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

+ RC.REV. 492/2016

RAJU TOMER @ RAJBEER Petitioner
Through Mr.Hari Shankar, Advocate

versus

KAMLESH & ANR Respondent
Through None

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
18.10.2016

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1. On 7.10.2016 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. Despite service of notice none has appeared for the respondents.
 2. By the present petition the petitioner seeks to impugn the order dated 9.5.2016 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 is moved by Raju Tomar u/s.14(1)(e) of DRC Act, 1958. The premises is identified as shop no.H-31/1, Main Market, Shakarpur Khas, Delhi-92. The agreed rate of rent is Rs.225 per month. The premises was let out to the husband of the respondent 25-30 years ago. Husband of the respondent expired in 2011 and since then, despite repeated requests by the petitioner, the respondent did not vacate the premises and thus he is in illegal possession of the said shop. Due to the misconduct of the respondent, the petitioner does not want to keep the respondent as tenant in the premises and terminated the tenancy w.e.f. 18/4/2015. The petitioner has two sons named Sunder Singh aged about 31 years and Ashu Tomar aged about 33 years. Both the said sons are married and the premises is required by the petitioner to settle both his sons.

3.Without getting into the contents of application for leave to defend and other contentions/defences raised by the respondent, the present application u/s.14(1)(e) DRC Act, is dismissed because sons of a person who are married and are in their thirties cannot be said, to be dependent in any manner whatsoever on such person. Thus, the persons for whose need, the petitioner seeks eviction of the tenant are not dependent on the petitioner. The immunity of tenant against eviction cannot be taken away on this basis.”

3. 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;”

4. 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."

5. 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*.

6. In view of the above settled legal position the finding recorded in the impugned order by the ARC that the sons of the petitioner are 31 years and 33 years of age and are married and hence cannot be said to be dependent in any manner whatsoever on the petitioner is an erroneous finding recorded on the face of it. Merely because the sons are above 30 years and married cannot mean that they cannot be dependent upon the petitioner. They may still be dependent for their residence or on account of financial or emotional need.

7. 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.

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

JAYANT NATH, J

OCTOBER 18, 2016

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