

**Prem Singh Vs. Dharm Singh**

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**SooperKanoon Citation :** [sooperkanoon.com/1154502](http://sooperkanoon.com/1154502)

**Court :** Delhi

**Decided On :** Jul-02-2014

**Judge :** Najmi Waziri

**Appellant :** Prem Singh

**Respondent :** Dharm Singh

**Advocate for Pet/Ap. :** Mr. Som Dutt Sharma

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

02. 07.2014 + RC.REV. No.205 of 2014 PREM SINGH Through: ..... Petitioner Mr. Som Dutt Sharma, Adv. versus DHARM SINGH ..... Respondent Through: CORAM: HON'BLE MR. JUSTICE NAJMI WAZIRI NAJMI WAZIRI, J.

CM No.9808/2014 (Exemption) Allowed subject to just exceptions. RC Rev. No.205/2014 & CM No.9807/2014 (Stay) This petition impugns the order dated 7.12.2013 whereby the petitioner (tenant) has been directed to vacate a shop admeasuring 9ft. X18t. on the ground floor of premises bearing No.1958, Pillanji, Kotla Mubarakpur, New Delhi. In terms of the said order the respondent- landlords eviction petition under Section 14(1)(e) read with Section 25B of the Delhi Rent Control Act, 1958 (hereinafter referred to as the DRC Act) was allowed and the tenants application for leave to defend was rejected. The case of the tenant was that there was no bona fide need; the landlord was not the actual owner of the

premises; the property was given to one Shri Hem Singh, the elder brother of the tenant, at a license fee of Rs.4,000/- per

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month by the eviction petitioner, therefore, the provisions of the DRC Act would not apply; that the eviction petitioner owned other properties where he had sufficient alternate accommodation - these properties were 1915 & 1958, Pillanji, Kotla Mubarakpur, each of which had shops located on the ground floor and elsewhere too; that another property, viz. P-137, Old Pillanji, Sarojini Nagar - a three storeyed building comprising of eight (8) shops on the ground floor was another suitable alternate accommodation available to the eviction petitioner; that property No.151, Pilanji, Kotla Mubarakpur was the wrong address since the petitioner (landlord) was residing at Old Pilanji, Sarojini Nagar and not at Kotla Mubarakpur. Besides, the tenant further contended, in the latter property there were shops on the ground floor and residential accommodation on its upper floors, i.e. that the petitioner had four shops in his possession where he and his sons were carrying on their business. Therefore, they had sufficient commercial accommodation. However, the facts regarding these properties were not disclosed in the eviction petition. Therefore, it was argued that the petition lacked bona fides, was defective and should have been dismissed. In reply to the application for leave to defend, the respondent-landlord submitted that he neither owned nor had any property bearing No.1915, Pillanji, Kotla Mubarakpur, New Delhi; that property P-137, Old Pillanji was being used by the landlords son for residential purpose. That although there were shops on the ground floor of the said property, it was unsuitable for running a commercial shop since the property was located in a narrow lane. The landlord submitted that the rental collected from other shops was distributed between his married sons - Rambir, Ranbir, Rajbir & Raghubir

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Singh. He submitted that inadvertently his residential address has been shown as 151, Pillanji, Kotla Mubarakpur, New Delhi instead of 151, Old Pillanji, Sarojini Nagar, Delhi. He submitted that the property bearing No.P137 and P-151, Old Pillanji, Sarojini Nagar, New Delhi are the one and the same property and it is referred by both the numbers because from the front side it is known as P-137, Old Pillanji, Sarojini Nagar, New Delhi and from the rear side it is known as P-151,

Old Pillanji, Sarojini Nagar, New Delhi. The petitioner had contended that the property bearing No.1958, Pillanji, Kotla Mubarakpur, New Delhi, in which the tenanted shop is situated is the only shop which would be suitable for the purpose of establishing his youngest son Shyamvir into business. The petitioner denied any rental income as alleged by the tenant. From the records it is evident that the eviction petitioner/landlord had filed a suit for permanent injunction against the tenant and his brother Hem Singh. The latter were alleged to be trespassers and unauthorised occupants in the demised premises, which was given out on license basis to Hem Singh. However, the plaintiff (landlord) withdrew the suit, since the respondent/tenant claimed to be a lawful tenant in respect of the tenanted premises, i.e. Shop No.4, since the year 1976, at a monthly rent of Rs.125/which was subsequently increased to Rs.800/- per month, in the interim, on the basis of the claim and unequivocal admission to tenancy under the plaintiff (landlord) the latter filed the eviction petition under the DRC Act. The Trial Court rejected the tenants argument that, since the property was initially let out on license basis to Shri Hem Singh @ Rs.4,000/- per month, therefore, it would not be covered under the provisions of the DRC

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Act. The Trial Court found the contention untenable because of his own admission that he himself was a tenant at Rs.800/- per month. The tenant chose not to file a rejoinder to the landlords reply to the leave to defend. The Trial Court was of the view that while deciding an application for leave to defend, the affidavits of both the parties have to be seen whereas if the tenant chooses not to file a rejoinder affidavit then the facts stated by the landlady/landlord which remain uncontroverted would receive due consideration and to support its view, the Trial Court relied upon Mohd. Shamim Vs. Nasseban 1998 RLR217 The learned counsel for the petitioner states that clear triable issues were raised in the petition and the leave to defend ought to have been allowed. He relies upon the dictum of the Supreme Court in Inderjeet Kaur Vs. Nirpal Singh (2001) 1 SCC706 to contend that the burden placed on the tenant seeking leave to defend an application for eviction is rather light and limited and he is not required to establish a strong case as would nonsuit the landlord. The Apex Court states that it would be enough if the tenant prima facie makes out a case by disclosing such facts as would disentitle

the landlord from obtaining an order of eviction. The learned counsel also relies upon Sumati Naik Vs. Dilip Fatarpekar 1998 LawSuit (Bom) 600 and a decision of this Court in Tulsi Ram Vs. Ram Kishan Dass & Ors. 143 (2007) DLT1 wherein it was held as under:

21. This is no more res integra that the scheme of section 25B of Delhi Rent Control Act, 1958 does not contemplate a trial for determining whether leave to defend and contest the eviction petition should be granted to the tenant or not. The jurisdiction to

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grant leave to contest or refuse is to be exercised on the basis of the affidavit filed by the tenant. In 57 (1995) DLT781 Ishwari Devi vs Rallia Ram it was held that while browsing through the affidavit of the tenant, if there emerges averments of facts which on a trial, if believed, would non suit the landlord, the leave ought to be granted. What is to be considered is whether the affidavit for leave to defend and contest the eviction petition is clear, specific, positive and defence raised is bonafide and prima facie not untenable and untrue. While granting or declining leave to defend the disputed questions of facts are not to be determined conclusively by the Court. The inquiry before the court when leave is sought is, therefore, of a limited nature and is intended to determine a very narrow question on the grounds on which leave is sought, whether based on an assertion of fact or of law, would non suit the landlord, if they could ultimately prevail. In 60 (1995) DLT310 Raj Bahadur Baweja Vs Narender Singh Sahni & ors it was held that 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.

The tenants case was that sufficient alternate accommodation was available with the landlord. This, however, was clearly disproven by the reply of the landlord which showed that he had only property No.1958, Pillanji, Kotla Mubarakpur, New Delhi, which housed the tenanted premises. Property No.137, Old Pillanji is in a narrow lane and does not have shops on the ground floor and is not suitable for business purposes whereas property bearing No.1915 was not owned by him. The

confusion regarding the address of the petitioner being P-137, Old Pillanji or P-151, Old Pillanji, has also been sufficiently explained. Therefore, the court rightly concluded that the only property available to the landlord was

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property No.1958, Pilanji, Kotla Mubarakpur, New Delhi. As regards landlord-tenant relationship, the petitioner-tenant himself admitted in the suit filed by the landlord that he was a tenant in the suit premises @ Rs.800 per month, therefore, the landlord-tenant relationship is established and the proceedings were maintainable under the DRC Act. On the face of it, no triable issue was made out and the learned Additional Rent Controller rightly concluded that the leave to defend could not be granted. In the circumstances, insofar as the bona fide requirement was made out, the Trial Court rightly passed the order of eviction. The reasoning for and the conclusion arrived at cannot be faulted. This Court finds no reason to interfere with the impugned order. The petition and the application are without any merit and are accordingly dismissed. JULY02 2014 bnesh NAJMI WAZIRI, J.

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