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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ RC.REV. 52/2008

MANJIT KHANNA

..... Petitioner

Through: Mr. Sandeep Sharma with
Mr. Vikas Sharma, Advocates

versus

TARLOK SINGH

..... Respondent

Through: Mr. L.D. Adlakha with
Mr. K.S. Bana, Advocates

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

03.12.2009

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This petition under Section 25B(8) of the Delhi Rent Control Act, 1958 has been preferred by the landlady against the order of the Additional Rent Controller dismissing the petition for eviction filed by her under Section 14(i)(e) of the Delhi Rent Control Act, 1958, while considering the application of the respondent/tenant for leave to defend the petition for eviction.

The procedure followed by the Additional Rent Controller is found contrary to Section 37 of the Act which is set out hereunder:-

37. Procedure to be followed by Controller.- (1) No order which prejudicially affects any person shall be made by the Controller under this Act without giving him a reasonable opportunity of showing cause against the order proposed to be made and until his objection, if any, and any evidence he may produce in support of the same have been considered by the Controller.

(2) Subject to any rules that may be made under this Act, the Controller, shall, while holding an inquiry in any proceeding before him, follow as far as may be the practice and procedure of a Court of Small Causes, including the recording of evidence.

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(3) In all proceedings before him, the Controller shall consider the question of costs and award such costs to or against any party as the Controller considers reasonable.

The counsel for the respondent/tenant has sought to justify the order by contending that the petition for eviction can be dismissed under order 7 Rule 11 of the CPC. Admittedly, there was no application under Order 7 Rule 11 of the CPC. Moreover, for that purpose only the petition for eviction has to be seen. Admittedly, from a bare perusal of the petition for eviction, it cannot be said to be not disclosing a cause of action or to be barred by any law. No opportunity/notice was also given to the petitioner/landlady that the petition for eviction was being considered on merits.

The counsel for the respondent has sought to raise other arguments, however, the same are on the merits of the case. Without any opportunity having been given to the petitioner/landlady to lead evidence, Section 37 bars the order as has been made by the Additional Rent Controller. It is not the case of the respondent that the petitioner/landlady had made a statement that the petition be decided without leading any evidence.

Accordingly, the order of the Rent Controller being not in accordance with law, this petition succeeds and the order in so far as dismissing the petition for eviction is set aside. However, the same shall be read as granting leave to defend to the respondent tenant to contest the petition for eviction. The parties to appear before the Rent Controller, Rohini on 21st December, 2009 who shall either try the case himself/herself or mark the same for trial to the Court of any other Additional Rent Controller.

The petition is disposed of. No order as to costs.

DECEMBER 03, 2009/gsr

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RAJIV SAHAI ENDLAW, J

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