

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

% *Date of Judgment: 21.10.2011*

+ **R.C.R. No. 426/2011 & CM Nos. 19521-22/2011**

SHRI DEVENDER PANDEY Petitioner
Through: Mr. Kartikay Mathur,
Advocate.

Versus

SMT. BIMLA 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 Order impugned before this Court is the order dated 28.05.2011 whereby the application for leave to defend filed by the tenant Shri Devender Pandey had been dismissed.

2 Record shows that the present eviction petition has been filed by Bimla against her tenant under Section 14 (1)(e) of the Delhi Rent Control Act (DRCA); she claims herself to be the owner/landlord of shop measuring 6' X 3' situated at the ground

floor of property bearing No. 40/2976, Bidanpura, Karol Bagh, New Delhi; premises have been let out at a monthly rental of Rs.375/-. She is a widow having three daughters and one son; the bonafide requirement of the shop is for her two unemployed daughters i.e. for a commercial purpose i.e. stitching suits.

3 An application for leave to defend had been filed by the tenant; his contention was that the petition has been filed malafidely only to extract enhanced amount of rent; further contention being that the permission under the Slum Act has not been obtained; in the application for leave to defend, it has further been averred that the property in question is a five storeyed building and various portions have been let out to various other tenants; this by itself destroys the bonafide need urged by the petitioner. However the only argument urged before this Court today is that the five storeyed is building of the landlord is disentitled to ask for this shop which is only a small shop measuring 6'X 3' which would even otherwise not be suitable for running a stitching business; moreover the landlord already has possession of the portion on the first floor of the house. Other grounds mentioned in the application for leave to defend have not been pressed.

4 The prayer made in an application for leave to defend can be

granted only if some triable issue is shown; in the absence of which a defence which is sham or moonshine is not sufficient to entertain such an application. The only bone of contention of the petitioner is that the premises is a five storeyed building and the premises have been let out to other tenants which by itself destroys the bonafide need of the landlord; on a specific query put to the petitioner who under instructions from his client has admitted that this portion of the property which has been let out are all old tenancies; thus even presuming that these premises have been let out at earlier times; the need of the petitioner is now a room on the ground floor in order that her two daughters can carry on the stitching business which the petitioner is also doing; it is not in dispute that the petitioner herself along with her family is living on the first floor and this shop thus is bonafidely required by her for the said purpose i.e. as averred in the petition.

5 Impugned order suffers from no infirmity. No other ground has been urged or argued.

6 Dismissed.

INDERMEET KAUR, J

OCTOBER 21, 2011

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