

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

% *Date of Judgment: 17.11.2011*

+ **RC.Rev. No. 459/2011**

ABDUL MATIN & ORS. Appellant
Through: Mr. M. Taiyab Khan, Advocate.

Versus

MOHD. RAFI 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)

CM No. 20732/2011(exemption)

Exemption allowed subject to just exceptions.

RC. Rev. No. 459/2011 and CM No. 20731/2011(stay)

1. The order impugned before this court is the order dated 16.08.2011 vide which the application filed by the tenant seeking leave to defend in a pending petition under Section 14(1)(e) of the Delhi Rent Control Act (DRCA) had been dismissed.
2. The learned counsel for the petitioner has submitted a

two-fold argument; his first contention is that all the legal representatives of the deceased tenant should have been joined and non-joinder of some of the tenants is erroneous and this has raised a triable issue. This submission of the petitioner has no force. There is no dispute that after the death of the original tenant the tenancy devolves upon the legal representatives as joint tenants and not as tenant-in-common and the eviction petition filed by the landlord against one or the other legal representative of the deceased tenant who is in occupation of the premises is a valid petition. This position has been affirmed by the judgment of a coordinate Bench of this court in RC.Rev. No.17/2008 reported in 2008 VIII AD (Delhi) 328 titled as in Inder Pal Khanna vs. Bhupinder Singh Rekhi; there is thus no force in this submission; it does not in any manner raise a triable issue.

3. Second submission of the learned counsel for the petitioner is that the landlord has another alternate accommodation and this has been specifically averred by the petitioner in his application for leave to defend and for this submission attention has been drawn to para 15 of the application for leave to defend; in this para it has been stated that the son of the petitioner has a plot in Wazirabad Area; petitioner has also another

accommodation in Delhi. Admittedly, the accommodation of Delhi
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has not been specified by the tenant i.e. the detail of the other accommodation; in the corresponding para of the reply the landlord has specifically denied that he has any other accommodation in Delhi; the landlord has specifically averred that the present accommodation which is with the tenant is the only accommodation which he has in Delhi. Further the submission in reply to para 15 is that it is the son of the petitioner who has a plot in Wazirabad; a plot cannot be equated with a residential house which is the property in question.

4. The premises in question in fact comprises of three rooms, one store, WC with an open space on the first floor of property No. 2022 Gali Quasim Jain, Ballimaran, Delhi of which the petitioner is admittedly the owner and the landlord. It is also relevant to state that the petitioner himself is about 80 years of age; his family comprises of himself and his three sons and one daughter. He has specifically averred that two of his sons are married and they both have two children each; his grandson is also married. The accommodation in possession of the petitioner is only one room, one small room, one store, kitchen and toilet with covered dallan and a shop on the ground floor, one store and Bathroom are at first floor and one hall on the second floor. The family of the petitioner comprises of three married couples and

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four grand-children between the ages of 13 to 23 years. Petitioner has only three rooms for a family of 12 members which is not sufficient; the present accommodation is bonafidely required by him for his need as also for the family members who are dependent upon him and living with him. It was in this factual scenario that the application for leave to defend had been dismissed.

5. This order suffers from no infirmity; it is dismissed.

INDERMEET KAUR, J

NOVEMBER 17, 2011

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