

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

% *Date of Judgment: 02.11.2011*

+ **R.C. REV. No. 132/2011 & CM Nos.8238-39/2011,**
13010-11/2011

ROYAL NEPAL AIRLINES CORPORATION Petitioner
Through: Mr. A.K. Singla, Sr. Advocate
with Mr. Ramashankar,
Advocate.

versus

SHRISHTI PROPERTIES PVT LTD Respondent
Through: Mr. Sanjeev Sindhwani,
Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J. (Oral)

1. Order impugned before this Court is the order dated 13.08.2010 wherein the application filed by the tenant (Royal Nepal Airlines Corporation) seeking leave to defend in an eviction petition filed under Section 14 (1)(e) read with Section 25-B of the Delhi Rent Control Act (DRCA) by the landlord (M/s Shrishti

Properties Pvt. Ltd.) had been dismissed. This order is the subject matter of the present petition.

2. Record shows that the landlord had purchased this property from its erstwhile owner Vijay Narain and Virender Narain Seth by a registered sale deed dated 25.09.1996; the respondent was a tenant on the ground floor of the suit premises i.e. premises bearing No. 44, Janpath, New Delhi; area under the possession of the tenant is about 3000 square feet; he is the tenant @ Rs.116/- per month; tenancy dates back to about 25 years. In the eviction petition the bonafide requirement pleaded by the landlord is that he wishes to start his business but because of paucity of accommodation he cannot do so; contention is that he has received offers from various multi-national companies and seeks to enter into a collaboration agreement with them. This is the bonafide need which has been pleaded by the landlord in the eviction petition.

3. In the application for leave to defend, the triable issues have been sought to be raised. Contention of the tenant is that need of the landlord is not bonafide; attention has been drawn to the object clause of the petitioner company; contention being that the grounds for eviction as depicted in the eviction petition make

reference to the intent of the landlord to enter into a business but details of the business have not been given; contention being that the landlord in the eviction petition has stated that he wishes to carry on a hotel and restaurant business which business is not a part of the object clause of the company and unless the Articles of Association of the Company are amended, he is not permitted to carry on any such business. The whole thrust of the argument of the petitioner is that the need of the landlord is not bonafide but in fact it is malafide. Further contention being that an alternate property at 6, Babar Lane, Bengali Market, New Delhi is also available to the landlord. The second triable issue raised by the petitioner is that the petition has not been filed through a duly authorized representative; eviction petition has been filed by one Umesh Bhatt who is not authorized to file the present eviction petition; contention being that the resolution of the Board of Directors of the Company authorizing Umesh Bhatt to institute this petition is contrary to the Articles of Association of the company which only permit the Managing Director of the company to institute proceedings on behalf of the company; further contention is that the provisions of Order 29 Rule 1 read with Order 3 Rule 1 of the Code of Civil Procedure (hereinafter referred to as the 'Code') have not been adhered to. Attention has

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also been drawn to the provisions of Sections 193 & 194 of the Companies Act. To support this submission, learned counsel for the petitioner has placed reliance upon a judgment of this Court reported in AIR 1991 Delhi 25 M/s Nibro Limited Vs. National Insurance Co. Ltd. as also another judgment reported as (1994) 1 CLJ 345 (Del) Ferruccio Sias and Another Vs. Jai Manga Ram Mukhi & others. The third triable issue sought to be raised is that Section 86 of the Code creates an embargo; contention being that the tenant is a foreign state and is entitled to sovereign immunity; no suit or eviction petition could have been instituted against him without prior permission of the Central Government which in this case has not been obtained. Reliance has also been placed upon the judgments reported in (1983) 1 SCC 301 Charan Dass Duggal Vs. Brahma Nand, AIR 2000 SC 2470 Liaq Ahmed and others Vs. Habeeb-Ur-Rehman and (1982) 3 SCC 270 Precision Steel & Engineering Works & another Vs. Prem Devi Niranjana Deva Tayal to support his submission that where a prima-facie case has been made out by the tenant evidencing a triable issue, it is incumbent upon the Rent Controller to grant leave to defend to the tenant; it is pointed out that in the judgment of the Precision Steel (Supra), the Apex Court has in fact noted that the provision of Section 25-B

approach and not a negative inhibition; it casts a statutory duty upon the Controller to give to the tenant leave to contest the application for recovery of possession if the affidavit filed by the tenant prima facie and not on contest discloses such facts which if proved would disentitle the plaintiff from seeking possession. It is pointed out that triable issues having arisen in this case, the impugned order not granting leave to defend the suit suffers from a patent infirmity; it is liable to be set aside.

4. Arguments have been refuted. It is submitted that the last defence raised by the tenant i.e. the protection of Section 86 of the Code is no longer available to the petitioner as this argument has been set to rest by the judgment of the Single Bench of this Court in W.P.(C) No. 1409/2011 dated 12.10.2011 whereby the letter of the Ministry of External Affairs dated 08.05.2002 was the subject matter of challenge in a writ petition which petition has been withdrawn; attention has been drawn to this letter; this is a letter dated 08.05.2002 addressed by the Ministry of External Affairs to the landlord informing him that for a commercial transaction and matters concerning rent/lease, the same are exempted by the Central Government permission. It is submitted that this ground is now no longer open for challenge. On the

second ground also, arguments have been refuted; it is submitted that in the reply filed by the landlord to the leave to defend, the landlord has on affidavit stated that the property i.e. 6, Babar Lane, New Delhi was a tenanted property and has since been taken back by the original owner; bonafide requirement of the landlord is indeed bonafide. On the last count also, it is pointed out that the Board Resolution of the landlord company has authorized Umesh Bhatt to institute the present eviction petition and the Articles of Association as pointed out by learned counsel for the petitioner are subject to the provisions of Section 292 of the Indian Companies Act which read together authorize the company by way of a Board Resolution to permit any person of the category mentioned therein to institute a suit on behalf of the company which it had done so; the impugned order not granting leave to defend on no count suffers from any infirmity.

5. Record has been perused. This Court shall first deal with the last argument propounded by the petitioner. It is not in dispute that on 08.05.2002 a letter had been received by the landlord from the Ministry of External Affairs which was in response to the letter dated 22.04.2002 of the landlord informing him that for the purpose of the vacation of his property i.e. 44, Janpath, New Delhi

let out to Royal Nepal Airlines Corporation permission under Section 86 of the Code is not required as it is a commercial transaction and matters of rent/lease are exempted from Central Government's permission. Extract of this letter is reproduced herein as under:-

"This has reference to your letter dated 22nd April 2002 seeking permission of this Ministry for vacation of your property at No.44 (Ground Floor), Janpath, New Delhi, which has been let out to the Royal Nepal Airlines Corporation for a period of 25 years from 21st July 1975.

In this connection, it is stated that the Royal Nepal Airlines Corporation is a State-owned concern of the Royal Nepal Government, which as an entity can sue and be sued. As per Section 86 of CPC, commercial transactions and matters concerning, in particular, rent/lease etc. are exempted from Central Government's permission. Therefore, legal proceedings may be initiated against the Royal Nepal Airlines Corporation, without the prior permission of this Ministry, for non-vacation of the above property."

6. Record shows that the present eviction petition under Section 14 (1)(e) of the DRCA had been filed on 24.08.2009; it had been decreed in favour of the landlord vide the impugned judgment dated 13.08.2010. The letter of Ministry of External Affairs dated 08.05.2002 was challenged by the tenant in a writ petition being W.P.(C) No. 1409/2011 which was filed on 03.03.2011 which was admittedly after the decreeing of the eviction petition; challenge in 2011 of a letter dated 08.05.2002 is

admittedly after nine years. This writ petition had thereafter been withdrawn by the petitioner before the Single Judge on 12.10.2011; para 9 of the order clearly states so. This order was the subject matter of an LPA which was disposed of by a Division Bench of this Court on 19.10.2011. The extract of the judgment of the Division Bench in the LPA which has vehemently been highlighted by learned counsel for the petitioner reads herein as under:-

"3. The impugned order would show that the learned Single Judge has dismissed the writ petition as withdrawn pursuant to a statement made by learned counsel for the appellant and vide paragraph 12 has made it abundantly clear that while dismissing the writ petition as withdrawn the learned Single Judge had not gone into the merits of the issue raised and secondly that the revision petition challenging the eviction order would deal with the issue raised."

7. Contention of the petitioner is that this argument about the embargo of Section 86 of the Code has to be gone into by this Court and this has been noted by the Division Bench. This submission of the petitioner is apparent and borne out from the record. This Court shall accordingly address this argument.

8. The Apex Court in the case of 2011 (8) Scale *Ethiopian Airlines Vs. Ganesh Narain Saboo* had the occasion to deal with the provisions of Section 86 of the Code and its applicability to a

complaint filed under the Consumer Protection Act, 1986; in this context the Apex Court had noted that the provisions of Section 86 are excluded and are not applicable to the proceedings under the Consumer Protection Act. Counsel for the respondent has highlighted that the powers vested with the District Forum under Section 13 (4) of the Consumer Protection Act are para-materia with the powers vested with the Rent Controller under Section 36 (2) of the DRCA. This submission of learned counsel for the petitioner has force.

9. Section 13 (4) & (5) of the Consumer Protection Act has entailed the powers of District Forum and read herein as under:-

“(4) For the purposes of this section, the District Forum shall have the same powers as are vested in a civil court under Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—

- (i) the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath;*
- (ii) the discovery and production of any document or other material object producible as evidence;*
- (iii) the reception of evidence on affidavits;*
- (iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;*
- (v) issuing of any commission for the examination of any witness, and*
- (vi) any other matter which may be prescribed.*

(5) Every proceeding before the District Forum shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Code (45 of 1860), and the District Forum shall be deemed to be a civil court for the purposes of section 195, and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974). ”

10. The powers of Controller under the DRCA as detailed in Section 36 (2) reads as under:-

“(2) The Controller shall have the same powers as are tested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit, in respect of the following matters, namely: --

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) issuing commissions for the examination of witnesses;

(d) any other matter which may be prescribed,

and any proceeding before the Controller shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860), and the Controller shall be deemed to be a civil court within the meaning of section 480 and section 482 of the Code of Criminal Procedure, 1898 (5 of 1898).”

11. Except for provision of Section 13 (iv) all other powers vested with the District Forum under the Consumer Protection Act and of the Controller under DRCA are common. There is also no doubt to the proposition that both the enactments are special enactments and operate for the purpose and object for which they have been promulgated.

12. The Apex Court in the case of Ethiopian Airlines (supra) had reiterated the observations of its earlier decision in the case of State of Karnataka Vs. Vishwabharathi House Building Co-operative Society and Others (2003) 2 SCC 412 and quoted with the approval the following extracts:-

"This Court in Vishwabharathi House Building Coop. Society and Ors. (supra) dealt with the object of the Consumer Protection Act, 1986: to provide expeditious adjudication of consumers' complaints by adopting summary procedure. The Consumer Protection Act, 1986 is a comprehensive and self-contained piece of legislation, and its object is to decide consumers' complaints expeditiously, via summary procedure. The Consumer Protection Act, 1986 also permits authorized agents to appear on behalf of the complainants in order to ensure that they are not burdened with the heavy professional fees of lawyers."

13. While rejecting the plea sovereign immunity of the Ethiopian Airlines qua commercial transactions, the Apex Court in the case had also noted:-

"70. Ethiopian Airlines is not entitled to sovereign immunity with respect to a commercial transaction is also consonant with the holdings of other countries' courts and with the growing International Law principle of restrictive immunity. For instance, in England, in Rahimtoola v. H.E.H. The Nizam of Hyderabad and Ors. (1957) 3 All E.R. 441, Lord Denning found that "there was No. reason why [a country] should grant to the departments or agencies of foreign governments an immunity which [the country does] not grant [its] own, provided always that the matter in dispute arises within the jurisdiction of [the country's] courts and is properly cognizable by them." Lord Denning also held that "if the dispute concerns... the commercial transactions of a foreign government... and it arises properly within the territorial jurisdiction of [a

country's] courts, there is No. ground for granting immunity," finding implicitly that it would not "offend the dignity of a foreign sovereign to have the merits of such a dispute canvassed in the domestic courts of another country."

.....In the modern era, where there is close interconnection between different countries as far as trade, commerce and business are concerned, the principle of sovereign immunity can no longer be absolute in the way that it much earlier was. Countries who participate in trade, commerce and business with different countries ought to be subjected to normal rules of the market. If State owned entities would be able to operate with impunity, the rule of law would be degraded and international trade, commerce and business will come to a grinding halt. Therefore, we have no hesitation in coming to the conclusion that the Appellant cannot claim sovereign immunity. The preliminary objection raised by the Appellant before the court is devoid of any merit and must be rejected."

14. The Apex Court in the case of Prithipal Singh Vs. Satpal Singh (Dead) through its LRs. (2010) 2 SCC 15 also had the occasion to deal with the provisions of Section 14 (1)(e) read with Section 25-B of the DRCA. This was a case where the application for leave to defend had been filed belatedly; condonation of delay of 8 days had been disallowed on the ground that the procedure for dealing with a petition under Section 14 (1)(e) is contained in Section 25-B of the said Act; Section 25-B of the Act is a complete Code in itself and in this context applicability of Rule 23 of the DRCA Rule, 1959 was also negatived. The Apex Court had inter-alia noted as under:-

"The dominant object of the act is to provide a speedy, expeditious and effective remedy for a class of landlords contemplated by Sections 14(1)(e) and 14A and for avoiding unusual dilatory process provided otherwise by the Rent Act. It is common experience that suits for eviction under the Act take a long time commencing with the Rent Controller and ending up with the Supreme Court. In many cases experience has indicated that by the time the eviction decree became final several years elapsed and either the landlord died or the necessity which provided the cause of action disappeared and if there was further delay in securing eviction and the family of the landlord had by then expanded, in the absence of accommodation the members of the family were virtually thrown on the road. It was this mischief, which the Legislature intended to avoid by incorporating the new procedure in Chapter III-A. The Legislature in its wisdom thought that in cases where the landlords required their own premises for bona fide and personal necessity they should be treated as a separate class along with the landlords covered by Section 14(A) and should be allowed to reap the fruits of decrees for eviction within the quickest possible time. It cannot, therefore, be said that the classification of such landlords would be an unreasonable one because such a classification has got a clear nexus with the objects of the Amending Act and the purposes, which it seeks to subserve. Tenants cannot complain of any discrimination because the Rent Act merely gave certain protection to them in public interest and if the protection or part of it afforded by the Rent Act was withdrawn and the common law right of the tenant under the Transfer of property Act was still preserved, no genuine grievance could be made."

.....

As noted herein earlier, Section 25B(1) clearly says that any application filed by a landlord for recovery of possession of any premises, inter alia, on the ground of Section 14(1)(e) of the Rent Act, shall be dealt with in accordance with the procedure specified in Section 25B of the Rent Act. Therefore, subsection (1) of Section 25B makes it clear that if any application for eviction of a tenant is filed by the landlord, the special procedure indicated in Section 25B has to be followed and Section 25B(1) clearly stipulates that the application for eviction shall be strictly dealt with in accordance with the procedure specified

in this Section. Apart from that, as we have noted herein earlier, Section 25B itself is a special code and therefore, Rent Controller, while dealing with an application for eviction of a tenant on the ground of bona fide requirement, has to follow strictly in compliance with Section 25B of the Act. Therefore, after insertion of Section 25B of the Act, any application for granting eviction for a special kind of landlord, shall be dealt with strictly in compliance with Section 25B and question of relying on Rule 23 of the Code, which also does not give full right to apply the provisions of the Code, could be applied."

15. In the facts of the instant case, doctrine of sovereign immunity as contained in Section 86 of the Code is also not available to the tenant. Letter dated 08.05.2002 of the Ministry of External Affairs clearly states so; moreover this letter which was the subject matter of challenge in W.P. (C) No. 1409/2011 was a petition which was permitted to be withdrawn by the petitioner on his specific asking; this was on 12.10.2011; obviously the petitioner was no longer aggrieved by the contents of this letter dated 08.05.2002 which clearly stated that for commercial transactions including matter of rent/lease permission of the Central Government under Section 86 of the Code is not required; this letter had been addressed to the landlord specifically informing him that for an eviction petition to be filed against the Royal Nepal Airlines Corporation, no such permission is required. The petitioner no longer aggrieved by this letter had withdrawn the petition which had challenged this letter. The judgment of the

Division Bench has only asked this revision Court to delve into this controversy. This Court is of the considered view that the impugned order holding that sovereign immunity is not available to the tenant suffers from no infirmity. This had in fact been answered by the Central Government itself in its letter dated 08.05.2002 which has since attained a finality. No triable issue has been arisen on this point; the fact that a writ petition had been filed challenging this letter dated 08.05.2002 also shows that it involved a question of law; disputed questions of fact cannot be gone into in a writ proceeding; this objection of the petitioner is thus clearly without any merit.

16. The next objection of the petitioner that the eviction petition has not been instituted by a duly authorized person is also a moonshine defence; it appears to be illusory. It is not in dispute that along with the eviction petition, the board resolution of the landlord company i.e. M/s Shrishti Properties Pvt. Ltd dated 15.07.2009 had been filed resolving that Umesh Bhatt is authorized to represent the company in all legal matters as also to institute, sign and verify legal proceedings before all courts, tribunals and arbitrators on behalf of the company. Article 48 A of

the Articles of Association of the landlord company also interalia states as under:-

“the Board of Directors may, from time to time and subject to the restrictions contained in Section 292 of the Act, delegate to a committee or committees consisting of one or more directors or to managers, secretaries, officers, assistants and other employees or persons any of the powers, authorities and discretions for the time being vested in the Directors and may, at any time revoke such powers, authorities and discretions.”

17. Thus the submission of the petitioner that the Articles of Association did not authorize the Board of Directors to pass a resolution authorizing any person other than the Managing Director of the company to institute a suit on behalf of the company is negated. The judgments relied upon by learned counsel for the petitioner on this score do not come to his aid. In M/s Nibro Limited (Supra) provisions of Order 29 Rule 1 of the Code were under consideration; there is no dispute to the proposition that the right to institute a suit is distinct and different from the provisions of Order 29 Rule 1 of the Code which makes a reference to the signing and verification of the pleadings. This was a case where there was no resolution passed by the company authorizing G. Jhajharia to institute a suit on behalf of the company. Facts of the instant case are distinct; board resolution of the landlord company in this case has specifically

authorized Umesh Bhatt to institute a suit on behalf of the company. In the Judgment of *Ferruccio Sias* (supra) challenge was to the fact that four additional directors of the company had been appointed while some of the members of the Board of Directors were abroad; it was in these circumstances that an issue had been framed on the authority of the so called whole time Director to institute a suit on behalf of the company. There is no such challenge in the instant case; in the application for leave to defend ground 'd' has merely made a passing reference stating that the petition has not been signed by a duly authorized and competent person; further contention being that the copy of the resolution has not been furnished to the tenant. This later averment is negated by the admitted fact that the Resolution of the Board of Directors had been filed by the landlord company along with the eviction petition itself. This defence raised by the petitioner does not in any manner raise any triable issue; submission of the respondent on this count is that if this is treated as a triable issue then in all eviction petitions filed by a corporation, even though the Board Resolution is appended along with the eviction petition; merely on the asking of the tenant, it would become a triable issue and this was definitely not the intent

contained in Section 25-B of the DRCA which was introduced by the promulgation of Chapter III (a) in the DRCA for dealing with the eviction petition under Section 14 (1)(e) in a summary manner. This submission of learned counsel for the respondent also has force. Thus this objection of the petitioner not raising a triable issue, it is also rejected.

18. The last ground urged by the petitioner is contained in clauses 'f' and 'g' of his grounds for leave to defend. His contention is that the landlord has another office at 6, Babar Lane, Bengali Market. As noted supra, on affidavit the landlord has denied this position; his affidavit on oath has stated that these premises were tenanted premises of Sunita Gupta which have since been returned back to her; the landlord has specifically in his reply affidavit further averred that the petitioner company does not in fact have any other accommodation in the entire National Capital Territory of Delhi except these premises in question. Submission of the petitioner that the landlord also owns a property at Greater Kailash has not been pressed as the learned counsel for the petitioner has fairly conceded that the address of the so called property at Greater Kailash is not known to him. This has also been specifically denied by the respondent; landlord has

categorically stated that he has no premises at Greater Kailash. Rejoinder has also been filed. In 1998 RLR 217 Mohd. Shamim Vs. Naseeban where the landlord in his reply affidavit had specifically denied the grounds raised by the tenant and no rejoinder had been filed refuting the stand of the landlord, a Bench of this Court had noted that the facts stated in the counter affidavit of the landlord thus remain on record since the same have not been refuted. It is also relevant to state that in the application for leave to defend, the petitioner has nowhere denied that the need of the landlord is not bonafide; in the ground 'G' in his application for leave to defend the tenant has stated that the landlord can expand his business through internet and this space is not really required by him.

19. The Apex Court has time and again noted that it is prerogative of the landlord to decide whether the premises are required for expansion of his business or not; in this context the observations of the Apex Court in the case of Sait Nagjee Purushotam & Co. Ltd. Vs. Vimalbai Prabhulal and Others (2005) 8 SCC 252 is relevant; it reads as under:-

"It is always the prerogative of the landlord that if he requires the premises in question for his bona fide use for expansion of business this is no ground to say that the landlords are already having their business at Chennai and Hyderabad

therefore, it is not genuine need. It is not the tenant who can dictate the terms to the landlord and advise him what he should do and what he should not. It is always the privilege of the landlord to choose the nature of the business and the place of business.”

20. Sarla Ahuja Vs. United Insurance Company Limited VIII

(1998) SLT 374, the Apex Court had observed as under:-

“The crux of the ground envisaged in Clause (e) of Section 14(1) of the Act is that the requirement of the landlord for occupation of the tenanted premises must be bona fide. When a landlord asserts that he requires his building for his own occupation the Rent Controller shall not proceed on the presumption that the requirement is not bona fide.

When other conditions of the clause are satisfied and when the landlord shows a prima facie case it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bona fide. It is often said by Courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.”

21. The Apex Court in Hari Shanker and others Vs. Rao Girdhari Lal Chowdhury AIR 1963 S.C. 698 while dealing with the scope of revisional powers of High Court under the proviso of Section 25-B (8) had noted the purport of legislative intent of this enactment; it had in this context observed as under:-

“In our opinion the jurisdiction of the High Court under proviso to Section 25B (8) has to be interpreted, keeping in view the legislative intent. The revision under Section 25B(8) cannot be regarded as a first appeal and nor can it be as restricted as the revisional jurisdiction under Section 115, CPC. The High Court

would have jurisdiction to interfere if it is of the opinion that there has been a gross illegality or material irregularity which has been committed or the Controller has acted in excess of his jurisdiction or has not exercised the jurisdiction vested in him. A finding of fact arrived at by the Controller would not be interfered with by the High Court unless it can be shown that finding has been arrived at by misreading or omitting relevant evidence and this has resulted in gross injustice being caused. If none of the aforesaid circumstances exist the High Court would not be entitled to interfere with the order of the Controller in exercise of its jurisdiction under proviso to Section 25B(8) of the Act."

22. The conspectus of the aforementioned judgments pronounced by the Courts is to the effect that where the need shown by the landlord is bonafide and the tenant has failed to dispel this submission of the landlord; i.e. where the tenant has failed to show that the need of the landlord is not bonafide but it is fanciful or malafide only then would it be a case where a triable issue is evidenced. This is not so in the present case. There is no dispute that the tenant has nowhere disputed the need of the landlord to expand his business; in fact during the pendency of these proceedings in part execution, out of 3000 square feet area which is under the possession of the tenant, 500 square feet have been reverted back to the landlord; landlord has also on affidavit also stated that apart from this property, he has no other premises in the NCR of Delhi; his need for expanding his business has clearly been made out; his need is genuine and bonafide; the pointer of

the tenant that the landlord should expand his business through computer and internet and for this reason premises are not required by him is to say the least an over-reaching submission; it is not for the tenant to dictate terms to the landlord; it is the landlord who is the best judge of his requirement and he has complete freedom in the matter to decide how and in what manner he wishes to carry on his business; in fact as noted earlier no malafides have at all been imputed to this need of the landlord.

23. In Prithipal Singh (supra) the Apex Court has in deep detail dealt with the object of the Rent Act and also the insertion of Chapter III-A; the dominant object of the amending Act being that there should be a speedy, expeditious and effective remedy for special class of landlords who are contemplated under Section 14 (1)(e) of the DRCA and this has also been noted supra.

24. The judgments relied upon by the learned counsel for the petitioner do not advance his submission. The case of Precision Steel (supra) relied upon by him in fact states that the prayer for leave to contest should be granted to the tenant only where a prima-facie case has been disclosed by him. In the absence of the tenant having disclosed a prima-facie case i.e. such facts as to what disentitles the landlord from obtaining an order of eviction,

the Court cannot mechanically in routine grant leave to defend. It has also to be borne in mind that the trial is required for establishing facts and not law;

25. In Nem Chand Daga Vs. Inder Mohan Singh Rana 94 (2001)

DLT 683, a Bench of this Court had noted as under:-

“That before leave to defend is granted, the respondent must show that some triable issues which disentitle the applicant from getting the order of eviction against the respondent and at the same time entitled the respondent to leave to defend existed. The onus is prima facie on the respondent and if he fails, the eviction follows.”

26. No triable issue has been raised in this case. The defences sought to be propounded by the petitioner are sham, moonshine and illusory and take him nowhere. As noted supra until and unless the tenant has raised disputed questions of fact for which a trial is required, the intent of the Legislature is that the Courts shall not in a mechanical manner grant leave to defend. The impugned order dismissing the application of the tenant for grant for leave to defend in no manner suffers from any infirmity.

27. Dismissed.

NOVEMBER 02, 2011
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INDERMEET KAUR, J