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**HIGH COURT OF DELHI : NEW DELHI**

**RC. REV. No. 74/2010 & CM No.6014/2010**

% Judgment reserved on: 21<sup>st</sup> July, 2010

Judgment delivered on: 26<sup>th</sup> July, 2010

Sh. Vinod Sharma  
S/o. Sh. Avtar Kishan  
R/o. A-7/31, 2<sup>nd</sup> Floor, Lal Quarters  
Krishna Nagar  
Delhi-110051.

....Petitioner.

Through: Mr. R.K. Ahuja and Mr. P.N.  
Sharma, Advs.

Versus

Smt. Kasturi Devi  
W/o. Late Sh. Hari Kishan  
R/o. IX/668, Subhash Road  
Gandhi Nagar  
Delhi-110031.

....Respondent.

Through: Mr. J.P. Mishra, Adv.

Coram:

**HON'BLE MR. JUSTICE V.B. GUPTA**

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|------------------------------------------------------------------------------|-----|
| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not?                                        | Yes |
| 3. Whether the judgment should be reported in the Digest?                    | Yes |

**V.B.Gupta, J.**

Present Revision Petition under Section 25-B (8) of Delhi Rent Control Act, 1958 (for short as 'Act') has been filed against order dated 14<sup>th</sup>

January, 2010 passed by Additional Rent Controller, Delhi vide which leave to defend application filed by the petitioner was dismissed and eviction order has been passed in favour of respondent and against the petitioner.

2. Brief facts of this case are that respondent is owner of property No.IX/668, Subhash Road, Gandhi Nagar, Delhi. Petitioner is a tenant therein in respect of one shop at the ground floor at the rate of Rs.440 p.m. excluding other charges. The said shop is lying locked/unused as petitioner has joined business of his brother at another place.

3. It is further stated that the respondent is a widow having a meagre rental income and she has 3 major and married sons namely Pramod Kumar, Manoj Kumar and Ajay Kumar. Her two sons are living separate with their wives and children but youngest son Ajay Kumar is living with her, who is unemployed and has no independent source of income to maintain his wife Smt. Ram Lata and three minor children. Sh. Ajay Kr. is fully dependent on the respondent financially as well as for the purpose of the accommodation and respondent is not in a position to maintain him and her family members. So she wants to settle him and to get open a General Store for him in the shop under the tenancy of the petitioner.

4. Hence, shop in question is bonafidely required by respondent for the business of her said son as the same is most suitable for above said business for her son because the same is situated on the road in the main market

notified by MCD. Respondent has no other reasonably suitable commercial premises/shop in her above said property. Moreover, respondent does not own any other property except Property No.IX/668, Subhash Road, Gandhi Nagar, Delhi, in which she and her above said sons are living with their respective wives and children, except shops with six tenants Sh. Vinod (Petitioner), Dhum Singh, Rama Maggoo, Ram Kr. Verma, Pradeep Kr. and Suraj Bhan.

5. Petitioner in his one page affidavit filed in support of leave application, has not mentioned any ground seeking leave. However, in the application for leave he has mentioned grounds which as per petitioner's case disentitle the respondent to have an eviction order.

6. Vide impugned order, leave application filed by the petitioner was dismissed and eviction order was passed in favour of respondent and against the petitioner.

7. It is contended by learned counsel for petitioner that trial court did not consider the application for leave to contest on merits and has made observations that in one page affidavit in respect of leave application, no grounds seeking leave have been mentioned. Since, petitioner has mentioned all the details in the leave application and has also filed affidavit (though the same was only one page) but that will not make any difference. In support of these contentions, learned counsel cited decision of this Court

reported as *Gian Chand v. Roop Narain, 1979 Rajdhani Law Reporter 469*, in which it was observed;

“In this case the tenant made an application as required by the summons. He made an affidavit in support of his application but it was a short one. In the affidavit he made a specific reference to the grounds set out in the application. For the “sake of brevity” he did not reproduce them in the affidavit. But it does not mean that the tenant’s application should be rejected only for the reason that he did not reproduce the grounds in the affidavit over again. The Additional Controller, I think, took too technical view. This has resulted in denial of justice.”

8. It is also contended by learned counsel for petitioner that respondent has concealed first floor of the property, since he has filed the site plan of ground floor only and not that of the first floor. Number of shops are lying vacant and the same have been shown in the site plan filed by the petitioner.

9. Other contention is that Ajay Kumar S/o. respondent for whom shop in question has been sought to be vacated, is already having a shop where he is running his business. Trial court did not consider the fact that elder son of the respondent is running business in another shop and besides that, there are number of shops lying vacant with the respondent. As such there is no bona-fide requirement of the respondent.

10. On the other hand, learned counsel for respondent has fully supported the decision of the trial court and has contended that there is no

illegality or infirmity in the impugned order. Trial court rightly passed an eviction order in this case.

11. Respondent has filed application for eviction of the petitioner under Section 14-1(e) read with Section 25B of the Act. As per this provision, the tenant after service, has to file an affidavit stating the grounds on which he seeks to contest the application for eviction. Relevant provision of Section 25B(4) of the Act reads as under;

**“25B. Special procedure for the disposal of applications for eviction on the ground of bona fide requirement.-**

**(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.”

12. As per this provision, tenant has to file an affidavit stating the ground on which he seeks to contest the application for eviction. Admittedly, in the affidavit filed by the petitioner no ground has been mentioned on which he seeks to contest the application for eviction, though he filed separately an application for leave to defend.

13. From a careful perusal of sub-Section (4) of Section 25B of the Act, it is clearly evident that tenant shall not be permitted to contest the prayer for eviction unless he files an affidavit before the Controller stating the ground on which he seeks to contest the application for eviction. There is no provision for filing of any application.

14. Supreme Court in *Prithipal Singh v. Satpal Singh (Dead) through LRs*, 2009 (14) SCALE 672 observed;

“14. From a careful perusal of Sub-section (4) of Section 25B of the Rent Act, it would be clearly evident that the tenant shall not be permitted to contest the prayer for eviction unless he files an affidavit before the Controller stating the ground on which he seeks to contest the application for eviction and obtains leave from the Controller. This Section also clearly indicates that in default of his appearance in compliance with the summons or his obtaining such leave, the statement made by the landlord in the eviction proceeding shall be deemed to be admitted by the tenant and the landlord shall be entitled to an order for eviction on the ground mentioned in the eviction petition.

15. At this stage, we may also note that in Sub-section (4) of Section 25B of the Rent Act read with Third Schedule, it has been made clear by the Legislature that if the summons of the proceeding is received by the tenant, he has to appear and ask for leave to contest the eviction proceeding within 15 days from the date of service of notice upon the tenant and if he fails to do so, automatically, an order of eviction in favour of the landlord on the ground of bona fide requirement shall be made.

16. Sub-section (5) of Section 25B of the Act clearly says that the Controller shall give to the tenant leave to

contest the eviction proceeding if the affidavit filed by the tenant discloses such facts as would itself disentitle the landlord from obtaining an order for recovery of possession of the premises on the ground specified in Clause (e) of the proviso to Section 14(1) or under Section 14A.”

15. In the present case, no affidavit as envisaged under Section 25B (4) of the Act has been filed on behalf of petitioner/tenant.

16. Nevertheless, petitioner has no case even on merits since he has nowhere given the shop numbers which are lying vacant or which are in occupation of the respondent/landlord.

17. On the other hand, respondent has narrated in the petition that there are six shops forming part of the property and all the shops are under different tenants and name of the tenants, including present petitioner, have also been mentioned in the petition.

18. Lastly, petitioner has made vague averments in his application for leave to defend.

19. Findings of the trial court in this regard are well reasoned which read as under;

“ii) the petitioner has very well narrated in the petition that there are six shops forming part of the property no.IX/668 and that all these six shops are under different tenants. The names of the tenants (including the respondent) have also been reflected in the petition. The respondent-applicant has not challenged the averment to the effect that the persons shown as tenants are not the tenants occupying the shops in property

No.IX/668. The respondent has also not challenged the veracity of the site plan filed by the petitioner. The said site plan also shows six shops therein. Moreover, the respondent has also not filed any site plan showing either the eight shops or showing the alleged vacant shops.”

20. In view of decision of Supreme Court in Prithipal Singh (Supra), the judgment cited by learned counsel for petitioner in support of his case is not applicable to the facts of the present case.

21. Under these circumstances, I do not find any ambiguity or illegality in the impugned order. Trial court rightly rejected petitioner’s application for leave to contest and passed the eviction order. Since there is no merit in the present petition, the same is hereby dismissed.

**CM No.6014/2010**

22. Dismissed.

23. Copy of this judgment be sent to trial court.

**V.B. GUPTA, J.**

26<sup>th</sup> July, 2010  
RB