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

% *Date of Judgment: 04.01.2011*

+ **R.S.A.No.183/2010 & CM No.18263/2010**

S.AMARJEET SINGH

.....Appellant

Through: Mr.Kirti Uppal and Mr.Pradeep
Chandel, Advocates.

Versus

MS.HARINDER KAUR

.....Respondent

Through: Mr.Ghanshyam Mishra and
Mr.V.S.Mehta, Advocates

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. This appeal has impugned the judgment and decree dated 21.7.2010 which had endorsed the finding of the trial judge whereby the suit of the plaintiff Harinder Kaur seeking possession, permanent injunction and mesne profits 200/- per month had been decreed.

2. The appellant before this Court was the defendant before the trial judge. His contention was that after the death of his father on 04.3.2000 the appellant being financially dependent upon his father had inherited the tenancy from his father and in terms of Section 2(ℓ) of the Delhi Rent Control Act 1958 (hereinafter referred to as 'the DRCA') he was entitled to retain the accommodation in his independent capacity.

3. The suit premises are bearing property No.5039 & 5005, Chamanganj Street, Roshnara Road, Subzi Mandi, Delhi. Plaintiff is undisputedly the owner of the said property. The property had been leased out to Iqbal Singh. The plaintiff vide legal notice dated 08.9.1998 had terminated the tenancy of Iqbal Singh who thereafter became a statutory tenant. Iqbal Singh expired on 04.3.2000. The eviction proceedings pending inter se between the parties were dismissed after the death of Iqbal Singh. The present suit was filed by the plaintiff after the expiry of one year of the death of Iqbal Singh alleging the appellant to be a trespasser and an unauthorized occupant in terms of Section 2(ℓ) of the DRCA.

4. The defendant contested the claim on the ground that he being financially dependent upon his father and residing with him

at the time of his death had inherited the tenancy.

5. Trial judge framed eight issues. On the oral and the documentary evidence which was held by the respective parties the Court was of the view that the appellant was not financially dependent upon his father; he being a trespasser was liable to be evicted. Decree for possession was passed.

6. This finding of the trial judge was endorsed in appeal.

7. This is a second appeal. On behalf of the appellant it has been urged that the provisions of Section 2(l) of the DRCA had not been appreciated in their correct perspective; the said provision had been engrafted in the statute with a laudable objective, the objective being that a helping hand has to be lent to a hapless spouse, son, daughter or parents by protecting him/them from the vagaries of being rendered homeless in the face of the loss of bread winner; the concept of “financial dependence” has to be understood in this background. Learned counsel for the appellant has placed reliance upon a judgment of the Division Bench of this Court reported in 2001 2 RCR 364 Krishna Prakash Vs. Dilip Harel Mitra Chenoy to substantiate this submission. Reliance has also been placed upon 1985 RCR 29 Lachmhi Devi Vs. Hira Lal . It is submitted that even presuming that the appellant was earning

₹3000/- per month in the year 2000 it would not be sufficient for him to sustain himself which clearly shows that the appellant was financially dependent upon his father and that has not been appreciated by both the Courts below.

8. Arguments have been countered. It is submitted that there is no fault in the finding in the impugned judgment.

9. The impugned judgment has dealt with this proposition and has examined the provisions of Section 2(ℓ) of the DRCA as also the explanation thereto. The relevant extract reads as follows:

“Thus the law is clear that if the son is financially dependent upon his deceased father on the date of death of his father and after expiry of one year period he would no longer remain a tenant and thus the relationship of landlord and the tenant would no longer exist and be then and his status would become that of a tress passer and in such a situation Civil Courts would have jurisdiction to entertain any suit for possession brought by the landlord. However if in the very same case the son is financially dependent upon his father (statutory tenant) on the date of his death, he will also be deemed to be a statutory tenant and the relationship of landlord and the tenant would be there and power of Section 50 would also apply in such circumstances. Financial dependency for the purposes of this section would not only include dependency for the purpose of livelihood but also for the purposes of residence.

The trial court record shows that though at one point of time, the defendant's/appellant's father owned the DDA flat bearing no.6, Phase-I, Block B, IV/64-C, Lawrence Road Delhi but the same was sold to Sh.S.K.Jain by the appellant's father in 1998 itself who subsequently sold it to DW-2. The other property in

the name of the appellant was flat no.208, Pocket 13, Block D, Sector 7, Rohini Delhi which was also sold to DW-3 who has been residing in the said property for the last about 16 years. Both these properties were sold by virtue of General Power of Attorney, agreement to sell and registered Will, thus a legally recognizable transaction was there, though in the DDA records the changes have not been done. However, the change in ownership in such a manner is recognized by courts and thus these properties are no longer owned by the appellant notwithstanding the fact that it is the appellant who is shown as the owner in DDA records. But the way the appellant seeks to take into consideration and the ground reality, when the property change multiple hands, while in the records of DDA the original allottee stands owner. In the same fashion, this factual position cannot be ignored either that the sale must have fetched handsome amount and it cannot be ruled out that a person having no personal abode which in all probability go to purchase one for himself. The other inference is that the appellant was on the look out of speculation gains and wanted rather unjustly enriched himself at the wish of others. He, on one hand sells away his own house in open market and clings to other property. How far this is justifiable and permissible.

The appellant has stated that he earns approximately Rs.3000/- per month however he has not produced any document in support of his averment, but the WS in a prior eviction proceedings pending between the deceased father of the appellant and the present respondent which was filled by the respondent in the Trial Court on which the respondent relied to show that the father of the appellant was ill and was financially dependent on the appellant and the appellant was earning and supporting the family including the deceased father. Though the appellant has not produced any document to show that he is earning Rs.3000/- per month nor the respondents have produced any document to controvert that he is earning more than

Rs.3000/- per month. The WS in the prior suit was produced by the respondents to substantiate their claim. Therefore, in view of the evidence to the contrary, this court finds no reason to disbelieve the fact that the appellant would be earning approximately Rs.3000/- per month at the time of death of his father. The very same WS, however, also shows that at the time of death of the statutory tenant, he was dependent upon his son who was the sole bread winner of his family.”

10. The evidence led before the court had established that in the prior eviction proceedings which were inter se pending between the parties it had been admitted by the appellant that he was earning about ₹3000/- per month; his father was ill and bed ridden; he was 75 years of age and suffering from old age disease such as diabetes, hypertension and most of the time he was confined to bed and he had no source of income; the janta flat which had been allotted to him had been disposed of by him as he did not have sufficient money to retain the said flat. The appellant was earning ₹3000/- by booking trucks on commission basis. These facts had emerged in the judgment of the trial judge (para 12).

11. These fact findings clearly evidence that it was the father in fact who was dependent upon the son; he having no independent source of income. The son was admittedly earning a minimum of ₹

3000/- per month. In this back ground the Courts below had rightly endorsed the findings that this was a case where the son/appellant was not financially dependent upon his father. Provisions of Section 2(ℓ) of the DRCA did not come to his aid. There is no perversity in this finding and it calls for no interference.

12. The judgment of Lachhmi Devi (supra) is distinct on its facts. In this case the widow had claimed the protection under the provisions of Section 2(ℓ) of the DRCA; after the death of her husband she had taken up menial jobs of cleaning utensils and washing clothes in houses to earn her livelihood; her husband was doing the work of wooden crates; it was in these circumstances that the Court had held that the wife was financially dependent upon her deceased husband. Facts are distinct and inapplicable to the instant scenario. The judgment of Krishan Prakash (supra) has in fact expounded the intention of the legislature in incorporating this provision and a distinction between an ostensible dependence and factual dependence had been drawn. This judgment has recorded that it would be contrary to the letter and spirit of this beneficial provision embodied in Explanation II Section 2(ℓ) of the DRCA to treat a legal heir as financially

dependent who had sufficient means to meet his necessities of life on the date of the death of the statutory tenant. The scenario in the instant case shows that it was the appellant who was the financial earner in the family; his father being confined to bed had no source of income. Court below had rightly held that the appellant was not financially dependent upon the statutory tenant. The finding in the impugned judgment calls for no interference. No substantial question of law has arisen. Appeal is without any merits. Appeal as also the application is dismissed in limine.

INDERMEET KAUR, J.

JANUARY 04, 2011
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