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**(2011) 08 DEL CK 0032**

**In the Delhi High Court**

**Case No : CM (M) No. 1566 of 2010**

Upper India Trading Company Pvt. Ltd.

APPELLANT

Vs

Smt. Shobha Asrani

RESPONDENT

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**Date of Decision : 27-08-2011**

**Acts Referred:**

Delhi Rent Control Act, 1958 — Section 14(1), 25B

**Citation : (2011) 08 DEL CK 0032**

**Hon'ble Judges : Indermeet Kaur, J**

**Bench : Single Bench**

**Advocate : Ashwini Kr. Mata and Ankur Chandhoke, for the Appellant; Rakesh Makhija, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

Indermeet Kaur, J.—The order impugned before this Court is the order dated 10.11.2010 whereby the application filed by petitioner seeking a decision on his application which in turn had sought dismissal of the eviction petition had been dismissed.

2. Facts as emanating from the record are that an eviction petition i.e. E.P. No. 30/2009 had been filed before the Delhi Rent Control Act (DRC Act); in that application leave to defend had been granted in favour of the defendant vide order dated 11.11.2005. On 25.05.2010, on a prayer made by the petitioner seeking permission to withdraw the eviction petition, the petitioner had been granted permission to withdraw the eviction petition and to file another eviction petition on the same cause of action as and when required; it had accordingly been dismissed as withdrawn.

3. The second petition had been filed u/s 14(1)(e) of the DRC Act; this was numbered as E.P. No. 27/2010. After service of notice in this petition which had been affected on the defendant on 07.08.2010, the application for leave to defend had been filed by the defendant. Meanwhile, the order dated 25.05.2010

permitting the petitioner to withdraw the first eviction petition (with permission to file another eviction petition on the same cause of action) was assailed before the Rent Controller Tribunal. The RCT vide its order dated 04.10.2010 set aside the order passed by the ARC dated 25.05.2010; the first eviction petition i.e. E.P. No. 30/2009 was directed to be dealt with in accordance with law and the parties had been directed to appear before the ARC for the said purpose on 11.10.2010.

4. The contention of the petitioner is that pursuant to this order the eviction petition i.e. E.P. No. 30/2009 had been restored with retrospective effect i.e. with effect from 25.05.2010 and as such the second execution petition which had been filed on 28.07.2010 was not maintainable on the said date i.e. 28.7.2010 and was liable to be dismissed. This was the vehement contention of the tenant/petitioner before the ARC; he had sought dismissal of this petition; this request was declined vide the impugned order. This order is now the subject matter of the present petition.

5. Learned Counsel for the respondent on the other hand submits that the first eviction petition had been withdrawn by him on 25.05.2010 because of a formal defect; names of the parties had not been correctly mentioned; additional fact had to be brought to the notice of the ARC that the landlord suffers from knee and joint pain which submission needed to be incorporated in the plea of bonafide requirement seeking eviction of the tenant u/s 14(1)(e) of the DRC Act. The contention is that the law is well settled that the need of bonafide requirement is a changing need; it is not static and need may be one on one date and it may change in the future. This proposition of law is not in dispute.

6. Counsel for the respondent states that he may be permitted to withdraw the first eviction petition i.e. E.P. No. 30/2009 and in fact, he would be moving an appropriate application to the said effect before the concerned court. It is pointed out that second petition i.e. 27/2010 has to be adjudicated upon and the application for leave to defend is still pending before the ARC; all these submission now made before this Court could have been taken by the petitioner before the ARC.

7. This submission of the learned Counsel for the respondent has force. The procedure to deal with an eviction petition u/s 14(1)(e) of the DRC Act which is on the ground of bonafide requirement is contained in Section 25B of the DRC Act. This is a complete Code in itself. After summons are served on the defendant, defendant may file his application for leave to defend and he can raise all defenses available to him. The arguments now propounded before this Court that the second eviction petition is not maintainable could well have been taken by the tenant in his second eviction petition by incorporating it in his application for leave to defend; ARC would then adjudicate upon the same. In fact this has been left open in the impugned order and the ARC has granted liberty to the tenant to raise the question of bonafides and the applicability of subsequent events in his application for leave to defend which matter had been adjourned for further arguments for 11.11.2010. The question as to whether the

need of the landlord has changed after the date of the filing of the first petition in the intervening period i.e. till the time he had filed his second eviction petition is a question yet to be gone. The matter has been left open by the ARC.

8. The impugned order suffers from no infirmity; it warrants no interference.

9. Dismissed.