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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RC.REV. 582/2015**
RATTAN LAL

..... Petitioner

Through Mr. Praduman Kumar Aggarwal, Adv

versus

BHIM SEN

..... Respondent

Through Mr. Ajay Kumar Gupta, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **07.04.2016**

C.M. No.25312/2015 (for taking on record subsequent facts)

There is no opposition to the prayer made in this application.
The prayer made in this application is allowed.

RC.REV. 582/2015

The petitioner is aggrieved by the order dated 15.04.2015 wherein his application seeking leave to defend had been dismissed and the eviction petition filed by the landlord seeking eviction of the petitioner/tenant from the suit premises bearing NO. 212-213, Gali Luhan, Ajmeri Gate, Delhi in a pending petition under Section 14 (1)(e) of the Delhi Rent Control Act (DRCA) had been decreed.

Eviction petition discloses that the suit property had been tenanted out to the tenant at a monthly rent of Rs.160/- per month. The petitioner is the owner of the suit property. His family comprises of three sons and six grandsons of whom the younger son had died

leaving behind his widow, two daughters and one son namely Atul aged 28 years; the present shop is required by Atul for running his business; this family of his predeceased son is virtually on the point of starvation. They do not have any financial help from any corner; Atul had started a business of tools from a rented accommodation where he is paying rent of Rs.7,500/- per month; he has to run his kitchen expenses also; he does not have sufficient income to support his family expenses. There is no accommodation with the petitioner and his grandson from where he can carry out his business. The suit shop is located in the busy vicinity of Ajmeri Gate which is the biggest market for business of tools. Atul is already carrying this business from a rented shop. The ground floor of the suit property is commercial and all other portions are in occupation of the tenant. The first, second, third and barsati floor are in use and occupation of the petitioner and his family i.e. the petitioner and his three sons. There is no reasonable accommodation from where Atul can carry on his business. Eviction petition was accordingly filed.

The site plan filed along with the eviction petition has been perused. This reflects that that the disputed shop measure 11.6 X 10 feet. It is on the main road.

In the application seeking leave to defend, several triable issues were sought to be raised. The first submission of the learned counsel for the petitioner is that the site plan is incorrect and the site plan as depicted by the landlord shows 10 shops whereas in actuality there are 13 shops. Attention has been drawn to the site plan which had

been filed by the tenant. Admittedly this site plan had not been filed along with the application seeking leave to defend. It had been filed along with the rejoinder. The Trial Court has perused this site plan and has rightly noted that this is not a correct site plan showing 13 shops. There appeared to be a discrepancy in the area which has been shown as a 'mandir'; both plans depict a mandir/temple; the area of the 'mandir' as shown in the site plan filed by the landlord reflects that the site of the 'mandir' is 11 X 8 feet and this 'mandir' thus opens out into a passage in order that it can be accessed. The site plan filed by the tenant has depicted the 'mandir'/'temple' but has drawn a line midway from this 'mandir' showing the balance portion of the 'mandir' as a room. Learned counsel for the landlord rightly points out that this is an incorrect site plan for the reason that if there was a temple and an adjacent room next to the temple, the site plan as filed by the tenant clearly shows that there would be no way to access the temple; it would only be through the room. This is evident from the perusal of the site plan. Thus the submission of the learned counsel for the petitioner that this is an incorrect site plan is prima-facie a right finding returned by the Trial Court. More so, at the cost of repetition, this site plan had not been filed along with the application seeking leave to defend and needless to state that the law on this aspect is very clear. It is from the pleadings of the parties which includes the application seeking leave to defend and the eviction petition that the triable issues have to be culled out. No triable issue has arisen on this score.

The next submission of the learned counsel for the petitioner is that a subsequent event has been taken on record and it has brought to the notice of the Court that the landlord has got another shop and thus the need of the landlord now stands satisfied. This submission is also incorrect. That eviction petition had been decreed in favour of the landlord qua the need of another grandson and even assuming that this shop has been vacated by Virender Sharma, it does not fulfil the need of Atul; that shop was for the need of another grandson. The fact that both the grandsons of the landlord are dependent upon him for their need for accommodation has been specifically averred; in this petition (which is relevant for the decision of this matter), it has clearly been stated that the grandson Atul is dependent upon the petitioner for his need for accommodation.

The concept of ‘dependency’ as contained in the Section 14 (1)(e) is not limited to a financial dependency only . This concept is much wider.

In 1986 (1) RCJ 717 R.K. Bhatnagar versus Sushila Bhargava , the word ‘dependent’ was analysed to include not only a person who is financially dependent upon the landlord/landlady but has a such wider ambit. In this context it was noted as under:

“it is now well settled that the word “dependent” cannot be construed as wholly dependent in the sense of earning nothing at all and the entirely dependent on the parents for lodging and maintenance. It connotes a wider concept and covers a larger field. It takes a person who is not financially dependent upon the landlord but who would in normal course look upto the landlord to provide

him/her with the facility of a house/portion possessed by the landlord.”

In 10 (2003) DLT 746 Om Prakash Bajaj Vs. Chander Shekar, a Bench of this Court had noted that the members of the family of the landlord and their need for accommodation is in fact the need of the landlord himself and even where the son and grandson of the landlord were noted to be financially well of, it could not be said that they were not dependent upon their father and grandfather for the need of accommodation.

The next submission of the learned counsel for the petitioner is that in the application seeking leave to defend, the tenant has averred that the landlord had tenanted one shop to one Ram Avtar who has since vacated the shop and the said shop has been re-tenanted to Sanjeev Aggarwal which was in November, 2012 i.e. two years from the date of filing of the eviction petition. This has been specifically denied by the landlord. In his reply, the landlord has stated that Sanjeev Aggarwal had become his tenant in the year 2005-2006. In this context, learned counsel for the petitioner additionally submits that the signatures of Sanjeev Aggarwal qua the rent receipts which have been placed on record by the landlord (dated 30.11.2006) appears to be a forged document as compared to the rent receipt which has been placed on record qua Sanjeev Aggarwal which is dated 15.01.2014 and attention has been drawn to the said two documents for the said purpose. This Court is not in agreement with this submission of the learned counsel for the petitioner. On the face reading of the documents, there appears to be no forgery in the

signatures of Sanjeev Aggarwal. Even otherwise, the landlord has clearly and categorically stated that Sanjeev Aggarwal had become his tenant in the year 2005-2006 and the rent receipt for the year 2006 evidencing the signatures of Sanjeev Aggarwal as tenant in that shop is clear. The rent deed dated 08.11.2005 qua the tenancy of Sanjeev Aggarwal is also a part of the record. This argument also raises no triable issue.

The last submission of the learned counsel for the petitioner is that the bonafide need of the landlord is not made out and the accommodation which is presently available with the landlord is sufficient to meet his need. This submission of the learned counsel for the petitioner has again been noted to be rejected. The rent deed which has been placed on record qua the premises which have been taken on record by Atul i.e. shop bearing No. 4790/2, Hauz Khazi, Delhi show that he had taken these premises on rent in the year 2013 substantiating the submission of the petitioner that Atul had started business in the year 2013 and thus on all scores, the submission of the tenant that the grandson had started his business prior to 2012 when Sanjeev Aggarwal had been inducted as tenant is an argument without any force. There is no other accommodation available with the petitioner to permit Atul to carry out his business. By no stretch of imagination can it be stated that a tenanted accommodation would satisfy the need. Thus, on no count, does any triable issue arise.

This petition is nothing but an abuse of the process of the

Court. Petition is without any merit. Dismissed with costs quantified at Rs.20,000/-.

INDERMEET KAUR, J

APRIL 07, 2016

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