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

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Judgment delivered on: 11.09.2019

+ RC.REV. 395/2017

RISHI NATH AGGARWAL

..... Petitioner

versus

SAURAV & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner:

Mr. Kunal Kalra, Adv.

For the Respondent:

Mr. Ravish Kr. Goyal, Adv

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 30.03.2017 whereby the eviction petition filed by the petitioner has been dismissed by the Addl. Rent Controller, while considering the application for grant of leave to defend to the respondent.

2. Subject eviction petition was filed by the petitioner under Section 14 (1) (e) of the DRC Act contending that the petitioner's son is aged about 24 years and daughter aged about 28 years, both of whom have done degrees in Masters of Business Administration. It is

stated that the premises was required bonafide for use and occupation of himself as well as adult family members, inter-alia, two children who were unemployed.

3. The Rent Controller, by the impugned order, has dismissed the petition on the ground that persons aged 24 years and 28 years are not dependent in law on their parents and further that the petitioner had expressed only a desire and not a need and as such the petition was not maintainable.

4. Learned Counsel for the Respondent fairly concedes that these were not the grounds taken by him in the leave to defend application.

5. Clearly, the Rent Controller has committed an error in holding that persons aged 24 years and 28 years are not dependent on their parents. Dependency for the purposes of residence or business is distinct from financial dependency. A person may be financially independent but can still be dependent upon his parents for the purposes of residence or business premises.

6. In the present case, the petitioner had specifically averred that the children are educated and unemployed and dependent upon him.

7. Further, the finding of the Rent Controller that the petitioner has merely expressed a desire and not pleaded necessity is contrary to record. Petitioner has pleaded that the premises is required bonafidely for the use of the petitioner as well as his unemployed children.

8. The Rent Controller could not have dismissed the petition on the said grounds. If the Rent Controller was prima facie of the view that the children were not dependent on the petitioner or that the need was not bonafide, the Controller could have granted leave to defend, but not dismiss the petition.

9. The impugned order dated 30.03.2017, dismissing the eviction petition is not sustainable and as such the same is set aside. The matter is remitted to the Rent Controller to consider the leave to defend application of the respondent on merits.

10. The parties shall appear before the concerned Rent Controller on 27.09.2019. The Rent Controller shall consider and decide the leave to defend application within a period of three months from the said date.

11. Original record received from the Rent Controller is directed to be sent back forthwith.

12. It is clarified that this Court has neither considered nor commented on the merits of the case. All rights and contentions of parties are reserved.

13. Order *Dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

SEPTEMBER 11, 2019

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