

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
% *Date of Judgment: 27.04.2012*

+ RC.REV. 178/2012 and CM Nos. 7562-7563/2012

SAGAR MAL ..... Petitioner  
Through Mr. J.C. Mahindru, Adv.  
versus

SUDHIR KUMAR KAPOOR ..... Respondent  
Through None.

**CORAM:**  
**HON'BLE MS. JUSTICE INDERMEET KAUR**

**INDERMEET KAUR, J.** (Oral)

1 Impugned judgment is dated 20.07.2011; eviction petition filed by the landlord under Section 14(1)(e) of the Delhi Rent Control Act (DRCA) had been decreed; the application filed by the tenant seeking leave to defend had been declined. Premises have been described as Shop No. 3 as part of property bearing No. B-3, Rana Pratap Bagh, Delhi had been tenanted out @ Rs. 152/- per month.

2 Record shows that the eviction petition has been filed on the ground of bona fide requirement; petitioner claims to be the owner of the suit property; he had purchased the same by virtue of a registered sale deed 04.04.1962. Initially the premises have been tenanted out to

the tenant where he was carrying on the work of embroidery thereafter he has changed the said work of embroidery and converted it into Video cassettes Library. The petitioner is a Civil Structural Design Engineer; he was working with the Ministry of Petroleum and Natural Gas; he is a post graduate in Civil Engineering from the Delhi University and also possess a certificate of Chartered Engineers recognizing him as certified practitioner; he is due to retire in October 2010 i.e. when he will superannuate at the age of 60 years; he wishes to carry out a business of consultation after his retirement i.e. for the purpose of giving civil and structural design consultancy and he wishes to carry out the business of civil and structural design in the aforementioned premises.

3      Contention is that for the working of this office he requires minimum 400 sq. ft. to accommodate himself, the enclosures for 1 design engineer, two drafting personnel, one clerk as also the infrastructure i.e. printer, fax machines, xerox machine and storage space for books and literature. After the aforementioned premises are vacated the petitioner will even then have only 200 sq. ft. working area; the aforementioned premises are required by him urgently. Further contention is that the younger son of the petitioner namely, Neeraj who is married

has one daughter; he is also unemployed and lives with the petitioner; he is a graduate from Delhi University and has cleared 3 years GNIIT; his son shall associate him in this aforementioned consultancy business which the petitioner wishes to carry out. Petitioner's family comprises of 6 adults i.e. of himself, his wife, two sons and two daughters in law and one grand-daughter. He has close family relatives which includes six married sisters; all are living in Delhi who regularly visit him. The accommodation presently available with the petitioner consists of one living room on the ground floor; one drawing room, one living room, one kitchen and a verandah on the first floor; on the second floor, there are three bed rooms. There are three shops on the ground floor, one of which is with the present tenant; all these structures have been built on a plot of 100 sq. yds.; the residential accommodation presently available with the petitioner is also insufficient; present premises are required by the petitioner by fulfilling his need to start a consultancy business in which he will be helped by his younger son-Neeraj; further contention is that the tenant was earlier using the shop himself and since the last 5 to 6 years, he has in fact sub-let it. . Eviction petition on the ground of bonafide need was accordingly filed.

4 Leave to defend has been filed and the averments contained therein have been perused. This application is bereft of any details; it hardly raises any triable issue; by and large, the averments made in the application for leave to the defend are to the effect that this eviction petition has been filed by the landlord only to extract a higher rate of rent from the tenant. Contention is that the electricity in the aforementioned premises has also been disconnected; tenant is merely being harassed; petitioner is in possession of shop No. 2 on the ground floor as also two rooms on the back side of the shop; sub-letting has been dis-continued. In fact para 10 to 12 have been highlighted; contention is that the accommodation presently available with the petitioner is sufficient and the present eviction petition has been filed only with malafide intent; but no details whatsoever have been given apart from this bald averment.

5 Reply to the corresponding paras of the application seeking leave to defend has been perused; all these paras have been denied; it was denied that the petitioner has sufficient accommodation; contention is that the petitioner is living with his family members on the first floor and second floor; accommodation is insufficient for the residential

purpose; the shop on the ground floor is required by the landlord in order that he can able to get a space of minimum of 200 sq. ft for the purpose of starting his consultancy business which he wishes to start after his retirement; document shows that the petitioner shall retire in October; further submission being that he will be actively associated by his son Neeraj who is a graduate and has a three years diploma from GNIIT.

6 The submissions of the petitioner have been substantiated. Before this court, Court has also been informed that the premises have since been vacated by the tenant and the landlord in the course of the execution proceedings has taken possession of the suit premises.

7 The landlord is the best judge of his requirement and this has been reiterated by the courts time and again that the landlord knows the needs of himself and his family; it is neither for the court nor for the tenant to dictate the terms to describe the manner in which the landlord should live. The Supreme in Prativa Devi (Smt.) Vs. T.V. Krishnan (1996) 5SCC 353 had held in this context inter alia noted as:-

*“The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the courts*

*to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own.”*

8 Leave to defend cannot be granted in a routine manner. If this is done the whole purport and purpose of the summary procedure as contained in Section 25 B of the DRCA would be given a go by. This was not the intent of the legislature.

9 In (1982) 3 SCC 270 Precision Steel & Engineering Works & another Vs. Prem Devi Niranjana Deva Tayal the Apex Court had noted 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 should not mechanically and in routine manner grant leave to defend.

10 Impugned order having decreed the petition and dismissed the leave to defend application suffers from no infirmity. Petition is without any merit; it is dismissed.

**INDERMEET KAUR, J**

**APRIL 27, 2012**

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