Precision Steel & Engineering Works and Another

Vs

Prem Deva Niranjan Deva Tayal

Civil Appeal No. 209 of 1981

(D. A. Desai, A. P. Sen, Baharul Islam JJ)

07.10.1982

JUDGMENT

DESAI, J. -

1. A provision conferring power enacted to mollify slogans chanting public opinion of speedy justice, if not wisely interpreted may not only prove counter-productive but disastrous. And that is the only raison d'etre for this judgment because in the course of hearing at the stage of granting special leave Mr D.V. Patel, learned counsel for the respondent straightaway conceded that this is such a case in which leave to defend could never have been refused. Unfortunately, however, not a day passes without the routine refusal of leave, tackled as a run of mill case by the High Court in revision with one-word-judgment 'rejected', has much to our discomfiture impelled us to write this short judgment.

2. First the brief narration of facts. Respondent M/s Prem Deva Niranjan Deva Tayal (Hindu undivided family) through Prem Deva Tayal, constituted Attorney of Niranjan Deva Tayal (landlord) moved the Controller having jurisdiction by a petition under Section 14(1) proviso (e) (for short 'Section 14(1)(e)') read with Section 25-B of the Delhi Rent Control Act, 1958 ('Act' for short), for an order for recovery of possession of the premises being, front portion of premises bearing No. B-44, Greater Kailash Part I, New Delhi, on the ground that the premises were let out for residential purpose and are now required bona fide by the landlord for occupation as residence for himself and the members of his family dependent on him and that the landlord has no other reasonably suitable accommodation. To this petition he impleaded M/s Precision Steel and Engineering Works (tenant), a firm and Shri B.K. Beriwala constituted attorney of the firm. Landlord alleged in his petition that the premises in question were first given on leave and license and subsequently relationship of lessor and lessee was established and that the tenant is in possession since October 1, 1971. Landlord further alleged that he now requires the premises for himself and the members of his family consisting of himself, his wife and two school-going children. He admitted that he has been employed in India since 1965 but was posted at Bombay in 1970 and returned to Delhi in 1972. He went to Saudi Arabia and has now returned to India. It was alleged that on May 1, 1974, he called upon the tenant to vacate the premises but the request has fallen on deaf ears. It was specifically alleged that as the landlord has now taken up a job and has settled down in Delhi and that he has no other suitable accommodation, and accordingly he bona fide requires possession of the demised premises for his personal occupation. It was alleged that M/s Prem Deva Niranjan Deva Tayal (HUF) is the owner of the suit premises and Shri Niranjan Deva Tayal is the Karta of the HUF and second notice dated June 22, 1979 was given under instruction by the constituted Attorney Prem Deva Tayal. Even though the landlord who sought possession of the premises for his personal requirement was in Delhi at the relevant time, i.e. in 1979, the petition was

also filed through the constituted Attorney and Niranjan Deva Tayal who seeks possession for his use being in Delhi and available is conspicuous by his absence throughout the proceedings.

3. On the petition being lodged the Controller directed summons to be served in the prescribed form. On service of the summons the tenant being a firm M/s Precision Steel & Engineering Works, and its constituted Attorney Shri B.K. Beriwala appeared and filed an affidavit seeking leave to contest eviction petition. In the affidavit tenant contended that respondent 1, i.e. M/s Precision Steel & Engineering Works is the tenant and respondent 2 does not claim any interest in the premises in question in his personal capacity and ought not to have been impleaded as a respondent. While denying that there is any undivided family styled as Prem Deva Niranjan Deva Tayal it was contended that the petitioner is not entitled to file a petition under Section 14(1)(e) because the purpose of letting was not residential alone but combined purpose of residence-cum-business. It was denied that the tenant entered the premises as a licensee and subsequently the contract of lease was entered into and it was submitted that the tenant entered the premises as tenant effective from September 13, 1971, and the lease was for residential-cum-commercial purpose. A specific agreement was pleaded that the tenant which is a partnership was entitled to use the premises for the residence of the director and/or partner as also for the office purpose. Reliance was placed on Clause 6 of the License Agreement, which was really and substantially according to the tenant a contract of lease. It was also alleged that since the inception of the tenancy the premises have been used both for residence and business purposes to the knowledge of landlord and local authorities and no objection has been raised in this behalf. It was emphatically denied that the premises were required by the landlord for his personal use as well as for the use of the members of his family and it was also denied that the landlord has not in his possession reasonably suitable accommodation in Delhi. It was positively averred that Niranjan Deva Tayal who claims to be the owner of the premises and for whose personal requirement the eviction petition has been filed has been residing at 32, Anand Lok, New Delhi and that is the address of the landlord set out in cause title of the petition filed by the Attorney. Dimension of the premises in possession of the landlord was given out as 2 1/2-storey building built on a plot of 1000 sq. yards. It was averred that the building now in possession of the landlord is divided into four blocks or units, each block consisting of four bed rooms, three bath rooms, one kitchen, one living room and one drawing-cum-dining room. It was in terms stated that the whole of the house is in occupation and possession of petitioner landlord and he has been residing all along in the house much prior to the beginning of tenancy and he is in possession of the same. It was further averred that the petitioner has concealed the fact that petitioner is the owner of another building at 52, Anand Lok, New Delhi, which building is equally big. One other averment of which notice may be taken is that the petitioner has been managing both the buildings and whenever blocks fall vacant he lets them out at higher rent. It was specifically stated that front petition of the building at B-44, Greater Kailash Part I has the same accommodation as the building which the landlord has in his possession at present. In order to point out that the petitioner landlord when he comes into possession of premises vacated by tenants lets out the same at higher rent thereby contravening law and obtains unlawful enrichment, it was averred that the premises of identical size and nature situated at the back of the demised premises were taken on rent by M/s Kirloskar Company during the period 1970-73 and when vacated by the tenant the same was let out to Food Corporation of India from 1974-1975 and after getting the same vacated the same was let out in 1976 to Yash Mahajan and on each such opportunity rent was enhanced. It was accordingly alleged that the petition is mala fide and the claim of bona fide requirement is utterly untenable.

4. A counter-affidavit was filed on behalf of the landlord to the affidavit seeking leave to defend reiterating what was averred in the main petition, namely, that Prem Deva Niranjan Deva Tayal (HUF) is the owner of the property and that Niranjan Deva Tayal is the Karta of the same. It was

stated that the landlord bona fide required the premises for his own use. With reference to the building situated at 32, Anand Lok, New Delhi, it was stated that Niranjan Deva Tayal has not interest in the property and that the petitioner Niranjan Deva Tayal has no other suitable residential accommodation in Delhi. It was claimed that the property at 32, Anand Lok, New Delhi, belongs to one K.D. Tayal. The dimension of the house was also disputed. With reference to the premises at 32, Anand Lok, New Delhi, it was stated that the building is not being used as residential premises but it is only a garage block. It was further averred that Niranjan Deva Tayal was serving in Saudi Arabia and, therefore, the premises were given on leave and licence but now that the petitioner has returned to India and has permanently settled down he requires the premises for his own use. A further averment was made to the effect that the block at the back of the demised premises is at present in occupation of M/s Coronation Spinning Co. Dadra, and the occupant is entitled to occupy the premises till 1981.

5. Frankly, in appeal by special leave under Article 136 it was not necessary to set out the pleading in detail. However, the question before this Court is whether leave to contest the petition ought or ought not to be granted and that is clearly relatable and wholly dependent upon the averments in the pleadings and the disputed questions of facts arising therefrom and that is the apology for detailed narration of rival contentions.

6. And now to law. Section 14(1)(e) of the Act reads as under :

> 14. (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant :

Provided that the Controller may, on an application made to him in the prescribed manner, make an order of the recovery of possession of the premises on one or more of the following grounds only, namely -

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> (e) that the premises let for residential purposes are required bona fide by the landlord or occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation;

Explanation. - For the purposes of this clause, "premises let for residential purposes" include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes;

> Section 25-B which forms part of Chapter III-A was introduced in the Act by Amending Act 18 of 1976 with effect from December 1, 1975. The fasciculus of sections is headed 'Summary Trial of Certain Applications'. Section 25-B(1), (4) and (5) are material for the present purpose. They read as under :
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> 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 14-A, shall be dealt with in accordance with the procedure specified in this section.

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> (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 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.
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> (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 14-A.

7. The increased tempo of industrialisation since the independence resulted in mass migration of population from rural to urban areas. This urbanisation process resulted in phenomenal demand for housing accommodation. Harsh economic law of demand and supply operated with full vigour to the disadvantage of the under privileged. To checkmate the profiteering by the owners of property and to protect the weaker sections, most of the States in our country enacted legislation for the protection of tenants of premises situated in urban and semi-urban areas. These legislation have been enacted with the avowed object of putting a fetter on the unrestricted right of re-entry enjoyed by the landlords with a view to protecting the tenants assuring security of tenure. This avowed object and purpose for enacting legislation must always inform and guide the interpretative process of such socially oriented beneficial legislation. But the language of the statute has to be kept in view to determine the width and ambit of protection. Normally in all such statutes a provision is inserted prescribing enabling provision under which landlord can recover possession and thereby restricted the unfettered tight of re-entry. One such provision normally to be found in all such statutes is the one which enables a landlord to recover possession if he bona fide requires the same for occupation by himself or for the use of the members of the family dependent on him. If the landlord seeks possession bona fide for his personal requirement, he must commence the action by filing a petition and the tenant would be entitled to appear and defend the action. While defending the action in an adversary system the tenant would file his written statement raising contentions which in terms would focus the attention of the court on questions of facts in dispute on the basis of which issues on which parties are at variance would be framed. Both the parties would lead evidence and ultimately on evaluation of evidence the court/Controller would determine the issues on the principle of pre-ponderance of probability and answer the issues one way or the other determining the fate of the petition.

8. That was the position under the Act. On the introduction of Chapter III-A a notable departure has been made in the Act with regard to the procedure for trial of action brought under Section 14-A and 14(1)(e). When a petition is brought before the Controller under Section 14(1)(e) a summon has to be issued to the tenant and when the summons is served the tenant cannot straightaway proceed to contest the petition for eviction from the premises but either he must surrender possession or seek leave to contest the petition. While seeking leave he must file an affidavit setting out the ground on which he seeks to contest the application for eviction. This is the scheme of Section 25-B(1) and (4). Then comes Section 25-B(5) which provides that the Controller is under a statutory duty - note the

expression "shall give leave to 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 mentioned in Section 14(1)(e), i.e. bona fide requirement for his personal use or the use of the members of his family.

9. Let us recall the procedure for obtaining a decree or order for eviction against a tenant entitled to protection of Rent Act other than Delhi Rent Act. What would the court except the landlord to prove before be seeks to recover possession from the tenant on the ground that he bona fide requires possession for his own use or the use of the members of his family ? In a catena of decisions it has been decided that in order to succeed the landlord should show that the premises have been let out as a residence or for residential purposes; that the landlord needs to occupy the premises which may imply that either he has got no other accommodation in the city or town in which the premises in question are situated or the one in his possession does not provide him a suitable residence and he is required to shift to the premises in question; that his need is genuine and that it is not merely a fanciful desire of an affluent landlord who for the fancy of changing the premises would like to shift to the one from which the tenant is sought to be evicted; that he is acting bona fide in approaching the court for recovery of possession; and that his demand is reasonable. These facts have to be proved to the satisfaction of the court and once the trend of judicial opinion as expressed by the court went so far as to say that the court cannot pass a decree on compromise because the statute has cast duty on the court to be satisfied about the requirement of the landlord and a compromise decree was held to be nullity (see Bahadur Singh v. Muni Subrat Dass ((1969) 2 SCR 432 : (1970) 2 SCJ 153) and Kaushalya Devi v. K.L. Bansal ((1969) 2 SCR 1048 : (1969) 1 SCC 59 :AIR 1970 SC 838). Certain States have in their respective legislations also imposed an additional condition before the landlord can obtain possession for personal requirement viz. before making a decree or order of eviction the court must weigh the relative hardship of the landlord and the tenant and if greater hardship is likely to be caused to tenant, the court is under an obligation to refuse to pass the decree notwithstanding the fact that landlord has proved his requirement. Rent restriction legislation enacted by States may differ from State to State. Restrictions on the landlord's unfettered right to re-entry may be stringent or not so stringent depending upon the local situation. But the underlying thrust of all rent restriction legislations universally recognised must not be lost sight of that the enabling provisions of the Rent Restriction Act are not to be so construed or interpreted as would make the protection conferred on the tenant illusory by a liberal approach to the desire of the landlord to evict tenant under the camouflage of personal requirement. It is not for a moment suggested that a landlord should not get possession if he genuinely requires the premises for his own use and occupation. That much incidental element of ownership in a country governed by mixed economy is still being recognised though in the wake of agrarian reforms the tenants of agricultural land have been made the owners thereof in almost the whole country. But that is a subject with which we are not concerned. We must proceed on the accepted principle that the one element of ownership, viz., right to personally occupy and enjoy, stands legislatively recognised when an enabling provision was made while restricting the unfettered tight of the landlord to re-enter demised premises at his sweet will giving him an opportunity to seek possession on the ground of personal requirement. But care has to be taken to visualise that the lust for increasing rent by getting the premises vacated masquerading under the garb of personal requirement does not overreach the courts. This is the gist of observations of this Court in Bega Begum v. Abdul Ahad Khan ((1979) 2 SCR 1 : (1979) 1 SCC 273 : AIR 1979 SC 272); where it was held that the expression 'reasonable requirement' in Section 11(h) of the Jammu & Kashmir Houses and Shops Rent Control Act, 1966, undoubtedly postulates 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 nothing but a desire as the High Court appeared to have done in that case. Thus observation was quoted with approval in Kewal Singh v. Lajwanti ((1980) 1 SCR 854, 864 : (1980) 1 SCC 290 : AIR 1980 SC 161). In Kewal Singh case ((1980) 1 SCR 854, 864 : (1980) 1 SCC 290 : AIR 1980 SC 161) this Court repelled challenge to the constitutional validity of Section 25-B of the Act.

10. Undoubtedly the procedure prescribed in Chapter III-A of the Act is materially different in that it is more harsh and weighted against the tenant. But should this procedural conundrum change the entire landscape of law ? When a landlord approaches Controller under Section 14(1) proviso (e), is the court to presume every averment in the petition as unchallengeable and truthful ? The consequence of refusal to grant leave must stare in the face of the Controller that the landlord gets an order of eviction without batting the eyelid. This consequence itself is sufficient to liberally approach the prayer for leave to contest the petition. While examining the question whether leave to defend ought or ought not to be granted the limited jurisdiction which the Controller enjoys is prescribed within the well-defined limits and he cannot get into a sort of a trial by affidavits preferring one set to the other and thus concluding the trial without holding the trial itself. Short-circuiting the proceedings need not masquerade as a strict compliance with sub-section (5) of Section 25-B. The provision is cast in a mandatory form. Statutory duty is cast on the Controller to give leave as the legislative uses the expression "the Controller shall give" to the tenant leave to contest if the affidavit filed by the tenant discloses such fact as would disentitle the landlord for an order for recovery of possession. The Controller has to look at the affidavit of the tenant seeking leave to contest. Browsing through the affidavit if there emerges averment of facts which on a trial, if believed, would non-suit the landlord, leave ought to be granted. Let it be made clear that the statute is not cast in a negative form by enacting that the Controller shall refuse to give to the tenant leave to contest the application unless the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order, etc. That is not the mould in which the section is case. The provision indicates a positive approach and not a negative inhibition. When the language of a statute is plain, the principle that legislature speaks its mind in the plainest language has to be given full effect. No canon of construction permits in the name of illusory intendment defeating the plain, unambiguous language expressed to convey the legislative mind. And the legislature had before it Order 37, an analogous the phraseology of the Code of Civil Procedure, namely, 'substantial defence' and 'vexatious and frivolous defence', the legislature used the plainest language, 'facts disclosed in the affidavit of the tenant'.

11. The language of sub-section (5) of Section 25-B casts a statutory duty on the Controller to give to the tenant leave to contest the application, the only pre-condition for exercise of jurisdiction being that 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 mentioned in Section 14(1)(e). Section 14(1) starts with a non obstante clause which would necessarily imply that the Controller is precluded from passing an order or decree for recovery of possession of any premises in favour of the landlord against the tenant unless the case is covered by any of the clauses of the proviso. The proviso sets out various enabling provisions on proof of one or the other, the landlords would be entitled to recover possession from the tenant. One such enabling provision is the one enacted in Section 14(1) proviso (e). Upon a true construction of proviso (e) to Section 14(1) it would unmistakably appear that the burden is on the landlord to satisfy the Controller that the premises of which possession is sought is (i) let for residential purposes; and (ii) possession of the premises is required bona fide by the landlord for occupation as residence for himself or for any member of his family, etc.; and (iii) that the landlord or the person for whose benefit possession is sought has not other reasonably suitable residential accommodation. This burden, landlord is

required to discharge before the Controller gets jurisdiction to make an order for eviction. This necessarily transpires from the language of Section 14(1) which precludes the Controller from making any order or decree for recovery of possession unless the landlord proves to his satisfaction the conditions in the enabling provision enacted as proviso under which possession is sought. Initial burden is thus on the landlord.

12. The question is whether this burden is in any way diluted or stands discharged or wholly shifted to the tenant because of a different procedure prescribed in Chapter III-A of the Act. Section 25(4) provides that in default of the appearance of the tenant in pursuance of the summons or his obtaining such leave, the statement made by the landlord by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the landlord shall be entitled to an order for eviction on the ground set out in Section 14(1)(e). On a combined reading of Section 14(1) proviso (e) with Section 25-B(1) and (4) the legal position that emerges is that on a proper application being made in the prescribed manner which is required to be supported by an affidavit, unless the tenant obtains leave to defend as contemplated by sub-sections (4) and (5) of Section 25-B, the tenant is deemed to have admitted all the averments made in the petition filed by the landlord. The effect of these provisions is that the Controller would act on the admission of the tenant and there is not better proof of fact as admission, ordinarily because facts which are admitted need not be proved. But what happens if the tenant appears pursuant to the summons issued under sub-section (2) of Section 25-B, files an affidavit stating the grounds on which he seeks to contest the application. As a corollary it would transpire that the facts pleaded by the landlord are disputed and controverted. How is the Controller thereafter to proceed in the matter. It would be open to the landlord to contest the application of the tenant seeking leave to contest and for that purpose he can file an affidavit in reply but production and admission and evaluation of documents at that stage has no place. The controller has to confine himself to the affidavit filed by the tenant under sub-section (4) and the reply, if any. On perusing the affidavit filed by the tenant and the reply if any filed by landlord the Controller has to pose to himself the only question : Does the affidavit disclose, not prove, facts as would disentitle the landlord from obtaining an order for the recovery of possession on the ground specified in clause (e) of the proviso to Section 14(1). The Controller is not to record a finding on disputed questions of facts or his preference of one set of affidavit against other set of affidavits. That is not jurisdiction conferred on the Controller by sub-section (5) because the Controller while examining the question whether there is a proper case for granting leave to contest the application has to confine himself to the affidavit filed by the tenant disclosing such facts as would prima facie and not on contest disentitle the landlord from obtaining an order for recovery of possession. At the stage when affidavit is filed under sub-section (4) by the tenant and the same is being examined for the purposes of sub-section (5) the Controller has to confine himself only to the averments in the affidavit and the reply if any and that becomes manifestly clear from the language of sub-section (5) that 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 recovering possession etc. 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 that 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 that stage of proof is yet to come. 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.

This view taken in B. Kanjibhai v. Mohanraj Rajendrakumar (AIR 1970 Guj 32 : 11 Guj LR 140) and Kishan Singh v. Mohd. Shafi (AIR 1964 J & K 39 : 1964 Kash LJ 92) appears to have been approved in Santosh Kumar v. Bhai Mool Singh (1958 SCR 1211, 1217 : AIR 1958 SC 321 : 1958 SCJ 434), where at SCR page 1217 this Court while commenting upon an order granting conditional leave under Order 37, Rule 3, passed by the Trial Judge which was to this effect : "In the absence of these documents, the defence of the defendants seems to be vague consisting of indefinite assertions...", observed as under :

This is a surprising conclusion. The facts given in the affidavit are clear and precise, the defence could hardly have been clearer. We find it difficult to see how a defence that, on the face of it, is clear becomes vague simply because the evidence by which it is to be proved is not brought on file at the time the defence is put in.

The learned judge has failed to see that the stage of proof can only come after the defendant has been allowed to enter an appearance and defend the suit, and that the nature of the defence has to be determined at the time when the affidavit is put in. At that stage all that the Court has to determine is whether "if the facts alleged by the defendant are duly proved" they will afford a good, or even a plausible, answer to the plaintiff's claim. Once the Court is satisfied about that, leave cannot be withheld and no question about imposing conditions can arise; and once leave is granted, the normal procedure of a suit, so far as evidence and proof go, obtains.

The manifest error committed in the procedure followed at present by the Controller under Section 25-B may be pointed out. The tenant has to file an affidavit stating the grounds on which he seeks to contest the application. The Controller may accept an affidavit in reply if landlord chooses to file one. So far there is no difficulty. There then follows affidavit in rejoinder and sub-rejoinder and the documents are produced and when this procession ends the Controller proceeds to examine the rival contentions as if evidence produced in the form of the affidavits untested by cross-examination and unproved documents are before him on the appreciation and evaluation of which he records an affirmative finding that the facts disclosed in the affidavit of tenant are not proved and therefore leave to contest should be refused. In our opinion, this is wholly impermissible. The regular trial required to be held by a Court of Small Causes as contemplated by sub-section (6) read with sub-section (7) of Section 25-B is not to be substituted by affidavits and counter-affidavits at the stage of considering tenant's affidavit filed for obtaining leave to contest the petition under sub-section (4). Sub-section (6) enjoins a duty on the Controller where leave is granted to the tenant to contest the application to commence the hearing of the petition as early as practicable and sub-section (6) prescribes procedure to be followed as if the controller is a Court of Small Causes. The Court of Small Causes follows the summary procedure in the adversary system where witness are examined and cross-examined and truth of averment is decided on the touchstone of cross-examination. A speedy trial not conforming to the well-recognised principle of arriving at truth by testing evidence on the touchstone of cross-examination, should not be easily read into provision at a stage not contemplated by the provision unless statute positively by a specific provision introduces the same. The scheme of Section 25-B does not introduce a trial for arriving at the truth at the stage of proceeding contemplated by sub-section (4) of Section 25-B.

13. It is at this stage advantageous to refer to the analogous provisions in Order 37 of the Code of Civil Procedure to find out whether that provision is bodily incorporated in sub-section (5) of Section 25-B or there is material departure so that stare decisis may or may not shed light on the vexed question. Order 37, Rule 1 sets out courts and classes of suits to which the order would apply. Rule 2 provides for institution of summary suits and sub-rule (3) of Rule 2 provides that the

defendant shall not defend the suit referred to in sub-rule (1) unless he enters an appearance and in default of his entering an appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for a sum, etc. Sub-rule (3) provides the procedure where the defendant enters an appearance. On such appearance being entered the plaintiff has to serve on the defendant summons for judgment in the prescribed form which is to be supported by an affidavit verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the suit.

14. It may be recalled that the language of Rule 3 of Order 37, Code of Civil Procedure, prior to the amendment of the Code in 1976 was materially different and substantially the whole of Rule 3 has been replaced making detailed provision therein about the manner, method and circumstances in which leave to defend may be granted or refused. Leave to defend under sub-rule (5) of Rule 3 may be granted if the defendant by affidavit or otherwise discloses such facts to the court as may be deemed sufficient to entitle him to defend. The first proviso makes it clear that the leave shall not be refused unless the court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious. Recall the language of sub-section (5) of Section 25-B which makes it obligatory upon the Controller to give leave by use of the mandatory language that the Controller shall give leave to defend to the tenant 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, etc. For proper and better appreciation it may be made clear that when the mandate of the section is that leave shall be granted as it enjoins a positive duty while the proviso to sub-rule (5) of Rule 3 of Order 37 provides that leave to defend shall not be refused unless the court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise, etc. Undoubtedly, the test of triable issue has been largely followed by the court while considering application for leave to defend under Order 37, Rule 3(5) but what constitutes a triable issue always depends upon the facts and circumstances of each case and its connotation would change after the recasting of whole Rule 3 of Order 37. It was, however, urged that the scope and ambit of sub-section (5) of Section 25-B in its comparison with sub-rule (5) of Rule 3 of Order 37 is no more res integra in view of the decision of this Court in Busching Schmitz (Pvt.) Ltd. v. P.T. Menghani ((1977) 3 SCR 312 : (1977) 2 SCC 835 : AIR 1977 SC 1569). This Court observed as under : (SCC pp. 842-43, para 12)

> .... But we make it plain even at this stage that it is fallacious to approximate (as was sought to be done) Section 25-B(5) with Order 37, Rule 3 of the Code of Civil Procedure. The special setting demanding summary proceeding, the nature of the subject-matter and, above all, the legislative diction which has been deliberately designed, differ in the two provisions. The legal ambit and judicial discretion are wider in the latter while, in the former with which we are concerned, the scope for opening the door to defence is narrowed down by the strict words used. The Controller's power to give leave to contest is cribbed by the condition that 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 14-A. Disclosure of facts which disentitle recovery of possession is a sine qua non for grant of leave. Are there facts disentitling the invocation of Section 14-A ?

It is not clear from the decision whether this Court took note of whole of the re-structured Rule 3 of

Order 37 or it was keeping in view the unamended Rule 3 of Order 37. Neither is quoted, none is referred to and it is not clear whether a note of amendment of 1976 was taken. That apart, compare the language of both the provisions as hereinabove indicated. The two provisos to sub-rule (5) of Rule 3 make it clear that the leave cannot be refused if the defendant has a substantial defence to make or that the defence intended to be put is neither frivolous nor vexatious. Defence has to be substantial before leave can be obtained. Compare it with expression "affidavit discloses such facts as would disentitle that landlord, etc.". It is not difficult to ascertain where obligatory duty is cast. Mere disclosure of facts, not a substantial defence is the sine qua non. Further, the court can grant conditional leave or leave limited to the issue under Order 37, Rule 3(5). There is no such power conferred on the Controller under sub-section (5) of Section 25-B. Coming to the social setting referred to by this Court, one must not overlook the fact that a summary procedure can as well be prescribed for all suits to satisfy the felt needs of time referable to highly congested court dockets. There is no evangelical sanctity in speeding up the actions against tenant alone. The landlord at one stage lets out the premises with the knowledge that it is difficult to evict tenant and obtain possession and, therefore, would reasonably be expected to foresee that even if he has some future need he will not get back possession and yet after letting out premises in a short time approaches the court on the ground of personal requirement and the tenant may not get even a chance to defend himself. Social setting is, therefore, in favour of tenant. However, referring to this decision a Full Bench of the Delhi High Court in Mohan Lal v. Tirath Ram Chopra ((1982) 22 DLT 1), observed that the scope for granting leave under sub-section (5) of Section 25-B is narrower than the one under Order 37, Rule 3, Code of Civil Procedure. We do not accept the interpretation of the observation of this Court in Busching Schmitz case as understood by the Delhi High Court.

15. At this stage we may also refer with advantage to the decision of this Court in B.N. Mutto v. T.K. Nandi ((1979) 2 SCR 409 : (1979) 1 SCC 361 : AIR 1979 SC 460). In this case a petition under Section 14-A(1) of the Delhi Rent Control Act was filed for eviction of the tenant on the ground that the landlord has retired from government service and he has been called upon to vacate the government premises which he was occupying by virtue of his office. The only relevant observation to which our attention was drawn reads as under : (SCC p. 371, para 18)

> ... Leave to contest an application under Section 14-A(1) cannot be said to be analogous to the provisions of grant of leave to defend as envisaged in the Civil Procedure Code. Order 37, Rule 2, sub-rule (3) of the Code of Civil Procedure provides that the defendant shall not appear or defend the suit unless he obtains leave from a Judge as hereinafter provided so to appear and defend. Sub-rule (1) of Rule 3 of Order 37 lays down the procedure to obtain leave. Under the provisions leave to appear and defend the suit is to be given if the affidavit discloses such facts as would make incumbent on the holder to prove consideration or such other facts as the court may deem sufficient to support the application. The scope of Section 25-B(5) is very restricted for leave to contest can only be given if the facts are such as would disentitle the landlord from obtaining an order for recovery of possession on the ground specified in Section 14-A.

With respect, the fact that an obligatory duty is cast on the Controller to grant leave on disclosure of facts in the affidavit as would disentitle the landlord to obtain possession itself specifies and defines the scope and ambit of jurisdiction and power of the Controller. Assuming that Order 37, sub-rule (5) of Rule 3 confers wider discretion on the court that by mere comparison cannot cut down or narrow or limit the power coupled with the duty conferred on the Controller under sub-section (5) of Section 25-B. Mere disclosure of facts which when proved in a regular trial which would

disentitle the landlord to obtain relief, such disclosure only impels the Controller to grant leave. It is not necessary to record as required by Order 37, Rule 5 whether the defence is substantial or frivolous as vexatious. We find it difficult to subscribe to the view that the jurisdiction under Section 25-B(5) is very very limited.

16. We may as well now refer to Sarwan Singh v. Kasturi Lal ((1977) 2 SCR 421 : (1977) 1 SCC 750 : AIR 1977 SC 265). Of course, the question substantially raised in that case was about the apparent conflict between Slum Areas (Improvement and Clearance) Act, 1956 and Sections 14-A, 25 and 25-B of Delhi Rent Control Act, 1958. What is the scope and ambit of jurisdiction of the Controller under sub-section (5) of Section 25-B did not come up for consideration. What was, however, pointed out was that Section 25-B provides for a procedure to effectuate the purpose underlying Section 14-A and Section 14(1)(e) which enables the landlords to recover 'immediate possession of the premises'. Expostulating the philosophy underlying this provision this Court observed as under : (SCC p. 760, para 19)

> ... Whatever be the merits of that philosophy, the theory is that an allottee from the Central Government or a local authority should not be at the mercy of laws delays while being faced with instant eviction by his landlord save on payment of what in practice is penal rent. Faced with a Hobson's choice, to quit the official residence or pay the market rent for it, the allottee had in turn to be afforded a quick and expeditious remedy against his own tenant. With that end in view it was provided that nothing, not even the Slum Clearance Act, shall stand in way of the allottee from evicting his tenant by resorting to the summary procedure prescribed by Chapter III-A. The tenant is even deprived of the elementary right of a defendant to defend a proceeding brought against him, save on obtaining leave of the Rent Controller. If the leave is refused, by Section 25-B(4) the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the landlord is entitled to an order for eviction. No appeal or second appeal lies against that order. Section 25-B(8) denies that right and provides instead for a revision to the High Court whose jurisdiction is limited to finding out whether the order complained of is according to law.

This observation is in the context of a proceeding under Section 14-A where a landlord on ceasing to be in government service is likely to be on the road. It ill-compares with Section 14(1)(e). But apart from that, this decision is not helpful because the question did not arise in that case about the scope and ambit of Section 25-B(5). Undoubtedly, as has been stated in the decision, the object and purpose of the legislation assumes greater relevance while interpreting the language of the statute. The provision under construction finds its place in the Delhi Rent Control Act, 1958. Its long title shows the object underlying the legislation. The long title is : "An Act to provide for control of rent and eviction and rates of hotels, lodging houses and for the lease of vacant premises to Government in certain areas in the Union Territory of Delhi". The underlying object is to provide for control of eviction. This must inform every interpretative process including the provision contained in Section 25-B(5). By construction of Section 25-B(5) let us not return to the days when under the Transfer of Property Act except in the case of fixed period of tenancy the tenant at will had no defence to offer and could be thrown out at the mere whim and fancy of the landlord. When leave to contest the petition is refused the uninvestigated averments in the petition are deemed to be of such great evidentiary value as to result in eviction without the examination of those averments. The outcome of refusal to grant leave must stare into the face while deciding the scope of the power and jurisdiction under Section 25-B(5).

17. In passing we may refer to two decisions of this Court in Charan Dass Duggal v. Brahma Nand (Civil Appeal No. 179 of 1982, decided on January 11, 1982) and Om Prakash Saluja v. Saraswati Devi (Civil Appeal No. 527 of 1982, decided on February 8, 1982). We would have avoided any reference to these two decisions because the decision in each case was rendered on the facts of the case but the Full Bench of the Delhi High Court referred to these two decisions and observed that the ratio in each of it runs counter to the large Bench decisions of this Court in Busching Schmitz ((1977) 3 SCR 312 : (1977) 2 SCC 835 : AIR 1977 SC 1569) and B.N. Mutto ((1979) 2 SCR 409 : (1979) 1 SCC 361 : AIR 1979 SC 460) cases and that the two earlier decisions provided the law of the land under Article 141 of the Constitution. We fail to see any inherent conflict between the aforementioned two earlier decisions and the two later decisions. The earlier two decisions have been fully discussed by us and we find nothing in the later two decisions which may even remotely be said to run counter to the ratio of the earlier decisions.

18. It is indisputable that while examining the affidavit of the tenant filed under Section 25-B(4) for the purpose of granting or refusing to grant leave to contest the petition the landlord who has initiated the action has to be heard. It would follow as a necessary corollary that the landlord may controvert the averments made in the affidavit of the tenant but the decision to grant or refuse leave must be based on the facts disclosed in the affidavit. If they are controverted by the landlord that fact may be borne in mind but if the facts disclosed in the affidavit of the tenant are contested by way of proof or disproof or producing evidence in the form of other affidavits or documents that would not be permissible. It is not the stage of proof of facts, it is only a stage of disclosure of facts. Undoubtedly, the rules of natural justice apart from the adversary system we follow must permit the landlord to contest affidavit filed by the tenant and he can do so by controverting the same by an affidavit. That would be an affidavit in reply because tenant's affidavit is the main affidavit being treated as an application seeking leave to contest the petition. But, the matter should end there. Any attempt at investigating the facts whether they appear to be proved or disproved is beyond the scope of sub-section (5) of Section 25-B. Viewed from this angle the decision in Mohan Lal case ((1982) 22 DLT 1) rendered by the Full Bench of the Delhi High Court is far in excess of the requirement of Section 25-B(5) and the view taken therein does not commend to us.

19. It was, however, urged that Section 37(1) makes it obligatory for the Controller to not only hear the landlord but examine evidence at the stage of granting or refusing to grant leave to contest. Section 37(1) provides that no order which prejudicially affects any person shall be made by the Controller under the Act without giving him a reasonable opportunity of showing cause against the order proposed to be made and until his objections, if any, and evidence he may produce in support of the same have been considered by the Controller. Sub-section (2) of Section 37 provides that subject to any rules that may be made under the Act, the Controller shall, while holding an enquiry in any proceeding before him, follow as far as may be the practice and procedure of a Court of Small Causes, including the recording of evidence. Section 37(1) prescribes procedure to be followed by the Controller in a proceeding under the Act and sub-section (2) makes it clear that subject to the rules that may be made under the Act, the Court has to follow the practice and procedure of the Court of Small Causes inclusive of the provision for recording of evidence. However, in this context it is advantageous to refer to sub-section (7) of Section 25-B. It reads as under :

> 25-B. (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.

Sub-section (7) of Section 25-B opens with a non obstante clause and provides that while holding an enquiry in a proceeding to which the Chapter III-A applies, the Controller has to follow the practice and procedure of a Court of Small Causes including the recording of evidence. Section 25-B(1) leaves no room for doubt that it is as self-contained code and that is why sub-section (7) had to open with a non obstante clause. It is crystal clear that while holding the enquiry under Chapter III-A which incorporates Section 25-B, the court has to follow the practice and procedure of a Court of Small Causes. It was, however, submitted that the non obstante clause excludes the application of sub-section (2) of Section 37 and not sub-section (1) of Section 37 and, therefore, when leave to contest is sought by the tenant not only the landlord can contest the same which is indisputable but the Controller will have to follow the procedure prescribed in Section 37(1), namely, inviting the objections, taking into consideration the evidence that may be produced, etc. If Section 37(1) is attracted and the evidence has to be produced and the Controller is bound to take that evidence into consideration, the evidence can as well be oral evidence which necessitates the examinations and cross-examination of witnesses. If that is contemplated by Section 37(1), incorporating it in Section 25-B would be self-defeating. On the contrary even the exclusion of Section 37(1) will necessarily follow from the provision contained in sub-section (10) of Section 25-B which reads as under :

> 25-B. (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 14-A, shall be the same as the procedure for the disposal of applications by Controllers.

It would appear at a glance that sub-section (10) operates to being in Section 37(1) after leave to contest is granted. However, if there is any provision in Section 25-B for dealing with an application under that section that would prevail over other provisions of the Act while considering an application amongst others are under Section 14(1) proviso (e). If at the time of considering the application for granting leave the procedure under Section 37(1) is to be followed it would render sub-section (10) superfluous and redundant. If Section 37(1) were to govern all proceedings including the application for leave to contest the proceedings, sub-section (7) and sub-section (10) would both be rendered redundant. On the contrary the very fact that sub-section (7) provides that while considering the affidavit of the tenant seeking permission to contest the proceedings the practice and procedure of the Small Causes Court will have to be followed itself indicates the legislative intention of treating Chapter III-A and especially Section 25-B as self-contained code and this conclusion is buttressed by the provision of sub-section (1) which provides that every application by landlord for recovery of possession of any premises on the ground specified in clause (e) of the proviso to sub-section (1) of Section 14 shall be dealt with in accordance with the procedure specified in Section 25-B. Any other section prescribing procedure for disposal of application covered by sub-section (1) of Section 25-B will be excluded. And that will also exclude Section 37(1). The stage for considering the application for leave to contest the petition is anterior to the stage of hearing the substantive petition for eviction and the procedure for the disposal is prescribed in sub-section (7). After grant of leave to contest sub-section (10) of Section 25-B comes into operation and it makes it abundantly clear that the procedure prescribed while holding an enquiry consequent upon the granting of leave to contest shall be the same as required to be followed by the Controller. This directly points in the direction of Section 37(1). Therefore, it is crystal clear that Section 37(1) is not attracted at the stage of considering an application for leave to contest filed under sub-section (4) and examined under sub-section 25-B.

> 20. Before concluding on this point conceding that a summary procedure has been devised so that the bane of law courts and legal procedure as at present in vogue

> manifestly showing regard for the truth being the last item on the list of priorities and, therefore, the tenant should not necessarily be permitted to prolong the litigation and cause hardship to the landlord who is seeking possession on the ground of personal requirement by raising untenable and frivolous defence where speedy decision is desirable in the interest of society, does not imply that ignoring the mandate of law, the Controller should hold trial at a stage not prescribed by the statute. Inability to make good a defence does not render every defence either frivolous or vexatious. In a civil proceeding the courts decide on the pre-ponderance of probabilities and it may be that while evaluating the evidence that court may lean one way or the other but the one rejected does not necessarily become vexatious or frivolous. The last two are positive concepts and have to be specifically found and it is not an end product of failure to offer convincing proof because sometimes a party may fail to prove the fact because the other side can so doctor or articulate the facts that the proof may not be easily available. Coupled with this is the fact that the justice delivery system in this country worshipped and ardently eulogised is an adversary system the basic postulate of which was noticed by this Court in Sangram Singh v. Election Tribunal, Kotah ((1955) 2 SCR 1, 8 : AIR 1955 SC 425 : 1955 SCJ 431 : 10 ELR 293) as under :

Now a code of procedure must be regarded as such. It is procedure, something designed to facilitate justice and further its ends : not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done on both sides) lest the very means designed for the furtherance of justice be used to frustrate it.

Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that effect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle.

Add to this the harshness of the procedure prescribed under Section 25-B. The Controller is the final arbiter of facts. Once leave is refused, no appeal is provided against the order refusing leave (see sub-section (8) of Section 25-B). A revision petition may be filed to the High Court but realistically no one should be in doubt the narrow constricted jurisdiction of the High Court while interfering with findings of facts in exercise of revisional jurisdiction. Compared to the normal procedure certainly the procedure is a harsh one and that considerably adds to the responsibility of the Controller at the time of deciding the application for leave to contest the petition. Wisdom, sagacity and the consequence of refusal to grant leave coupled with limited scope of enquiry being confined to facts disclosed in affidavit of the tenant should guide the approach of the Controller.

21. Since Sangram Singh ((1955) 2 SCR 1, 8 : AIR 1955 SC 425 : 1955 SCJ 431 : 10 ELR 293) the ever widening horizon of fair procedure while rendering administrative decision as set out in Maneka Gandhi ((1978) 1 SCC 248 : (1978) 2 SCR 621 : AIR 1978 SC 597) should guide the approach of the court while examining the encroachment, fetters and restriction in the procedure normally followed in courts. Speedy trial is the demand of the day but in the name of speedy trial a

landlord whose right of re-entry was sought to be fettered by a welfare legislation with its social orientation in favour of a class of people unable to have its own roof over the head - the tenant should not be exposed to the vagaries of augmenting that right which even when Rent Restriction Act was not in force had to be enforced through the machinery of law with normal trial and appeal.

22. What then follows. The Controller has to confine himself indisputably to the condition prescribed for exercise of jurisdiction in sub-section (5) of Section 25-B. In other words, he must confine himself to the affidavit filed by the tenant. If the affidavit discloses such facts - no proof is needed at the stage, which would disentitle the plaintiff from seeking possession, the mere disclosure of such facts must be held sufficient to grant leave because the statute says "on disclosure of such facts the Controller shall grant leave". It is different to be exhaustive as to what such facts could be but ordinarily when an action is brought under Section 14(1) proviso (e) of the Act whereby the landlord seeks to recover possession on the ground of bona fide personal requirement if the tenant alleges such facts as that the landlord has other accommodation in his possession; that the landlord has in his possession accommodation which is sufficient for him; that the conduct of the landlord discloses avarice for increasing rent by threatening eviction; that the landlord has been letting out some other premises at enhanced rent without any attempt at occupying the same or using it for himself; that the dependents of the landlord for whose benefit also possession is sought are not persons to whom in eye of law the landlord was bound to provide accommodation; that the past conduct of the landlord is such as would disentitle him to the relief of possession; that the landlord who claims possession for his personal requirement has not cared to approach the court in person through he could have without the slightest inconvenience approached in person and with a view to shielding himself from cross-examination prosecutes litigation through an agent called a constituted attorney. These and several other relevant but inexhaustible facts when disclosed should ordinarily be deemed to be sufficient to grant leave.

23. And now to the facts of this case. Really no elaborate discussion is necessary but what is stated herein is with a view to pointing out with respect how contrary to well established principles and the mandatory requirements of the statute the learned Controller and the High Court dealt with the matter. The learned Controller in para 2 of the judgment set out five different defences raised by the tenant in his affidavit seeking leave to contest the petition. The learned Controller then proceeded to note in para 3 of the order that the petitioner filed a counter-affidavit and also filed the sale deed of the house at 32, Anand Lok, New Delhi and further stated that the landlord has only one house of his ownership and that is the demised premises. In summarising the contentions raised by the tenant in his affidavit the learned Controller overlooked two most important contentions : (1) that though the landlord Niranjan Deva Tayal for whose benefit the petition was filed has been in Delhi since 1972 yet the leave and license agreement in favour of the tenant was renewed in 1972 and 1973 which would mean that even though Niranjan Deva Tayal, the real landlord whose proxy is Prem Deva Tayal, the constituted attorney, did not seek possession but renewed the so-called leave and licence agreement which would necessarily imply that he was not in need of the premises and that he has some accommodation in his occupation which he considers sufficient and could occupy it as of right. If that was not to be he should have so stated in the petition. But the glaring lacuna in summarising the contentions made by the learned Controller is that the tenant stated in his affidavit that an identical unit at the back of the demised premises fell vacant in 1973 when M/s Kirloskar & Co. vacated the same and the same was let out to the Food Corporation of India at enhanced rent. The learned Controller did not note the fact that a notice seeking eviction was served in 1974 and that too on the ground that Niranjan Deva Tayal requires the premises for his personal occupation because he bona fide needs the same and yet no follow-up action was taken till 1979 when on June 22, 1979, a second notice of eviction was served. If in a regular trial these facts are proved, is there

any doubt about the outcome of the petition ? There was the further averment of which proper summary is not made that even Food Corporation of India appears to have vacated the premises at the back of demised premises and the same is in occupation of M/s Coronation Spinning (India) and it is admitted that the same were let out up to and inclusive of the year 1981. The averment is that every time a fresh letting is indulged into it is done after raising the rent. Could not the bona fide of the landlord on disclosure of these facts be put in issue ? Surprisingly, contrary to the provision of law the learned Controller took the affidavit and counter-affidavit and reply affidavit as unquestioned evidence and proceeded to decide all disputed questions of fact. Is this at all contemplated by Section 25-B ? If not, the whole order would be without jurisdiction. But the more objectionable part overlooked by him is that the landlord who seeks possession for himself and is admittedly in Delhi has not stated a single word on oath about his requirements as to in what right he is occupying the premises in which he is at present staying, why after nearly seven years he is required to vacate the same and what necessitates his seeking possession of the front portion when identical unit at the back fell vacant thrice during the period he was permanently in Delhi. If these facts without further elaboration disclosed in affidavit of the tenant are not sufficient to grant leave, we would find it difficult to see a single case in which leave could ever be granted which would mean that the landlord fortunately having premises in Delhi where rents are fantastically high can hold tenants at ransom on the threat of eviction on the ground of personal requirement and on refusal of leave obtain possession. We say no more.

24. We then turn to the judgment of the High Court rejecting the revision petition filed by the tenant. The learned Chief Justice first examined the contention whether the demised premises were let for residence or or residence-cum-business. While examining the contention, Clause 6 of the licence deed was referred to which inter alia provides that the licensee will however be free to use the said premises in part or in full also for office purposes provided the rules of the local authorities so permit and in such and event the licensees shall pay to the owners any increase in local taxes, etc., etc. occasioned by such change of use of the said premises from residence to office. The contention raised in the petition of the tenant is that the premises were let for residence-cum-business. The landlord has camouflaged licence for lease but it is admitted on all sides and it is so stated in the petition filed before the Controller by the constituted Attorney of the landlord that the respondent was accepted as tenant on monthly rent of Rs 2000. It is nowhere examined by the High Court as to when the licence was terminated as alleged by the landlord in the petition and a contract of lease was entered into and what were the terms of the lease. The learned Chief Justice observed : "a plain reading of the Clause, spells out the sole purpose of letting being residence" and this observation is made in the shape of the positive finding. Since the entry in the premises the tenant has been using part of the premises for office with the specific and undisputed permission of landlord and this fact is gloated over. Whether the rules permit such a use; whether there was such rule prohibiting such use, is a matter left to be inferred by a statement that no rule or bye-law was brought to the notice of the court that such a use was permissible. If the landlord entered into a contract of lease permitting non-residential use and yet if it is pleaded that such use can be made if the rules of the local authority permitted it, ordinarily one would expect the landlord to show that such use was impermissible. There is no finding to that effect.

25. The learned Chief Justice then proceeded to examine the second contention, whether the landlord Shri Niranjan Deva Tayal as Manager of the Hindu Undivided Family has other suitable accommodation at 32, Anand Lok, New Delhi. The High Court disposed of the contention by an observation which bespeaks of non-examination of contention assuming that such examination at that stage was permissible. The High Court observed that the learned Controller rightly came to the conclusion that the premises belong not to the respondent but to his brother. This approach is wholly

unjustified because the question was not whether Shri Niranjan Deva Tayal for whose benefit possession was sought was the owner of the premises occupied by him and situated at 32, Anand Lok, New Delhi, but the substantial question was in what right he was occupying the premises for a period extending over 7 years on the date of the petition before the learned Controller and how it has become imperative for him to vacate the premises. No examination of the relevant aspects appeared to have been undertaken and the revision petition was dismissed. With great respect to the learned Chief Justice, if such an approach is to be upheld, the legislative purpose in enacting the Rent Act stand defeated. Therefore it is not possible to accept the conclusion recorded by the High Court, both on account of non-examination of the relevant contentions and also on account of utterly incorrect approach as to how the matter has to be examined at the stage of granting or refusing to grant leave under sub-section (5) of Section 25-B.

26. We accordingly allow this appeal, set aside the order of the learned Controller as well as of the High Court and grant to the tenant leave to contest the petition for eviction and remit the case to the learned Controller for proceeding according to law.

27. As Mr D.V. Patel, learned counsel at the commencement of the hearing fairly conceded that this is a case in which leave to contest the petition ought to have been granted and therefore even though we allow the petition, we cannot saddle the landlord with costs. We accordingly direct the parties to bear their own costs throughout the proceedings. Costs of future proceedings shall abide the final outcome of the petition.

28. As we are remitting the case to the learned Controller where facts on trial are to be investigated any observation on the merits of the contentions made for disposing of this appeal have to be wholly ignored in the subsequent proceedings as if they have never been made.

A.P. SEN, J. (partly dissenting) &#65533;

I agree that this pre-eminently is a fit case where leave to contest the application under Section 14(1)(e) must be granted to the tenant under sub-section (5) of Section 25-B of the Delhi Rent Control Act, 1958 ('Act' for short), but I have the misfortune to differ from the construction placed upon the provisions contained in sub-section (5) of Section 25-B of the Act.

30. Sub-section (5) of Section 25-B of the Act reads as follows :

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 14-A.

31. There is a definite public purpose behind the enactment of Chapter III-A introduced by the Delhi Rent Control (Amendment) Act, 1976. The words "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 14-A" used in sub-section (5) of Section 25-B are to be interpreted in a manner which is in consonance with the intention of the legislature and must be construed in a sense which would carry out the object and purpose of the Act. The construction to be adopted must be meaningful and innovative. A mechanical and literal construction of these words detached from the context of the other provisions as also the object and purpose of the enactment will reduce this beneficial

legislation to futility.

32. Section 14-A of the Act was enacted to confer the right to recover immediate possession, upon persons who being in occupation of any residential premises allotted to them by the Central Government or any local authority, were required, in pursuance of any general or special order made by the Government or authority to vacate such residential accommodation, or in default, to incur the liability to pay penal rent. The whole object in Section 14-A was to ensure that all government servants to whom residential accommodation had been allotted by the Government or any local authority, should vacate their Government accommodation if they have any house of their own in the Union Territory of Delhi.

33. Further, experience in the past showed that landlords who were in bona fide requirement of their accommodation for residential purposes under clause (e) of the proviso to sub-section (1) of Section 14 were being put to great hardship due to the dilatory procedure of the suit. It was felt in the public interest that such landlords who were in bona fide requirement of their residential premises for their own occupation or for the occupation of any member of their family dependent on them, should not be subjected to protracted trial of a civil suit with concomitant right of appeals.

34. The underlying object behind the enactment of Chapter III-A was that these clauses of landlords i.e. a landlord who was in bona fide requirement of his residential premises for his own occupation or for the occupation of any member of his family dependent on him under clause (e) of the proviso to sub-section (1) of Section 14, or a landlord seeking to enforce the right to recover immediate possession under Section 14-A of the Act, should not be at the mercy of law's delays but there should be quick and expeditious remedy against his own tenant.

35. Apart from conferring rights under Section 14-A to recover immediate possession, a summary procedure for trial of applications made under Section 14(1)(e), or under Section 14-A, was provided for by Chapter III-A. Section 25-A provides that the provisions of Chapter III-A which contains Sections 25-A, 25-B and 25-C and any rule made thereunder shall have effect "notwithstanding anything inconsistent therewith contained elsewhere in the Act or in any law for the time being in force". By sub-section (1) of Section 25-B, every application by a landlord for 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 14-A, has to be dealt with in accordance with the procedure specified in Chapter III-A. The conferral of the right to recover immediate possession under Section 14-A on a person in occupation of any residential premises allotted by the Central Government or any local authority necessitated a consequential change in the law. Such a person, before the enactment of section 14-A, could not evict his own tenant because so long as he was in occupation of the residential accommodation allotted to him, he could not satisfy the requirement of clause (e) of the proviso to sub-section (1) of Section 14 that he should not have any other reasonably suitable accommodation. In order that the object of Section 14-A may not be frustrated, Section 25-C provides that nothing contained in sub-section (6) of Section 14 shall apply to a landlord who is in occupation of any premises allotted to him by the Central Government or any local authority is required to vacate that residential accommodation. There was also a similar change brought about with respect to a claim by a landlord under clause (e) of the proviso to sub-section (1) of Section 14. Sub-section (7) of Section 14 provides that where an order for recovery of possession is made on the ground specified in clause (e) of the proviso to sub-section (1) of Section 14, the landlord shall not be entitled to obtain immediate possession thereof before the expiration of a period of six months from the date of the order. Sub-section (2) of Section 25-C reduces the period of six months to two months.

36. One of the dominant objects with which the legislation was introduced was mitigate the hardship of landlords who were in bona fide requirement of their residential premises and had made an application for eviction under Section 14(1)(e), or under Section 14-A, and to obtain immediate possession of such premises without well-known travails of our procedural laws. The whole object was to confine the trial only to such cases where the tenant had such a defence as would disentitle the landlord from obtaining an order for eviction under Section 14(1)(e), or under Section 14-A, and to provide for a summary procedure of trial of such applications. The words "if the affidavit filed by the tenant discloses such facts" used in sub-section (5) of Section 25-B of the Act must therefore take their colour from the context in which they appear.

37. It is to mitigate the rigour of the law that Parliament in its wisdom introduced Chapter III-A and made the summary procedure applicable to the trial of applications under Section 14(1) (e), or under Section 14-A. It seeks to strike a balance between the competing needs of a landlord and tenant and has therefore provided that the tenant shall have a right to apply for leave to contest. Sub-section (4) of Section 25-B provides that the tenant shall not contest the prayer of eviction from the premises unless he has failed an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller. Under sub-section (5) of Section 25-B, the Controller is enjoined to give the tenant leave to contest the application only if the affidavit filed by the tenant discloses such facts as would disentitle a 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 14-A.

38. In Sarwan Singh v. Kasturi Lal ((1977) 2 SCR 421 : (1977) 1 SCC 750 : AIR 1977 SC 265), Chandrachud, J. (as he then was) after stating that the object of Section 14-A was to confer on a class of landlords the right to recover "immediate possession of the premises", observes : (SCC p. 760, para 19)

> ... Whatever be the merits of that philosophy, the theory is that an allottee from the Central Government or a local authority should not be at the mercy of law's delays while being faced with instant eviction by his landlord save on payment of what in practice is penal rent. Faced with a Hobson's choice, to quit the official residence or pay the market rent for it, the allottee had in turn to be afforded a quick and expeditious remedy against his own tenant. With that end in view it was provided that nothing, not even the slum Clearance Act, shall stand in the way of the allottee from evicting his tenant by resorting to the summary procedure prescribed by Chapter III-A. The tenant is even deprived of the elementary right of a defendant to defend a proceeding brought against him, save on obtaining leave of the Rent Controller. If the leave is refused, by Section 25-B(4) the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the landlord is entitled to an order for eviction. No appeal or second appeal lies against that order. Section 25-B(8) denies that right and provides instead for a revision to the High Court whose jurisdiction is limited to finding out whether the order complained of is according to law.

The provisions of Chapter III-A have been enacted with the object, in the words of Chandrachud, J., "to confer a real, effective and immediate right on a class of landlords to obtain possession of premises let out by them to their tenants". The same considerations are applicable to the disposal of application under clause (e) of the proviso to sub-section (1) of Section 14. The right to recover immediate possession which accrues under Section 14-A of the Act is equated by Parliament with

the landlord's bona fide requirement of residential premises for his own occupation or for the occupation of the members of his family under Section 14(1)(e). Sub-section (5) of Section 25-B governs the disposal of both and therefore must be interpreted in a manner which will carry out the legislative mandate.

39. Under the scheme of the Act, the grant or refusal of leave under sub-section (5) of Section 25-B of the Act, is the most crucial stage of the proceedings initiated on an application for eviction by the landlord under Section 14(1)(e), or under Section 14-A, at which stage the Controller has to decide whether the application should proceed to trial. The Controller obviously cannot come to a decision as to whether or not leave to contest should be granted under sub-section (5) of Section 25-B without affording the parties an opportunity of a hearing. The Controller is not a court but he has the trappings of a court, and he must conform to the rules of natural justice. It must therefore follow as a necessary corollary that the Controller has the duty to hear the parties on the question whether leave to contest should or should not be granted under sub-section (5) of Section 25-B of the Act.

40. Once it is conceded that the landlord has a right to be heard on the question of grant of leave to contest under sub-section (5) of Section 25-B, it must follow as a necessary implication that he has a right to refute the facts alleged by the tenant in his affidavit filed under sub-section (4) of Section 25-B and to show that the affidavit filed under sub-section (4) of Section 25-B by the tenant does not represent the true facts. The Controller is therefore bound to give the landlord an opportunity to meet the allegations made by the tenant. The Controller must apply his mind not only to the averments made by the landlord in his application for eviction, but also to the facts alleged by the tenant in his affidavit for leave to contest as well as the facts disclosed by the landlord in his affidavit in rejoinder, besides the other material on record, i.e. the documents filed by the parties in support of their respective claims in order to come to a conclusion whether the requirements of sub-section (1) of Section 25-B are fulfilled. It is difficult to lay down any rule of universal application for each case must depend on its own facts. To ask the Controller to confine only to the affidavit filed by the tenant is to ask him not to apply his mind in a judicial manner even if he feels that the justice of the case so demands. The Controller must endeavour to resolve the competing claims of landlord and tenant to the grant or refusal of leave under sub-section (5) of Section 25-B of the Act, by finding a solution which is just and fair to both the parties.

41. It is not suggested for a moment that the proceedings initiated on an application by the landlord under Section 14(1)(e), or under Section 14-A, must undergo trial at two stages. Under sub-section (5) of Section 25-B, the Controller must prima facie be satisfied on a perusal of the affidavits of the parties to the proceedings and the other material on record that the facts alleged by the tenant are such as would disentitle the landlord from obtaining an order for 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 14-A. The word 'disentitle' is a strong word, and the Controller must be satisfied that the tenant has such a defence as would defeat that claim of the landlord under clause (e) of the proviso to sub-section (1) of Section 14, or under Section 14-A. It cannot be that the Controller would set down the application for trial merely on perusal of the affidavit filed by the tenant without applying his mind to the pleadings of the parties and the material on record. If he finds that the pleadings are such as would entail a trial, then the Controller must grant the tenant leave to contest as the words "shall grant to the tenant leave to contest" in sub-section (5) of Section 25-B make the grant of leave obligatory.

42. It is also necessary to emphasise that the scope of sub-section (5) of Section 25-B is restricted and the test of "triable issues" under Order 37, Rule 3(5) of the Code of Civil Procedure, 1908 is not

applicable, as the language of the two provisions is different. The use of the word 'such' in sub-section (5) of Section 25-B implies that the Controller has the power to limit the grant of leave to a particular ground. A tenant may take all kinds of pleas in defence. The whole object of sub-section (5) of Section 25-B was 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)(e), or under Section 14-A, he must file an affidavit under sub-section (4) of Section 25-B raising his defence which must be clear, specific and positive. The defence must also be bona fide and if true, must result in the dismissal of landlord's application. Defences 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, are not of the kind which will 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. Such an order for the grant or refusal of leave to contest under sub-section (5) of Section 25-B of the Act cannot be made without affording to the parties an opportunity of a hearing which, as we all know, does not only mean the right to address the Controller but also consideration of the material placed before him by both the parties.

43. I would, therefore, for my part, refrain from placing a literal and mechanical construction on sub-section (5) of Section 25-B of the Act as it conflicts with the essential requirements of fair play and natural justice which the legislature never intended to throw overboard. In my view, 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.

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