

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

% *Date of Judgment: 24.10.2011*

+ **RC.REV.No.428/2011 & CM No.19594/2011**

SHRI RAMESH KUMAR Petitioner
Through: Mr. Y.S. Chauhan, Advocate.

Versus

SHRI MOHD. IBRAHIM AHMED PAI Respondent
Through: Nemo

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. The petitioner is aggrieved by the order dated 29.07.2011. Vide this order, the application for leave to defend filed by the tenant had been dismissed.

2. Record shows that the present eviction petition had been filed under Section 14 (1)(e) read with Section 25-B of the Delhi Rent Control Act (DRCA). The respondent is the tenant of the

premises i.e. 3385, ground floor, Delhi Gate, Delhi. In the eviction petition it has been averred that the premises are required bonafidely by the petitioner for running a private spectacle shop for the purpose of business of his son and grandsons both of whom are dependent upon him. In the eviction petition, the petitioner has admitted that he has five small shops bearing No. 3377, 3378, 3379, 3380 and 3385; all are occupied by other tenants; the present premises are bonafidely required by him for his son and grand sons who are dependent upon him in order they can carry out their business from there. In the eviction petition, the first contention raised was that the petition is barred under Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956 as necessary permission under Section 19 of the Act has not been taken. This objection had been conceded and in view of the judgment of a Bench of this Court reported in 17 (1980) DLT 344 Krishna Devi Nigam Vs. Sham Babu Gupta for an eviction petition under Section 14(1)(e) of the DRCA, permission under Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956 is not a pre-condition. This objection is without any merit. The second contention raised by the tenant in his application for leave to defend was that the petitioner is not the owner and he is not a tenant; this argument was also not pressed in view of the property

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tax receipts placed on record by the landlord which documents remained undisputed; the rent receipts bearing the signatures of the tenant Ramesh had also been placed on record; these documents were also not in dispute. Landlord-tenant relationship having admitted and there being no serious dispute about the imperfectness of the title of the premises in question, this objection was also without any merit and in fact was not pressed before this Court. The only argument urged before this Court that there is an alternate accommodation which is available with the landlord and this comprises not only of the five shops (referred to Supra) as noted in the eviction petition but also another haveli bearing No. 1304, Hisamuddin, Ballimaran, Delhi as also a compound of about 5000 square yards bearing No. 3387, situated in Delhi Gate Bazar.

3. In the reply filed by the landlord, these averments were answered; there is no dispute about the fact that the aforementioned five shops i.e. shops bearing No. 3377, 3378, 3379, 3380 and 3385 had been leased out to earlier tenants and this has been stated by the landlord himself in his eviction petition. These premises are thus not available to the landlord for his use. The premises bearing No. 1304, Hisamuddin, Balimaran, Delhi is a residential house where he along with his family member is living and there

are two tenants on two other floors; this submission has been substantiated by the rent receipts showing the presence of the said tenants on the said two floors of the said property. Qua the third property i.e. 3387 in Katra Hisamuddin, Ballimaran, Delhi contention of the landlord is that it is not a 5000 square yards property but it is only 1000 square yards and this is under the tenancy of Choudhary Bir Singh since 1947 and after the death of Bir Singh his son and grandson had become tenants and eviction petition on the ground of non-payment is pending against them before the ARC. These facts are undisputed. The only contention urged today before this Court that a triable issue had been arisen for the reason that this disputed plot is 5000 square yards as has been alleged by the tenant but the landlord has averred that it is only 1000 square yards and this can be decided only by way of evidence. Relevant would it be to state that in the reply filed to leave to defend application, the landlord has specifically stated that this property i.e. property No. 3387 is 1000 square yards; no rejoinder has been filed to this reply affidavit; nothing has been substantiated by the tenant to show that this plot comprises of 5000 square yards and not 1000 square yards; no site plan or any other document to this effect has been placed on record. In these circumstances, the ARC had correctly noted that the defence

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sought to be raised by the tenant that this property comprises of 5000 square yards is only sham and moonshine; it being illusory only, no prima-facie right to defend the eviction petition had arisen in favour of the tenant. The impugned order has correctly noted that the petitioner has a son namely Qaiser Ibrahim aged 46 years, grandson Anas Ibrahim aged 20 years and another grandson Fahed Suleman aged 25 years; they are all dependent upon the petitioner; because of the non-availability of any shop, they are not able to carry out their business; bonafide need of the petitioner is that his son and grandsons wants to do business from the aforementioned shop; their need is bonafide. The only argument that the property bearing No. 3387 was 5000 square yards which was unsubstantiated by any document, it was rightly rejected. Court had correctly noted that no triable issue had arisen.

4. It is not for the tenant to dictate terms to the landlord and decide the manner in which he has to live his life; the bonafide requirement of the landlord is best known to himself; unless the tenant is able to show that the need as set up by the landlord is malafide, fanciful and not bonafide and there being no triable issue; an application for leave to defend cannot mechanically in routine be granted. If this is done, the provisions of Section 14

(1)(e) read with Section 25-B of the DRCA which is an enactment
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engrafted by the Legislature to dispose of an eviction petition summarily would be given a go-bye. The impugned order suffers from no infirmity.

5. Dismissed.

OCTOBER 24, 2011

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INDERMEET KAUR, J