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

% *Date of Judgment: 24.5.2013*

+ **RC.REV. 281/2012 & C.M. No.11240/2012(stay)**

KAMLA THUKRAL & ORS Petitioners

Through: Dr.N.K.Khetrapal, Adv.

versus

TARLOK SINGH Respondent

Through: Mr.V.B.Andlay, Sr. Adv. with
Mr.Priyank Sharma and Mr.K.C.
Baliar Singh, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 Order impugned is the order dated 02.3.2012. The application filed by the tenant/petitioner seeking leave to defend in a pending eviction petition under Section 14(1)(e) of the Delhi Rent Control Act (hereinafter referred to as the DRCA) had been dismissed. The petitioner is aggrieved by the aforementioned finding.

2 Record shows that the eviction petition has been filed by the respondent/landlord under Section 14(1)(e) read with Section 25 B of the DRCA seeking eviction of the tenant from the premises which are

occupied by him i.e. one room on the ground floor, entire first floor, a store and bath room on the second floor. The petitioner undoubtedly and undisputedly is the owner and landlord of the aforementioned premises. No challenge has been laid to the aforementioned contention. The eviction petition discloses that the premises is required bonafide for him and his wife both of whom are senior citizens; petitioner is aged 84 and his wife is aged 82 years. They are residents of the United Kingdom; however, they regularly come to Delhi and whenever they are in Delhi they have to stay in a small part of the suit property on the second floor; the months of winter in the United Kingdom are extremely cold and because of their old age they come to Delhi almost every year around the month of September and stay here till May of the next year. The petitioners family also comprise of two adult sons who also regularly come to India; so also his sisters who also come along with their families to see them. They stay in the meager accommodation presently available with the petitioner which is only one room (which is used as a garage for parking their car) on the ground floor and two rooms on the second floor. In fact there was no bathroom facility available and only on 12.02.2013 (in terms of the orders of this Court) the bath room on the second floor which is in use and occupation of the tenant was permitted to be used by the petitioner and his family. Submission is that the accommodation which is presently available with the petitioner is only one room on the ground which is being used as a garage and the two small rooms on the second floor along with dining area and the kitchen are insufficient to meet the need and requirement of the petitioner and

his family (as detailed supra); the kitchen on the third floor is also in a dilapidated condition. The petitioner and his wife besides the fact that they are senior citizen citizens; the wife of the petitioner has also undergone a knee replacement surgery performed upon her. It is difficult for her to climb two flights of stairs to the second floor and the doctor has advised her against climbing stairs. Eviction petition was accordingly filed.

3 In the application seeking leave to defend the primary defence was that the landlord being a resident of United Kingdom so also his other family members, it is impossible to imagine that he would be visiting India at such an old age. More so this is a case of additional accommodation as admittedly a portion of the second floor and the third floor are also available to the landlord and his family which is sufficient to meet their need. Issue of additional accommodation has, however, not been pressed.

4 Arguments had in fact been concluded yesterday but after the arguments learned counsel for the petitioner sought time to seek instructions from his client as to whether he would be pressing this petition or would be seeking time to vacate the suit property. He presses the first alternate; he seeks an order on merits.

5 The Supreme Court has reiterated time and again that it is the desire and will of the landlord to decide how and in what manner he wishes to live. Admittedly, both the petitioner and his wife are aged 84

and 82 years respectively; their prolonged visit and stay during winter season from London to India is not and cannot in fact be disputed. The fact that it is very cold in the winter in the United Kingdom is an undisputed fact. It is also an undisputed fact that at old age knee joints become feeble and nimble. The fact that the wife of the petitioner has undergone a knee surgery is also not in dispute. Thus the wish and desire of the petitioners to spend their winter months in Delhi in their own house is their genuine and bonafide need for which they have sought vacation of the tenant. At present they are only in possession of one room on the ground floor which is being used as a garage for parking their vehicle. The locality is congested and there is no space for parking their car. This position is also not disputed. They also have no accommodation on the first floor. On the second floor they have two small rooms and a lounge but without a bathroom and said bathroom facility which was under the tenancy of the petitioner had been permitted to them vide order of this Court on 12.2.2013 i.e. during the pendency of the petition. The third floor comprises of one room which is also in a dilapidated condition. The petitioner and his wife have two adult sons who also visit Delhi with their families; sisters of the petitioner also visit India. Learned counsel for the respondent/landlord has placed reliance upon a judgment reported as 167 (2010) DLT 80 Sarwan Dass Bange Vs. Ram Prakash to support his argument where also the landlord was residing in the United Kingdom but in his old age he expressed his wish to reside in India along with his family members

comprising of his wife, four sons and one daughter; his petition for eviction of tenant on the bonafide ground was allowed.

6 A triable issue has to emanate from the pleadings of the parties; which can be from the application seeking leave to defend, reply to the application to the leave to defend; and the eviction petition. This is not so in the instant case. The only triable issue sought to be raised by the petitioner is that the petitioner and his wife who are residents of United Kingdom are not likely to visit India frequently. This can in no manner said to be a triable issue. It was not a secret of the landlord that he is a resident of United Kingdom. It is also an admitted position that the landlord regularly visits India. In fact he spends half the year in India i.e. during the extreme cold and harsh winter months of the United Kingdom. He stays on the second floor of the same accommodation. The accommodation presently available with him is not only insufficient but also being on the second floor where petitioner and his wife would have a great difficulty in climbing. The one room available on the ground floor is used as a garage. The tenanted premises on the ground floor is one room from where the tenant is running a shop measuring approximately 9.9 feet x 7.1 feet. This can be used as a bedroom for the petitioner. The entire first floor is also with the tenant; this can also be used as a residence by the petitioner and his wife. Climbing one flight of stairs is half the time easier than climbing two flights of stairs; as on date the petitioner and his wife have to climb two flights of stairs to reach their residence.

7 In this background the eviction petition having been decreed and the application seeking leave to defend having been dismissed suffers from no infirmity.

Petition is without any merit.

Petition as also the application are dismissed.

INDERMEET KAUR, J

MAY 24, 2013
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