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

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RC.REV. 646/2015

RAJAN YADAV

..... Petitioner

Through  
versus

Mr.Manjit Singh Chauhan, Adv.

RAJ DULARI GARG

..... Respondent

Through

Mr. Pawan K. Bahl and Mr. Pankaj  
Singhala, Advs.

**CORAM:**

**HON'BLE MS. JUSTICE INDERMEET KAUR**

**ORDER**

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**04.05.2016**

The eviction petition had been decreed on 16.09.2015. This order was passed in favour of the landlady Raj Dulari Garg. The tenant Rajan Yadav is aggrieved by this finding. The application seeking leave to defend in the spending proceedings filed by the landlady under Section 14 (1)(e) of the Delhi Rent Control Act (DRCA) had been dismissed.

Record discloses that an eviction petition had been filed by the landlady seeking eviction of her tenant from the suit property i.e. a shop on the ground floor of property No. F-197-B, Mangal Bazar, Laxmi Nagar, Delhi. The premises had been let out for commercial purposes. The landlady claims herself to be the owner of the suit property. Eviction petition discloses that there were four shops on the ground; first floor was a residential where the plaintiff was living along with her family. Out of the four shops on the ground floor, the shop depicted in red colour was tenanted out to the tenant in question. The second shop was in possession of one of her son namely Parvesh

Garg who is carrying on business under the name and style of Easy Bill Shop. The second shop is in possession of Sarla Devi. The third shop is a shop where the petitioner was carrying on fair price ration shop with the assistance of her husband. Apart from this, the petitioner has no other commercial accommodation available. The bonafide need of the landlady has been set up in para 18-A which is the need for her son Vipin Garg to start an independent practice; he was a qualified Chartered Accountant and also has the requisite experience to carry out this practice; presently he was working as a Manager, Taxation at the Dynamic Drilling and Services Pvt. Ltd at Moti Nagar. He wanted to set up his own practice. The eviction petition was accordingly filed.

The application seeking leave to defend was filed within the stipulated period. Contention was that the premises is not required bonafide by the landlady; she has three other shops on the ground floor and the son of the petitioner can well carry out his business of chartered accountancy from the said shops. The son of the petitioner is already working at a handsome salary. The eviction petition has been filed only for a commercial need as the premises has to be re-let out to a builder for rebuilding. These are the assertions made in this application.

Reply was filed by the landlady controverting these submissions. It was reiterated that out of the four shops on the ground floor, two have been tenanted out and from the third shop, the husband of the petitioner is carrying out a fair price shop. The need of the petitioner was the need of her son Vipin Garg to set up his

independent practice. The first floor is residential and cannot be used for the said purpose where even otherwise the family of the petitioner is living. It was denied that the need of the landlady was not genuine or this eviction petition has been filed only for a commercial reason.

The Trial Court had noted that no triable issue has arisen in view of the averments made in the application seeking leave to defend. The Trial Court had correctly noted that twin requirement of Section 14 (1)(e) of the DRCA stood established. The landlord-tenant status was not denied. The bonafide need of the qualified Chartered Accountant i.e. the son of the landlady is to set up his independent practice. The fact that he was a qualified Chartered Accountant was an admitted position. The fact that he was presently in service is also an admitted fact. The fact that there is no alternate suitable accommodation available with the landlady as the other three shops of which two shops had been leased out and the one where the husband of the petitioner is carrying out a fair price ration shop. The submission of the landlady is that there was no reasonably suitable accommodation from where her son Vipin Garg could set up an independent business. Both the essential ingredients of Section 14 (1)(e) of the DRCA stood satisfied. The eviction decree was rightly passed in favour of the landlord. It suffers from no infirmity.

In fact on an earlier date, this Court had returned a prima-facie finding on this count and on 01.02.2016 had noted the sole argument propounded by the learned counsel for the petitioner which was to the effect that necessary clearance under Slum Areas (Improvement and Clearance) Act, 1956 (hereinafter referred to as the said Act) had not

been obtained which would raise a triable issue. Arguments have been heard on this point. Learned counsel for the petitioner/tenant candidly admits that this argument has not been raised by him in his application seeking leave to defend. His submission on this count is that such a submission should have been noted by the Trial Court and the Section 19 of the said Act requires that a slum clearance has to be obtained for initiating the proceedings under Section 14 (1)(e) of the DRCA and this permission not having been obtained, it was for the ARC to have gone into this aspect himself and examined it suo-motu.

This submission has been countered by the learned counsel for the respondent.

This Court is not in agreement with this submission of the learned counsel for the petitioner. The summary procedure contained in Section 25-B of the DRCA which is the procedure to be followed in an eviction petition filed under Section 14 (1)(e) had been adhered to. Section 25-B presupposes that where the eviction petition has been filed under Section 14 (1)(e), the procedure contained in that Chapter (Chapter III of the DRCA) has to be followed.

After summons have been served on the tenant in the requisite format, the application seeking leave to defend has to be filed by the tenant within the stipulated period of 15 days. Reply to the said application would thereafter be filed by the landlord. The triable issues have to be culled out from the pleadings of the parties which would include the eviction petition, the application seeking leave to defend and the reply filed to that application including the documents appended along with the said pleadings. The triable issues cannot be

imagined or guessed by the Judge. It is not for the Judge to build up a defence of a party. There is no gainsaying to the settled legal proposition that a Judge is a balance between the two warring parties. When admittedly no ground had been raised about the permission under the said Act in the application seeking leave to defend, there was no scope for the landlady to have answered these averments. Since it was not a part of the application seeking leave to defend, obviously there could have been no reply filed to the same by the landlady. The Judge, in these circumstances, had not gone into this issue. No triable issue having arisen on this count as such an issue not having been raised before the Trial Judge, all other issues are against the tenant, the impugned order had rightly decreed the eviction petition. The submission of the learned counsel for the petitioner that this aspect of the permission of the slum clearance should have been taken suo-motu by the Trial Judge is a submission without any force. Unless and until, the fact so pleaded in the application seeking leave to defend, the Court could not have taken suo-motu cognizance of the same.

Impugned order, in this background, suffers from no infirmity. Petition is without any merit. Dismissed.

**INDERMEET KAUR, J**

**MAY 04, 2016**

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