



\$~29

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

+ **RC.REV. 13/2023**

LACHO DEVI

.....Petitioner

Through: **Mr. Jairam Garg, Advocate**

versus

NASIR AHMED

.....Respondent

Through: **Appearance not given**

CORAM:

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

ORDER

%

23.07.2024

1. The present revision petition is filed under section 25-B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the “Act”) to set aside the impugned order dated 25.07.2022 passed by the court of Ms. Divya Malhotra ARC- 01 Central District, Tis Hazari Courts, Delhi in case bearing RC ARC 252/20 and E no. 66/20 whereby the application for leave to defend filed by respondent was allowed.
2. The petitioner filed eviction petition under section 14(1)(e) of the Act titled as **Lacho Devi V Nisar Ahmed Khan** whereby claiming to be the co-owner of the property bearing no. 313/70-J, Plot No.20, Anand Nagar, Delhi and tenanted premises i.e. one shop situated on the ground floor of the said property as shown in red color in the site plan annexed in the petition was stated to be let out to the respondent for commercial purposes.
3. The petitioner in the eviction petition claimed that the tenanted shop for her own requirement for the commercial need of each of her family



members i.e. her son, daughter in law and her grand-daughter who was stated to be school going.

4. The respondent after service of summons as per the third Schedule of the Act filed an application for leave to defend along with an affidavit. The Trial court vide impugned order vide dated 25.07.2022 has allowed the application for leave to defend while observing as under

8. In the present case, petition has taken multifarious grounds to establish her *bonafide* need of the premises. At first, she states that the tenanted premises is required for her residence, as she being an old lady cannot climb the stairs whereas the tenanted premises is situated at the Ground Floor. In the same breath, she has also projected the commercial needs of each of her family members i.e. her son; daughter-in-law and even her school going grand daughter. It appears that the petitioner herself is not clear as to what her requirement is.

9. A proceeding under Section 14(1)(e) read with Section 25(b), being summary innature it is, imperative that ample caution is exercised before a tenant is evicted from the premises. The legislation is enacted for the benefit of those class of landlords who genuinely require the premises for their needs and benefit any other accommodation. The requirement must be sincere and honest and not a pretense to evict the tenant. A mere fanciful desire or whim would not suffice and would rather run counter to the scheme of the beneficial legislation.

10. The petitioner has taken all the possible grounds under the sky so as to establish her requirement. It is hard to fathom that a small property ad-measuring 7'3"x15'3" can accommodate all the above projected needs. She cannot speak in two voices simultaneously. Section 14(1)(e) ORCA cannot be used as a tool to swiftly evict a tenant. Petitioner has to clearly establish her *bonafide* need & not create an artificial ground for eviction. In the given facts and circumstances, it is only deemed appropriate that her projected need be tested at the touch-stone of evidence/cross-



examination. Although landlord is the master of his own needs but when the need so projected, appears to be arbitrary, he can certainly be asked to establish the basis of the same.

11. Thus, in the given facts & circumstances of the case, triable issues have arisen whereby an opportunity needs to be granted to the respondent to cross-examine the petitioner. As such leave to defend is allowed. WS be filed within 30 days from today with copy to the opposite side thereafter, Replication if any be also filed with advance copy.

5. The counsel for the petitioner stated that trial court in the impugned order has not considered essential ingredients of section 14(1)(e) of the Act and passed the impugned order merely on the basis of presumption that there cannot be any bonafide requirement for family members of the petitioner. The counsel for the petitioner further stated that in **Dr. Jitendra Mohan Gulati V Hira Lal Singh** in RC Rev.272/2013 decided on 08.04.2015 by this court, wherein it was observed that there is no requirement in law that while filing an eviction petition under 14(1)(e) of the Act, the landlord must restrict himself only to one bona-fide requirement.

6. In view of these submissions, the counsel for the petitioner prayed that the impugned order dated 25.07.2022 be set aside and eviction order in respect of the tenant premises be passed in favour of petitioner and against the respondent.

7. The counsel for the respondent argued that the trial court has passed the impugned order after appropriate appreciation of the materials placed on record and the present petition be disposed of.

8. The perusal of impugned order dated 25.07.2022, reflects that trial court has not discussed all the essential ingredients of section 14(1)(e) of the Act and rather it is appearing that the trial court was swayed by the



submissions of the petitioner that the tenanted shop is required for the commercial needs of the family members as such the petitioner herself was not clear about her requirement. The said observation made by the trial court is appearing to be based on the assumption and surmises rather on the settled principles of law.

9. After considering all facts, the impugned order dated 25.07.2022 is set aside and the case is remanded back to the trial court for fresh disposal of application for grant of leave to defend along with affidavit filed by the respondent.

10. The trial court is also directed to discuss all the necessary ingredients under section 14(1)(e) of the Act as well as the pleas and contentions taken by both the parties.

11. The petitioner and the respondent are directed to appear before the trial court on 17.08.2024 as already listed.

12. The trial court is expected to dispose of the application for leave to defend preferably within a period of 02 months from the date of receipt of this order.

13. The present petition stands disposed of.

14. Copy of this order be sent to the trial court for information and compliance.

DR. SUDHIR KUMAR JAIN, J

JULY 23, 2024

Sk/abk