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

+ **RC.REV. 553/2016**

RATI RAM VERMA

..... Petitioner

Through: **Mr.Sunil Kumar, Advocate.**

versus

RAJESHWAR PRASHAD

..... Respondent

Through: **Mr.Anil Sharma, Mr.Arun Baali,
Mr.JAskaran Singh and Mr.Aman
Bhardwaj, Advocates.**

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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22.05.2017

1. The petitioner has invoked the extraordinary jurisdiction of this Court under Article 227 of the Constitution of India impugning the order dated 29th August, 2016 whereby the learned ARC while deciding the application seeking leave to defend filed by the respondent/tenant, dismissed the eviction petition filed by the petitioner/landlord under Section 14(1)(e) read with 25-B of Delhi Rent Control Act.
2. The eviction petition bearing No.RC/ARC No.872/2016 was filed by the petitioner/landlord under Section 14(1)(e) read with Section 25-B of Delhi Rent Control Act in respect of Shop No.2 in property No.A-9, Ground Floor, Krishna Nagar, Delhi.
3. After service of notice of the eviction petition, the respondent/tenant filed application seeking leave to defend the case. Vide impugned order, the learned ARC while disposing of the application seeking leave to defend, dismissed the eviction petition.
4. Notice of this petition was issued to the respondent/tenant.
5. Heard learned counsel for the parties.

6. Mr. Anil Sharma, Advocate fairly concedes that if the learned ARC was inclined to allow the application seeking leave to defend, the only course open before the learned ARC was to give an opportunity to the respondent/tenant to file the written statement.

7. Chapter-III A of Delhi Rent Control Act provides 'Summary Trial of Certain Applications' which includes Section 25-B i.e. Special procedure for the disposal of application for eviction on the ground of bona fide requirement.

8. Clauses 4, 5 and 6 of Section 25B of Delhi Rent Control Act read as under:-

'25B - Special procedure for the disposal of applications for eviction on the ground of bona fide requirement. -

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(4) The tenant on whom the summons is duly served (whether in the ordinary way or by registered post) in the form specified in the Third Schedule shall not contest the prayer for eviction from the premises unless he files and affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided; and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction on the ground aforesaid.

(5) The Controller shall give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in clause (c) of the proviso to sub-section (1) of section 14, or under section 14A.

(6) Where leave is granted to the tenant to contest the application, the Controller shall commence the hearing of the application as early as practicable.

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9. In para 4 of the impugned order, the learned ARC has observed that all the sons of the petitioner are well settled and petitioner has adequate accommodation at his disposal.

10. The concluding paragraphs whereby the eviction petition has been dismissed read as under:-

'5. A major grand son, aged 38 years, who is already married, is not dependent on his grand father and thus, the petition is not maintainable because the person for whose need, the premises is sought to be vacated by destroying the immunity of tenant against eviction, is not dependent on the landlord.

6. Petition is dismissed'

11. The spirit of the order impugned herein is that the learned ARC was satisfied that it was a case where application seeking leave to defend was to be allowed. However, in that circumstance, the learned ARC should have posted the case for filing the written statement but dismissed the eviction petition which is not permissible under the law.

12. The impugned order to the extent that it has dismissed the eviction petition, is hereby set aside.

13. The Eviction Petition bearing RC/ARC No.872/2016 is restored to its original number.

14. The parties are directed to appear before the concerned Court on 5th July, 2017.

15. Respondent/tenant is directed to file written statement on or before 5th July, 2017.

16. The petition is disposed of with above observations.

17. A copy of this order be sent to the concerned Court for information and compliance and be also given dasti to learned counsel for the parties.