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S-A-23

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ RC.REV. 189/2016

JIWAN LAL BERRY & SON (HUF) Petitioner
Through Mr.B.B.Gupta, Sr. Advocate with
Mr.Udyan Srivastava, Advocate.

versus

NARESH DASS KHANNA Respondent
Through Mr.Sacchin Puri, Sr. Advocate with
Ms.Hrishika Pandi, Advocate

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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24.08.2016

1. The present revision petition is filed seeking to impugn the order dated 11.02.2016 by which the application filed by the respondent/tenant under Section 25B for leave to contest was allowed.
2. The petitioner/landlord has filed an eviction petition under Section 14(1)(e) read with Section 25B of the DRC Act. The respondent being served with summons of the eviction petition filed an application for leave to appear and contest the eviction petition along with an affidavit.
3. The ARC by the impugned order has noted the contentions of the respondent/tenant. Having noted the said contentions, the order concludes that the respondent is able to raise triable issues regarding the availability of the sufficient accommodation with the petitioner and also about the bona fide requirement of the suit premises by him. Hence, the order concludes

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that triable issues have arisen between the parties.

4. The court did not record the submission of the petitioner. The court did not come to a conclusion based on the pleadings as to whether a triable issue has been raised or not. It merely noted the submissions of the respondent and formed its conclusion that a triable issue is raised.

5. In a somewhat similar case, this court in the case of *Sarwan Dass Bange vs. Ram Prakash*, MANU/DE/0204/2010 noted the impugned orders as follows:-

“5. The Additional Rent Controller has in the order impugned in this petition dealt with the matter in a very cursory manner. After reproducing the pleadings, arguments and passage from the judgment of the Supreme Court in Precision Steel and Engineering Works Ltd. v. Prem Deva Niranjana Deva Tayal MANU/SC/0210/1982: AIR 1982 SC 1518, it has merely been observed that the respondent/tenant has disputed each and every ingredients of Section 14(1)(e) of the Act and thus disputed question of fact arise making the respondent/tenant entitled to leave to defend. Though the judgments cited by the petitioner are recorded in the order but there is no reasoning as to why the law laid down therein is not to be applied. Aggrieved therefrom the present revision petition has been preferred.

6. This court thereafter stated as follows:-

“7. The Controller has not discussed as to how the pleas raised by the respondent/tenant in the application for leave to defend are such which if established by adducing evidence would disentitle the petitioner/landlord of an order of eviction under Section 14(1)(e) of the Act. Ordinarily, when a tenant approaches an advocate for drafting a leave to defend application, the advocate, using his legal acumen would dispute each and every plea of the landlord in the eviction petition. However, merely because the tenant so disputes and controverts the pleas of the landlord does not imply that the

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provision of summary procedure introduced in the Act with respect to ground of eviction on the ground of requirement is to be set at naught. The Controller is required to sift/comb through the application for leave to defend and the affidavit filed therewith and to see whether the tenant has given any facts/particulars which require to be established by evidence and which if established would disentitle the landlord from an order of eviction. The test is not of the tenant having controverted/denied the claim of the landlord and thus disputed questions of fact arising; the test is to examine the pleas of facts and then to determine the impact thereof."

7. Clearly, the impugned order has been passed in a cursory manner and contrary to law.
8. Accordingly, the present impugned order is set aside.
9. The matter is remanded back to the trial court to consider the application filed by the respondent for leave to defend seeking leave to contest the matter. The ARC is requested to dispose of the said application within three months from today uninfluenced by any observations made by this court.
10. The petition stands disposed of.



JAYANT NATH, J

AUGUST 24, 2016

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