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

+ RC.REV. 524/2015

RAJKUMAR SARDANA

Through

..... Petitioner

Mr.Mahabir Singh, Senior Advocate
with Mr. Daviender Hora and
Mr. Aman Sardana, Advocate.

versus

ROOP SINGH

Through

..... Respondent

Mr.Deepak Gupta, Advocate.

+ RC.REV. 525/2015

RAJKUMAR SARDANA

Through

..... Petitioner

Mr.Mahabir Singh, Senior Advocate
with Mr. Daviender Hora and
Mr. Aman Sardana, Advocate.

versus

ROOP SINGH

Through

..... Respondent

Mr.Deepak Gupta, Advocate.

+ RC.REV. 526/2015

RAJKUMAR SARDANA

Through

..... Petitioner

Mr.Mahabir Singh, Senior Advocate
with Mr. Daviender Hora and
Mr. Aman Sardana, Advocate.

versus

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Mr.Deepak Gupta, Advocate.

RC.REV.Nos.524-526/2015

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CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **19.04.2016**

1 Petitioner before this Court is Raj Kumar Sardana. He is the tenant in the proceedings before the Trial Court filed by the landlord (Roop Singh) under Section 14(1)(e) of the Delhi Rent Control Act (DRCA). The application filed by the tenant seeking leave to defend in these pending eviction proceedings stood dismissed. The petitioner is aggrieved by the said finding.

2 Record shows that the suit property comprised of three rooms on the first floor of property bearing no.91-92, Ward No.3, Gandhi Gali, Fateh Puri, Delhi (hereinafter referred to as the suit property). The landlord and his family comprising of eleven members live on the first floor and second floor of the suit property. On the first floor they have two rooms and on the second floor they have three rooms. Three separate eviction petitions have been filed qua the three rooms as there are three tenancies which have been created in favour of the same tenant namely Raj Kumar Sardana.

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3 Record further shows that the eviction petitions filed by the landlord discloses his bona fide need in para 18 of the evictions petitions. The premises have been described as premises bearing no.3 and 4 forming part of property no.91, Gandhi Gali, Fateh Puri, Delhi. In the memo of parties, the address of the landlord has been described as resident of 91-92, Gandhi Gali, Fateh Puri, Delhi. Eviction petition discloses that the petitioner is the owner of the suit property. The family of the petitioner comprises of himself, his wife, his elder son Sanjeev and his wife, grandson aged 19 years, granddaughter aged 11 years; his second son Sandeep, his wife, granddaughter aged 15 years and grandson aged 8 years are living with him. Out of two sons one son is working in the Delhi Secretariat as a UDS; the second son is working in the Ministry of Defence. Petitioner has one married daughter who lives abroad but visits her. She also has a family. The petitioner is in possession of first floor which comprises of two rooms. The three rooms under the tenancy of the tenant are also located on the first floor. On the second floor he has another three rooms. This accommodation is insufficient for him and his family

members; all of whom are dependent upon him for their need for accommodation. Eviction petition was accordingly filed.

4 In the application seeking leave to defend the tenant has stated that the landlord has sufficient alternate accommodation and the need which has been projected in this petition is in fact not bona fide. The tenant is living in this property since the last several years. The alternate accommodations available with the landlord (detail not disclosed) makes out a case of triable issues entitling the tenant for leave to defend. These are the by and large the averments contained in the application seeking leave to defend.

5 Reply has been filed by the landlord to the aforementioned application. In this reply, it has been denied that there is any other alternate accommodations available with the petitioner. It is denied that the need of the petitioner is not bona fide.

6 Rejoinder has also been filed.

7 Learned senior counsel for the petitioner/tenant has vehemently argued that there are enough triable issues disclosed in the application seeking leave to defend. His submission is that in this application he

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has brought to the notice of the Court that there was an alternate accommodation available with the landlord in Madhya Pradesh and this finds mention in para (j) of the aforementioned application. His submission is that since the landlord himself has disclosed that both his children are working in Government Departments they would be entitled to alternate Government accommodations through their respective offices. Additional submission being that the suit premises has been described as property No.91; as per the memo of parties and the address disclosed by the petitioner in his eviction petition he has mentioned the property as 91-92. What is the status of property no.92 has not been detailed by the landlord. This also raises a triable issue. Another submission is that there is a tenant namely Sanjog Lata living in the ground floor and this has been disclosed by the landlord in the eviction petition yet the electricity bill of the aforementioned property shows that the electricity in this property was obtained only in the year 2009 and thus the submission of the landlord that Sanjog Lata is living in the ground floor of the suit property since 1997 is a wrong submission. The landlord has not come to the Court with clean hands.

His last submission is that the daughter-in-law of the petitioner travels abroad frequently. In fact she is not living in the suit property. The need of the landlord is not bona fide. Triable issue have arisen. Learned senior counsel for the petitioner has placed reliance upon two judgments of the Apex court reported as (1983) 1 SCC 301 Charan Dass Duggal Vs. Brahma Nand and 1(2001) 1 SCC 255 Santosh Devi Soni Vs. Chand Kiran. Submission being reiterated that where plea raised by the tenant makes out a prima facie case leave to defend should be granted. A mere desire on the part of the landlord is not sufficient to qualify it as a need. The Trial court refusing leave to defend to the tenant has committed an illegality.

8 Per contra, these arguments have been refuted by the landlord.

9 Record discloses that the eviction petition has been filed seeking eviction of the petitioner/tenant from the three rooms on the first floor of property no.91-92, Gandhi Gali, Delhi. The site plan filed by the landlord has clearly described the property as municipal no.91-92. The memo of parties filed by petitioner/landlord also discloses his address at property bearing no.91-92. Submission of the

tenant that property no.91 is a property distinct from property no.92 and the status of the property no.92 has not been disclosed by the landlord is an argument without any merit. This is clear from the aforementioned documents. That apart, this argument has not been raised in the application seeking leave to defend. Even otherwise the site plan and the memo of parties have clearly depicted the property as property bearing no.91-92. No triable issue has arisen on this count whatsoever. The second argument on alternate accommodation i.e. even presuming that there is an accommodation in Madhya Pradesh (although vehemently denied by the landlord) would not be an alternate accommodation for the landlord. The landlord is admittedly a resident of Delhi and this has been supported by the documentary evidence filed on record along with the eviction petition which includes his election card, statement of the Indian Bank, Fateh Puri Chowk (all these documents are of the years 2009-2014) substantiating the submission of the petitioner that he is a resident of Gandhi Gali, Fateh Puri, Delhi. Submission of the tenant that the landlord is in fact staying at Madhya Pradesh is clearly negated.

The accommodation at Madhya Pradesh by no stretch of imagination be deemed to be an alternate accommodation. In this regard, a Coordinate Bench of this Court in RCR 470/2013 Raj Kumar Sethi Vs. Sunil Kumar Verma decided on 15.7.2014 observed that it is a well settled law that while dealing with the concept of an alternative accommodation available to the landlord such accommodation available to the landlord alternatively must be situated within Delhi and not outside Delhi. The house at Madhya Pradesh presuming it as true would thus not qualify as an alternate accommodation for the landlord. The next submission of the tenant that the sons of the petitioner who are both working in Government departments would have alternate Government accommodations is also an oral argument. This ground has not been taken in the application seeking leave to defend. Time and again it has been reiterated by the Supreme Court that the triable issues have to be culled out from the pleadings of the parties which include the application seeking leave to defend. There is no such averment in the application seeking leave to defend that alternate accommodations are

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available with the sons of the petitioner as they are Government employees and they have government accommodation. This is only an oral submission made before this Court. This is clearly a bald submission. It deserved no consideration and has no merit whatsoever. The averments in the eviction petition clearly reiterate that both the sons of the petitioner although Government servants are admittedly living with the landlord-petitioner and are dependent upon the landlord father for their need for accommodation. This argument is also accordingly rejected. Additional submission of the learned counsel for tenant being that the daughter-in-law of the landlord most of the times live abroad is also an argument noted to be only rejected. There is nothing to support this argument; this has been denied by the landlord. The last submission of the learned counsel for the tenant is that Sanjog Lata is not a tenant since last several years as is the contention of the landlord. The property on the ground floor having been energized only in the year 2009; at best Sanjog Lata could be a tenant there since 2009. The landlord has not come to the Court with clean hands; this entitles him for leave to defend. This argument is

also worthy of no merit. Besides the fact that this argument is only an oral submission, it even otherwise merits no weight. Sanjog Lata as per the petitioner-landlord is a tenant in the ground floor of the property which is a godown and has no outlet; it has no windows and ventilation and the same is being used by Sanjog Lata for the purposes of a godown alone. It was in the reply filed by the landlord to the application of the tenant (seeking leave to defend) these facts have been brought to the knowhow. It has been disclosed that the ground floor comprises of one single hall which is under the tenancy of Sanjog Lata and at the cost of repetition it has no ventilation and it is being used by her only for the purposes of a godown; that apart this property is in the tenancy of Sanjog Lata since year 1997. This eviction petition has been filed in the year 2014. Even presuming that the electricity on the ground floor was energized w.e.f. from 2009 the fact is that this eviction petition was filed in the year 2014 and since 2009 at least it has been in continuous tenancy of Sanjog Lata. On no ground has any triable issue arisen.

10 This Court had suggested to the learned counsel for the

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petitioner-tenant that he may take instructions from his client, if he wishes to vacate the suit property within a time period. In fact the landlord has agreed to give him one year extension provided the tenant paid user charges at the market rate. This submission was made in view of the judgment of the Apex Court reported in 2005 (1) SCC 705 Atma Ram Properties Pvt. Ltd. Vs. Federal Motors Pvt. Ltd.. This proposal is however not acceptable to the tenant. He seeks an order on merit.

11 This Court on the basis of the aforementioned discussion comes to a conclusion that no triable issue having arisen; the impugned judgment in no manner calls for any interference. The application seeking leave to defend was rightly dismissed. Petitions are dismissed with a cumulative cost of Rs.30,000/-.

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INDERMEET KAUR, J

APRIL 19, 2016
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