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done, and in my opinion the principle laid down in *Motivala's case* applies to the present case.

One argument advanced on behalf of the respondents was that under the provisions of section 29 of the Act any assessment order made by an Income-tax Officer must be followed by the service on the assessee of a notice of demand, and it is contended that the assessment order in this case could not be regarded as an assessment because it was not followed by such a notice of demand. Actually in the present case the notice which would follow from the terms of the assessment would be one intimating a refund, but whether the notice was to be for a demand or a refund is immaterial. The same argument applies as in *Motivala's case,* that the only thing which prevented the Income-tax Officer from giving effect to the terms of his assessment order without delay was the order for the obtaining of the prior approval of the Inspecting Assistant Commissioner, which is the main bone of contention in the petition and which I have already held to be illegal.

I am, therefore, of the opinion that on the facts of this case the assessment order of the Income-tax Officer called a draft assessment by the respondents was in fact his assessment order and that, therefore, the issuing of fresh notices under section 22(4) of the Act to the petitioner was illegal and further proceedings on the basis of those notices must be quashed and I would accept the present petition to the extent of ordering accordingly. I would also allow the petitioners his costs from the respondents. Counsel's fee Rs. 250.

Harbans Singh, J.

HARBANS SINGH, J.—I agree.

B.R.T.

APPELLATE CIVIL

Before D. Falshaw, C.J.

C. L. DAVAR,—*Appellant*

versus

AMAR NATH KAPUR,—*Respondent*

Second Appeal from Order No. 35-D of 1961

1962

March, 14th

Delhi Rent Control Act (LIX of 1958)—Section 14(1) (e)—Interpretation of—Dependant—Meaning of.

Held, that the proper interpretation of section 14(1)(e) of the Delhi Rent Control Act, 1958, is that a landlord who owns the leased premises can obtain possession of them on the ground that he requires them for his own accommodation and he can also obtain possession of them for the occupation of any dependant member of his family althouh he does not wish to occupy them himself, and also that he can obtain possession because he requires them as a residence for both himself and the dependant members of his family. The conclusion that the word 'himself' may include members of the family other than dependant members is wholly unjustified.

Held, that the word 'dependant' cannot be construed as meaning nothing but wholly dependant in the sense of not earning anything at all and being entirely dependant on the father for board, lodging and food. The term must be construed as meaning somebody not wholly independent or self-supporting and in a position to set up a separate residence. Dependence may not in all circumstances be entirely a matter of finance and this would particularly be so in the case of an unmarried daughter who may be employed, but in whose case for various reasons it would not be desirable for her to attempt to live away from her parents and on her own.

Second Appeal from the order of Shri Diali Ram Puri, Rent Control Tribunal, Delhi, dated the 16th February, 1961, reversing that of Shri O. P. Garg, Controller, Delhi, dated the 22nd August, 1960, dismissing the application under section 14(1)(e) of Rent Act 59 of 1958 of the petitioner landlord.

GURBACHAN SINGH AND R. S. TANDON, ADVOCATES, for the Appellant.

R. S. NARULA AND D. N. BHASIN, ADVOCATES, for the Respondent.

JUDGMENT

Falshaw, C. J.

FALSHAW, C.J.—This is a second appeal under the Delhi Rent Control Act of 1958, by a tenant C. L. Davar whose ejectment has been ordered by the Rent Control Tribunal after the application of the

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landlord Amar Nath Kapur had been dismissed by the Rent Controller.

The landlord's application was based on the provisions of section 14(1)(e) of the Act, the relevant parts of which read—

> "that the premises let for residential purposes are required *bonafide* by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof......and that the landlord...... has no other reasonably suitable residential accommodation."

The premises in suit form the upper flat in a building situated in the area of New Delhi adjoining the Mathura Road known as Nizam-ud-din East. The flat consists of the first floor, which is identical with the flat on the ground floor, and also the second floor which is really the roof on which a *barsati* is constructed. The family of the landlord consists of himself, his wife, a daughter aged 18 studying in a local college and two sons one of whom is apparently serving in the Army outside Delhi. The landlord is at present residing in a leased flat in Cannaught Circus which, according to the plan, Exhibit P. 2, has only two bed-rooms, one of which is occupied by his brother-in-law S. L. Chopra as sub-tenant, the use of some of the other rooms being shared.

The Controller found that the landlord's requirement of the premises in suit for the residence of himself and members of his family could in the circumstances be regarded as reasonable, but dismissed his application on the ground that his requirement of the premises in suit could not be regarded as *bona fide*. It was in fact admitted in the evidence that the ground floor flat in the building in which the premises are situated had fallen vacant both in 1958 and again in 1959 and the landlord had on each occasion leased the flat to another tenant, increasing the original rent from Rs. 225 to Rs. 275 per mensem, the latter being the rent paid

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by the present petitioner. The explanation of the landlord for not occupying the ground floor flat on either of the occasions when it fell vacant, namely that he was required by the company which employed him to occupy the flat in Connaught Circus, which was very close to his office was rejected on the ground that it was admitted that he had retired from the service of the company, the Sunlight Insurance Co., in December, 1957, i.e., before the first occasion on which the ground floor flat fell vacant. His further explanation that the flat in suit was more suitable for the accommodation of himself and his family than the ground floor flat was also brushed aside.

In appeal the learned Rent Control Tribunal has written a long judgment, a great part of which is occupied with the meaning of section 14(1)(e) of the Act and in particular what is meant by the word "or" wherever it occurs. The net result of his discussion, so far as I have been able to understand it, was that a landlord who owned premises could claim possession of leased premises on the ground that he *bona fide* required them himself, or alternatively that he required the premises for the occupation of any member of his family dependent on him, but not if he required the premises both for himself and for a dependent member of his family. At the same time it was held that the words 'for himself' must include both the landlord himself and members of his family who might not necessarily be confined to dependent relations.

I do not agree with this conclusion and my interpretation of section 14(1)(e) is that a landlord who owns the leased premises can obtain possession of them on the ground that he requires them for his own accommodation and he can also obtain possession of them for the occupation of any dependent member of his family although he does not wish to occupy them himself, and also that he can obtain possession because he requires them as a residence for both himself and the dependant members of his family. I consider that the conclusion that the word 'himself' may include members of the family other than dependant members is wholly unjustified.

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As far as the facts of the present case are concerned the son who is said to be serving in the Army can be ignored as a member of the landlord's family. He is said to be married and even if he happens to be stationed at Delhi at some future date it will be for the Army authorities to find him accommodation here. There can be no doubt about the status of the wife and student daughter as dependent members of the landlord's family, but the question arises whether the other son, who is said to be about 24 years old, is a person on whose behalf the landlord's requirement can be legitimately based.

In the first place it is argued on behalf of the tenant that there is no clear and specific statement in the evidence of the landlord that the son is living at present in the flat at Connaught Circus occupied by the landlord along with his brother-in-law, but this could be said to be implied, and I should certainly have expected that if the son who is still unmarried is living separately and is in occupation of residential premises of his own, this fact would certainly have been brought out by the defendant, who has strenuously contested the landlord's case, The question which arises is, therefore, whether the son can be said to be dependent on the father. The only evidence regarding the status of the son is what is elicited from the father in cross-examination, namely, that the son is running a shop in which he had been set up by his father in business. No attempt was made to probe any further into the matter for the purpose of discovering whether the son was prospering in his business or whether he had achieved economic independence from his father.

I do not think there can be any real doubt regarding the meaning of the word 'dependent'. In my opinion it cannot be construed as meaning nothing but wholly dependent in the sense of not earning anything at all and being entirely dependent on the father for board, lodging and food. I think the term must be construed as meaning somebody not wholly independent or self-supporting and in a position to set up a separate residence

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I also consider that dependence may not in all circumstances be entirely a matter of finance and this would particularly be so in the case of an unmarried daughter who may be employed, but in whose case for various reasons, it would not be desirable for her to attempt to live away from her parents and on her own.

The question whether the son in the present case is dependent on his father was not considered at all by the Controller and no finding has been given on it by the learned Rent Control Tribunal which has evaded the issue by interpreting section 14(1)(e) in the manner I have described above. In my opinion for the proper decision of the case a finding on this point is necessary and in order to arrive at such a finding it will be necessary for more evidence to be recorded regarding the exact position of the son, and since this question will have to be examined it may as well clear up the point regarding whether the son is at present living with his parents in the Connaught Circus flat. I, therefore, consider that the best course would be to send the case back to the Court of the Controller for an enquiry on this matter and report within two months. The parties have been directed to appear in the Court of the Controller on the 26th of March, 1962.

B.R.T.

APPELLATE CIVIL

Before D. Falshaw, C.J.

HAKIM SARDAR BAHADUR,—*Appellant.*

versus

TEJ PARKASH SINGH,—*Respondent.*

Second Appeal from Order No. 145-D of 1961.

1962

March, 16th

Landlord and Tenant—Doctrine of suspension of rent—Applicability of.

Held, that in a case where the landlord tortiously deprives a tenant of the use of a part of the demised premises, so long as the deprivation continues, the landlord cannot even claim the rent for the rest of the premises which the tenant still continues to occupy. The