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

+ RC.REV. 444/2016 & CM No.33452/2016

MOHAN KUMAR GANDHI Petitioner
Through Mr.D.K.Rustagi, Advocate

versus

NARINDER SHAH Respondent
Through Mr.Abhinav Tyagi, Advocate

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

% **ORDER**
17.01.2017

CM No.33452/2016(exemption)

Allowed subject to all just exceptions.

RC.REV. 444/2016

1. The present revision petition is filed seeking to impugn the order dated 16.07.2016 by which the application filed by the respondent/tenant under Section 25B for leave to contest was allowed.
2. The petitioner/landlord has filed an eviction petition under Section 14(1)(e) of the DRC Act. The respondent being served with summons of the eviction petition filed an application for leave to appear and contest the eviction petition along with an affidavit.
3. The ARC by the impugned order has noted the contentions of the respondent/tenant. Having noted the said contentions, the order concludes that the respondent is able to raise triable issues regarding the availability of the sufficient accommodation with the petitioner and also about the bona

fide requirement of the suit premises by him. Hence, the order concludes that triable issues have arisen between the parties.

4. The court did not record the submission of the petitioner. The court did not come to a conclusion based on the pleadings as to whether a triable issue has been raised or not. It merely noted the submissions of the respondent and formed its conclusion that a triable issue is raised.

5. In a somewhat similar case, this court in the case of **Sarwan Dass Bange vs. Ram Prakash**, *MANU/DE/0204/2010* noted the impugned orders as follows:-

“5. The Additional Rent Controller has in the order impugned in this petition dealt with the matter in a very cursory manner. After reproducing the pleadings, arguments and passage from the judgment of the Supreme Court in Precision Steel and Engineering Works Ltd. v. Prem Deva Niranjana Deva Tayal MANU/SC/0210/1982: AIR 1982 SC 1518, it has merely been observed that the respondent/tenant has disputed each and every ingredients of Section 14(1)(e) of the Act and thus disputed question of fact arise making the respondent/tenant entitled to leave to defend. Though the judgments cited by the petitioner are recorded in the order but there is no reasoning as to why the law laid down therein is not to be applied. Aggrieved therefrom the present revision petition has been preferred.

6. This court thereafter stated as follows:-

“7. The Controller has not discussed as to how the pleas raised by the respondent/tenant in the application for leave to defend are such which if established by adducing evidence would disentitle the petitioner/landlord of an order of eviction under Section 14(1)(e) of the Act. Ordinarily, when a tenant approaches an advocate for drafting a leave to defend application, the advocate, using his legal acumen would dispute each and every plea of the landlord in the eviction

petition. However, merely because the tenant so disputes and controverts the pleas of the landlord does not imply that the provision of summary procedure introduced in the Act with respect to ground of eviction on the ground of requirement is to be set at naught. The Controller is required to sift/comb through the application for leave to defend and the affidavit filed therewith and to see whether the tenant has given any facts/particulars which require to be established by evidence and which if established would disentitle the landlord from an order of eviction. The test is not of the tenant having controverted/denied the claim of the landlord and thus disputed questions of fact arising; the test is to examine the pleas of facts and then to determine the impact thereof.”

7. Clearly, the impugned order has been passed in a cursory manner and contrary to law.

8. Apart from the above, I may note that while passing an order a court is obliged to give reasons. Supreme Court in the case of ***Assistant Commissioner, Commercial Tax Department, Works Contract & Leasing, Kota v. Shukla & Brothers, (2010) 4 SCC 785***, held as follows:

“The Supreme Court has consistently taken the view that recording of reasons is an essential feature of dispensation of justice. A litigant who approaches the court with any grievance in accordance with law is entitled to know the reasons for grant of or rejection of his prayer. Reasons are the sole of orders. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. These principles are not only applicable to administrative or executive actions, but they apply with equal force and, in fact, with a greater degree of precision to judicial pronouncements. The orders of the court must reflect what weighed with the court in granting or declining the relief claimed by the applicant.”

9. Accordingly, the present impugned order is set aside. The petition stands disposed of. The matter is remanded back to the trial court to consider afresh the application filed by the respondent seeking leave to defend.

10. List before the ARC on 30.01.2017. The ARC is requested to dispose of the said application within four months from the date of receipt of a copy of this order uninfluenced by any observations made by this court.

JAYANT NATH, J.

JANUARY 17, 2017/v