Supreme Court of India
Kewal Singh vs Lajwanti on 4 October, 1979
Equivalent citations: 1980 AIR 161, 1980 SCR (1) 854
Author: S M Fazalali
Bench: Fazalali, Syed Murtaza

PETITIONER:
KEWAL SINGH

Vs.

RESPONDENT:
LAJWANTI

DATE OF JUDGMENT04/10/1979

BENCH:
FAZALALI, SYED MURTAZA
BENCH:
FAZALALI, SYED MURTAZA
SHINGAL, P.N.
SEN, A.P. (J)

CITATION:
1980 AIR 161 1980 SCR (1) 854
1980 SCC (1) 290
CITATOR INFO :
C 1980 SC 315 (3)
R 1982 SC1518 (9)
R 1984 SC 967 (7,10)
D 1990 SC 560 (32)

ACT:
Frame of Suit-Whether earlier giving up a cause of action by deletion from the plaint and later on again re for inclusion of the same cause is barred by the principle of Order II of Rule 2 C.P.C.
Doctrine of constructive Res-judicata-When it applies-Whether deletion of a cause of action from the plaint and again a request for inclusion would amount to a bar of Res-judicata.
Delhi Rent Control Act , Section 25B-Whether violative of Art. 14 of the Constitution.

HEADNOTE:
The appellant was the tenant of respondent in Quarter No. IV-H/46 Lajpat Nagar from 1-7-1967. On 2-6-1976, the respondent filed an application under sections 14A(1), 14(1)(e) and 14(1)(f) of the Delhi Rent Control Act, for eviction of the appellant firstly on the ground that as her

husband was required by the Government to vacate the Government quarters or pay the penal rent, the husband of the respondent had to shift to the house of his wife which was in the tenancy of the defendant. A prayer was also made that even otherwise the premises were required for a bonafide necessity of the landlord and also as the premises had become unfit for human habitation the respondent required the same for carrying out repairs which could not be done unless the premises were vacated. On 3-6-76 the respondent filed an application withdrawing the cause of action mentioned by her regarding bonafide necessity and repairs as contemplated by Section 14(1)(e) and 14(1)(f) of the Act. The Rent Controller accordingly allowed the plaintiff to withdraw the two causes of action mentioned in the application since no notice was served at this time on the appellant. Thereafter notice was served on the appellant. On 4-6-1976, the plaintiff again sought to amend her petition by deleting the cause of action mentioned under section 14A(1) of the Act i.e. requirement of the respondent because her husband had been directed to vacate the Government Quarter. On 13-8-1976 the appellant appeared before the Rent Controller and filed an application under section 25B, sub sections 4 and 5 requesting the Rent Controller to give him permission to defend the suit, on the ground that as the landlady was not a Government servant she was not entitled to maintain the eviction petition under Section 14A(1) of the Act. On 6-10-76 the husband of the respondent filed an application for being impleaded as a party, but this application was rejected on 22-11-76. The respondent thereafter again filed another application on 27-1-77 praying for amendment of her eviction application by re-inserting the cause of action contained in section 14(1)(e) of the Act and sought to claim eviction on the ground of bonafide requirement. This application was contested by the appellant but was allowed by the Rent Controller by his order dated 19-2-77 leaving open to the appellant to file his objection by a fresh application if he wanted to defend the suit. The appellant accordingly filed an application on 9-3-77 for permission to defend the suit on the ground that the amendment sought for by the plaintiff was uncalled for and illegal and could not be allowed. Ultimately, the Rent

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controller by his order dated 27-7-77 rejected the application for leave to appear and defend the suit and passed an order evicting the appellant from the premises. The revision petition filed by the appellant under Section 25B(8) in the Delhi High Court was dismissed on 6-4-1978 and hence the appeal by special leave of the Court.

It was contended: (a) that the second application given by the respondent for re-amending her plaint by inserting the relief under section 14(1)(e) which she had given up at a prior occasion when she had based her suit under section

14A(1) was barred by the principles of Order II Rule 2 C.P.C. (b) that even if order II Rule 2 C.P.C., had no application, the second application filed by the respondent was barred by the doctrine of constructive res-judicata and (c) Section 25B which lays down the procedure for disposing of the applications filed by the landlord under the provisions of Section 14A and 14(1)(e) are violative of Article 14 of the Constitution in as much as the provisions are arbitrary and discriminatory in nature, and seek to provide two different procedures for tenants similarly situated.

Dismissing the appeal by special leave, the Court

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HELD: 1. A perusal of order II Rule 2 C.P.C. would clearly reveal that this provision applies to cases where a plaintiff omits to sue a portion of the cause of action on which the suit is based either by relinquishing, the cause of action or by omitting a part of it. The provision has, therefore, no application to cases where the plaintiff has based his suit on separate and distinct causes of action and chooses to relinquish one or the other of them. In such cases, it is always open to the plaintiff to file a fresh suit on the basis of a distinct cause of action [860 E-F]

In the instant case, the second amendment application was rot barred by the principles of order II, Rule 2 C.P.C. The respondent had first based her suit on three distinct causes of action, but later confined the suit only to the first cause of action, namely the one mentioned in Section 14A(1) of the Act and gave up the cause of action relating to section 14(1) (e) and (f). Subsequently by virtue of an amendment she relinquished the first cause of action arising out of section 14A(1) and sought to revive her cause of action based on section 14(1)(e). At the time when the respondent relinquished the cause of action arising out of Section 14(1)(e), the applicant was not in the picture at all. Therefore it was not open to the appellant to raise any objection to the amount sought by the respondent. 1861 G-H. 862 A-C]

Mohammed Khalil Khan and Ors. v. Mahbub Alikhan and Ors. 75 I.A 121 P.C.; applied.

2. One of the essential conditions of res judicata is that there must be a normal adjudication between the parties after full hearing. In other words, the matter must be finally decided between the parties. [862 C]

In the instant case, the doctrine of constructive res-judicata has no application whatsoever, since at the time when the respondent relinquished her first cause of action, the appellant was no where in the picture and there was no adjudication between the parties. The second amendment application was made in the same proceedings on a case of action that she was allowed to insert with the permission of the Court. Although both the parties went to the Court on the basis of

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these facts, neither the bar of res judicata nor that of Order II Rule 2 C.P.C. was raised before the Rent Controller. [862 C, E]

3. It is well settled that what Article 14 forbids is hostile discrimination and not reasonable classification. Discrimination may take place in many ways and what Article 14 requires is that equals must be treated alike. If equals and unequals one also treated alike then also Article 14 is clearly attracted and discrimination results. [862 F-G]

(b) A reasonable classification based on grounds having a clear nexus with the objective to be achieved and grouping certain persons in a separate category in view of their special peculiarities is undoubtedly permissible. Of course, classification should not be purely a class legislation. [862 G-H]

(c) It is also well settled that there is always a presumption in favour of tho constitutionality of a statute and any party who seeks to challenge the legislation on the ground of applicability of Article 14 must plead and prove tho necessary facts. In making a classification, the Court must presume matters of common knowledge, common report, history of the time and every other relevant fact. [862 H, 863 A]

Chiranjit Lal Chowdhari v. Union of India and Ors. [1950] S.C.R. 869, State of West Bengal v. Anwar Ali Sarkar [1952] S.C.R. 284; Sri Ramkrishna Dalmia v. Shri Justice S.R. Tandolkar and Ors. [1959] S.C.R. 279 Mahant Moti Das v. S. P. Sahi the Special Officer in charoe of Hindu Religious Trust and Ors., [1959] 2 Supp. S.C.R. 563, A. C. Aggarwal Sub Divisional Magistrate Delhi and Anr. v. Mst. Ram Kali etc. [1968] 1 S.C.R. 205; referred to.

4. The Rent Control Act is a piece of social legislation and is meant mainly to protect the tenants from frivolous evictions. At the same time, in order to do justice to the landlords and to avoid such restrictions on their right to evict the tenant so as to destroy their legal right to property certain salutary provisions have been made by the legislature which give relief to the landlord. In the absence of such a legislation a landlord has a common law right to evict the tenant either on the determination of the tenancy by efflux of time or for default in payment cf rent or other grounds after giving notice under the Transfer of Property Act. Their broad right has been curtailed by the Rent Control Legislation with a view to give protection to the tenants having regard to their genuine and dire needs. [864 C-E]

While the rent control legislation has given a number of facilities to the tenants, it should not be construed so as to destroy the limited relief which it seeks to give to the landlord also, like the question of landlord's bonafide personal necessity. The concept of bonafide necessity should be meaningfully construed so as to make the relief granted

to the landlord real and practical. [864 E-G]

Bega Begum and Ors. v. Abdul Ahmed Khan (dead) by 1. rs and Ors. [1979] 2 S.C.R. 1; referred to.

Section 25B of the Delhi Rent Control Act was inserted in the statute by Act 18 of 5976 and was given retrospective effect from 1-12-75, with the sole object of simplifying the procedure for eviction of tenants in case the landlord requires the premises bonafide for his personal occupation. The Legislature in its wisdom thought that a short and simple procedure should be provided

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for those landlords who generally want the premises for their bonafide necessity so that they may be able to get quick and expeditious relief. [865 G-H, 866 A-B]

Section 25B does not govern all grounds open to a landlord for evicting the tenant but it is confined only to the ground in section 14Aand proviso to section 14(1)(e). In other words, the bonafide necessity of the landlord has been put in a separate class or category having regard to the peculiar incidents of his right. Section 14A also relates to a special situation where the landlord under the Government Rules is asked to shift to his own house, if he has one or in a house that belongs to his spouse, failing which he has to pay a penal rent which almost takes away a major part of his salary. Thus, such a landlord becomes a class by himself. The statute thus puts personal necessity of the landlord as a special class requiring special treatment for quick eviction of the tenant and cuts out delays and plugs all the loopholes, which may cause delay in getting the relief by the landlord. The classification made by the legislature is in public interest and is in complete consonance with the objectives sought to be achieved. The landlords having personal necessity have been brought together as a separate class because of their special needs and such a classification cannot be said to be unreasonable particularly where the legislature in its obvious wisdom feels that the Landlords should get this relief as quickly as possible. [868 A-E]

Even though a summary procedure has been evolved the tenant has been afforded full opportunity to defend the application provided he can disclose good grounds for negating the case of the landlord. No litigant has a right to protract the legal proceedings by taking frivolous, irrelevant, irrational or uncalled for pleas. This is what Section 25B seeks to prevent. [869 E-F]

An appeal is purely a creature of the statute and this right has not been given in order to cut out unnecessary delay. Indeed the highest Court of the state has been given a wide power of revision where the said Court can examine the case of the tenant and the landlord and the validity of the order passed by the Controller. The right of the tenant, therefore, is sufficiently safeguarded by the proviso to sub- section 8 of Section 25B of the Act. In order to give

the relief to the tenant against any apparent error of law or fact where no revision has been filed in the High Court, the statute confers power of review on the Controller. [869 G-H, 870 A]

Thus, taking an overall picture of the situation, the circumstances under which the landlord's needs have been classified and the safeguards given by the statute it cannot be said by any stretch of imagination that Section 25B and its sub sections are violative of Article 14 of the Constitution. In fact, Section 25B contains valuable and sufficient guidelines which completely exclude the exercise of uncanalised or arbitrary powers of the Rent Controller. [870 A-B]

Section 25B is constitutionally valid. The legislature has not taken, away the right of the tenant at all but has merely simplified the procedure for eviction of the tenant in cases falling within the ambit of sections 14A and 14(1)(e) of the Act. A tenant cannot challenge the validity of such a provision enacted by the legislature from which the tenant itself derive such rights. If the legislature considered in its wisdom to confer certain rights or facilities on that tenants, it could due to changed circumstances curtail, modify, alter or even take away such rights or the procedure enacted for the purpose of eviction and leave the tenants to seek their remedy under the common law. [870 G-H, 871 A, B-C]

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1291 of 1970.

Appeal by Special Leave from the Judgment and Order dated 6-4-1978 of the Delhi High Court in Civil Revision No. 822/77.

Madan Mohan, V.J. Francis and D.K. Garg for the, Appellant.

R.P.H. Parekh, C.B. Singh, M. Mudgal and B.L. Verma for the Respondent, The Judgment of the Court was delivered by FAZAL ALI, J. This appeal by special leave is directed against the judgment and order of The Delhi High Court dated the 6th April, 1978 dismissing the revision petition filed by the appellant against an order of the Rent Controller. For the purpose of brevity and to avoid confusion the appellant shall hereafter be referred to as the defendant and the respondent as the Plaintiff.

The defendant appellant was inducted as a tenant by the plaintiff in Quarter No. IV-H/46, Lajpat Nagar, New Delhi on 1-7-1967. On 2nd June, 1976 the plaintiff filed an application under sections 14A(1) 14(1)(e) and 14(j)(l) of the Delhi Rent Control Act, hereinafter referred to as the Act, for

eviction of the tenant firstly on the ground that as the husband of the plaintiff was required by the Government to vacate the Government quarter or pay the penal rent the husband of the plaintiff had to shift to the house of his wife which was in the tenancy of the defendant. A prayer was also made by the plaintiff that even otherwise the premises were required for a bonafide necessity of the land-lady and also as the premises had become unfit for human habitation the plaintiff required the same for carrying out repairs which could not be done unless the premises were vacated. On the next date, that is on 3rd June, 1976 the plaintiff filed an application with drawing the cause of action mentioned by her regarding bonafide necessity and repairs as contemplated by sections 14(1)(e) and 14(1) (f) of the Act. The defendant appellant at this time was nowhere in the picture and no notice had yet been served on him. The Rent Controller accordingly allowed the plaintiff to withdraw the two causes of action mentioned in the application. Thereafter notice was issued to the defendant. On the 4th June, 1976 the plaintiff again sought to amend her petition by deleting the cause of action mentioned under section 14-A(l) of the Act, that is to say requirement of the plaintiff because her husband had been directed to vacate the Government quarter. This was perhaps necessitated because there were some amendments in the Government Rules on the subject. On the 13th August, 1976 the defendant appeared before the Rent Controller and filed an application under section 25B sub-sections 4 and 5 requesting the Rent Controller to give the defendant permission to defend the suit, on the ground that as the land-lady was not a Government servant she was not entitled to maintain the eviction petition under section 14A(1) of the Act. The defendant also raised some other contentions. On 6-10-1976 the husband of the plaintiff filed an application for being impleaded as a party, but this application was rejected on 22-11-1976. The plaintiff thereafter again filed another application on 27-1-1977 praying for amendment of her eviction application by re- inserting the cause of action contained in section 14(1)(e) of the Act and sought to claim eviction on the ground of bonafide requirement. This application was contested by the defendant but was allowed by the Rent Controller by his order dated 19-2-1977. The Rent Controller however left it open to the defendant to file his objection by a fresh application if he wanted to defend the suit. The defendant accordingly filed an application on the 9th March, 1977 for permission to defend the suit on the ground that the amendment sought for by the plaintiff was uncalled for and illegal and could not be allowed. Ultimately the Rent Controller by his order dated 27th July, 1977 rejected the application of the defendant for leave to appear and defend the suit and passed an order evicting the defendant from the premises. Being aggrieved by this order the defendant went up in revision to the Delhi High Court as no appeal or second appeal against the order passed by the Rent Controller was maintainable under sub-section 8 of section 25B of the Act. The revision petition was heard by Justice Prakash Narain of the Delhi High Court who by his order dated 6th April, 1978 dismissed the revision petition with costs. Thereafter, the petitioner approached this Court and obtained special leave. Hence this appeal.

On a perusal of the judgment of the Rent Controller and that of the High Court prima facie it seems to us that the appeal was clearly concluded by findings of fact in as much as both the Courts had found that the plaintiff had proved that she required the premises for her bonafide necessity. Learned counsel for the appellant, however, raised three points of law before us. In the first place, it was argued that the second application given by the plaintiff for re- amending her plaint by inserting the relief under section 14(1)(c) which she had given up at a prior occasion when she had based her suit under section 14A(1) was barred by the principles of order 2 Rule 2 of the Code of Civil

Procedure.

It was next contended that even if order 2 Rule 2 C.P.C. had no application, the second application for amendment filed by the plaintiff 20-625 SCI/79 was barred by the doctrine of constructive res judicata. Finally, it was argued that section 25B which lays down the procedure for disposing of applications filed by the landlord under the provisions of sections 14A and 14(1)(e) are violative of Article 14 of the Constitution in as much as the provisions are arbitrary and discriminatory in nature, and seek to provide two different procedures for tenant similarly situate.

So far as the first two contentions are concerned, we are of the opinion that do not merit any serious consideration. Regarding the question of the applicability of order 2 Rule 2, C.P.C. the argument of the learned counsel for the appellant is based on serious misconception of law. Order 2 Rule 2 C.P.C. runs thus:-

> "2 (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished".

A perusal of Order 2 Rule 2 would clearly reveal that this provision applies to cases where a plaintiff omits to sue a portion of the cause of action on which the suit is based either by relinquishing the cause of action or by omitting a part of it. The provision has, therefore, no application to cases where the plaintiff basis his suit on separate and distinct causes of action and chooses to relinquish one or the other of them. In such cases, it is always open to the plaintiff to file a fresh suit on the basis of a distinct cause of action which he may have relinquished.

In the case of Mohammad Khalil Khan & Ors. v. Mahabub Ali Mian & Ors. the Privy Council observed as follows:-

> "That the right and its infringement, and not the ground or origin of the right and its infringement, constitute the cause of action, buy the cause of action for the Oudh suit (No. 8 of 1928) so far as the Mahbub brothers are concerned was only a denial of title by them as that suit was mainly against Abadi Begum for possession of the Oudh property; whilst in the present suit the cause, of action was wrongful possession by the Mahbub brothers of the Shahjahanpur property, and that the two causes of action were thus different."
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> "Their Lordships are satisfied that there is no force in the contention that the plaintiffs in the present suit could not reasonably commence an action in respect of the Shahjahanpur property while their right to mutation in the Revenue registers was the subject of an appeal to the Commissioner which had not been decided, or, in other words, that it was not open to them to sue the defendants in respect of the

> Shahjahanpur property at a date earlier than October 29, 1928 and to include the Shahjahanpur property in the earlier suit No. 8 instituted on September 14, 1928".
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> "The principles laid down in the cases thus far discussed may be thus summarized; (1) the correct test in cases falling under O. 2. r. 2 is "whether the claim in the new suit is, in fact, founded on a cause of action distinct from that which was the foundation for the former suit. Moonshee Buzloor Ruheem v. Shamsoonnissa Begum. (2) The cause of action means every fact which will be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment Read v. Brown. (3) If the evidence to support the two claims is different then the causes of action are also different Brunsden v. Humphery. (4) The causes of action in the two suits may be considered to be the same if in substance they arc identical. (Brunsden v. Humphery). (5) The cause of action has no relation whatsoever to the defence that may be set up by the defendant, nor does it depend on the character of the relief prayed of by the plaintiff. It refers "to the media upon which the plaintiff asks the court to arrive at a conclusion in his favour." Muss. Chand Kour v. Partab Singh. This observation was made by Lord Watson in a case under s. 43 of the Act of 1882 (corresponding to 0.2.r.2) where plaintiff made various claims in the same suit".

Applying the aforesaid principles laid down by the Privy Council we find that none of the conditions mentioned by the Privy Council are applicable in this case. The plaintiff had first based her suit on three distinct causes of action but later confined the suit only to the first cause of action, namely, the one mentioned in section 14A(1) of the Act and gave up the cause of action relating to section 14(1) (e) and (f). Subsequently, by virtue of an amendment she relinquished the first cause of action arising out of section 14A(1) and sought to revive her cause of action based on section 14(1)(e). At the time when the plaintiff relinquished the cause of action arising out of section 31 14(1)(e) the defendant was not in the picture at all. Therefore, it was not open to the defendant to raise any objection to the amendment sought by the plaintiff. For these reasons, we are satisfied that the second amendment application was not barred by the principles of 0.2 r.2 C.P.C. and the contention of the learned counsel for the appellant must fail.

Secondly, as regards the question of constructive res judicata it has no application whatsoever in the instant case. It is well settled that one of the essential conditions of res judicata is that there must be a formal adjudication between the parties after full hearing. In other words, the matter must be finally decided between the parties. Here also at a time when the plaintiff relinquished her first cause of action the defendant was no where in the picture, and there being no adjudication between the parties the doctrine of res judicata does not apply. The second amendment application was made in the same proceedings on a cause of action that she was allowed to insert with the permission of the court. Although both the parties went to the court on the basis of these facts, neither the bar of res judicata nor that 0.2 r.2 appear to have been raised before the Rent Controller. For these reasons, therefore, the second plank of the argument put forward by counsel for the appellant also must be rejected.

Lastly, we come to the question of the application of Article 14 to the provisions of the Act. This is undoubtedly a question which merits serious consideration. Before approaching this question we might observe that it is well settled that what Article 14 forbids is hostile discrimination and not reasonable classification. Discrimination may take place in many ways, and what Article 14 requires is that equals must be treated alike. If equals and unequals are also treated alike then also Article 14 is clearly attracted and discrimination results. A reasonable classification based on grounds having a clear nexus with the objective to be achieved and grouping certain persons in a separate category in view of their special peculiarities is undoubtedly permissible. Of course, classification should not be purely a class legislation. It is also well settled that there is always a presumption in favour of the constitutionality of a statute and any party who seeks to challenge the legislation on the ground of applicability of Article 14 must plead and prove the necessary facts. In making a classification the court must presumed matters of common knowledge, common report, history of the time and every other relevant fact.

In the case of Chiranjit Lal Chowdhuri v. The Union of India & Ors. this Court observed as follows:-

> "The legislature undoubtedly has a wide field of choice in determining and classifying the subject of its laws, and if the law deals alike with all of a certain class, it is normally not obnoxious to the charge of denial of equal protection, but the classification should never be arbitrary. It must always rest upon some real and substantial distinction bearing a reasonable and just relation to the things in respect to which the classification is made; and classification made without any substantial basis should be regarded as invalid".

Same view was taken in the case of The State of West Bengal v. Anwar Ali Sarkar.

In the case of Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar & Ors. it was held that in determining whether there is any intelligible differential on the basis of which the petitioners and their companies could have been grouped together it is permissible to look to the facts appearing in the notification as also those brought to the notice of the court.

In the case of Mahant Moti Das v. S. P. Sahi, The Special Officer in charge of Hindu Religious Trusts & Ors. this Court held that apart from there being a presumption in favour of the constitutionality of all enactment the burden is upon the party who alleges that there has been a clear transgression of the constitutional guarantee. It was further pointed out that the legislature correctly appreciated the needs of its own people and that its laws are directed to problems made manifest by experience and that any discrimination made are based on adequate grounds as the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest.

These observations clearly justify the classification made by the legislature in enacting the Delhi Rent Control Act as we shall show later.

To the same effect is the decision in the case of Shri A.C. Aggarwal, Sub-Divisional Magistrate, Delhi & Anr. v. Mst. Ram Kali etc. In the light of the principles enunciated by the decisions of this Court we would now briefly approach the relevant provisions of the Delhi Rent Control Act which have been applied to the facts of the present case.

To begin with, it is not necessary for us to deal with section 14A(1) because the cause of action contained in this section has been given up by the plaintiff-respondent. We would, therefore, confine ourselves to the validity of section 14(1) (e) and the procedure prescribed to give relief mentioned in the aforesaid section in section 25B. Before discussing the relevant provisions of the Act it may be necessary to observe that the Rent Control Act is a piece of social legislation and is meant mainly to protect the tenants from frivolous evictions. At the same time in order to do justice to the landlords and to avoid placing such restrictions on their right to evict the tenant as to destroy their legal right to property certain salutary provisions have been made by the legislature which give relief to the landlord. In the absence of such a legislation a landlord has a common law right to evict the tenant other in the determination of the tenancy by efflux of time or for default in payment of rent or other grounds after giving notice under the Transfer of Property Act. This broad right has been curtailed by The Rent Control Legislation with a view to give protection to the tenants having regard to their genuine and dire needs. While the rent control legislation has given a number of facilities to the tenants it should, not be construed so as to destroy the limited relief which it seeks to give to the landlord also. For instance one of the grounds for eviction which is contained in almost all the Rent Control Acts in the country is the question of landlord's bonafide personal necessity. The concept of bonafide necessity should be meaningfully construed so as to make the relief granted to the landlord real and practical. In the case of Bega Begum & Ors. v. Abdul Ahmed Khan (dead) by L.Rs and Ors. this Court to which one of us (Fazal Ali, J.) was a party and spoke for the Court observed as follows :-

> "Moreover, section 11(h) of the Act uses the words' reasonable requirement' which undoubtedly postulate that there must be an element of need as opposed to a mere desire or wish. The distinction between desire and need should doubtless be kept in mind but not so as to make even the genuine need as nothing but a desire as the High Court has done in this case. It seems to us that the connotation of the term 'need' or 'requirement' should not be artificially extended nor its language so unduly stretched or strained as to make it impossible or extremely difficult for the landlord to get a decree for eviction. Such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds. This appears to us to be the general scheme of all the Rent Control Acts prevalent in other States in the country. This Court has considered the import of the word 'requirement' and pointed out that it merely connotes that there should be an element of need".

Coming back to the Delhi Rent Control Act it appears that section 25B was inserted in the statute by Act 18 of 1976 and was given retrospective effect from 1-12-1975. The statement of objects and reasons which formed part of the Delhi Rent Control Act run thus:

> "There has been a persistent demand for amendments to the Delhi Rent Control Act, 1958 with a view to conferring a right of tenancy on certain heirs successors of a deceased statutory tenant so that they may be protected from eviction by landlords and also for simplifying the procedure for eviction of tenants in case the landlord requires the premises bona fide for his personal occupation. Further, Government decided on the 9th September, 1975 that a person who owns his own house in his place of work should vacate the Government accommodation allotted to him before the 31 st December, 1975. Government considered that in the circumstances, the Act requires to be amended urgently. As the Parliament was not in session the Delhi Rent Control (Amendment) Ordinance 1975 was promulgated on the 1st December, 1975. The Bill seeks to replace the said Ordinance".

(Emphasis ours) This Act actually replaced the ordinance which was promulgated on 1st December, 1975. The objects and reasons clearly reveal that the amendment has been made for simplifying the procedure for eviction of tenants in case the landlord requires the premises bona fide for his personal occupation. It is a matter of common knowledge that even though the landlord may have an immediate and imperative necessity for vacating the house given to a tenant he is compelled to resort to the time consuming any dilatory procedure of a suit which takes years before the landlord is able to obtain the decree and in most cases by the time the decree is passed either the landlord dies or the need disappears and the landlord is completely deprived of getting any relief. It appears to us that it was for these reasons that the legislature in its wisdom thought that a short and simple procedure should be provided for those landlords who generally want the premises for their bona fide necessity so that they may be able to get quick and expeditious relief. Section 25B of the Act runs thus:-

> "25.B (1) Every application by a landlord for the recovery of possession of any premises on the ground specified in clause (e) of the proviso to sub-section (1) of section 14, or under section 14A, shall be dealt with in accordance with the procedure specified in this section.
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> (2) The Controller shall, issue summons, in relation to every application referred in sub-section (1) in the form specified in the Third Schedule. (3)(a) The Controller shall, in addition to, and simultaneously with, the issue of summons for service on the tenant, also direct the summons to be served by registered post, acknowledgement due. addressed to the tenant or his agent empowered to accept the service at the place where the tenant or his agent actually and voluntarily resides or carries on business or personally works for gain and may, if the circumstances of the case so require, also direct the publication of the summons in a newspaper circulating in the locality in which the tenant is last known to have resided or carried on business or personally worked for gain.
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> (b) When an acknowledgement purporting to be signed by the tenant or his agent is received by the Controller or the registered article containing the summons is received back with an endorsement purporting to have been made by a postal

employee to the effect that the tenant or his agent had refused to take delivery of the registered article, the Controller may declare that there has been a valid service of summons. (4) The tenant on whom the summons is duly served, (whether in the ordinary way or by registered post) in the form specified in the Third Schedule shall not contest the prayer for eviction from the premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided; and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction on the ground aforesaid.

(5) 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 obtaining an order for the recovery of possession of the premises on the ground specified in clause (e) of the proviso to sub section (1) of section 14 or under section 14A.

(6) Where leave is granted to the tenant to contest the application, the Controller shall commence the hearing of the application as early as practicable. (7) Notwithstanding anything contained in sub- section (2) of section 37, the Controller shall, while holding an inquiry in a proceeding to which this Chapter applies, follow the practice and procedure of a Court of Small Causes, including the recording of evidence.

(8) No appeal or second appeal shall lie against an order for the recovery of possession of any premises made by the Controller in accordance with the procedure specified in this section;

Provided that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this section is according to law, call for the records of the case an(l pass such order in respect thereto as it thinks fit (9) Where no application has been made to the High Court on revision, the Controller may exercise the powers of review in accordance with the provisions of order XLVII of the First Schedule to the Code of Civil Procedure, 1908.

(10) Save as otherwise provided in this Chapter, the procedure for the disposal of an application for eviction on the ground specified in clause (e) of the proviso to sub-section (1) of section 14, or under section 14A, shall be the same as the procedure for the disposal of applications by Controllers".

It is obvious that this section does not govern all grounds open to a landlord for evicting the tenant but is confined only to the ground in section 14A and proviso to section 14(1)(e). In other words, the bona fide necessity of the landlord has been put in a separate class or category having regard to the

peculiar incidents of this right. Section 14A with which we are not concerned in this case also relates to a special situation where the landlord under the Government Rules is asked to shift to his own house if he has one or in a house that belongs to his spouse failing which he has to pay a penal rent which almost takes away a major part of his salary. Thus, such a landlord be comes a class by himself. The statute thus puts personal necessity of the landlord as a special class requiring special treatment for quick eviction of the tenant and cuts out all delays and plugs all the loopholes which may cause delay in getting the relief by the landlord. It is obvious, therefore, that the classification made by the legislature is in public interest and is in complete consonance with the objectives sought to be achieved. The landlords having personal necessity have been brought together as a separate class because of their special needs and such a classification cannot be said to be unreasonable particularly when the legislature in its wisdom feels that the landlords should get this relief as quickly as possible. Sub-section (2) of section 25B enjoins on the Controller to issue summons as soon as an application for eviction has been filed before the Rent Controller. Sub-section 3(a) further provides that along with the issue of summons in the ordinary way summons should also be served by registered post acknowledgement due addressed to the tenant or his agent empowered to accept the service. Sub-section 3(b) provides that when the acknowledgement due purporting to be signed by the tenant or his agent is received by the Controller with an endorsement made by a postal employee that the tenant or his agent has refused to take delivery of the registered article the Controller may declare that there has been a valid service of summons. This provision is designed to cut out delays by the conduct of the defendant in trying to evade service of summons in a variety of ways. Sub-section (4) provides that the tenant on whom the summons is served shall not be allowed to contest an application for eviction unless he files ah affidavit stating the grounds on which he seeks to contest the application for eviction and he has to obtain leave from the Controller to contest the application. In case the tenant does not appear the Controller can presume that the application for eviction shall be deemed to have been admitted by the tenant. Sub- section (5) provides that the Controller shall give to the tenant leave to contest the application if the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises. This is also a very salutary provision in order to prevent frivolous pleas taken by the tenants to avoid eviction. Sub-section (6) provides that where leave to defend is granted to the tenant the Controller shall proceed to hear the application and in order to ensure a quick decision sub-section (7) enjoins that the Controller shall follow the practice and procedure of the Court of Small Causes including recording of evidence. Subsection (8) bars appeal or second appeal against an order passed by the Controller for recovery of possession of the premises. Nevertheless the proviso to sub-section (8) confers on the High Court a power of revision for satisfying itself whether or not the order made by the Controller is according to law. Subsection (9) confers a power of review on the Controller where no application for revision has been filed before the High Court. Sub-section (10) provides that procedure mentioned above shall apply also to an application for eviction on the ground as specified in clause (e) of the proviso to section 14(1); That is to say bona fide requirement of the landlord in respect of the tenanted premises.

The comments by the learned counsel for the appellant are first that there was no reason to discriminate the landlord suing for personal necessity by trying his application in a summary fashion. We have already pointed out that the classification made by section 25B is a reasonable classification and cannot be said to be in any way discriminatory or arbitrary. Even though a

summary procedure has been evolved the tenant has been afforded full opportunity to defend the application provided he can disclose good grounds for negativing the case of the landlord. No litigant has a right to protract the legal proceedings by taking frivolous, irrelevant, irrational or uncalled for pleas. This is what the section seeks to prevent.

It was then argued by counsel for the appellant that where an application has been allowed for eviction of the tenant, no appeal or second appeal is provided by the Act. An appeal is purely a creature of the statute and this right has not been given in order to cut out unnecessary delay. Instead the highest Court of the State has been given a wide power of revision where the said Court can examine the case of the tenant and the landlord and the validity of the order passed by the Controller. The right of the tenant, therefore, is sufficiently safeguarded by the proviso to sub-section (8) of section 25B of the Act referred to above. In order to give relief to the tenant against any apparent error of law or fact where no revision has been filed in the High Court the statute confers power of review on the Controller.

Thus taking an overall picture of the situation, the circumstances under which the landlord's needs have been classified and the safeguards given by the statute it cannot be said by any stretch of imagination that section 25B and its sub-sections are violative of Article 14 of the Constitution of India, or that section 25B suffers from the vice of excessive delegation of powers. In fact section 25B contains valuable and sufficient guidelines which completely exclude the exercise of uncanalised or arbitrary powers by the Rent Controller. As discussed above the rights of the tenants are sufficiently protected. For instance if the tenant presents a plausible defence the plaintiff can be non suited if the defence is accepted by the Controller. The tenant however cannot claim a legal right to take all sorts of frivolous, baseless or irrelevant pleas which alone the statute bars. We have already indicated that summary procedure relates only to a particular ground on the basis of which the landlord can seek eviction and does not apply to other grounds on which the tenant can be evicted.

There is yet another important aspect of the matter which may be mentioned here. Prior to the enactment of the Rent Control legislation in our country, the relationship of landlord and tenant was governed by our common law viz. the Transfer of Property Act (Sections 107 to 111). The tenant was inducted with this tacit agreement to be regulated by the conditions embodied in the contract and could not be allowed to repudiate the agreement reached between him and the landlord during that period. The tenant was, therefore, bound in law to vacate the premises either voluntarily or through a suit after he was given a notice as required by the Transfer of Property Act under the terms and conditions of the lease. However, as a piece of social reform in order to protect the tenants from capricious and frivolous eviction, the legislature stepped in and afforded special protection to the tenant by conferring on him the status of a statutory tenant who could not be evicted except under the conditions specified and the procedure prescribed by the Rent Control Acts. Thus to this extent. the agreement of lease and the provisions of the Transfer of Property Act stood superseded. At the same time, the Rent Control Acts provided the facilities of eviction to the landlord on certain specified grounds like bona fide personal necessity or default in payment of rent etc. Thus any right that the tenant possessed after the expiry of the lease was conferred on him only by virtue of the Rent Control Act. It is, therefore, manifest that if the legislature considered in its wisdom to confer certain rights or facilities on the tenants, it could due to changed circumstances curtail, modify, alter

or even take away such rights or the procedure enacted for the purpose of eviction and leave the tenants to seek their remedy under the common law.

Thus, we do not see how can the tenant challenge the validity of such a provision enacted by the legislature from which the tenant itself derived such rights.

In the instant case, the legislature has not taken away the right of the tenant at all but has merely simplified the procedure for eviction of the tenant in cases falling within the ambit of Sections 14A & 14(1) (e) of the Act as discussed in the judgment. In these circumstances, therefore, any challenge by the tenant to the constitutionality of the Act must necessarily fail and hence Section 25B is constitutionally valid.

For these reasons, therefore, all the contentions raised by the appellant fail and the appeal is dismissed. But in the peculiar circumstances of the case there will be no order as to costs. Time till 31-5-1980 is given to the tenant to hand over peaceful and vacant possession to the landlord on filing an undertaking to this Court within a month accompanied by an affidavit that he would do so on the date fixed and shall not induct any other person on the premises. The tenant will, during this period, continue to pay the compensation for wrongful use of the premises equivalent to the amount of the rent and clear all arrears. V.D.K. Appeal dismissed.