that the provisions were analogous to order 37 Rule 3 and strong reliance had been placed on the decision of the Supreme Court in the case of *Santosh Kumar v. Bhai Mool Singh,* [15], which dealt with a case arising under the provisions of Order 37 Rule 3. After referring to the aforesaid Supreme Court case, it was held by B.C. Misra, J. that the said case did not apply to the provisions of Section 25B. It was observed by him as follows:-

"The decision of the Supreme Court referred to above, in my opinion, has a

persuasive value, but it does not apply to the provisions of law under our consideration. Under rule 3 of Order 37, the requirement is seeking leave upon affidavits which disclose such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application. Again, the leave may, in discretion of the Courts be given unconditionally or be subject to such terms as to payment into Court, giving security etc. Consequently, in very many cases, the provisions about imposing conditions and terms in cases under Order 37 meets the ends of justice but no such provision is available in the procedure prescribed by Section 25B. Moreover, the language of the two provisions is not identical. The requirement of sub-section (4) of Section 25B is that the affidavit filed by the tenant must disclose facts as would disentitle the landlord from obtaining an order for recovery of possession. The language of the provision under consideration is more stringent and is be strictly construed and applied."

With regard to the consideration which should weight with the Controller when he is deciding as to whether leave to contest should be granted or not, it was observed as follows :-

"The Controller, where leave to contest the petition is sought, will consider whether the affidavits for leave are clear, specific and positive and the defence raised is *bonafide* and *prima facie* not untenable and untrue. But the Controller is granting or refusing the leave cannot determine any disputed questions of fact, and if any such dispute arises *bonafide* where the defense taken is clear, specific positive, then the petition must be set down for trial on evidence and the facts should be investigated as quickly as possible, as is required by sub-section (6) and (7) of Section 25B. On the other hand, should the Controller find that the defense raised is not clear, specific and positive or is not *bonafide*, but had been made only to gain time, he would be justified in refusing the leave to contest the petition. In case leave to contest has been granted, the petition for eviction would be set down for trial in accordance with the procedure prescribed by law and the landlord would then be required to lead evidence to prove the ingredients of the grounds on which he seeks eviction and the burden will lie on the landlord to prove his claim except in so far as any part of the claim be admitted by the tenant."

The provision also came up for consideration before one of us (Prakash Narain C.J.) in the case of *Precision Steel & Engineering Works & another v. Prem*

*Deva Niranjan Deva Tayal* [16] It was contended in that case on behalf of the tenant that triable issue having been raised the Controller should grant leave to contest and he should not have gone into the evidence and considered the documents on record at that stage. Repelling this argument it was observed by the Court as follows:-

"Section 25B of the Act was enacted by Parliament to give some respite to landlords *bonafide* needing premises for themselves and not compel them to under go the trials and tribulations of a full-fledged trail to seek eviction. The legislative intent would be set at naught if documents filed along with an affidavit and referred to in the affidavit are not allowed to be seen and read during summary proceedings. Indeed, the documents filed along with an affidavit, as postulated by sub-section (5) of Section 25B of the Act would become part of the affidavit. I do not see any infirmity in reference being made to those documents which are referred to in the affidavit in arriving as a correct conclusion in summary proceedings of the type postulated by Chapter IIIA of the Act. The same view has been expressed by another learned Judge in *Shri Ramesh Chand Sharma v. Shri Harpal Singh Sharma,* [17] I therefore hold that there was absolutely no infirmity in the conclusion arrived at by the Controller on the question of what was the letting purpose."

In *S.K. Arora v. B.L. Sarna,* [18] Yogeshwar Dayal, J. dealt with the contention as to whether the averments made by the tenant in his affidavit for leave to contest should be regarded as correct or not while deciding as to whether the leave should be granted. It was observed by him as under:-

I also do not find any merit in the submission of learned counsel for the tenant that the averment made by tenant in his application will have to be deemed to be correct. If this proposition is accepted it will completely defeat the purpose of summary trial. Due to paucity of accommodation the tenant is likely to plead facts if, they are to be deemed to be accepted in every case for the purpose of deciding applications for leave hardly any application would fail. This certainly is not the idea behind this provision. In my view while deciding these applications for leave to contest all that is required for the Controller is to observe rules of natural justice i.e. hear both the parties and give opportunity to party to produce the material on which he relies and also grant opportunity to opposite Party to rebut that material."

19. The aforesaid cases show the different approaches which have been adopted by different judges at different points of time in different cases. While in some cases it has been stated that documents which are filed are not to be considered, in other cases it has been observed that the Rent Controller would be entitled to examine the documents in order to decide whether leave to contest should be granted or not. Similarly, while in large number of cases it has been held that if a disputed question arises then the leave should be granted but, on the other hand, in B.K. Arora's case it has been observed that all that was required is that the Controller should observe that rules of natural justice and to give opportunity the parties to produce material on which they rely. In that case the Court went into the merits and came to the conclusion that the case fulfilled the test of *bonafide* requirement by the landlord for occupation as a residence for himself, and that no facts had been disclosed by the tenant, in his affidavit, as would have disentitled the landlord from obtaining an order for the recovery of possession of the premises. In effect the learned Judge did examine the record and documents in order to decide as the whether the case put forth by the tenant was correct or not.

20. In our opinion, in order to properly construe the provisions of Section 25B, it is necessary to bear in mind the aim and object of this provision. As already observed by us earlier, the purpose of enacting Section 25B was to provide a speedy remedy in cases where applications are filed for eviction of the tenants on the ground of *bonafide* requirement of the landlords. The Supreme Court also while construing the provisions of Section 25B, and other provisions which were inserted by the Amending Act of 1976 took into consideration the aim and object of the amendment. One such case which arose for consideration before the Supreme Court, which primarily dealt with the case of a landlord who was governed by the provisions of Section 14A, was that of *Buschinz Schmits Private Ltd. v. P.T. Menghani and another,* [19] . It was observed, while referring to the delay in getting order for eviction on the ground of *bonafide* need that the chronic disease needed drastic treatment and the legislative draftsmen created a chain of stiff provisions so a new right (Section 14A) was created, accelerated remedial procedures were prescribed (Section 25A and 25B)." In the case of *Kewal Singh v. Mt. Lajwanti,* [20] the Supreme Court again, while construing the provisions of Section 25B, referred to the intention of the legislature in inserting Section 25B. It was observed by the Court as follows:-

"The objects and Reasons clearly reveal that the amendment has been made for simplifying the procedure for eviction of tenants in case the landlord requires the premises *bonafide* for his personal occupation. It is a matter of common knowledge that even though the landlord may have an immediate and imperative necessity for vacating the house given to a tenant he is compelled to resort to the time consuming and dilatory procedure of a suit which takes years before the landlord is able to obtain the decree and in most cases by the time the decree is passed either the landlord dies or the need disappears and the landlord is completely deprived of getting any relief. It appears to us that it was for these reasons that the legislature in its wisdom thought that a short and simple procedure should be provided to those landlords who generally want the premises for their *bonafide* necessity so that they may be able to get quick and expeditious relief."

It is the duty of the Court that as far as possible the provisions of a statute should be construed to bring out and maintain the legislative intention. The intention of the legislature while inserting Section 25B has been clearly stated by the Supreme Court in the aforesaid two decisions. It is in this back ground that we are called upon to examine the correctness of the arguments of Shri Ishwar Sahai to the effect that if the tenant, in his affidavit for leave to contest, raises a tribal issues then in such a case the Controller ought to grant leave to contest.

21. In our opinion the question as to whether the provisions of Section 25B of the Act are analogous to Order 37 Rules 3 C.P.C. is no longer res integra. This question has come up for consideration before the Supreme Court twice. It was first raised before the Supreme Court in Busching's case (supra). It was ought to be contended on behalf of the tenant in that case, that the Controller could not shot out the tenant from being heard if a tribal issue emerged. Repelling this argument the Supreme Court observed as follows:-

"But we make it plain even at this stage that it is fallacious to approximate (as was sought to be done) Section 25B (5) with Order 37, Rule 3 of the Code of Civil Procedure. The social setting demanding summery proceeding, the nature of the subject-matter and, above all, the legislative diction which has been deliberately designed, differ in the two provisions. The legal ambit and judicial discretion are wider in the latter while, in the former with which we are concerned, the scope for opening the door to defense is narrowed down by the

strict words used. The Controller's power to give leave to contest is cribbed by the condition that the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in Clause (e) of the proviso to sub-section (1) of Section 14, or under Section 14A. "Disclosure of facts which disentitle recovery of possession is a sine qua non for grant of leave."

In Smt. V.L. Kashyap's case (supra) (1977 (1) R.C.R. 449) also similar views had been expressed by this Court which have already been noted earlier. The different in the two provisions is evident from the difference in the language employed, as well as from the difference in the setting in which the two provisions are placed. In this connection reference may also be made to another decision of the Supreme Court (of a Bench of 3 Hon'ble Judges) in the case of *B.N. Muttoo and another v. Dr. T.K. Nando* . [21] Though that was a case of a landlord who was seeking to invoke the provision of Section 14A, the Supreme Court, however, dealt with the provisions of Section 14(1)(e) also. While constructing the said provision, it also dealt with the contention that the provision of Section 25B was analogous to that of Order 37 Rule 2(3) and 3(1). This contention was repelled in the following words :-

"Leave to contest an application under Section 14A(1) cannot be said to be analogous to the provisions grant of leave to defend as envisaged in the Civil Procedure Code. Order 20XVII, Rule 2, sub rule (3) of the Code of Civil Procedure provides that the defendant shall not appear or defend the suit unless he obtains leave from a Judge as hereinafter provided so to appear and defend. Sub-rule (1) of Rule 3 of Order 20XVII lays down the procedure to obtain leave. Under the provisions leave to appear and defend the suit is to be given if the affidavit discloses such facts as would make incumbent on the holders to prove consideration or such other facts as the court may deem sufficient to support the application. The scope of Section 25B(5) is very restricted for leave to contest can only be given if the facts are such as would disentitle the landlord from obtaining an order for recovery of possession on the ground specified in Section 14A.

22. It appears to us that notwithstanding the fact that since the decision of the Supreme Court, at least, in the case of Santosh Kumar (supra) the provisions of Order 37 Rule 3 C.P.C. have been construed to mean that leave to defend has to be granted if tribal issue is raised, which makes it incumbent upon the plaintiff

to prove consideration or such other facts, the legislature nevertheless, while enacting Section 25B, discarded the theory of tribal issue. Under Section 25B(4) on the contrary the legislative intent is that it is for the tenant to disclose such facts as would disentitle the landlord from obtaining an order for recovery of possession. While deciding as to whether leave to defend should be granted or not, the Controller has not to deal with the merits of the eviction petition which is filed before him. He has to deal with the affidavit of the tenant containing grounds on the basis of which he seeks leave to contest. It is only if he is able to make out a ground which, in the opinion of the Controller, would disentitle the landlord to the grant of an eviction order, that the leave to contest would be granted.

23. Mr. Iswar Sahai, however, strongly relied upon the decisions of the Supreme Court in *Shri Charan Dass Duggal v. Shri Brahma Nand, Civil* [22] and *Om Parkash Saluja v. Smt Saraswati Devi, Civil Appeal No. 527 of 1982*, decided on 8th February, 1982. In both these decisions the Supreme Court has observed that when tribal issue is raised leave to contest should be granted. We are of the opinion that reliance cannot be place by Shri Sahai on these decisions. Both these decisions were given by Benches of two Judges each. The observations, that if tribal issue is raised leave to contest should be granted, appear to be contrary to the decision of the Supreme Court in Busching's case and Muttoo's case (supra). The decision in Muttoo's case was delivered by a Division Bench of three Judges, and it appears that this decision was not brought to the notice of the Court and that is why the said decision is not referred to in Charan Dass's case and Om Parkash's case. The decision of the larger Bench of the Supreme Court, namely, in the case of Muttoo has specifically repelled the application of the principals of Order 37 Rule 3 to application for leave to contest under Section 25B and the decision is the law of the land under Act 141 of the Constitution and is binding on us.

24. In the light of the aforesaid, the next question which arises is as what should be stated in the eviction petition and in the affidavit for leave to contest and how should the same be dealt with by the Controller. While construing Section 25B(5) the Supreme Court, in Muttoo's case, had observed that the tenant should disclose such facts as would disentitle the landlord from obtaining an order for recovery of possession. It was specifically observed by the Court that "the tenant may resist the application on the grounds specified, namely that the

premises are not let for residential purposes, that they are not required *bonafide* etc". It was further observed in the said case that "leave to contest can only be given if the facts are such as would disentitle the landlord from obtaining an order for recovery of possession on the ground specified in Section 14A (in the present case Section 14(1)(e)". It would follow firm the aforesaid observations that the tenant, in his affidavit, should give as detailed facts as possible which would show that the landlord would not be entitled to get an order of eviction. The Endeavour of the tenant has to be place on record facts which would show that the landlord, filing the eviction petition, is either not the landlord or he is not the owner or the premises have not been let for residential purposes a one or that they are not required *bonafide* for himself or members of his family or that the landlord is in possession of reasonably suitable residential accommodation. The defense has to be clear and not vague, positive and not negative, specific and not a short in the dark. Merely disputing the averments made by the landlord, in his petition under Section 14(1)(e) or merely contending that none of the ingredients as mentioned is Section 14(1)(e) exists would not be sufficient to enable the tenant to the grant of leave. Such averments would be regarded as vague or bald allegations and they cannot be regarded as disclosure of "facts as would disentitle the landlord from obtaining an order of recovery of possession". The tenant should, wherever possible try and substantiate the allegations of fact by annexing such documents to his affidavit as may be relevant to the issue. The tenant cannot afford to make vague assertions. It is no doubt true that the time within which the tenant is required to file an affidavit is limited to only 15 days, but the very purpose of limiting the time to 15 days is to try and expedite the disposal of such applications. The paucity of time cannot be a ground for not stating specific facts which would enable the tenant to the grant of leave to contest.

25. When such an affidavit has been filed by the tenant, the Rent Controller should grant an opportunity to the landlord to file a reply. This would be in consonance with the principles of natural justice. Moreover, in the absence of such a reply, it will not be possible for the controller to find out as to whether the allegations contained in the said affidavit are frivolous, sham, fictitious or *mala fide* etc. In appropriate cases, as already observed, the Controller may also give an opportunity to the tenant to file a rejoinder.

26. While dealing with an application for leave to contest, the Controller is to

first see as to whether the grounds raised are sham, *mala fide* or frivolous. In order to decide this, it may become necessary for the Controller to refer to such documents as may be filed before him either with the eviction petitioner with any of the affidavits. For example, while mere denial of ownership is not sufficient, the tenant may plead the ownership of some one other than the landlord. In such a case the Controller would be entitled to see the document of title, which may have been filed on the record, which would enable him to come the conclusion whether the ground raised by the tenant is false or frivolous. Similarly, the Controller may be justified in looking to the lease-deed in order to find out the frivolously of the defense whether the premises were let for residential purposes or not. It may also, in appropriate cases, be proper for the Controller to look to the medical certificates etc. which may be filed on the record in order to judge as to whether the plea of the tenant, that the alleged requirement of the landlord for medical reason is not made out, is false or frivolous. In our opinion, the documents which are annexed to the affidavits become a part of the affidavits. Sub-section (5) of Section 25B enable the Controller to look to the affidavit. The said clause, therefore, clearly would entitle the Controller to look to the documents which are annexed to the affidavit. This question may be viewed from another angle. If a landlord or a tenant in his affidavit sets out the contents of a document is extracted? The answer to this must necessary be in the affirmative. If that be so, it cannot stand to reason that the Controller would not be entitled to look into the documents which are annexed to affidavit. It is, of course, open to the Controller to take the view that he may not, in the facts and circumstances of a particular case, like to place any reliance on a document which is so annexed without any further proof of the document. His disinclination to base his decision on documents, the correctness or authenticity of which he is not immediately satisfied, does not mean that he has not jurisdiction to refer to or rely on them. If he is debarred from looking at such documents it would amount to his being prevented from reading an affidavit as a whole, where such documents are annexed to or referred to in an affidavit. Just as he would be entitled to look at the documents annexed to an affidavit for leave to contest, similarly the Controller would also be entitled, in our opinion, to look at the documents filed along with the eviction petitioner to the counter-affidavit of landlord. If the documents do not commend to the Controller at that stage, he may decline to place any reliance on them for the purposes of deciding as to whether leave to contest should be granted or not,

but he would be within his jurisdiction to refer to and rely on them, if he is so inclined.

27. If the Controller comes to the conclusion that the defense raised is not sham or *mala fide* or frivolous he has further to see as to whether the tenant has raised a plausible defense or not. This is the view which has been expressed by the Supreme Court in Kewal Singh's case (supra) 1980(1) R.C.R. 273 (SC) when it observed as follows:-

"As discussed above the rights of tenants are sufficiently protected. *For instance if the tenant presenting a plausible defense the plaintiff can be non-suited if the defense is accepted by the Controller*. The tenant, however, cannot claim a legal right to take all sorts of frivolous, baseless or irrelevant pleas which alone the statute debars" (Emphasis added).

When the Controller comes to the conclusion that the pleas raised are not frivolous, baseless or irrelevant or irrational and that the defense of the tenant is a plausible one then the tenant would be entitled to the grant of leave to contest and not otherwise. The tenant has not to raise merely a tribal issue, but his affidavit must disclose something more, namely, he must raise a plausible defense and must state such facts which would disentitle the landlord from getting an order of recovery of possession. It is for the tenant to show, by alleging facts, that all or any of the ingredients of Section 14(1)(e) are absent in a case. For example, the tenant must state facts which will show the lack of *bonafide* on the part of the landlord in moving an application for eviction under Section 14(1)(e). Similarly it will be for the tenant to disclose facts which may show that the premises were wholly or party let for non-residential purposes or that the landlord has sufficient alternative accommodation available with him. The tenant, in other words, must fail or succeed on the facts which he discloses and if he fails to disclose such facts as would non-suit the landlord then in such a case, the Controller would be justifies in refusing to grant leave to contest.

28. Before considering the merits of present case it is necessary to deal with C.M. Nos. 911 and 912 of 1982 with are the tenants' applications for bringing on record subsequent events alleged to have taken place after the filing of the eviction petition. At the outset an objection has been raised on behalf of the respondents that such an application is not maintainable. In our opinion Section 25B does not contain any provision which prohibits the High Court from taking

into consideration any subsequent events which may be alleged either by the tenant or the landlord. The jurisdiction of the High Court to pass orders while hearing a revision is not as restricted as the powers of the High Court while exercising jurisdiction under Section 115 C.P.C. The High Court can see for itself as to whether the order passed is in accordance with law, and the High Court has the jurisdiction to pass such orders in respect thereof as it thinks fit. It is now well settled that the revisional jurisdiction of the High Court is a part of its general appellate jurisdiction as a superior court. This was so held by the Supreme Court in the case of *Shankar Ramchandra Abhyabkar v. Krishanaji Dattatry Bapat,* [23] Dealing with the question as to whether the principle of merger of order of inferior courts is applicable in the case of orders passed in revision, the Supreme Court observed as follows :-

"Now when the aid of the High Court is invoked on the provisional side it is done because it is a superior Court and it can interfere for the purpose of rectifying the error of the Court below. Section 115 of the Code of Civil Procedure circumscribes the limits of that jurisdiction but the jurisdiction which is being exercised is a part of the general appellate jurisdiction of the High Court as a superior Court. It is only one of the modes of exercising power conferred by the statute; basically and fundamentally it is the appellate jurisdiction of the High Court which is being invoke and exercised in a wider and larger sense. We do not therefore, consider that the principle of merger of order of inferior Courts in those of superior Courts would be affected or would become inapplicable by making a distinction between a petition for revision and an appeal."

In exercising such appellate powers, this Court does have the inherent jurisdiction to permit subsequent events being placed on record, if justice so demands. In *S.R. Dutta v. Chunilal Bhatia,* [24] *Rajdhani Law Reporter 172* this Court, while dealing with an appeal from an order of Rent Control Tribunal, took into consideration subsequent events which had taken place during the pendency of the appeal. A similar view was expressed by T.P.S. Chawla, J. in the case of *Shri Surinder Kumar Goyal v. Shri B.N. Javeri,* [25] . But in all these cases, and in our view rightly, only those facts were taken into consideration which came into existence after the filing of the eviction petition. If there were facts which were in existence at the time when the tenant filed an affidavit seeking leave to contest, but such facts were not pleaded, then in our opinion he

cannot be permitted to place the said facts on the record either by filing an additional affidavit before the Rent Control or before this Court. The jurisdiction of this Court is to see whether the order passed by the Controller was in accordance with law. It will not be proper for the High Court to set-aside the order of the Controller, and which existed at the time when the eviction petition or the affidavit for leave to contest had been filed. We might observe that it is not as if the tenant, even under such circumstances, would be wholly without any remedy. If the tenant comes to know that certain facts existed which were concealed by the landlord from the Controller, while filing his eviction petition, or if the tenant gets into his possession some evidence which can non-suit the landlord, and which evidence was not available with the tenant despite his best efforts, then under those circumstances the tenant can exercise his right of filing a review under sub-section (9) of Section 25B. The said provision clearly provides that when an application for review is filed, the Controller may exercise the powers of review in accordance with the provisions of Order 47 of the Code of Civil Procedure. If the tenant is able to satisfy the ingredients of Order 47 then the Controller would pass an order of review and give the tenant such relief as he may be entitled to. The tenant would, in such cases, while invoking the review jurisdiction of the Controller, place on record such evidence as he may be able to rely upon under the provisions of Order 47 rule 1. A review application would have to be filed within 30 days of the order of the Controller. Ordinarily such an application would be filed before a revision petition is filed under Section 25B (8). No prejudice would, therefore, because to the tenant if he is not permitted to plead such facts in the revision because he would be entitled to urge these facts by way of a review which he would have ordinarily filed before filing the revision petition.

29. In the present case, the facts alleged in the applications are those which came into existence subsequent to the filing of the eviction petition. It is firstly contended that even though permission had been granted to respondent No. 1 under Section 21 of the Act in respect of the premises where he is residing, his landlord has, nevertheless, not filed any application for execution of the said order. It is contended that respondent No. 1 has become a regular tenant and his tenancy is not limited as envisaged under the order passed under Section 21. It is further alleged that respondent No. 2 is residing in Flat No. 5A, Juhu Church Road, Bombay and the said flat belongs to him. It is also contended that respondent No. 2 is still employed by M/s Paper Products Ltd. In reply, the

respondents have stated that the landlord of respondent No. 1 has not applied for execution of the order under Section 21 because respondent No. 1 had told him that an order for ejectment of the petitioners herein has been obtained and the premises at Tagore Garden would be vacated very soon. Respondent No. 1 has contended that it is at his request that his landlord has shown indulgent and has permitted him to continue to remain in the premises for a short while. With regard to the allegations against respondent No. 2, it has been stated that the flat at Bombay does not belong to the said respondent. It has been further averred that, though respondent No. 2 is serving the Paper Products Ltd. at Bombay, it is no longer possible for him to get further extension and his desire is to live permanently at Delhi as he was a permanent resident of Delhi and had gone to Bombay only to earn his livelihood.

Even after taking the subsequent events which are alleged in the aforesaid applications into consideration, in our opinion, the affidavits of the tenants did not disclose such facts as would disentitle the landlords to get an order of recovery of possession. The main thrust of the arguments on merits of Sri Sahai is the alleged lack of *bonafide* on the part of the landlords in seeking the eviction of the tenants. It was in this connection that it was submitted that respondent No. 1 had manipulated to get the present premises in his occupation at Tagore Garden on rent, on the basis of an order passed under Section 21 of the Act, and notwithstanding the period mentioned in the said order having come to an end, no eviction petition had been filed by his landlord.

30. The tenants have not denied that an order under Section 21 had been passed against respondent No. 1. At the time when the application for eviction was filed on 7th April, 1980 the said respondent No. 1 was in occupation of the premises at Tagore Garden as a tenant, whose period of tenancy was to expire on 31st August, 1980. The allegation of the tenants, that the said respondent had earlier vacated a house at Joshi Road reportedly after taking pugree, is a vague allegation made without any basis. Respondent No. 1 in his reply had explained that proceedings had been initiated by his landlord for his eviction. In order to avoid litigation he took on rent the premises at Tagore Garden. The said premises were available to him only after an order under Section 21 had been passed. This shows the attitude of respondent No. 1 of avoiding litigation with his landlords. If an owner, who is residing in tenanted premises, makes a commitment to return the premises to his landlord, and the commitment is

genuine one and not sham or fraudulent then it cannot be argued that the need of the said landlord for recovery of possession of residential premises from his tenants is not a *bonafide* need. In the present case, it has been clearly averred by respondent No. 1 that he has made a commitment to his landlord, that he will vacate the premises, and it is on his representation that his landlord at Tagore Garden had not filed an application for execution. The fact that respondent No. 1 had obtained an order of eviction against the petitioners herein, must have prevailed upon respondent No. (sic) landlord at Tagore Garden to believe that respondent No. 1 would be vacating the Tagore Garden premises and, therefore, it was not necessary to apply for the execution of the order under Section 21. The tenants, in our opinion, have not disclosed any facts which can show lack of *bonafide* on the part of the said respondent. In any case, another reason which has been given by respondent No. 1 for wanting the vacation of the premises in question is that the said respondent No. 1 is having to pay a rent of Rs. 375/- per month at Tagore Garden. At this old age, it is averred, he would not like to bear this financial burden and, therefore, would like to shift to his own house. It appears to us that financial circumstances may be such that *bonafide* need may arise for any owner to recover possession of the premises from his tenants. Like in the present case, if an owner finds it difficult to bear the burden of paying the rent of the tenanted premises, because of the poor financial condition of the owner, then it cannot be said that such an owner does not *bonafide* need the premises owned by him and which had been let out to tenants. If, as in this case, a landlord is having to pay more rent in respect of premises taken by him on rent and the rent which he received from his tenants is lesser, then in such a case it would be difficult to hold that the requirement of the landlord, to obtain possession from his tenant, is not *bonafide*. In the present case, respondent No. 1 is paying a rent of Rs. 375/- P.M. whereas Tulsi Dass is paying a rent of Rs. 12.50/- P.M. and Mohan Lal is paying a rent of Rs. 25/- P.M. It is evident, therefore, that on this ground alone the requirement of the landlord is *bonafide*. The tenants, in the present case, have not shown that this submission of respondent No. '1 lacks *bonafide*.

31. It is natural aspiration for a landlord, in his old age, to leave the tenanted premises and stay in his own house in the evening of his life. In some cases this desire may conceivably become an obsession with the landlord, and if he files an application for eviction for eviction of his tenants then, in such circumstances, it will be difficult to hold that, what was previously only a

desire, has now not become a *bonafide* need or requirement. If such desire or obsession adversely affects the health of an owner, mentally or physically, then it can conceivably be argued that *bonafide* need arises for the landlord to recover possession of the house let out by him. In the present case both the landlords are old. Their desire to spend the last few years of their life together in the same house which is owned by them, an which was inherited by them from their father and is, therefore, a family house, cannot be regarded as fanciful. Under these circumstances it was for the tenants to disclose facts which would show that this desire or need was fanciful or not *bonafide*. As already observed, the facts disclosed by the tenants do not make out such a case.

32. With regard to Pyare Lal Chopra, it is true that he is at present employed at Bombay. The fact that his family house is in Delhi is not denied. Nor can it be denied that he hails from this part of the country. It is true that work has taken him to Bombay, but it is very normal for a person to come back to his home town after his retirement. The plea of Pyare Lal Chopra is precisely this. He has stated that, though he had reached the age of superannuation, he has been given extention and is working at Bombay but it will not be possible for him to get further extension. His old age is a factor which has to be borne in mind, and it would *prima facie* show that there would be a need for him to find permanent residence on his retiring from service. It is not disputed that he has been given extension by his employers at Bombay. Normally an extension is never for an unlimited period and any prudent man, who is on extension, will have to plan out his retirement. If, therefore, he seeks the vacation of his house where he intends to live permanently for the rest of his life, and he seeks possession when his retirement is approaching, it cannot be said that he does not *bonafide* require the premises. The facts disclosed by the tenants do not, in our opinion, show that Pyare Lal Chopra would be disentitled from obtaining an order for recovery of possession of the premises.

33. The other objections of the tenants also were rightly held by the Rent Controller not to disclose such facts on the basis of which leave to contest should have been granted. The finding of the Rent Controller to the effect that the landlords had given details showing how they had become owners of the property, has not been shown to be an incorrect conclusion. They were admittedly the heirs of their late father, who was the owner of the premises in question. The rent has been paid by the tenants to the landlords, and whatever

rights had been inherited by the mother were bequeathed to the respondent by the registered will which had been executed by the mother in their favour. Even in the Municipal records the property had admittedly been mutated in favour of the landlords. Therefore, the allegation of the tenants that the landlords were not the only owners of the premises in questions factually without any basis. In any event, it is now well settled that co-owners can file petition for eviction even without joining the other co-owners. Therefore, even if it be assumed that the respondents were co-owners of the property, and apart from them there were other owners as well, the present petition could not be said to be not maintainable for, as already observed, any of the co-owners can file a petition for eviction. (See *Smt. Kanta Goel v. B.P. Pathak and other,* [26] The other allegation that the landlords wanted to increase the rent and had agreed to sell the house to them is extremely vague. The Rent Controller rightly did not grant leave to contest on such a bald assertion of the tenants.

34. It has been argued before us that the jurisdiction of this Court under proviso to sub-section (8) of Section 25B is a limited jurisdiction and it is not open to the High Court to reassess the evidence and to interfere with the finding of fact. The submission is that the Rent Controller which would entitle him to get leave to contest. This decision is a finding of fact and this finding of fact cannot be assailed in the present revisions. Our attention was drawn to the decision of the Supreme Court in the case of *Hari Shanker & Ors. v. Rao Girdhari Lal Chowdhury,* [27] . In that case the provisions of Section 35 of the Delhi and Ajmer Rent (Control) Act, 1952 came up for consideration. Section 35 (1) of the said Act read as follows:-

"The High Court may, at any time, call for the record of any case under this Act for the purpose of satisfying itself that a decision made therein is according to law and may pass such order in relation thereto as it thinks fit".

Under the 1952 Act the proceedings for eviction of a tenant had to be initiated before a Subordinate Judge. First appeal against the decision of the trial Judge lay to the District Judge. Under Section 35 the High Court had this provisional jurisdiction. The Supreme Court, while constructing Section 35, observed as follows:-

"The phrase "according to law" refers to the decision as a whole and is not to be equated to error of law or of fact simpliciter. It refers to the overall decision,

which must be according to law which it would not be if there is a miscarriage of justice due to a mistake of law. The section is thus framed to confer larger powers than the power to correct error of jurisdiction to which Section 115 is limited. But it must not be overlooked that the section in spite of its apparent width of language where it confers a power join the High Court to pass such order as the High Court might think fit, -- is controlled by the opening words, where it says that the High Court may send for the record of the case to satisfy itself that the decision is according to law". It stands to reason that if it was considered necessary that there should be a rehearing a right of appeal would be a more appropriate remedy, but the Act says that there is to be no further appeal.

The Supreme Court observed that Section 35 was almost the same as Section 25 of the Provincial Small Cause Courts Act. It quoted with approval the following observations of Beaumont, C.J. (as he then was) in *Bell & Co. Ltd. v. Waman Hemraj,* [28]

"The object of Section 25 is to enable the High Court to see that there has been no miscarriage of justice that the decision was given according to law. The section does not enumerate the cases in which the Court may interfere in revision, as does Section 115 of the Code Civil Procedure, and I certainly do not propose to attempt an exhaustive definition of the circumstances which may justify such interference; but instances which readily occur to the mind are cases in which the Court which made the order had no jurisdiction, or in which the Court has based its decision on evidence which should not have been admitted or cases where "the unsuccessful party has not been given a proper opportunity of being heard or the burden of proof has been placed on the wrong shoulders. Whether the Court comes to the conclusion that the unsuccessful party has not had a proper trial according to law, then the Court can interfere. But, in my opinion the Court ought not to interfere merely because it thinks that possibly the Judge who heard the case may have arrived at a conclusion which the High Court would not have arrived at."

The Supreme Court held that there would be no justification, while exercising powers under Section 35 of the said Act, in interfering with plain findings of fact.

35. There is one very important distinction which exists between the provision of Section 25B and that the Section 35 of the Delhi and Ajmer Rent (Control)

Act, 1952. The distinction is that whereas the power of revision under Section 35 of the 1952 Act was to be exercised after a right of appeal had been exhausted by any of the parties, under Section 25B of the Act the right of appeal has been expressly taken away. In its place a limited right has been conferred on the High Court in proviso to sub-section (8). We feel that the observations of the Supreme Court in Hari Shankar's case would not, therefore, be quite apposite while construing the previsions of Section 25B (8). The limited jurisdiction as envisaged by Beaumont, C.J. in Bell & Co.'s case which was approved by the Supreme Court in Hari Shankar's case, may have been applicable if the right of appeal contained in Section 38 of the Rent Control Act, 1958 had not been taken away. Moreover, the language of Section 35 of the 1952 Act and Section 25B of the present Act is not identical. In our opinion the jurisdiction of the High Court under proviso to Section 25B(8) has to be interpreted, keeping in view the legislative intent. The revision under Section 25B(8) cannot be regarded as a first appeal and not can it be as restricted as the revisional jurisdiction under Section 115 C.P.C. The High Court would have jurisdiction to interfere if it is of the opinion that there has been a gross illegality or material irregularity which has been committed or the Controller has acted in excess of his jurisdiction or has not exercised the jurisdiction vested in him. A finding of fact arrived at by the Controller would not be interfere with by the High Court unless it can be shown that finding has been arrived at by misreading or omitting relevant evidence and this has resulted in gross injustice being caused. If none of the aforesaid circumstances exists the High Court would not be entitled to interfere with the order of the Controller in exercise of its jurisdiction under proviso to Section 25B (8) of the Act.

36. For the aforesaid reasons the petitions are dismissed. In the special circumstances of the case, however, the parties are left to bear their own costs.

Sd/- B.N. Kirpal,

Judge.

Sd/- Prakash Narain,

Chief Justice.

Sd/- S.S. Chadha,

Judge.

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2. 1977(1) R.C.J. 902

3. 1977 Rajdhani Law Reporter 522,

4. 1978 Rajdhani Law Reporter 228.

5.15 (1979) 97,

6. (1979) 15 D.L.T. 46,

7. 1979 (2) R.C.R. 317

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10. 1979(1) R.C.R. 422

11. 18 (1980) D.L.T. 94

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15. AIR 1958 Supreme Court 321

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17. 1980(2) Rent Control Journal 630 - 18 1980 DLT 412

18. 1982(1) R.C.J. 297

19. 1977(2) RCR 233 (SC) : AIR 1977 Supreme Court 1569

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22. Appeal No. 179 of 1982, decided on 11th January, 1982

23. AIR 1970 Supreme Court 1.

24. 1981(1) R.C.R. 318, 1981

25. 1979(1) R.C.R. 265

26.1979(1) R.C.R. 485 (S.C.): AIR 1977 Supreme Court 1959

27. AIR 1963 Supreme Court 698

28. AIR 1938 Bombay 223