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

+ RC.REV. 439/2016

PREM KUMARI

..... Petitioner

Through

Mr.Virendra Singh, Advocate.

versus

PURSHOTTAM LAL

..... Respondent

Through

Mr.R.P.Arora, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE JAYANT NATH**

**ORDER**

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**18.10.2016**

1. On 09.09.2016 this court had issued notice to the respondents including Dasti notice to be issued to counsel representing the respondents before the trial court as well as notice on the letterhead of the learned counsel for the petitioner. The petitioner has today placed on record an affidavit showing service of the Dasti notice on the respondent alongwith proof of dispatch of the notice and the tracking record showing delivery of the notice.

2. By the present petition the petitioner seeks to impugn the order dated 29.3.2016 by which Eviction Petition filed by the petitioner under Section 14(1)(e) of the Delhi Rent Control Act for bona fide requirement of the petitioner was dismissed. Respondent had entered appearance and had filed an application for leave to defend. At that stage, while considering the application for leave to defend the ARC passed the following order:-

“2.The present petition has been filed by petitioner in respect of alleged need of the premises identified as one shop measuring 6 ft x 8 ft situated at the ground floor of property identified as No.189, South Anarkali, Som Bazar, Delhi-110051, for his eldest son named Prem Kumar. It has been pleaded that Prem Kumar is unemployed as he has resigned from his employment with M/s. Moser Baer India at 66, Udyog Vihar, Greater Noida (UP). Thus Prem Kumar is dependent on petitioner and requires the premises to commence business of his own.

3. A person who has children aged 9 and 2 ½ years (as has been averred in petition, Prem Kumar to have) and who has been in employment must necessarily have attained age of majority and thus cannot be said to be dependent on his parents. Furthermore, the fact that Prem Kumar has resigned on his volition from his job, leads to the inference that the alleged need of Prem Kumar has been created by him and therefore does not qualify to be addressed as ‘bonafide requirement’ for the purpose of Section 14(1)(e) of DRC Act. The DRC Act provides protection to the tenant against eviction which cannot be taken away upon whims, fancies and greed of the landlord to acquire possession by raising and creating bogus issue of ‘bona fide requirement’, as is apparent in the present case.”

4. Section 14(1)(e) of the Delhi Rent Control Act reads as follows:-

**“14. Protection of tenant against eviction. –**

(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by and court or Controller in favor of the landlord against a tenant:

(e) That the premises let for residential purpose are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose

benefit the premises are held and the landlord or such person has no other reasonably suitable residential accommodation;”

5. This Court in *Anil Kumar Gupta vs. Deepika Verma, 224 (2015) DLT 473* elaborated the concept of dependent as stated in Section 14(1)(e) of the DRC Act and noted as follows:-

“12. Customarily or in common parlance a dependent would be defined as any person who is reliant on another either for financial or physical support for sustenance of life. It is pertinent to note that the word dependent or as to what constitutes a family has nowhere been defined in the Delhi Rent Control Act. Rather, the legislators consciously and deliberately have used the words "any member of family dependent on the landlord" instead of defining a clear degree of relations so as to construe a wider meaning to the aforesaid words as man is a social creature and part of a complex societal system involving myriad of relations from which he cannot be isolated. It is significant to understand that the dependency is not restricted to financial or physical but will also include emotional reliance on another person. Reliance in this regard is placed on the findings of this court in *M/S. Jhalani Tools (India) Pvt. Ltd. vs. B.K. Soni*; AIR 1994 Delhi 167, wherein the court observed that the social set up of our society is such where a married daughter continues to enjoy a place of pride in her maternal home and therefore while considering the requirement of the landlord her married daughter and her expected visits cannot be lost sight of. Similarly in *Sain Dass v. Madan Lal*; 1972 Ren CJ (SN) 8 (Delhi), this Court has acknowledged that the word "himself" has to be construed to mean "himself" as cohabiting with his family members with whom he is normally accustomed to live. Therefore, contrary to the submissions of the learned counsel for the petitioner financial or physical incapacitation cannot be the sole premises for determining dependency on another.

13. The Honorable Supreme Court in *Corporation of the City of Nagpur v. The Nagpur Handloom Cloth Market Co. Ltd.*, AIR (1963) SC 1192 while interpreting the word "Family" observed as under :

"But the expression 'family' has according to the contest in which it occurs, a variable connotation. It does not in the setting of the rules postulate the existence of relationship either of blood or by marriage between the persons residing in the tenement Even a single person may be regarded as a family, and a master and servant would also be so regarded."

14. As it crystallizes from the aforesaid the word dependent cannot be constructed in a narrow and literal manner. The same have to be interpreted judiciously keeping in mind the intent of the legislators. As discussed above the words used under S.14 (1) (e), are "any member of family dependent on him" which would include the daughter in law who in the instant matter is dependent on her mother in law/landlady (respondent herein) and on account of sharing of residence both the daughter in law and the respondent are physically, emotionally and financially inter-dependent."

6. Reference may also be had to the judgment of the Supreme Court in *Joginder Pal vs. Naval Kishore Bahl (2002) 5 SCC 397* and of this Court in *Khem Chand Ramesh Kumar vs. Vijay Mehra, 2015(216) DLT 544*.

7. In view of the above settled legal position the finding recorded in the impugned order by the ARC that a person who has children aged 9 and 2½ years and who has been in employment must necessarily have attained age of majority and thus cannot be said to be dependent on his parents in any manner is an erroneous finding recorded on the face of it. Merely because the son has children and has been in employment cannot mean that he cannot be dependent upon the petitioner. He may still be dependent for his residence or on account of financial or emotional need.

8. Clearly, the order dismissing the eviction petition at the threshold without dealing with the application for leave to defend filed by the respondent or even giving an opportunity to the petitioner to lead evidence is a manifest error in exercising its jurisdiction by the ARC. The impugned order is accordingly quashed. The matter is remanded back to the ARC to consider the matter afresh in the light of the above legal position. Petition stands disposed of in the above terms. All pending applications, if any, also stand disposed of accordingly.

9. The parties to appear before the ARC on 23.11.2016.

**JAYANT NATH, J**

**OCTOBER 18, 2016**

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