



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No.10566/2025

1. Arun Fatehpuria Son of Late Shri Shankar Lal Fatehpuria, Aged About 63 Years, Resident of Tholia House, Tholia Circle, Mirza Ismile Road, Jaipur, Rajasthan.
2. Deepak Fatehpuria Son of Late Shri Shankar Lal Fatehpuria, Aged About 60 Years, Resident of Tholia House, Tholia Circle, Mirza Ismile Road, Jaipur, Rajasthan.

----Petitioners

Versus

Tarachand Tholia HUF, Through Pranshant Tholia S/o Shri Sharad Chandra Tholia, aged about 52 Years, Resident of Tholia House, Tholia Circle, M.I. Road, Jaipur, Rajasthan.

----Respondent

For Petitioner(s)	:	Mr.Shashwat Purohit Mr.Ramesh Chandra Sharma Mr.Jaivardhan Joshi
For Respondent(s)	:	Mr.Prateek Kasliwal Ms.Varnali Purohit Mr.Harsh Parashar

**JUSTICE ANOOP KUMAR DHAND
Order**

Reserved on	:	:	:	18/07/2025
Pronounced on	:	:	:	25/07/2025
Reportable				

For convenience of exposition, this judgment is divided in the following parts:-

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**The Challenge:-**

1. A challenge has been led to the impugned judgment dated 31.05.2025 passed by the Appellate Rent Tribunal (hereinafter referred to as "the Appellate Tribunal") by which the appeal preferred by the petitioners against the judgment dated 12.10.2022 passed by the Rent Tribunal No.2, Jaipur Metropolitan-I (hereinafter referred to as "the Tribunal") has been rejected.

2. By judgment dated 12.10.2022, the application submitted by the respondent/landlord (hereinafter referred to as "the respondent") under Section 9 of the Rajasthan Rent Control Act, 2001 (hereinafter referred to as "the Act of 2001"), was partly allowed by the Tribunal and eviction order has been passed against the petitioners/tenants (hereinafter referred to as "the petitioners"), directing them to vacate the premises within a period of six months, from the date of the judgment and to pay the revised rent along with arrears to the respondent.

Contentions by the rival sides:-**(A) By the petitioners:-**

3. Learned counsel for the petitioners submits that the respondents submitted an application under Section 9 of the Act of 2001 against the petitioner, before the Tribunal seeking eviction of the petitioners from the subject premises situated at Tholia House, M.I. Road, Jaipur on the ground of sub-letting, personal bona fide necessity and revision of rent in terms of Section 6 of the Act of 2001. Learned counsel submits that the respondent failed to establish that the petitioners had sub-let the subject premises or any part thereof, and transferred the possession of the same to third person.



4. Learned counsel for the petitioners submits that the subject premises was originally let out in the year 1954 to a partnership firm named M/s.Vyapar Udhyog Pratishtan of which Shankar Lal Fatehpuria was the proprietor. Learned counsel submits that the aforesaid partnership firm is a registered firm having three partners namely; Arun Fatehpuria, Deepak Fatehpuria and Ankit Fatehpuria. Learned counsel submits that the respondent submitted an application under Section 9 of the Act of 2001, without impleading the aforesaid partnership firm and the third partner Ankit Fatehpuria. Learned counsel submits that non-impleadment of proper parties, rendered the application defective due to non-joinder of parties and the same was not maintainable. Yet, the Tribunal entertained the said application and passed the order impugned against the petitioners. Learned counsel submits that the entire rent of the subject premises has been regularly paid from the bank account of the aforesaid partnership firm i.e. M/s.Vyapar Udhyog Pratishtan for the last 70 years and the same has been accepted by the respondent. Learned counsel submits that in order to substantiate the above, the partnership deed was placed on the record, but the same was overlooked and the order impugned has been passed by the Tribunal.

5. In support of his contentions, counsel has placed reliance upon the following judgments passed by the Hon'ble Apex Court and by this Court :-

- (1) **Richard Lee Vs. Girish Soni & Anr.**
reported in **2017 (3) SCC 194** decided on
02.02.2017.



(2) **Prabha Arora & Anr. Vs. Brij Mohini Anand & Ors.** reported in **2007 (10) SCC 83** decided on 31.10.2007.

(3) **Bhojamal Vs. Devaram** decided by this Court in **S.B. Civil First Appeal No.107/1993** on 11.05.2017.



6. Learned counsel for the petitioners submits that the application filed by the respondent under Section 9 of the Act of 2001 was carrying defect of non-joinder of necessary parties, hence, the same was not maintainable and was liable to be rejected by both the Tribunal and the Appellate Tribunal. However, instead of rejecting the application on this ground alone, the impugned orders have been passed against the petitioners. Therefore, interference of this Court is warranted.

7. Learned counsel for the petitioners submits that an application under Order 6 Rule 17 of the Civil Procedure Code (for short, "CPC") was submitted by the petitioners before the Appellate Tribunal seeking amendment in the reply to the application originally submitted by them before the Tribunal, but the said application came to be rejected. Learned counsel for the petitioners submits that the sole reason for passing the impugned order against the petitioners is the personal bona fide need, as claimed by the respondent. Learned counsel contends that in fact, the respondent is in possession of three premises, namely, the subject premises of the petitioners and two other premises operating in the name and style of Amarpali Jewellers and Anupam Trading. Learned counsel submits that during pendency of the eviction proceedings, the lease in favour of Amarpali Jewellers was renewed and another shop which is located behind the



subject premises was let out to Secure Ventures LLP. Hence, under these circumstances, counsel submits that the claim of personal bona fide requirement of the respondent is not genuine and the sole intention of the respondent is to get the petitioners evicted from the subject premises, rather than to fulfill any bona fide need.

8. In support of his contentions, he has placed reliance upon the following judgments passed by the Hon'ble Apex Court and by this Court :-

- (1) **Kempaiah Vs. Lingaiah & Ors.** reported in **2001 (8) SCC 718** decided on 31.10.2001.
- (2) Dhan Raj Vs. LR's of Nemichand reported in **2010 Supreme (Raj) 1838** decided on 30.09.2010 &
- (3) **Bhagirath Vs. Ram Prasad** reported in **1987 Supreme (Raj.) 212** decided on 10.09.1986.

9. Learned counsel submits that, under these circumstances, the orders passed by the Tribunal as well as by the Appellate Tribunal suffer from legal infirmity and the same are not sustainable in the eyes of law and are liable to be quashed and set-aside.

(B) By the respondent:-

10. *Per contra*, learned counsel for the respondent opposes the arguments advanced by learned counsel for the petitioners and submits that it is an admitted position in the reply filed by the petitioners before the Tribunal that the subject premises was initially taken on rent by Late Shankar Lal Fatehpuria in the year 1954 and subsequently, said Shankar Lal Fatehpuria started using



the subject premises in the name and style of M/s.Vyapar Udhyog Pratishtan. Learned counsel submits that the subject premises was never let out to any partnership firm or M/s.Vyapar Udhyog Pratishtan, rather the same was let out to an individual namely Shankar Lal Fatehpuria. Learned counsel submits that this fact has also been admitted by the petitioners' witnesses, while appearing in the witness box for recording of their statements. Learned counsel submits that the respondent is in bona fide need of the subject premises as he is a jeweler by profession and running his business from another location in the city, which is inadequate for his growing business requirements and the subject premises is better suited for his business operations. Therefore, the eviction application was filed by him against the petitioners, on the ground of personal bona fide necessity and other grounds. Learned counsel submits that the personal bona fide need/requirement of the respondent has been duly established by him not only on the record of the Tribunal but also the Appellate Tribunal, which recorded concurrent finding against the petitioners. Learned counsel submits that the landlord is the best judge of his requirements.

11. In support of his contentions, he has placed reliance upon the judgment passed by the Hon'ble Apex Court in the case of **Kahahaiya Lal Arya Vs. Md. Ehshan & Ors. (SLP (C) No.21965/2022)**.

12. Learned counsel further submits that the objection regarding non-joinder of the third partner Ankit Fatehpuria and the partnership firm Vyapar Udhyog Pratishtan, was raised by the petitioners before the Tribunal by way of filing an application



under Order 14 Rule 5 CPC. However, the said application was rejected by the Tribunal vide order dated 09.03.2022, against which the petitioners submitted S.B. Civil Writ Petition No.5394/2022 before this Court, which was also rejected by this Court granting liberty to raise all the available objections before the Tribunal. Learned counsel submits that the order dated 09.03.2022, passed by the Tribunal, has attained finality. Learned counsel submits that even an application was also submitted by the petitioners before the Appellate Tribunal under Order 6 Rule 17 CPC for taking on record the lease deed executed in favour of Secured Ventures LLP. However, the same was rejected by the Appellate Tribunal vide impugned order dated 31.05.2025. Hence, interference of this Court is not warranted and the writ petition is liable to be rejected.

Analysis, Discussions & Findings:-

13. Heard and considered the submissions made at the Bar and perused the material available on record.

14. Basically, the petitioners have raised two fold arguments: firstly, the rent of the subject premises was regularly paid from the bank account of the partnership firm i.e. M/s Vyapar Udhyog Pratisthan; and secondly, there existed no personal bona fide necessity of the respondent to seek eviction of the petitioners from the subject premises because the respondent is already in possession of the other premises, which have been let out by him to other tenants.

15. This Court shall deal with the first submission of the petitioner. The respondent has submitted an application under Section 9 of the Act of 2001 against the petitioners seeking their



eviction from the subject premises on the grounds of sub-letting and personal bona fide necessity. The issue of sub-letting has been decided against the respondent, while the issue of personal bona fide need/requirement has been decided in his favour by the Tribunal and the Appellate Tribunal.

16. Perusal of the application under Section 9 of the Act of 2001 reveals that the subject premises was let out in the year 1954 to Shankar Lal Fatehpuria, father of the petitioner, who started his business of agriculture equipments, spare parts and pump, etc. in the name and style of M/s.Vyapar Udhyog Prathisthan and the rent was paid by him through cheques drawn from the bank account of the above firm.

In the reply to the aforesaid application, the petitioners accepted and did not deny this fact. This fact has been also admitted by the petitioner No.2-Deepak Fatehpuria in his cross-examination.

17. The petitioners have submitted a copy of the partnership deed on the record, which indicates that the partnership firm M/s Vyapar Udhyog Pratisthan was comprised of three partners, namely, Arun Fatehpuria, Deepak Fatehpuria and Ankit Fatehpuria. The pleadings indicate that the rent was paid to the respondent from the bank account of the above firm. However, neither the partnership firm nor the third partner Ankit Fatehpuria have been impleaded as party in the eviction application submitted by the respondent. According to the petitioners, the said application was suffering from non-joinder of necessary parties and, therefore, the same is liable to be rejected.



18. This fact is not in dispute that the shop in question was let out to Shankar Lal Fatehpuria and not to the partnership firm M/s.Vyapar Udhyog Pratishtan, however, the rent was paid to the respondent from the bank account of the above firm. Now, the question before this Court is "Whether tenant of the landlord was Shankar Lal Fatehpuria individually or the partnership firm 'M/s Vyapar Udhyog Prathisthan'?"

19. The word 'tenant' has been defined under Section 2(i) of the Act of 2001 which reads as under:-

"2. Definitions.- In this Act, unless subject or context otherwise requires,-

(a) to (h) XX XX XX

(i) "tenant" means-

(i) the person by whom or on whose account or behalf rent is, or but for a contract express or implied, would be payable for any premises to his landlord including the person who is continuing in its possession after the termination of his tenancy otherwise than by an order or decree for eviction passed under the provisions of this Act; and

(ii) in the event of death of the person referred to in sub-clause (i),-

(a) in case of premises let out for residential purposes, his surviving spouse, son, daughter, mother and father who had been ordinarily residing with him in such premises as member of his family upto his death;

(b) in case of premises let out for commercial or business purposes, his surviving spouse, son, daughter, mother and father who had been ordinarily carrying on business with him in such premises as member of his family upto his death"

Perusal of the aforesaid Section 2(i) of the Act of 2001 clearly indicates that tenant means that the person by whom or on



whose account or on his behalf rent of the premises is paid to the landlord.

20. The Act of 2001 does not provide any procedure for suing a partnership firm or its partners where the tenancy has not been created in their favour. In general law, "partnership firm" is not a distinct legal entity, however, the definition of 'tenant' under Section 2(i) of the Act of 2001 includes a person by whom or on whose behalf rent is paid to the landlord for any premises. A rent petition against the partnership firm is liable to be filed only if the tenancy is created in the name of such firm, in case such firm or its partners have taken the premises on rent for conducting their business. There is neither any provision under Section 9 of the Act of 2001 nor under Order 30 Rule 1 CPC to file any suit against such firm for its eviction in the absence of any tenancy in its favour.

21. Eviction petition is filed by the landlord for eviction of his/her tenant. If the tenant is a partnership firm then, certainly, the petition can be filed against such firm, however, the partners are not tenant in their personal capacity and they are tenants as partners of the firm. Inheritance of tenancy of a partnership firm under the Hindu Succession Act, 1956, upon death of a partner will not be in operation. While the legal heirs inherit the rights of the deceased partners, they do not inherit the tenancy created in favour of the partnership firm.

22. In the instant case, the subject premises was let out to Shankar Lal Fatehpuria and not to his partnership firm. Merely, because he established a firm and the rent was paid from the bank account of that firm to the landlord does not confer any right



on his firm. The tenant-Shankarlal carried out his business of agriculture equipment, spare parts, pumps, etc. in the name of M/s.Vyapar Udhog Pratishthan, however that does not mean the firm automatically became the 'tenant' merely because of the fact that the rent was paid from its bank account.

23. The plea raised on behalf of the petitioners is that the shop premises was originally taken on rent by Shankar Lal Fatehpuria from the respondent in the year 1954, who subsequently, started his business in a partnership firm. Therefore, all the partners are the tenants of the respondent and accordingly, the firm and all its partners are necessary parties to the eviction application and as such, the application has been filed under Section 9 of the Act of 2001 by the respondent is not maintainable on account of non-joinder of all these necessary parties.

The above objections of the petitioners are not tenable for the reason that it is an admitted case of both the sides that tenancy was created solely in favour of the tenant Shankar Lal Fatehpuria and not in favour of his partnership firm M/s.Vyapar Udhog Pratisthan and there is no material on record to indicate and establish the tenancy was ever created in favour of the firm at any point of time. Accordingly, the partners of the firm have no right, title or interest in respect of the rented premises to claim themselves as tenant of the subject premises, either in the individual capacity or collectively as the partnership firm. The premises rented to Shankar Lal Fatehpuria shall be governed by the provisions contained under the Act of 2001. Therefore, neither M/s Vyapar Udhog Pratisthan nor Ankit Fatehpuria have any right



to be impleaded as party in the eviction petition submitted by the respondent against the petitioners.

24. This partnership firm and Ankit Fatehpuria are not tenants, hence, they are not entitled to claim their right on the subject premises as tenants. Therefore, they are not even a formal party much less necessary party.

25. The petitioners submitted an application under Order 14 Rule 5 CPC read with Section 21 of the Act of 2001 seeking amendment that the partnership firm has not been impleaded as a party in the eviction application. The said application was rejected by the Tribunal vide order dated 09.03.2022, against which the petitioners submitted S.B. Civil Writ Petition No.5394/2022, but the same was also rejected by this Court vide order dated 09.05.2022, hence, the order dated 09.03.2022 has attained finality. However, liberty was granted by this Court to the petitioners to raise their objections before the Tribunal.

Both the Tribunal and the Appellate Tribunal have dealt with the objections of the petitioners in their respective impugned order by recording concurrent findings. The judgments relied upon by the petitioners are not applicable in the facts and circumstances of the present case.

26. Now, this Court proceeds to deal with the second argument advanced by the petitioners regarding personal bona fide need of the subject premises by the respondent. The respondent submitted the application on the ground of his bona fide need to open a jewelry showroom. The personal need/requirement of the respondent was found to be bona fide not only by the Tribunal but also by the Appellate Tribunal through concurrent findings.



27. This Court finds no substance in the arguments of the petitioners that the respondent has alternative shops available which are suitable for his business. While the respondent may have some other properties, which are under tenancy of the other tenants, it is entire within his discretion to seek eviction of the petitioners from the subject premises based on his personal bona fide necessary to establish a jewelry showroom. He cannot be forced to initiate such proceedings against the other tenants. It is for the landlord to take a decision in this regard and once he has decided to get the subject premises vacated, no error or illegality can be attributed to his decision. It has been clearly established on record through concurrent findings of both the Tribunal and the Appellate Tribunal that the subject premises is more suitable place for the respondent to establish a jewelry showroom. Hence, the bona fide need of the respondent stands duly proved.

28. The Hon'ble Apex Court in the case of **Bhupinder Singh Bawa Vs. Asha Devi** reported in **2016 (10) SCC 209** has held that "it is perfectly open for the landlord to choose a more suitable premises for carrying on the business."

29. This Court also observed that in another judgment passed by Hon'ble the Apex Court in the case of **Dhannalal Vs. Kalawati Bai & Ors.** reported in **(2002) 6 SCC 16**, the Apex Court has held as under:-

"A landlord cannot be compelled to carry on business in rented premises and the proved requirement cannot be defeated by the tenant submitting that the landlord can start or comfortably continue to run his business in rented premises"



"27. 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".

30. Recently, the Hon'ble Apex Court in the case of **Kanahaiya Lal Arya** (supra) has held in Para No.11 as under:-

"In the case at hand, the appellant-landlord may be having some other properties under tenancy of various persons but once he has decided to get the suit premises vacated for the bona fide need of establishing an ultrasound machine for his two unemployed sons, he cannot be forced to initiate such a proceeding against the other tenants. It is for the appellant-landlord to take a decision in this regard and once he has decided to get the suit premises vacated, no error or illegality could be pointed out in his decision. Secondly, it has come on record by clear finding of the court of first instance that the suit premises is the most suitable accommodation for establishing an ultrasound machine. The reason being that it is situated adjacent to a medical clinic and a pathological centre and is the most appropriate place for establishing any medical machine. Moreover, the appellant-landlord has also proved his capacity to invest in purchasing/ establishing an ultrasound machine and that his two sons are unemployed and as such the suit premises is required to establish them in business and to augment the family's income. Therefore, the bona fide need of the appellant-landlord stands duly established."

31. In the considered opinion of this Court, it is for the landlord to decide and take a call for how the rented premises is required by the owner of the premises, i.e., the landlord. This Court is of the view that it is not within the domain of the tenant to suggest or to show that the landlord does not have the bona fide necessity



of the rented premises. The necessity of the rented property is required to be adjudged from the perspective of the landlord and not from the perspective of the tenant.

32. The judgments relied upon by learned counsel for the petitioners have no application in the facts and circumstances of the present case.

Conclusion:-

33. In view of the discussion made hereinabove, this Court does not find any error or infirmity in the orders passed by the Rent Tribunal and the Appellate Tribunal. This writ petition being bereft of merit, is liable to be and is hereby dismissed.

34. Stay application and all pending application(s), if any, also stand dismissed.

(ANOOP KUMAR DHAND),J

Ayush Sharma/16