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

Pronounced on: 30.11.2022

+ **RC.REV. 66/2017, CM APPL. 5769/2017, 40226/2017, 14619/2018, 53854/2019, 22410/2022, 36449/2022 & 37996/2022**

DILIP SINGH KAPOOR & ORS Petitioners
Through: Mr. Salman Khurshid, Sr. Advocate with Mr. N.S. Bajwa, Mr Anil Sharma, Mr Zafar Khurshid, Mr Amit Singh Chauhan, Ms Arundathi K., Mr Rishabh Saxena and Mr Syed Hamza, Advocates.

Versus

NEERAJ KHANNA & ANR Respondents
Through: Mr. Arun Kumar, Sr. Advocate with Mr. Navin Kumar Thakur, Mr Arjun Malik and Ms AaroHi Malik, Advocates

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

JUDGMENT

NAJMI WAZIRI, J.

1. This revision petition impugns the eviction order dated 15.11.2016 passed by the learned Additional Rent Controller under s.14(1) (E) read with s.25(B) of the Delhi Rent Control Act, 1958, directing the petitioners to vacate the shop on the

ground floor and basement, admeasuring 258.38 sq. ft. and 647.65 sq. ft. respectively, at G-7, South Extension Part-I, New Delhi (hereinafter to be referred as 'the suit property') on the ground of *bona fide* requirement and for expansion of the business of the respondents/landlords.

2. The petitioners say that there is no bonafide requirement, it is more of a subjective desire of the landlord as against objective assessment of bonafide need.
3. The respondents are first cousins and joint owners of the premises. On the basis of a family settlement dated 16.10.2007 pursuant to which a Release Deed 17.09.2008 and a Gift Deed dated 18.11.2008 were executed by Mrs. Meena Khanna and Mrs. Neelam Khanna in their favour. The aforesaid premises were let out on 10.06.1985 by the respondents' predecessors to Mrs. Surjit Kaur Kapoor for commercial purposes. The annual value of the suit property as on 01.01.2016 was Rs.1,29,60,000. On the demise of the said tenant, the tenancy was inherited by her LRs- the three appellants who are running a business enterprise therefrom, under the name and style of M/s Kapoor Watch Company Pvt Ltd and they are stated to be Manging Director /Directors of the said company. During the lifetime of Mrs. Kapoor, the erstwhile tenant, an eviction petition being Eviction Petition No.106/2002 titled *Meena Khanna & Ors. V. Surjeet Kaur Kapoor* had been filed against her by the respondents' predecessors in interest on the ground of her having sub-let the tenanted premises without permission. Subsequently, a Family

Settlement came about between the property owners. The respondents were substituted as landlords of the premises on 07.11.2015. The eviction petition was later disposed-off as withdrawn. Subsequently, another Eviction Petition was filed (being Old Eviction Petition No.16/2016 and new Eviction Petition No.5162/2016) under sections 14 (1) (a) read with Section 25-B of the Delhi Rent Control Act, 1995 on the grounds of bonafide need. The petitioners/tenants then filed an application seeking leave to defend. It was disallowed on 15.11.2016 by the learned ARC on the ground that no triable issues were raised and the impugned eviction order was passed.

4. The tenants contend that there is no bonafide need; it is more of a desire for additional space, the eviction petition is a fabricated case to somehow evict the tenants; that the earlier eviction petition was withdrawn without leading any evidence; that the landlords possess sufficient space in the same building to satisfy and meet their needs; that the side-lane/rear-lane are fully commercialized and equally accessible by prospective customers.
5. The portion occupied by the petitioners/tenants faces the main bazar. Logically, it is more amenable for access, it is prominently visible and eminently suitable for retail business of any kind. The eviction of the tenants from the tenanted premises had been sought on the ground of requirement of bonafide use and gainful employment of the landlords and/or for expansion of their business. They are engaged in the business of gold, silver and diamonds and are running a showroom under the name of 'Jass

Jewellers' (gold showroom) on the rear/back portion of the first floor of the aforesaid building. The landlord/respondent no.1 had been desirous of expanding his business while the respondent no.2/landlord wished to join in partnership with the former. They are cousins and co-owners of the suit premises. The latter also has requisite expertise in the same business. They claim that they do not have alternative suitable space to undertake the expansion of their business, that space suitable with them was in unusable bits and insufficient for them to grow their business, that with their joint efforts and enterprise, they would be able to infuse monies and expand their business for which they required a larger, more accessible and clearly visible area with better frontage, so that customers would be attracted to their showroom. They claim to have suffered losses in the past few years is because of poor accessibility to walk into their shop and low visibility of their wares. The tenanted space would be the most optimal requirement for their needs especially in a market place where a number of gold merchants and showrooms for expensive jewellery were ostensibly doing well. The visibility and accessibility in such a market place was essential to survive otherwise the bigger showrooms in the market would attract most of the business in the jewellery sector. The premises available on the rear side of the first floor is too small, neither properly visible nor convenient for prospective customers to walk up the stairs on the first floor.

6. The grounds for eviction further state:-

“...The Petitioner No.1 though is largely involved in retail of silver and gold articles, has in the recent years also commenced business in retail of diamonds articles for which currently the Petitioner No.1 does not have any exclusive display area which is most crucial in order to increase their business in diamond - articles. Not only this, the most important reason for requiring the said premises in particular is that the said premises is on the ground floor at front portion of the building of the existing showroom of the Petitioners which is on the first floor and is thus most suitable and of maximum commercial value of the purposes of expansion of showroom, since the specific requirement of the Petitioners is to obtain a premises with a main access from a main commercial street of the main market of the South Extension Part-1, New Delhi to increase business as it provides more visible Showroom space and increased footfall, for which the said Premises is ideal and the Petitioners have no other such premises available to them which fulfil these specific requirements. The basement area of the said Premises shall further provide the necessary area for stock keeping and storage of merchandise providing them easy access to the same and it shall further not necessitate the Petitioners to locate and hire additional area for available storage area which has become necessary due to the expanding business of the Petitioners and aims for further expansion. It is relevant to bring to the

notice of this Hon'ble Court that the Petitioners have lying vacant 750 sq.ft, area in the back portion of the ground floor of the Said Building which was rented out at a fixed term lease to M/s. SIL Gold Ltd... that M/s SIL Gold Ltd. has also since vacated the Said back portion on 15.04.2015 on the ground they are also unable to undertake business from the said back portion... The reason for non-utilization of that space is as that the said space falls in the back portion which only access to the back lane away from the main market area which provides no display area to the Petitioners which is most pertinent need of the Petitioners and the said back portion does not attract the same footfall as the front portions which includes the said premises which has access and frontage and display areas/ windows facing the main market. There is no use of the Petitioners spending money in expanding into the back portion of the ground floor as on date which does not meet any of the requirements of the Petitioners without proper frontage and display areas. The Petitioners also have in their ownership the 2nd Floor and the 3rd Floor of the said building which already has been leased out to M/s Boulevard International Pvt. Ltd. on 09.10.2014 for a period of 9 years, where they are undertaking business of export of garments, which does not have anything to do with onsite sales. The said 2nd and 3rd floors cannot be used for the jewellery business as jewellery business specifically requires display area where

highest footfall is to attract customers and increase sales...the Respondents are persons of extensive means and are in a very comfortable financial position to be able to relocate to another suitable location...”

7. In their Leave to Defend application the tenants did not specify any alternate space as being available to the landlords which could be suitable for the latter's needs. The tenants have impugned the said order on the ground that: their need is not bonafide; the leave to defend application should have been allowed because in view of the changed family circumstances the needs of the landlords needed to be assessed afresh so as to appreciate the bonafide need, if any; the landlords ought to show the use of the adjacent property which was available to them. Reliance has been placed upon the dicta of this court in *Khem Chand & Ors. V. Arjun Jain & Ors.* 2013 (138) DRJ 154 wherein it was held that a fanciful desire should not be camouflaged as a bonafide need, therefore the leave to defend application should be carefully considered and allowed in appropriate circumstances.
8. In the present case however no suitable alternative accommodation has been shown to be available to the landlords to meet their needs. The tenanted premises are contiguous to other bits of space on both sides of the ground floor. However, since the tenanted premises is in the middle of the ground floor, the areas on either side of it are of no strategic value or use. One

contiguous unit would be needed to be created to put it any meaningful use. The larger area having frontage, in the main market and greater visibility is with the tenants and this portion according to the landlords, would be more suitable for their bonafide needs. The bonafide need as made out from the eviction petition and as considered in the impugned order, is that landlords require that which is more accessible, visible and larger, so as to set up an attractive showroom for expansion of their jewellery business. Two cousins/landlords, with their joint expertise would be able to synergise their experiences for the expansion and growth of their proposed business. M/s SIL Gold occupying the rear portion of the ground floor of the suit premises had vacated the premises on 15.04.2015. However, it could not be used by the landlords because the said vacated space does not have visibility from the front portion of the main market i.e. a large attractive show-window was necessary for display of their jewellery items so as to attract their prospective customers. The premises vacated by M/s Mopal Shoes was only a small portion of the larger showroom on the ground floor which is adjacent to the premises now occupied by the present tenants. That portion too was too small had no frontage for attractive and meaningful display of the expensive jewellery items of the landlords. The latter are losing out to competition from larger jewellery showrooms in the main market because of attractive display of their jewellery items. The present premises used by the landlords had low visibility and it was virtually of no

consequence for customers, who largely visited the main market and not its rear side; this has resulted in the landlords' running into losses for the past few years. Site Plan the premises were seen and appreciated by the learned Trial Court which assessed the issue of visibility of the premises from the front side of the market and it has reasoned, *inter alia*, as under:

"... "12.15 The respondent stated that the petitioner has himself admitted that rear portion of the first floor is lying vacant and therefore, the same is already available for petitioner for opening the showroom. It is stated that the back side street also has several showrooms such as Indico, Beliram Silver, Hallmark, SIL Gold, CTC, Archies, Mc Donalds, Blue Cloth Company etc. and therefore, the said back portion is also suitable alternate accommodation."

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12.21 Although, there are vague averments of petitioners having other properties, however, no other properties have been mentioned except the property bearing no. G-37, South Ex.-I, New Delhi. In sum and substance the only alternative accommodation which is effectively available on the date of filing of the Petition is the rear portion of the ground floor vacated by M/s SIL which can be used by the petitioners for the purpose/requirement of running a jewellery showroom. It is admitted by the respondents that one M/s Jass Jewellers Arts Pvt. Ltd. is carrying on business from the front portion of the first floor and the second floor & third floor have already been rented out to one Boulevard International Pvt. Ltd. The averment of the petitioners that Petitioner No. 1 is in the rear portion of the first floor has not been questioned nor challenged. It is averred in the leave to defend that petitioners have one of the biggest show window in the entire South Ex., part -I. However, no photographs have been filed by the respondent alongwith leave to defend petition in support of the claim. In fact, except a copy of the*

judgment in eviction petition no. 34/14 no documents were filed with the leave to defend and no material has been placed on record by the respondents. Although, it is pleaded in para-28 of the affidavit that photographs are being annexed but no photographs were filed with leave to defend. The petitioner in his reply to para 28 of the affidavit specifically brought this fact to the notice of the respondent and the court by stating on Oath that no photographs have been submitted by the respondents, although, in para 28 a statement has been made that photographs were being annexed with the affidavit for leave to defend. In the rejoinder the respondents maintained an absolute mum about the non-filing of photographs. There is no denial of the strong objection made by the petitioner in para 28 of the reply affidavit. In the rejoinder, silence of the respondents as to non-submission of photographs shows the dishonest intentions of the respondent in making an averment that photographs were being filed with leave to defend while no photographs were being filed. In fact, in the rejoinder, the respondent does not even make any averment that the photographs could not be annexed because of inadvertence. No attempt was made to file these photographs with the rejoinder. Rejoinder was filed on 03.09.2016. For the first time, 3 photographs were filed by the respondents on 22.10.2016 alongwith an application for brining on record subsequent events and an additional affidavit was also filed. Clearly, the respondent has been trying to play mischief by falsely stating on oath that some material was being placed on record while none was placed on record.”

“12.23 Even otherwise, in the leave to defend, the averment of the petitioners that the rear portion of the ground floor is not suitable for the petitioners and that the accommodation on the first floor is not sufficient for both the Petitioners has not been questioned or challenged. The averment that the second and third floors were let out in the year 2014 has not been questioned as false. The petition has been filed in the year 2016

...

12.28 *Even otherwise there is no denial by the respondents that large jewellery showrooms are operating in South Ex and that several of them have area ranging between 900 to 2000 sq. ft. There is no denial that Tanishq has a jewellery store in the same area spread across three floors of a building. There is no denial that there is competition amongst jewellery stores in South-Ex area. Therefore, the pleaded requirement of the petitioners has not been seriously disputed by the respondents. In my view, it is a clear case where petitioners have pleaded that it is a case of no alternative reasonably suitable accommodation and not a case of additional accommodation. The requirement pleaded is of petitioner no.2 as well and not only of petitioner no. 1, who alone is running the showroom from the rear of the first floor. The composite need of the two petitioners cannot be treated as a mere case of additional accommodation.*

12.29 *Judicial notice can be taken of fact that commercial premises on the ground floor of a market area is better suitable for business of fast food/eatery and would invite more footfalls due to ease of access. Convenience of customers is the first thing a businessman may keep in contemplation while planning a business venture and is a relevant aspect. The High Court of Delhi and the Supreme Court of India have in several cases taken judicial notice of the fact that ground floor is more suitable for commercial activity. When the front and rear portion of ground floor is to be considered obviously the area having better visibility, access and footfall is more suitable than the area which is not. The requirement of law is that the landlord has no "suitable" "alternate accommodation". In Shiv Samp Gupta Vs. Dr. Mahesh Chand Gupta (1999) 6 SCC 222 The Supreme Court has held that an alternative accommodation, to entail denial of the claim of the landlord, must be reasonably suitable, obviously in comparison with the suit accommodation wherefrom the landlord is seeking eviction.*

The above principle laid down by the Supreme Court was also cited with approval by the Supreme Court in Dhannalal vs Kalawatibai AIR 2001 SC 2572. In Dhannalal (supra) the Supreme Court also laid down to what extent the court has a role to play in deciding the case and I quote:

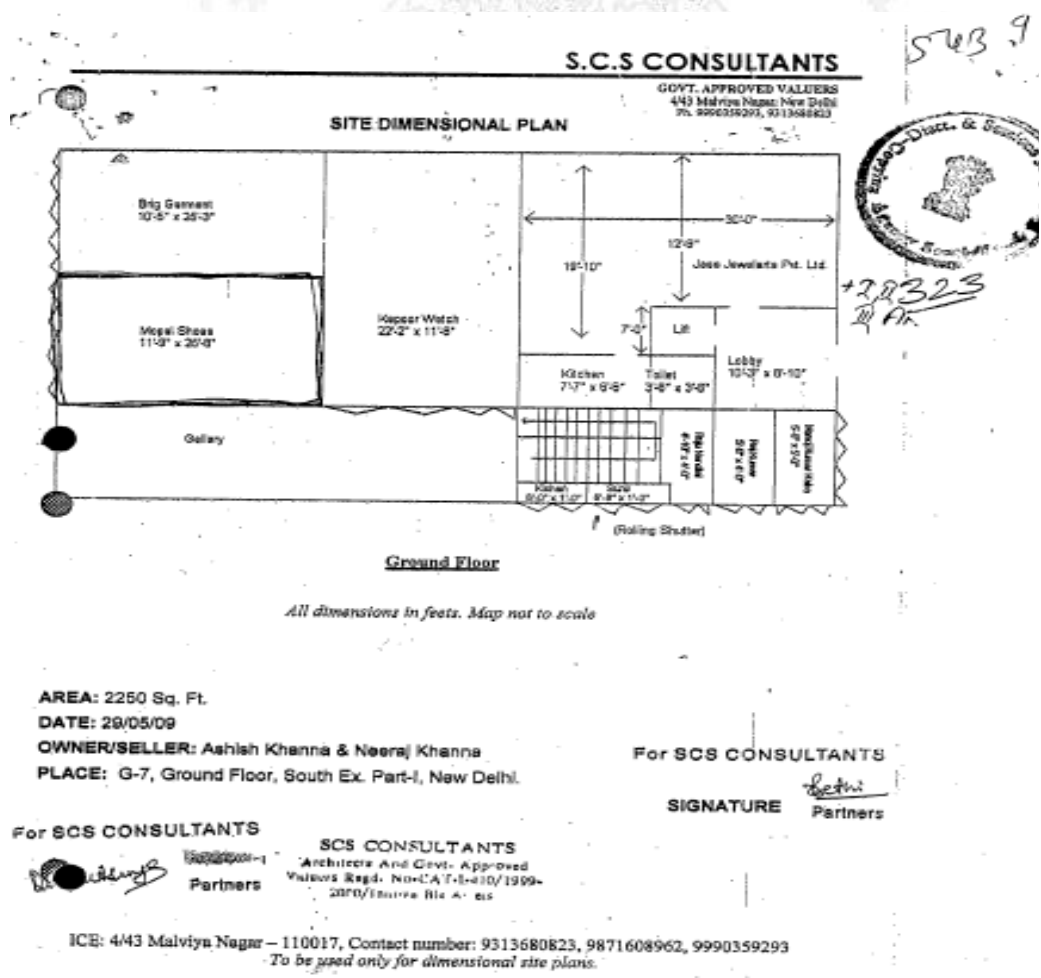
“The bona fides of the need of the landlord for the premises or additional premises have to be determined by the Court by applying objective standards and once the Court is satisfied of such bona fides then in the matter of choosing out of more accommodations than one available to the landlord, his subjective choice shall be respected by the Court.”

12.30 The court also noted that a Shop on the First Floor is not suitable when compared to a shop on the Ground Floor and I quote:

“For the business, which the respondents Nos. 2 and 3 propose to start or continue respectively, an accommodation situated on the first floor cannot be said to be an alternative suitable accommodation in comparison with the shops situated on the ground floor. A shop on the first floor cannot attract the same number of customers and earn the same business as a shop situated on the ground floor would do...”

9. Relying on the dicta of the Supreme Court in *Kanta Sachdeva & Anr. vs. A.D. Choudhary 2012 SCC Online Del 5320*, the learned Senior Advocate for the landlords submits that unless otherwise proven, children can be deemed to be dependent on their parents for setting up their business and such circumstances would be considered as bonafide need. Furthermore, he submits that in view of the dicta in *Sarla Ahuja Vs. United India Insurance Ltd. (1998) 8 SCC 199*, the High Court would ordinarily not come to

a different finding of facts unless the view of the learned Rent Controller was so unreasonable that it could not have reached it on the basis of material available on record. He further submits that reliance of the petitioners on *Khem Chand (supra)* is misplaced. He further submits that the reliance upon *Santosh Devi Soni v. Chand Kiran, (2001) 1 SCC 255* is distinguishable because that was regarding additional space whereas the present case is one of reasonably suitable alternative accommodation not being available. The site plan of the property filed by the landlords is as under:-



10. It shows that the main area presently occupied by the landlords is on the rear side or the side lane. The only visible space was available with Mopal Shoes and Kapoor Watch Company occupied by the present tenants. The space vacated by Mopal Shoes cannot be utilized for any purpose because Kapoor Watch is in the middle. Therefore for the purpose of creating an attractive showroom the landlords want the entire space for the ground floor to be of any meaningful use. Their business is of gold and diamond jewellery. The visibility will increase if the space vacated by Mopal Shoes and the present tenanted premises is used as one contiguous space. A larger and attractive showroom has its own advantages of drawing-in more prospective customers. The psychology of a prospective buyer has to be kept in mind for a jewellery showroom to be a meaningful enterprise. Unless the enterprise is attractive so as to draw an increased footfall, it may not be a worthwhile venture. It is the prerogative for the landlord to determine the suitability and requirement of space for the bonafide need. In the present case, it has not been shown that the landlord had any or alternate suitable accommodation which could be put to use for the need which they have articulated in the eviction petition. The records also show that the tenants have showrooms at various places in Delhi. The photograph of the showroom in South Extension

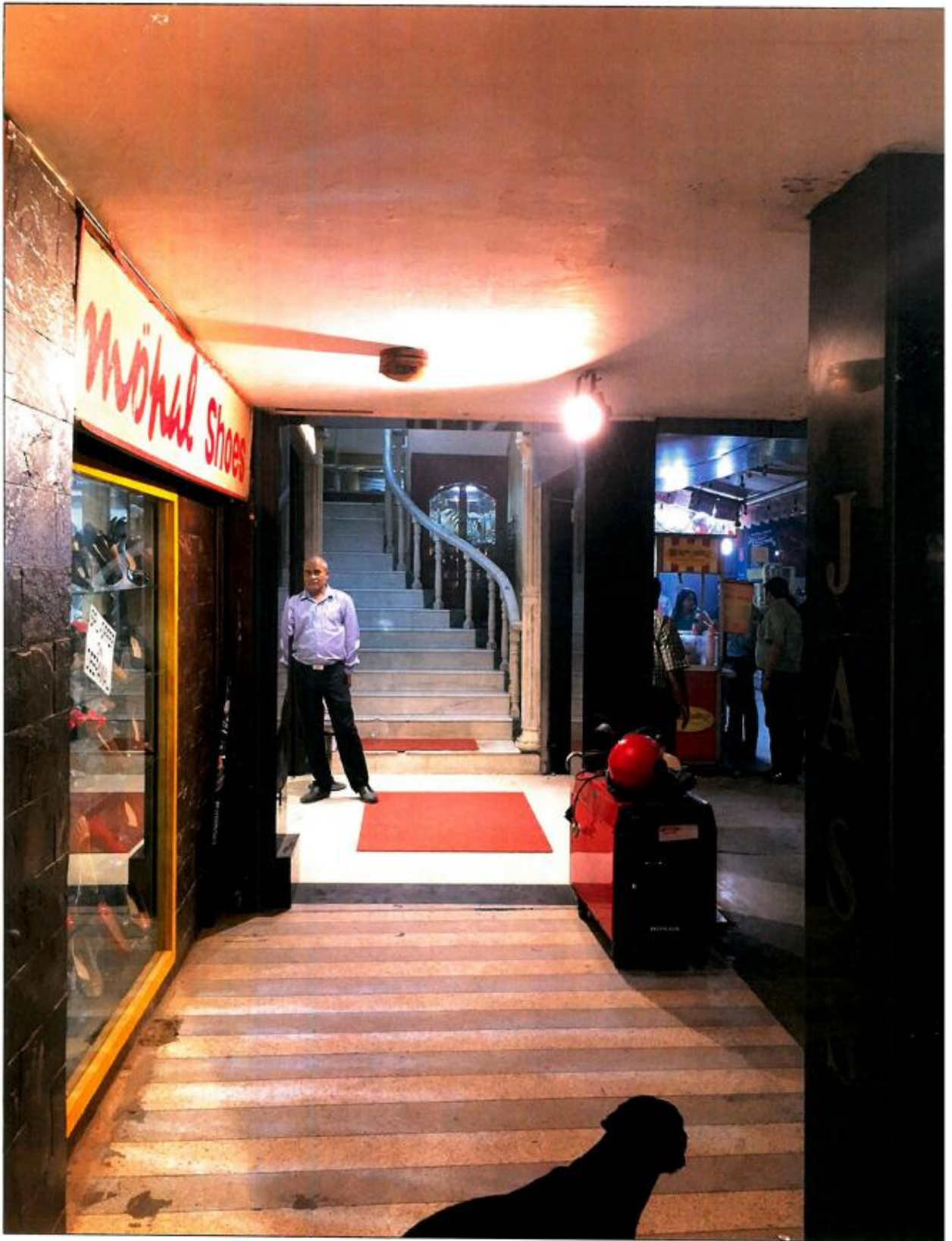
which is the tenanted premises is reproduced as under:

DELHI



SOUTH EXTENSION

11. The photographs of the space occupied by Mopal Shoes is shown in the photograph here-under and the portion ahead of it before the staircase, is the portion occupied by the present tenants.



12. The landlords are desirous to expand this portion into one contiguous space so as to provided it more visibility and accessibility from the main market. The area otherwise being used by the landlords is from the rear side and the visibility available to it is of no worthwhile consequence, as the photographs show:







13. For the reasons aforesaid, the court is of the view that the tenants have not made out a triable case for grant of leave to defend. The landlords' case is not for additional accommodation but of alternate accommodation not being available for the bonafide need of their business. In view of the dicta of the

Supreme Court in *Balwant Singh v. Sudarshan Kumar*, 2021 SCC OnLine SC 114, it is not for the tenant to dictate to the landlord as to how the latter should run his/its affairs/business, simply to accommodate the tenant to continue to occupy the tenanted premises.

14. For the aforesaid reasons, the court does not find any reason to interfere with the impugned eviction order dated 15.11.2016. The petition is without merit and is accordingly dismissed. The pending application(s) also stand dismissed.

NAJMI WAZIRI, J.

NOVEMBER 30, 2022
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