

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

**SUBJECT : DELHI RENT CONTROL ACT**

Date of Judgment: 04.11.2011

RC.REV. 88/2011 and CM No.6181/2011

SRI PRAKASH GUPTA ..... Petitioner  
Through: Mr. O.P. Aggarwal, Advocate.

Versus

DHARMANAND PANDEY  
DECD THR LRS ..... Respondent  
Through: Mr. L.N. Jha, Advocate.

CORAM:  
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. The impugned order had dismissed the application for leave to defend which had been filed by the tenant; the Additional Rent Controller (ARC) was of the view that no triable issue had arisen. Impugned order suffers from an infirmity as has rightly been pointed by the learned counsel for the petitioner. The application for leave to defend filed by the tenant has been perused; his contention was that the petitioner is not the owner of the suit premises; the premises are not required bonafidely by the petitioner for his residence; it was stated that there were five shops owned by the landlord which form part of the building; out of these shops one shop is of a bigger size; in 2007, the petitioner himself had demolished the back portion of the tenanted premises in order to create a paucity of accommodation and he has demolished the roof of his one shop; in the site plan filed by the petitioner this portion has now been depicted as a gallery between the two shops; the petitioner is already in possession of three shops; he has also not filed the correct site plan; he has not disclosed the area which is in his possession. These averments had been denied by the reply filed by the landlord. However, this was merely a bald denial and the body of the eviction petition as also the reply show that the area which was under the possession of the landlord has still not been disclosed; he has merely denied that the area is not of 200 sq. yards as has been alleged in the application for leave to defend; furthermore, there is again a bald denial to the averment of the tenant that the petitioner had in fact himself demolished the roof of one of his shops to create a paucity of accommodation which now been shown as a gallery. The eviction petition also shows that the area which was in possession of the landlord has not been depicted; in support of

the landlord he has stated he was earlier the landlord and owner of 150 Sq. yards of the property i.e. property bearing No. B-IC-164, Chander Lok, Main Mandoli Road, Delhi-93 out of which certain portion was gifted to Smt. Bhagwait Joshi and Sh. Sonu Joshi and the remaining part continues to be with him; the said remaining part (as noted supra) has not been specified.

2. It is also relevant to point out that the landlord himself has in his eviction petition stated that the building is very old and it is in a dilapidated state; this is even otherwise not a requirement for a petition under Section 14(1)(e) of the DRCA; the contention of the tenant is that the petitioner himself had demolished this building in 2007 to create a paucity of accommodation in dilapidated state; the submission of the tenant that the landlord himself had demolished a part of the building to create a paucity of accommodation and the earlier two shops have been depicted as a gallery were matters which require evidence; triable issue had prima facie arisen; the ARC dismissing the application for leave to defend summarily in this factual context suffers from an infirmity. The impugned order is set aside. Triable issues having arisen the ARC shall proceed to deal with the eviction petition on its merits.

3. The parties to appear before the Trial Court on 15.11.2011.

4. Petition is disposed of.

Sd/-  
INDERMEET KAUR, J