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

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Date of Judgment: 04.5.2016

+ RC.REV. 643/2015 & C.M. No.29615/2015

PRAKASH KUMAR

..... Petitioner

Through Mr.Sagar Hajelay, Advocate.

versus

INDER PAL SINGH AND ANR

..... Respondents

Through Mr.H.S.Dhawan, Advocate.

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

INDERMEET KAUR (oral)

1 Petitioner is aggrieved by the order dated 28.9.2015 wherein the application filed by the petitioner-tenant seeking leave to defend in a pending eviction petition under Section 14(1)(e) of the Delhi Rent Control Act (DRCA) stood dismissed.

2 Record shows that an eviction petition had been filed by the two landlords (Inder Pal Singh and Inderjeet Singh) which was filed under Section 14(1)(e) read with Section 25 B of the DRCA. Suit property comprised of a shop on the ground floor of property No.D-103, Tagore Garden Extension, New Delhi and had been depicted in red colour in the site plan. The premises had been leased out to the tenant by the late father of the petitioners vide rent deed dated 01.9.1981. At this stage it would be relevant to point out that there is no dispute about the status of the landlord-tenant relationship.

3 The need of the landlords has been projected in para 18 of the eviction petition. This need has been described as the need of petitioner no.1 for running a business of a cloth merchant. It is stated that the shop is situated in a highly commercially viable area and for running a business of a cloth merchant from the said shop would be suitable option for the petitioner no.1 who is presently carrying on his business of sale of clothes from the carrier of a bicycle.

4 Attention has been drawn to the site plan. Submission is that there is no other property available with the landlords to carry on this business. The other shops on the ground floor are already occupied;

Gulzar Singh is a tenant in an adjacent shop who is running a shop of a chemist; tenant Dinanath is carrying on a business of garments under the name and style of “Krishna Garments” in another tenanted shop; “Weekender Readymade Garments” is another tenant besides one ATM of Canara Bank. The property now stands mutated in the names of the petitioners. Petitioner no.1 has no other place from where he can carry out his garments business. At the cost of repetition, he is now carrying on his business of selling of garments from the carrier of his bicycle.

5 In the application seeking leave to defend primary contention of the tenant is that petitioner no.2 is running a business of a property dealer. The petitioners are gainfully employed. The first floor of property at D-58, Shivaji Market, Tagore Garden Extension, New Delhi is also in their possession and has been used for a commercial purpose. They can well use that area for the business of petitioner no.1. These were by and large the triable issues which were raised by the tenant.

6 Relevant would it be to note that this application seeking leave to defend was filed on 23.7.2012 i.e. within the stipulated period.

Thereafter on 04.9.2013 an additional affidavit was sought to be filed by the tenant seeking leave of the Court to bring on record certain additional facts. These additional facts are detailed in para 3 of the affidavit which reads as under:

“ That after the filing of the said application dated 23rd July, 2012 the petitioner has given on lease a shop with a L6 licence for sale of wine and beer to the Delhi Tourism and Transportation Development Corporation on the Ground Floor in the property bearing No.D-58, Shivaji Market, Tagore Garden Extension, Near Central School, New Delhi-110027. In addition another portion on the first floor of the property bearing no.D-58, Shivaji Market Tagore Garden Extension, Near Central School, New Delhi-110027 has been given on lease to the Delhi Tourism and Transportation Development Corporation. The Deponent has taken a photograph of the said property which shows the factum of leasing out of the property by the petitioner.”

7 Learned counsel for the petitioner in support of this application has placed reliance upon certain documents which have been filed along with the subsequent affidavit. This is an electricity bill in the name of Inderjeet Singh (petitioner no.2). Submission in para 3 of this additional affidavit is to the effect that the petitioners have given on lease a shop i.e. D-58, Shivaji Market Tagore Garden Extension, Near

Central School, New Delhi-110027 to the Delhi Tourism and Transportation Development Corporation i.e. D-58, Shivaji Market Tagore Garden Extension, Near Central School, New Delhi-110027 and photographs to the said effect depicting this fact apart from this document (electricity bill as noted supra) has been relied upon. This electricity bill is in the name of Inderjeet Singh wherein the consumer of the electricity is shown as Inderjeet Singh. It is not the Delhi Tourism and Transportation Development Corporation as is the argument raised before this Court. This pleading is wholly contrary to the pleading made in the aforementioned additional affidavit.

8 The Trial Court had noted the facts in the correct perspective. The Trial Court had noted that no subsequent fact relatable to the present proceedings is a part of the additional affidavit which can in any manner persuade the Trial Court to take it on record especially keeping in view the mandate of the law which clearly propounds that the leave to defend has to be filed within a period of 15 days of service failing which if no triable issue arises in the pleadings, the eviction petition has to be decreed. If the additional affidavit (dated 04.9.2013) would have been taken on record, it would clearly amount

to an extension of the period for filing leave to defend which would be extending it beyond even a period of one year. It would have amounted to ignoring the mandate of law which is contained in Section 25B of the DRCA. This was impermissible.

9 The Trial Court had correctly noted that the twin requirements of Section 14(1)(e) of the DRCA had been met with. The relationship of landlord and tenant has not been disputed. The premises are required bona fide for petitioner no.1 for running his business of sale of garments. He has no other suitable accommodation as all other shops on the ground floor have already stood tenanted out. The suit premises is the only accommodation to fulfil the need of petitioner no.1. Even presuming that petitioner no.2 is carrying on business of a property dealer that does not preclude petitioner no.1 to project his need as he is the co-owner of the property. Time and again courts have reiterated that it is for the landlord to choose his vocation and to be the best judge of his requiremen, as to how he would like to use his accommodation for his purpose.

10 Contention of the tenant that one shop for running an ATM has been let out to the Canara Bank has been negated in the reply filed

by the landlord. That part, this shop wherein ATM is installed measures a space of 6 ½ x 8 sq. feet whereas the shop in question which is with the tenant measures 15.6 x 9.6 sq. feet. The dimensions and size of the ATM and shop being in contrast it would be impossible to believe that space which is sufficient for an ATM would also be sufficient for running a business of cloth/garments.

11 Although the Trial Court has gone into the factum as to whether the petitioners are the owner of the suit property by virtue of the will left by their deceased parents, before this Court learned counsel for the petitioner has stated that status of the relationship of owner/landlord-tenant qua the suit property is not under challenge.

12 This Court is of the view that the additional affidavit sought to be filed by the tenant on 04.9.2013 was rightly rejected as it was much beyond the stipulated period of 15 days during which an application seeking leave to defend is required to be filed; prima facie there was a document annexed with that affidavit to support the submission that subsequent facts during the pendency of the petition relevant to the present case had come to the knowledge of the tenant. This Court has also noted the contrary pleading in para 3 of the additional affidavit

which is in contrast to the electricity bill (document relied upon by the tenant). No triable issue has arisen on any count.

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

MAY 04, 2016
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INDERMEET KAUR, J

