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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RC.REV. 534/2015**
VINOD KUMAR

..... Petitioner

Through Mr.G.P.Thareja, Advocate.

versus

ASHOK KUMAR GANDHI

..... Respondent

Through Mr.Mohit Chaudhary, Mr. Kunal Sachdeva and Ms.Damini Chawla, Advocates

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **14.03.2016**

Petitioner is aggrieved by the order dated 05.5.2015 whereby his application seeking leave to defend in a pending petition under Section 14(1)(e) of the Delhi Rent Control Act (DRCA) had been dismissed.

The broad contentions raised by the learned counsel for the petitioner are as follows:

- i. Section 14(7) of the DRCA has to be reconciled with Section 25 (C) (2) of the DRCA. The summary procedure is permitted only to that class of landlord under Section 14(1)(e) where the bonafide need is for the landlord himself and not for his

dependant. To support this proposition reliance has been placed upon AIR 1984 SC 967 Ravi Dutt Sharma Vs. Ratan Bhargava.

- ii. The second submission is that the landlord had alternate accommodation at Sadar Bazar and in fact the son of the landlord (for whom the bonafide need has been projected) was carrying on business at Sadar Bazar which was reflected from the photograph which had been filed along with the application seeking leave to defend. The need was in fact not bonafide; it was malafide.
- iii. This being a case of additional accommodation and mere desire on the part of the landlord to seek eviction; such a prayer cannot be permitted. To support this proposition, reliance has been placed upon a judgment of this Court in C.M. (M) No.1164/2009 title Nitin Garg Vs. Naresh Kumar Arora & Anr delivered on 23.10.2009.
- iv. The bonafide need as disclosed by the landlord is coupled with his desire to rebuild the property which is a ground available under Section 14(1)(g) of the DRCA. If two needs are predicated in one eviction petition, the landlord is not entitled

to take benefit of the special procedure as contained in Section 25(B) of the DRCA. To support this proposition reliance has been placed upon 1985 PLJR 490 Reyazul Haque vs. Mosst. Maimun Khatoon & Anr.

Needless to state that these arguments have been refuted.

The first submission of the leaned counsel for the petitioner that Section 14(7) and Section 25(C) of the DRCA are in conflict with one another and in view of the language of Section 25(C) (2) it is only where the landlord needs the property for himself that this special procedure is available is an argument bereft of merit. The judgment of Ravi Dutt (supra) has not laid down this ratio. Before the Apex Court in the case of Ravi Dutt challenge was to the provisions of Section 14(1)(e) and Section 14A of the DRCA; the primary question was whether the provisions of the Slum Clearance Act are applicable to eviction petitions under the aforementioned provisions of law. Not one line from the judgment can be read to give it a meaning which is not otherwise emanating from the entire body of the judgment. It is erroneous to hold that this judgment laid down the proposition that where the need is of the landlord alone and not the need of his

dependant that the special procedure is available and not otherwise. This argument is rejected.

Second and third submissions of the learned counsel for the petitioner that this is a case of additional accommodation and is a mere desire on the part of the landlord is answered by the pleadings of the parties. The eviction petition discloses that the needs of the landlord (Ashok Kumar Gandhi) was to get the disputed premises i.e. the shop (measuring 12 x 20 sq. feet at J-3/188, Rajouri Garden) evicted for his own need and for the needs of his son. His contention was that his father had started a small business which the petitioner had joined; they had purchased a shop hearing no. 2774, Pratap Market, Sadar Bazar. The shop was initially in the name of his father and thereafter it has gone to the share of his mother. It is not in dispute that apart from the petitioner he has other siblings. It is also not in dispute that the shop at Pratap Market, Sadar Bazar is in the name of his mother. Petitioner is carrying on business from the said shop which is one room on the ground floor. In the eviction petition it has been stated that the area of the shop at Pratap Market, Sadar Bazar is very small (being 6' x 9' feet) and it is not able to generate a

sufficient income to run the family of the petitioner and the family of his son who is also married and living with him. They are unable to satisfy their need from the said shop. The shop in the Pratap Market is in the back lane and not in the main market. The financial dependency of the son of the petitioner is upon the petitioner and he needs the demised property for running a business to make some headway in augmenting the income of the family. The shop in dispute which is located in the hub of shopping place in Rajouri Garden is suitable for the petitioner and his son to carry on their business. In para (xviii) it has been stated that the petitioner also has plans to make a passage through the length of the property in order that he can have access to first floor of the property as presently he has to go to the back lane which is about six feet wide to access his first floor where he is living. It is this latter averment which has been argued vehemently by the learned counsel for the petitioner to support his submission that this is a case of re-building and thus amounts to a petition under Section 14(1)(g) of the DRCA and the present petition having been predicated on two grounds i.e. under Section 14(1)(e) and Section 14(1)(g) of the DRCA; this petition in view of the judgment

of Patna High Court in Reyazul Haque (supra) is not maintainable under the special procedure engrafted under Section 25-B. This submission of the learned counsel for the petitioner is without force. Site plan has been perused. The disputed shop is a shop measuring 12 x 20 feet at J-3/188, Rajouri Garden, New Delhi; this is with the tenant. The first floor of this property is with the landlord where he is residing. Site plan also shows that the way to access the first floor is to go to the rear side gali which is a 6 feet wide gali and only then the residential portion of the petitioner can be accessed. If this shop is made available to the petitioner he can use it for commercial purpose and at the same time he can made a staircase which will run through the length of the property enabling him to access his first floor residence from the inside side of the property without going to the gali. This definitely does not fall within the meaning of building and rebuilding as contained in Section 14(1)(g) of the DRCA. Thus the submission of the learned counsel for the petitioner that this eviction petition is predicated on two grounds is an incorrect proposition. This argument is also without any merit; it is rejected.

The need of the landlord has been explained in his petition. His

need is to get the shop to run a business from where he along with the assistance of his son who is financially dependent upon him can augment the family income. The shop at Sadar Bazar is a very small shop and cannot meet the growing needs of the petitioner and his son. The shop at Sadar Bazar admittedly also belongs to his mother. The mother besides the petitioner has other sons also; this shop is not owned by the petitioner.

Learned counsel for the petitioner has also drawn attention of this Court to a judgment pronounced by this Court in RSA No.75/1985 Delhi Development Authority Vs. Sheela Rani Gandhi on 01.12.2010 wherein this Court had noted that these premises at Sadar Bazar being in a notified development area, no construction could have been carried out without prior permission. Submission before this Court being that the mother of the petitioner is facing threat of demolition qua that property.

Be that as it may, the need of the petitioner has been effectively explained in the eviction petition. No triable issue has arisen. The submission of the learned counsel for the petitioner that there are two grounds contained in the eviction petition has been rejected. Even

otherwise this argument does not find mention in the application seeking leave to defend. Application seeking leave to defend is largely predicated on the proposition of Section 14(7) and Section 25C (2) of the DRCA which argument is also rejected. This is also not a case of desire. It is a bonafide need of the landlord. It is his honest need. He has honestly explained that the shop at Sadar Bazar besides being in the name of his mother is too small to augment the financial needs of the petitioner and his married son who has a family and who is dependent upon the petitioner for his need.

Needless to that it is the landlord alone who is the best judge of his own requirement; if his need is honest and as has been explained in the eviction petition is bonafide there is no reason why he should not be entitled to the benefit of the special procedure contained in Section 25B of the DRCA and why a decree should not follow when there is no triable issue. The application seeking leave to defend has in no manner raised any triable issue.

Petition is without any merit. Dismissed.

INDERMEET KAUR, J

MARCH 14, 2016
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