

IN THE COURT OF SH. RAJINDER KUMAR  
SCJ/RC(WEST), TIS HAZARI COURTS, DELHI

RC ARC. No.-144/19

In the matter of:

- 1) Sh. Priyanshu Aggarwal  
S/o Late Sh. Anun Aggarwal,
- 2) Sh. Bakhtawar Lal  
S/o Late Sh. Rampat Mal,  
Both R/o H.No.17/61, Than Singh Nagar,  
Gali No.1, Anand Parbat,  
New Delhi - 110005.

.....Petitioners

Vs.

Sh. Kishori Lal  
S/o Sh. Pancham Lal  
Shop on Ground Floor of  
Property No.57/G-2,  
Gadodia Road, Gali No1,  
Anand Parbat, New Delhi-110005.

Residence of :  
48/53, Gali No.6, Nai Basti,  
Gadodia Road, Anand Parbat,  
New Delhi-05.

.....Respondent

Date of filing of the petition : 19.12.2019  
Date of reserving order : 31.07.2020  
Date of pronouncement : 18.08.2020

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## ORDER

1. This order shall decide the question whether the respondent be granted leave to contest the present application under clause (e) of proviso to sub-section (1) of section 14 of the Delhi Rent Control Act, 1958 alongwith Section 151 of CPC.
2. The brief facts for the decision of the application as per the petitioners are that originally, petitioner no.2 was the owner / landlord of the property in question which was let out to the respondent about 40 years back. That the petitioner no.2 is the grand-father of the petitioner no.1 and as per the family partition, the suit property fell in the share of petitioner no.1. That the respondent attorned the father of the petitioner no.1 as owner / landlord and started paying rent to him. That the petitioner no.1 is aged 25 years and is practicing Advocate in Delhi, who has no other reasonably suitable place available to establish his office. That the petitioner no.1 is the only earning member of his family. That the petitioner no.1 has one other tenant in the same premises, shown in green colour.
3. In the affidavit (annexed with the leave to defend application), it is the plea taken by the respondent that there is no relationship between the parties, petitioner has concealed the material facts from the court that the



property in question belongs to DDA or Ramjas Foundation. It is also contented by the respondent that the petitioner no.1 and his parents are the owners of various properties but the same are not intentionally disclosed.

4. The application is contested by the petitioners by way of a written reply, wherein the contents of the application are denied and the facts of the petition are re-iterated and re-affirmed. It is also stated that the petitioner is not having alternative accommodation and also that the application for leave to contest and the affidavit, whereby no triable issues are raised is liable to be dismissed.

5. I have heard the counsels for the parties and gone through the material on record carefully.

6. Having drawn my attention on the application for eviction, affidavit of the petitioner, documents filed on behalf of the petitioners in support of the application for eviction, it is submitted by Ld. counsel for the petitioners that they are the owner and landlord of the premises and require the same bonafidely by the petitioner no.1 to operate as office and therefore, the application for eviction be allowed and the application for leave to contest made by the respondent be dismissed.

I have given my thoughtful consideration to the submissions made on behalf of the parties.

The present petition for eviction is under clause (e) of proviso to



sub-section (1) of section 14 of Act 59 of 1958 which reads as under :-

14.(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by and court or Controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely :-

(e) that the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation :

Explanation.- For the purpose of this clause, "premises let for residential purposes" include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes;

As per the law laid down by the Hon'ble Supreme Court in Satyawati Sharma v. Union of India and another, 148 (2008) DLT 705 (SC) clause (e) of proviso to sub-section (1) of section 14 of Act 59 of 1958 is also applicable to the premises let out for purpose other than residential purpose

The Hon'ble Supreme Court in Charan Dass Duggal v. Brahma Nand, (1983)1 SCC 301 while dealing with the question in the matter of granting leave to contest the eviction petition filed on the ground of personal requirement, in para 5 has stated thus:-

5. What should be the approach when leave to defend is sought? There appears to be a mistaken belief that unless the tenant at that stage makes out such a strong case as would non-suit the landlord, leave to defend cannot be granted. This approach is wholly improper. When leave to defend is sought, the tenant must make out such a prima facie case raising such

pleas that a triable issue would emerge and that in our opinion should be sufficient to grant leave. The test is the test of a triable issue and not the final success in the action (see *Santosh Kumar v. Bhai Mool Singh*). At the stage of granting the leave parties rely in support of their rival contentions on affidavit and assertions and counter-assertions on affidavit may not afford such incontrovertible evidence to lead to an affirmative conclusion one way or the other. Conceding that when possession is sought on the ground of personal requirement, an absolute need is not to be satisfied but a mere desire equally is not sufficient. It has to be something more than a mere desire. And being an enabling provision, the burden is on the landlord to establish his case affirmatively. If as it appears in this case, the landlord is staying at Pathankot, that a house is purchased, may be in the name of his sons and daughters, but there may not be an apparent need to return to Delhi in his old age, a triable issue would come into existence and that was sufficient in our opinion to grant leave to defend in this case.

In the same judgment, in para 7 it is further observed:-

7. The genesis of our procedural laws is to be traced to principles of natural justice, the principal amongst them being that no one shall suffer civil or evil or pecuniary consequence at his back without giving him an adequate and effective opportunity to participate to disprove the case against him and provide his own case. Summary procedure does not clothe an authority with power to enjoy summary dismissal. Undoubtedly wholly frivolous defence may not entitle a person leave to defend. But equally a triable issue raised, enjoins a duty to grant leave. Maybe in the end the defence may fail. It is necessary to bear in mind that when leave to defend is refused the party seeking leave is denied an opportunity to test the truth of the averments of the opposite party by cross-examination and rival affidavit may not furnish reliable evidence for concluding the point one way or the other. It is not for a moment suggested that leave to defend must be granted on mere asking but it is equally improper to refuse to grant leave though triable issues are raised and the controversy can be properly adjudicated after ascertainment of truth through cross-examination of witnesses who have filed their affidavit. Burden is on the landlord to prove his requirements and his assertion is required to be tested more so when it is shown that for long he is staying outside Delhi, that he has a building albeit standing in the names of his sons and daughters where he is staying and at which place he receives his normal correspondence. If in such a situation one can say that a triable issue is not raised, one is at a loss to find out where, when and in what circumstances such an issue would arise. We are, therefore,



satisfied that this is a case in which triable issues were raised and both the learned Rent Controller and the High Court were in error in refusing to grant the leave.

Further in Precision Steel and Engineering Works v. Prem Deva

Niranjan Deva Tayal, AIR 1982 SC 1518 the Hon'ble Supreme Court having

discussed the relevant provisions of Act 59 of 1958 held as follows:

The Controller has to confine himself to the affidavit filed by the tenant under sub-sec. (4) and the reply if any. On perusing the affidavit filed by the tenant and the reply if any filed by landlord the Controller has to pose to himself the only question, "Does the affidavit disclose, not prove, facts as would disentitle the landlord from obtaining an order for the recovery of possession on the ground specified in cl. (e) of the proviso to Section 14 (1)?" The Controller is not to record a finding on disputed questions of facts or his preference of one set of affidavit against the other set of affidavit. That is not the jurisdiction conferred on the Controller by sub-sec. (5) because the Controller while examining the question whether there is a proper case for granting leave to contest the application has to confine himself to the affidavit filed by the tenant disclosing such facts as would prima-facie and not on contest disentitle the landlord from obtaining an order for recovery of possession. At the stage when affidavit is filed under sub-sec. (4) by the tenant and the same is being examined for the purpose of sub-sec. (5) the Controller has to confine himself only to the averments in the affidavit and the reply if any and that become manifestly clear from the language of sub-sec. (5) that 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 recovering possession etc. The jurisdiction to grant leave to contest or refuse the same is to be exercised on the basis of the affidavit filed by the tenant. That alone at that stage is the relevant document and one must confine to the averments in the affidavit. If the averments in the affidavit disclose such facts which, if ultimately proved to the satisfaction of the Court, would disentitle the landlord from recovering possession, that by itself makes it obligatory upon the Controller to grant leave. It is immaterial that facts alleged and disclosed are controverted by the landlord because the stage of proof is yet to come. It is distinctly possible that a tenant may fail to make good the defence raised by him. Plausibility of the defence raised and proof of the same are materially different from each other and one cannot bring in the concept of proof at the stage when plausibility has to be shown.

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From the law laid down by the Hon'ble Supreme Court, it can be discerned that while deciding the question of the grant of leave to contest under the provisions of section 25B of Act 59 of 1958, the Rent Controller should see the affidavit filed by the tenant and the counter affidavit filed by the landlord. From the decisions of the Hon'ble Supreme Court it is also clear that while deciding the question of the grant of leave, the Controller is not required to conduct a full fledged trial and should only see that if the affidavit of the tenant raise any triable point the decision on which may disentitle the landlord from recovering possession of the premises. At the time of the decision on the question of leave, the Controller is not required to seek the proof of the defence of the tenant.

In Sarwan Dass Bange v. Ram Prakash, 2010 IV AD (Delhi) 252 it has been observed by the Hon'ble High Court of Delhi as follows:-

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 dis-entitle 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 provisions 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 dis-entitle 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. In the present case, the respondent has sought leave to contest the application for eviction mainly on two grounds i.e. (i) that the petitioner has concealed the fact that the property in question belongs to DDA or Ramjas Foundation and (ii) That the petitioner and his parents are owners of various properties.

(i) So far as the plea of the respondent that the property in question belongs to DDA or Ramjas Foundation is concerned, it becomes pertinent to mention here that the respondent himself is not sure as to whom the property belongs to. For the sake of arguments, if it is presumed to be correct, it is for the respondent himself to plead specifically as to whom the ownership / landlordship of the property in question lies if the same does not lie with the petitioner.

In para no.6 (reply on merits), it is the plea raised by the petitioners that the respondent has not given any particulars of any





litigation by DDA or by Ramjas Foundation in respect of the suit property. There is no documents placed on record by the respondent in support of the plea taken by him to make the court to believe that the suit property belongs to DDA or Ramjas Foundation.

Moreover, the respondent has not disputed his signatures over the rent receipts placed on record by the side of the petitioners.

It was held by the Hon'ble Apex. Court of Delhi in *Rita Lal Vs. Raj Kumar Singh AIR 2002 SC 3341* that "the tenant having been inducted by the landlord so long as he remains in possession cannot deny the title of his landlord in view of the rule of estoppel contained in Section 116 of Indian Evidence Act. It was further held that the plea raised in the affidavit seeking leave to defend does not amount to raising a triable issue."

It was held by the Hon'ble High Court of Delhi in *Sri Ram Pasricha Vs. Jaganath & Ors. AIR 1976 SC 2335* that "in a suit for eviction - the tenant is estopped from questioning the title of the landlord."

In *Lado Vs. Nannu Ram 2015 (4) CLJ 364 Del*, it was held by the Hon'ble High Court of Delhi that "mere



*denial of ownership of the landlord does mean that every case must be sent for trial involving years. It was further held that mere denial of ownership is no denial at all and it has to be something more."*

It is well settled law that bald allegations without any material on record to substantiate the same could not be looked into as mere bald allegations are not enough for grant of leave to defend. It was held by the Hon'ble High Court of Delhi in **Rajender Kumar & Ors. Vs. Leela Watt & Ors.** 155 (2008) Delhi Law Times 383 that ;

*"..... only those averments in the affidavit are to be considered by Rent Controller which have some substance in it and are supported by some material."*

It was held by the Hon'ble High Court of Delhi in **Hari Shankar Vs. Madan Mohan Gupta : 111 (2004) DLT 534** that ;

*"Summary procedure in Section 25-B of Delhi Rent Control Act, 1958 cannot be defeated by merely making frivolous and vague allegations which can never be substantiated."*

Accordingly, the defence raised by the respondent is a



sham defence and it does not raise any triable issue.

- (ii) So far as the plea of the respondent that the petitioner and his parents are the owners of various properties is concerned, the respondent has failed to give the details / documents of any of such properties. In the absence of the details / documents, nothing can be presumed in favour of the respondent and against the petitioner.

8. The petitioners have pleaded the bonafide requirement of the suit premises on the grounds that the suit premises is required bonafidely by the petitioner no.1, who is an Advocate for an office. The respondent has not placed on record any document / material to show that the petitioner no.1 is having any alternate accommodation to meet out his requirements. It is also pleaded by the petitioner no.1 that he is not having any alternate accommodation available with him.

In the absence of any substantial material brought before the court or pointed out by the respondent in the affidavit, it cannot be said that the present application for eviction is actuated by mala-fide and has not been made with bona fide intention. Merely stating in the affidavit that the application for eviction has been made with mala-fide intention is not sufficient to sustain the contention of the respondent. The court is satisfied that there is no triable point between the parties.



9. As per the provisions of section 25-B of Act 59 of 1958 a tenant shall be entitled to leave to contest the petition for eviction, if the affidavit filed by him discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the grounds specified in clause (e) of proviso to sub-section (1) of section 14 of Act 59 of 1958.

Even if, there is any issue the same is insignificant and does not entitle the respondent from seeking leave to contest the application for eviction.

In view of above discussion and the documents filed by the parties, this court is of the considered view that there is no triable issue between the parties which entitles the respondent for leave to contest the present application for eviction. The application for leave to contest is without merit and the same is dismissed.

As an off shoot of the dismissal of the application for leave to contest made by the respondent, the petitioner is found entitled to recover the possession of premises, i.e. ground floor in Municipal No.57G/2, Gall No1, Than Singh Nagar, Gadodia Road, Anand Parbat, New Delhi-110005, (shop on the ground floor as shown in red colour in the site plan annexed with the application for eviction). The application for eviction is allowed.

In the facts and circumstances of the case there shall be no order as to costs.



In view of the provisions of sub-section (7) of section 14 of Act 59 of 1958 this order for recovery of possession of premises shall not be executed before the expiration of a period of six months from this date.

File be consigned to record room after due compliance.

**PRONOUNCED ON**  
**18<sup>th</sup> of August, 2020.**

  
**(RAJINDER KUMAR)**  
**SCJ/RC(WEST)/DELHI**