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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ RC.REV. 132/2009

ASHOK KUMAR JAIN

..... Petitioner

Through: Mr. Vivek Bhardwaj, Advocate.

versus

DHARAM SINGH & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

30.11.2009

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This petition under Section 25 B (8) of the Delhi Rent Control Act, 1958 has been preferred by the tenant against the order dated 1st August, 2009 in a petition for eviction filed by the respondent/landlord under Section 14 (1) (e) of the Act with respect to a shop. The petitioner/tenant did not file the application for leave to defend the petition for eviction within time and filed the same along with an application for condonation of delay. The controller rightly held that he had no power to condone the delay. However, the counsel for the tenant contended before the controller that even if the leave to defend was to be not considered, the petitioner/tenant was entitled to show to the controller that the landlord was not entitled to an order of eviction on the basis of the averments in the petition for eviction. It was the case of the tenant that the petition for eviction was with respect to commercial shop let out for commercial purposes and notwithstanding the judgment in *Satyawati Sharma Vs. Union of India* AIR 2008 SC 3148, the petition for eviction was not entitled to be allowed. A number of judgments were cited before the controller in this regard. The controller negated the said plea and passed an order of eviction against the petitioner/tenant.

The counsel for the petitioner/tenant states that he is not pressing the argument raised before the controller. He however states that he has a very good case otherwise for having not been able to prefer the leave to defend within the prescribed time and for

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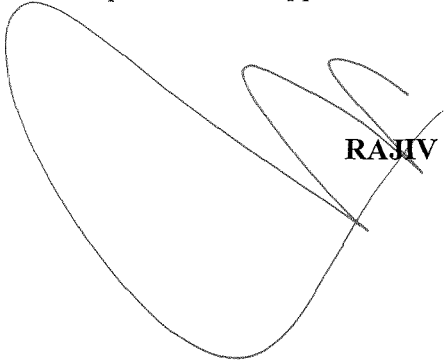
grant of leave to defend.

The Division Bench of this court in *Mohd. Quresh Vs Roopa Fotedar* ILR 1990 Delhi 16 has held that the remedy of a tenant in such a situation is in to apply to the Controller under Order 37 Rule 4 of the CPC. Upon the controller being approached by way of such an application, the controller is empowered to, if satisfied, set aside the order of eviction. The counsel for the petitioner states that the same enquiry be made by this court. However, it is deemed expedient that the said enquiry is made in the first instance by the controller rather than by this court itself.

This petition is accordingly disposed of with the liberty to the petitioner to apply to the controller as aforesaid. However, it is clarified that filing of this petition shall not come in the way of the petitioner approaching this court again if remains dissatisfied.

CM A.No.17169/2009 (u/S 151 CPC for stay).

With the disposal of the main petition, this application has become infructuous and is disposed of.



RAJIV SAHAI ENDLAW, J

NOVEMBER 30, 2009
PP