

\$~14

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RC.REV. 669/2015
GULSHAN OBEROI

..... Petitioner

Through Mr. Rajiv K. Garg and Mr. Ashish
Garg, Advs.
Mr. Praveen Khattar, Adv. (earlier
counsel)

versus

DR RAMAN TYAGI & ORS

..... Respondents

Through Mr. Rakesh Kr. Khanna, Sr. Adv.
with Mr. Ayush Gupta, Ms. Shefali
Jain, Ms. Anandita Sharma and Mr.
Anirudh Tanwar, Advs.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **16.03.2016**

The petitioner/tenant is aggrieved by the order dated 27.08.2015 vide which his application seeking leave to defend in the pending eviction petition under Section 14 (1) (e) of the Delhi Rent Control Act (DRCA) had been dismissed. The contention of the petitioner is that the Trial Court had failed to appreciate that triable issue had arisen; the landlord has not come to the Court with clean hands but all this was not considered by the Trial Court in the correct perspective. The impugned order is an illegality; it is liable to be set aside.

Needless to state that these arguments have been refuted.

The eviction petition has been filed by the landlord Raman Tyagi. The premises in dispute is a shop bearing NO. 17/10A, ground

floor, Tilak Nagar, New Delhi. The contention of the landlord is that the premises had been leased out to the tenant by a lease deed dated 30.03.1985. This property was originally owned by Ram Bhaj Tyagi. After his death, by virtue of a Will, the property had fallen to the share of the petitioner and vide conveyance deed dated 30.06.2003, this property stands transferred in his name. There is admittedly a landlord-tenant relationship between the parties. Further contention in the eviction petition is that the landlord and his wife are doctors who are practising dentists and presently they are running their clinic from the ad-joining property at 17/9B, Mal Road, Tilak Nagar. This property originally belongs to his father S.C. Tyagi but because of the need of the landlord, this property had been rented out to him after 2009. After the demise of his father, this property has been mutated in the name of his mother. The petitioner has no other property which is available to him and accordingly the eviction petition had been filed.

In the application seeking leave to defend, several grounds have been taken but the primary argument which has been urged before this Court is that an earlier eviction petition had also been filed by the landlord under Section 14 (1)(e) of the DRCA. This eviction petition was dismissed for non-prosecution on 06.09.2010. Attention has been drawn to the averments made in that eviction petition. In that eviction petition, it had been stated by the landlord (Raman Tyagi) that his father S.C. Tyagi has disowned him and the petitioner has no other suitable alternate accommodation or residential accommodation. Submission is that in the present eviction petition which had thereafter been filed on 10.10.2011, there is no contention about

disowning by his father (S.C. Tyagi) qua the present petitioner. Submission being that the petitioner before this Court has not come to the Court with clean hands. In the application seeking leave to defend, it has further been disclosed that the basement where the petitioner is presently running his clinic is a property owned by his father and his submission is that he is paying rent to his mother (after the demise of his father) is incorrect. He is the only son of his father and this property is sought to be vacated for the enhancement of rent and this is also clear from the fact that earlier a legal notice dated 31.05.2011 had been served upon the petitioner wherein only enhancement of rent had been sought qua the said property. There was no mention of any bonafide need by the petitioner. This submission of the learned counsel for the petitioner/tenant is correct and is borne out from the contents of the said legal notice dated 31.05.2011. It has also been brought to the notice of the Court that the adjoining property (owned by the mother of the petitioner) has been rented out on 11.04.2011 at an enhanced rent of Rs.90,000/- per month. This factum has also not been denied in Court.

The gamut of these submission do create a doubt in the mind of the Court as to whether the need of the landlord is in fact bonafide or not coupled with the fact that whether he has any other reasonably suitable accommodation to run his dental clinic.

Triable issues thus having arisen, the impugned order dated 27.08.2015 is set aside. Leave to defend is accordingly granted to the tenant. Written statement be filed within three weeks with advance copy to the learned counsel for the landlord who may file replication

thereafter.

Parties are directed to appear before the Trial Court on 04.06.2016.

At this stage, learned senior counsel for the landlord submits that there is every apprehension that the trial may get delayed and he accordingly prays that the Trial Court may be directed to expedite the trial. The Trial Court in this background is endeavour to dispose of the petition within an outer limit of one year from the receipt of this order. It is also made clear that any observation made in this order will not influence the final judgment.

Petition dispose of.

INDERMEET KAUR, J

MARCH 16, 2016

A