

Delhi High Court Shri Nem Chand Daga vs Shri Inder Mohan Singh Rana on 7 September, 2001 Equivalent citations: 94 (2001) DLT 683, 2002 (61) DRJ 410 Author: V Sen Bench: V Sen ORDER Vikramajit Sen, J. 1. In this Revision Petition the challenge is in respect of the Order dated 28.9.2000 passed by the Additional Rent Controller, Delhi in which he has declined to grant the Tenant 'Leave to Contest' the eviction petition. Such orders invariably require the court to successfully undertake a tightrope walk, since the competing interest of the tenant and the landlord have to be kept in balance. The Delhi Rent Control Act (hereinafter referred to as 'the Act') accorded protection to tenants against eviction. While it contained several grounds on which eviction could be prayed for, in almost all of them, the Tenant was afforded an additional protection. For example, even if there is a default in payment of rent, the tenant is not to be evicted for his first default; if it is found that the Tenant has misused the property the Landlord has still to prove that such misuse is detrimental to his interests; if the Tenant used the premises contrary to any conditions imposed on the landlord, the former can nonetheless resist eviction if he pays compensation to the Authority concerned. In respect of eviction on the grounds of the bona fide need of the Landlord for residential user of the demised property, the Legislature made a conscious shift in the approach and attitude, in terms of Chapter III-A and Section 25-B in particular of the Act. These provisions indicate that in this genre of cases, a summary trial should be conducted. This part of the Act should not be ignored and every effort must be made to implement its intent. It would be best to refer to the observations of A.P. Sen, J. in the partly dissenting opinion delivered by him in Precision Steel & Engineering Works and another v. Prem Deva Niranjana Deva Tayal , . "The whole object of sub-section (5) of Section 25-B is to prevent the taking of frivolous pleas by tenants to protract the trial. Where the tenant seeks leave to contest the application for eviction under Section 14(1) proviso (e) or under Section 14-A, he must file an affidavit under sub-section (4) of Section 25-B raising his defense which must be clear, specific and positive and must also be bona fide and if true, must result in the dismissal of landlord's application. defense of negative character which are intended to put the landlord to proof or are vague or are raised mala fide only to gain time and protract the proceedings, will not entitle the tenant to the grant of the leave. The Controller cannot set down the application for hearing without making an order in terms of sub-section (5) of Section 25-B. The trial must be confined only to such grounds as would disentitle the landlord to any relief. The Controller has the power to limit the grant of leave to a particular ground. If the Controller finds that the pleadings are such as would entail a trial, then he is bound to grant the tenant leave to contest. The Controller is not a court but he has the trapping of a court, and he must conform to the rules of natural justice. The landlord has a right to be afforded an opportunity to meet the allegations made by the tenant in the affidavit for leave to contest and filed under sub-section (4) of Section 25-B and there is a corresponding duty imposed on the Controller to hear the parties on the question whether such leave should or should not be granted under sub-section (5) thereof and apply his mind to the pleadings of the parties and the

material-on-record. It is difficult to lay down any rule of universal application for each case must depend on its own facts. The Controller must endeavor to resolve the competing claims of landlord and tenant to the grant or refusal of leave under sub-section (5) of Section 25-B, by finding a solution which is just and fair to both the parties. The scope of Section 25-B(5) is restricted and the test of 'triable issues' under Order 37, Rule 3(5) of the Civil Procedure Code is not applicable, as the language of the two provisions is different." 2. In any discussion on the circumstances which would be relevant for the grant or refusal to grant leave to contest an eviction petition in which Section 14(1)(e) of the Act has been invoked, the understanding and implementation of the recent judgment of the Hon'ble Supreme Court in *Inderjeet Kaur vs. Nirpal Singh*, JT 2001 (1) SC 308 = 89 (2001) Delhi Law Times 27 (SC) is now essential. A reading of the following paragraph makes it evident that leave to contest should be granted only where a prima facie case has been disclosed by the Tenant. In this event, the Rent Controllers should grant leave to contest and desist from entering into a final consideration of the grounds disclosed on their possible merits. The Rent Controllers should not obviate a Trial at this stage, by going into the merits of the grounds raised by the Tenant, if a final conclusion can be reached only after evidence is led in the Trial. The only possible exception may be where the grounds raised are strictly legal in character, not necessitating the holding of a trial. It should be borne in mind that a Trial is required for establishing facts, and now law. The Apex Court has opined in *Inderjeet Kaur's* case (supra) as follows:- "13. We are of the considered view that at a stage when the tenant seeks leave to defend, it is enough if he prima facie makes out a case by disclosing such facts as would disentitle the landlord from obtaining an order of eviction. It would not be a right approach to say that unless the tenant at that stage itself establishes a strong case as would non-suit the landlord leave to defend should not be granted when it is not the requirement of Section 25B(5). A leave to defend sought for cannot also be granted for mere asking or in a routine manner which will defeat the very object of the special provisions contained in Chapter IIIA of the Act. Leave to defend cannot be refused where an eviction petition is filed on a mere design or desire of a landlord to recover possession of the premises from a tenant under Clause (e) of the proviso to sub-section (1) of Section 14, when as a matter of fact the requirement may not be bona fide. Refusing to grant leave in such a case leads to eviction of a tenant summarily resulting in great hardship to him and his family members, if any, although he could establish if only leave is granted that a landlord would be disentitled for an order of eviction. At the stage of granting leave to defend, parties rely on affidavits in support of the rival contentions. Assertions and counter assertions made in affidavits may not afford safe and acceptable evidence so as to arrive at an affirmative conclusion one way or the other unless there is a strong and acceptable evidence available to show that the facts disclosed in the application filed by the tenant seeking leave to defend were either frivolous, untenable or most unreasonable. Take a case when a possession is sought on the ground of personal requirement, a landlord has to establish his need and not his mere desire. The ground under Clause (e) of the proviso to Sub-section (1) of the

Section 14 enables a landlord to recover possession of the tenanted premises on the ground of his bona fide requirement. This being an enabling provision, essentially the burden is on the landlord to establish his case affirmatively. In short and substance wholly frivolous and totally untenable defense may not entitle a tenant to leave to defend but when a friable issue is raised a duty is placed on the Rent controller by the statute itself to grant leave. At the stage of granting leave the real test should be whether facts disclosed in the affidavit filed seeking leave to defend prima facie show that the landlord would be disentitled from obtaining an order of eviction and not whether at the end defense may fail. It is well to remember that when a leave to defend is refused, serious consequences of eviction shall follow and the party seeking leave is denied an opportunity to test the truth of the averments made in the eviction petition by cross-examination. It may also be noticed that even in cases where leave is granted provisions are made in this very Chapter for expeditious disposal of eviction petitions. Section 25B(6) states that where leave is granted to a tenant to contest the eviction application, the controller shall commence the hearing of the application as early as practicable. Section 25B speaks of the procedure to be followed in such cases. Section 25B bars the appeals against an order of recovery of possession except a provision of revision to the High Court. Thus a combined effect of Sections 25(6), (7) and (8) would lead to expeditious disposal of eviction petitions so that a landlord need not wait and suffer for long time. On the other hand, when a tenant is denied leave to defend although he had fair chance to prove his defense, will suffer great hardship. In this view a balance view is to be taken having regard to competing claims. 17. It is clear from the reading of the Order of the Additional Rent Controller that he has taken pains to write an elaborate order as if he was writing an order after a full-dressed trial of eviction petition. He has considered merits of the respective contentions at the stage of granting leave to defend under Section 25-B(5) without keeping in mind the scope of the provisions and statutory duty cast on him". (emphasis supplied) 3. In *Santosh Devi Soni v. Kiran*, JT 2000 (3) SC 397, the Hon'ble Supreme Court has stated in its order that normally leave should be granted; and that in "considering the facts and circumstances of this case, we deem it fit to grant leave to defend". It did not lay down a proposition calling for universal application per se, that even if facts prima facie incredible in nature were pleaded, they should like a passport result in leave to contest being granted. In *Madan Lal Gupta vs. Ravinder Kumar*, (2001) 1 SCC 252, the Apex Court declined to interfere in the concurrent refusal to grant leave to contest even after referring to the case of *Santosh Devi* (supra) and *Liaq Ahmed vs. Habeeb-Ur-Rehman*, . 4. It should be borne in mind that the majority view in the *Precision Steel* case (supra) was that the Controller should peruse only the tenants affidavit. It was observed that "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 the 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 defense raised by him. Plausibility of the defense 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 Hon’ble Supreme Court in Inderjeet Kaur’s case (supra) has diverted the recommended approach from that of the majority view to the minority view in the Precision Steel case (supra) inasmuch as it has specifically recommended that the “tenant cannot be thrown out from a premises summarily even though prima facie he has been able to say that the claim of the landlord is not bona fide or untenable and as such not entitled to obtain an order of eviction”. However, moonshine defenses or in the words employed by the Apex Court in Inderjeet Kaur’s case (supra) i.e. “wholly frivolous and untenable defense”, now do not call for Leave to Contest being granted. 5. Let us now consider the facts which have arisen, in the present case. The Lease Deed contains two Clauses; Clause 6 states that “the premises shall be used purely for residential purposes”. The Additional Rent Controller had also taken into consideration the fact that the premises are residential in nature. The succeeding Clause 7 states that “in case the lessee wants to utilize premises for office or for any commercial purposes he will have to get permission of the government and will be liable to pay any penalty increase the House Tax etc. levied by the local or government authorities”. Clause of the latter type must be held not to change the nature of the letting; it has been rightly construed as a protection to the landlord against misuser. In any event, it is not the Tenant’s case that he had obtained permission from the Government and/or that there was any increase in the House Tax. Clause 7 is clearly not attracted and the purpose/user would not transform the residential letting to a composite one in the absence of the occurrence of the events envisaged in it. Reliance on the decision of the Hon’ble Supreme Court in Smt. A.N. Kapoor v. Smt. Pushpa Talwar , , is misplaced. There it had been found that there was continued user of the building ever since 1961 for the purpose of lodging paying guests which showed that the Landlord had not only been aware of such user of the building, but had also impliedly consented to such user. As noticed above this position does not obtain in the case in hand. In every litigation where eviction is sought under Section 14(1)(e) of the Act, the Tenant invariably puts forward a plea of the present nature. There must be something more than a bald plea to prevail upon the Controller into coming to the conclusion that there is prima facie substance in the defense and that the letting purpose was not strictly residential. Otherwise the entire purpose of this Section as well as Section 25-B of the Act would be rendered nugatory and the legislative intent would be emasculated. As has been set down in the Inderjeet Kaur’s case (supra), only if the Controller arrives at the opinion that a prima facie case had been made out by the Tenant would it be proper for him to grant Leave to Contest. No prima facie case has been made out by the Tenant in the present case. 6. The next point that has been raised by the Tenant is that the ownership of the landlord has not been proved. In reply thereto it has been shown that

a Probate had been granted in favor of the Landlord and the other legal heirs have been executed Relinquishment Deeds. It is not open to a tenant to assail the legality of such a family arrangement/understanding. Can it still be argued that a prima facie case has been disclosed? In my view the Additional Rent Controller had not committed any error in holding to the contrary. The Tenant had not filed any documents which would support the averments contained in his affidavit in regard to ownership of the premises, and the answer which was given on his behalf by Mr. V.B. Andley, Learned Senior Counsel was that the other partners were in possession of these documents. It was also contended that the occasion and stage for the filing/production of documents would be after the grant of Leave to Contest i.e. the earlier occasion would be at the time of the filing of the Written Statement. I am unable to find any merit in this submission as it would wholly frustrate the summary provisions of the Act introduced by Chapter III-A thereof. 7. No other grounds were argued. In these circumstances I find that no jurisdictional error has been committed by the Additional Rent Controller in declining the grant Leave to Contest. The Tenant has failed altogether to disclose any ground which even on a prima facie view would justify holding to the contrary. 8. The revision petition is without merit and is dismissed.