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

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Date of Judgment: 22.4.2016

+ RC.REV. 44/2015

RAM PRAKASH

..... Petitioner

Through Mr.S.D.Dixit, Advocate.

versus

RAMAN ARORA

..... Respondent

Through Mr.Kirti Uppal, Sr. Adv. with
Mr.Aman Bhalla, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 Petitioner/landlord is aggrieved by the order dated 05.12.2014 wherein the application filed by the tenant/respondent seeking leave to defend had been granted in his favour. The petitioner is aggrieved by this finding.

2 Record discloses that an eviction petition had been filed by the landlord Ram Prakash under Section 14(1)(e) of the Delhi Rent Control Act (hereinafter referred to as the DRCA). The property comprised of an L-Shaped hall in property bearing no.4213, Ground Floor, Gali Nihal Singh, Pahari Dhiraj, Delhi. It was described as a commercial godown. It was a single tenancy. The bonafide need of the landlord had been disclosed in para

18 of the eviction petition. The father of the petitioner was the owner of the property and after his death $1/5^{\text{th}}$ of the property devolved upon the petitioner-landlord. A suit for partition was filed inter se the siblings; pursuant thereto a compromise was arrived at and $2/3^{\text{rd}}$ share of the suit property was relinquished/compromised in favour of the petitioner; his two sisters relinquished their shares in favour of the petitioner. The petitioner in terms of the said compromise became entitled to $1/3^{\text{rd}}$ share in the property bearing No.4212-4213, Gali Nihal Singh, Pahari Dhiraj, Delhi which included this L-Shaped godown which had been tenanted out to the present tenant.

3 At this stage, it would be relevant to note that there is no dispute about the ownership-landlord status of the petitioner.

4 The need of the petitioner is to the effect that he had two married sons both of whom are living separately; one is living abroad and the other is living at Shalimar Bagh. His immediate family comprises of himself, his wife and his one unmarried daughter. At present the landlord-petitioner is aged about 85 years of age and his wife is aged about 83 years of age. His unmarried daughter at that stage was 49 years of age and presently would be about 53 years of age. The petitioner is an old man and has various old

age ailments including osterarthritis. It is difficult for him and his wife to climb stairs. They are living on the second floor. The first floor is also with them. It is very difficult for them to climb the flight of 14-15 steps to access the first and second floor. Their daughter Madhu is also suffering from acute arthritis. She also finds it difficult to access the first and the second floor. They even find it difficult to meet their daily needs of going to the market for the aforementioned reasons. The suit premises i.e. the ground is required by the petitioner for himself for his own use and for the use of his family members i.e. his wife and his daughter. The accommodation available on the first the second floor of the property is not suitable for them. Photographs to substantiate this submission have been placed on record.

5 An application seeking leave to defend had been filed by the tenant. The submission was that the contention of the petitioner that he was suffering from ailments is false and misleading. He is hail and hearty and he is actively involved in business activities. His need is not genuine. He has alternate accommodation in the form of the first and second floor. The petitioner is seeking to get this property vacated only for a commercial purpose in order that he could get higher rent.

6 Reply to this application has also been filed. It was denied that the

need of the petitioner was not genuine or that it was a malafide need. It was reiterated that there is no other alternate accommodation with the petitioner. His access to the first and the second floor is almost impossible because of his old age.

7 Record shows tht the eviction petition has been filed by an 81 years old landlord. The fact that his wife was 79 years of age at that point of time is not in dispute. This eviction petition was filed in the year 2013. Three years have since passed. The petitioner/landlord is now aged 84 years plus and his wife is also aged 82 years; so also their daughter who is in her early sixties. The submission of the landlord that he and his wife are suffering from old age ailments and their daughter is suffering from acute arthritis cannot be ignored. This is writ large from the face reading of the petition itself which clearly specifies that the landlord as on date is in his middle eighties and his wife is in her early eighties. It needs no document to establish that at this stage of life, old age ailments occur and osterarthritis is one such common ailment which pervades the body not only of women but also of men. The status of the unmarried daughter who is also in her early sixties and suffering from from acute arthiris is also noted. It is also noted that there is admittedly no other suitable alternative accommodation

available to the petitioner except the premises on the ground floor which is under the occupation of the tenant. The site plan shows that besides this 'L' shaped hall, there are two very small shops on the right hand corner which are tenanted out. The major portion of the ground floor which is this L-Shaped hall/godown is with the present tenant. Area of this godown as is evident from the site plan would be approximately 400 sq. feet besides a covered portion which this Court has noted is a covered veranda. The submission of the tenant that this portion has been used as a godown and there may not be a toilet is noted but the contention of the landlord is that unless and until he gets the possession of this godown he would not be able to create a toilet in the said portion is also noted. It carried weight.

8 Even as per the tenant, the landlord who is living on the first and the second floor has to access these floors by climbing 14-15 steps for each floor. It is impossible for such like senior citizens (aged more than 80 years) to go up and down the stairs and to further have access to their residence; their everyday activities are necessarily curtailed. The submission of the landlord in his petition that his everyday market needs also cannot be met with because of this difficulty has been noted is a matter of grave concern to the Court.

9 The site plan has depicted the status of the property correctly. The photographs shown to the Court and with the assistance of the learned counsel for the petitioner it is noted that the entire building is in a dilapidated condition; it is an old structure at Pahadir Dhiraj, Delhi. The landlord is also present in Court. He is a senior citizen. He has explained his bonafide need to the Court.

10 The fact that there is no other reasonably suitable accommodation available with the petitioner has been established. His bona fide need is also noted. His need is genuine. The Trial Court having granted leave to defend in a mechanical manner has committed an illegality.

11 The impugned order has noted the respective contentions of the parties but without going into any discussion has gone on to grant leave to defend to the tenant. This is against the intent of the legislature which has promulgated this summary procedure in the DRCA in order that a landlord may get a decree straightway where a triable issue has not been raised by the tenant. The entire body of the application seeking leave to defend persuades this Court to hold that no triable issue has arisen on any count. At the cost of repetition, since the ownership-landlord status of the petitioner has not been disputed, the petitioner having established that his need is bonafide and

genuine for the aforementioned accommodation which is on the ground floor, and he admittedly having no other reasonably suitable accommodation as the accommodation on the first and second floor is not an alternate accommodation for senior citizens of an age like the petitioner; this Court is of the view that the twin requirement of Section 14(1)(e) of the Delhi Rent Control Act has been met. The impugned order having granted leave to defend in a routine manner has committed a travesty of justice.

12 Impugned order is accordingly set aside. Eviction order is passed in respect of the suit property i.e. the L-Shaped hall bearing no.4213, Ground Floor, Gali Nihal Singh, Pahari Dhiraj, Delhi in favour of the petitioner-landlord and against the tenant-respondent. Petition disposed of.

INDERMEET KAUR, J

APRIL 22, 2016
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