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

% **Date of Decision: 28.03.2017**

+ RC.REV. 392/2016 and CM No. 29183/2016

PREM LAL

..... Petitioner

Through Mr.Javed Ahmad and Mr.Anis
Ahmad, Advocates

versus

DHARAM BIR JAIN

..... Respondent

Through Mr. Surendra Mishra and Mr.Sonal
Mishra, Advocates

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

1. By the present petition filed under Section 25 B (8) of the Delhi Rent Control Act (hereinafter referred to as the DRC Act), the petitioner seeks to impugn the eviction order dated 14.05.2016 passed by the Additional Rent Controller (hereinafter referred to as the ARC) in the eviction petition filed by the respondent/landlord under Section 14(1)(e) of the DRC Act.

2. The respondent/landlord filed the present eviction petition for property being Shop No. 5981, Chhalani Market, Gali Matkewali, Sadar Bazar, Delhi-110006. As per the eviction petition, it is stated that the respondent is the owner of the tenanted shop and is a resident of Jalandhar, Punjab. For his convenience, he has nominated and constituted his brother Sh. Mahabir Jain as a special attorney for the purpose of filing the present

eviction petition. The petitioner is said to be an old tenant with the rent of Rs.2,500/- per month. It is further stated that the respondent seeks the tenanted shop for himself to set up his own business and to earn a decent livelihood as the shop is situated in the centre of Sadar Bazar which is more suitable for doing business. It is further stated that the respondent has no other place in Delhi and this is the only space the respondent has in Delhi. Hence, the eviction petition.

3. The petitioner filed his leave to defend application. One of the pleas taken in the same is that the respondent is a resident of Jalandhar, Punjab and is doing business there and he is having sufficient space and accommodation there. Hence, there is no bona fide requirement to shift to Delhi to run the business from the present shop.

4. In the reply to the said application, the respondent has admitted that he is staying in Jalandhar. However, no further elaboration is made as to why the respondent seeks to shift from Jalandhar to Delhi. There is complete absence of any material or averment to the effect as to why the respondent who is a resident of Jalandhar would like to shift to Delhi and requires the shop for his bona fide requirement. The nature of business being done in Jalandhar is not stated.

5. The trial court by the impugned order does not deal with the present issues raised by the petitioner. It only reproduces the averments of the respondent in the eviction petition, namely, that the respondent seeks to set up his own business to earn his livelihood from the shop in question.

6. In the present case the trial court declined to grant leave to defend to the petitioner. The parameters for granting leave to defend are well known.

7. The Supreme Court in *Precision Steel & Engineering Works and another vs. Prem Deva Niranjana Deva Tayal*, AIR 1982 SC 1518 in para 22 held as follows:-

22. What then follows. The Controller has to confine himself indisputably to the condition prescribed for exercise of jurisdiction in Sub-section (5) of Section 25B. In other words, he must confine himself to the affidavit filed by the tenant. If the affidavit discloses such facts-no proof is needed at the stage, which would disentitle the plaintiff from seeking possession, the mere disclosure of such facts must be held sufficient to grant 'leave because the statute says on disclosure of such facts the Controller shall grant leave'. It is difficult to be exhaustive as to what such facts could be but ordinarily when an action is brought under Section 14(1) proviso (e) of the Act whereby the landlord seeks to recover possession on the ground of bona fide personal requirement if the tenant alleges such facts as that the landlord has other accommodation in his possession; that the landlord has in his possession accommodation which is sufficient for him; that the conduct of the landlord discloses avarice for increasing rent by threatening eviction; that the landlord has been letting out some other premises at enhanced rent without any attempt at occupying the same or using it for himself; that the dependents of the landlord for whose benefit also possession is sought are not persons to whom in eye of law the landlord was bound to provide accommodation; that the past conduct of the landlord is such as would disentitle him to the relief of possession; that the landlord who claims possession for his personal requirement has not cared to approach the Court in person though he could have without the slightest inconvenience approached in person and with a view to shielding himself from cross-examination prosecutes litigation through an agent called a constituted attorney. These and several other relevant but inexhaustible facts when disclosed should ordinarily be deemed to be sufficient to grant leave.”

8. This court in *Deepak Gupta vs. Sushma Aggarwal*, 2013 202 DLT, 121 held as follows:-

“24.From the mere reading of the afore mentioned illuminating observations of the Supreme Court in the case of Precision Steels (supra), it is apparent that the Controller has a statutory duty to grant the leave to defend if the affidavit discloses the facts which could raise suspicion on the genuineness of the need of the landlord which can in effect disentitle the landlord from recovering the possession on the ground of bonafide requirement. The likelihood of success or the failure of the defence is not really determinative of the question as to grant or not grant of the leave to defend but the real question is tenability of the plea which may raise a suspicion on the need of the landlord which may if proved can also lead to disentitlement to the recovery of the possession. Thus, the plea raising a doubt in the mind of the Controller is sufficient to grant the leave. The Controller can also not record the findings on disputed question of the facts by preferring the one set of facts over and above the other. The merits of the pleas raised are not to be gone into at the time of the grant of the leave to defend by going into the complicated questions of fact. For making the enquiry, the affidavit filed by the tenant is helpful.

25. The views expressed by the Supreme Court in the case of Charan Dass (supra) and Precision Steel (supra) are holding the field and have been consistently followed by the Supreme Court till recently and also by this court from time to time. (kindly see the case of Inderjit Kaur vs. Nirpal Singh, : 2001 (1) R.C.R. 33 and Tarun Pahwa vs. Pradeep Makin, : 2013 (1) CLJ 801 Del.)”

9. In my opinion, the impugned order suffers from material errors and illegality as it did not notice that a triable issue is stated. As per the petitioner, the respondent is settled in Jalandhar and has no need for the tenanted property. The respondent gives no facts or details as to why he

wants to shift to Delhi. Clearly, the petitioner has disclosed facts which raise suspicion on the genuineness of the need of the landlord. Accordingly, the impugned order suffers from material illegality.

10. I quash the impugned order dated 14.05.2016. The parties are relegated back to the ARC for adjudication of the eviction petition on merits. The parties shall appear before the ARC on 01.5.2017.

11. On the next date of hearing before the ARC, the petitioner shall file his written statement. The ARC is requested to expeditiously dispose of the present eviction petition. Ordinarily unless there is an emergent situation, no adjournment shall be given to the parties on the date fixed by the ARC.

12. The petition stands disposed of.

13. All pending applications also stand disposed of.

JAYANT NATH, J

MARCH 28, 2017

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