

**(2025) 12 DEL CK 0003**

**Delhi HC**

**Case No:** RC.REV. No. 213 Of 2018 & Civil Miscellaneous Application No. 42342 Of 2025

Miss Rubina Sultan

APPELLANT

Vs

Mohd Shafi & Anr

RESPONDENT

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**Date of Decision:** Dec. 18, 2025

**Acts Referred:**

- Code of Civil Procedure, 1908- Order 7 Rule 11, Order 32, Order 32 Rule 2, Order 32 Rule 4, Order 32 Rule 15
- Delhi Rent Control Act 1958- Section 14(1)(e), 25B, 25B(2), 25B(4), 25B(8)
- Delhi Rent Control Rules, 1959- Rule 23

**Hon'ble Judges:** Anup Jairam Bhambhani, J

**Bench:** Single Bench

**Advocate:** Naved Yar Khan, Jai Sahai Endlaw, Ashish Kumar, Rambhakt Agrawal, Azka Ahmed, Ashu Sharma

**Final Decision:** Dismissed

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**Judgement**

Anup Jairam Bhambhani, J

1. The petitioner (eviction petitioner before the learned Rent Controller) has approached this court in a revision petition under section 25-B(8) of the Delhi Rent Control Act 1958 (DRC Act), challenging order dated 19.03.2018 passed by the learned Pilot Court, Central District, Tis Hazari Courts, Delhi in CIS bearing No.1085/17, by which the learned Rent Controller has allowed an application filed by the respondents (tenants) under Order VII Rule 11 of the Code of Civil Procedure 1908 (CPC); and has dismissed as rejected the eviction petition filed on the ground of bona-fidé requirement. At the same time the learned Rent Controller has also dismissed the respondents leave-to-defend application, for having been filed beyond the statutory period of 15 days prescribed in the Third Schedule read with section 25-B(4) of the DRC Act.

**PETITIONERS SUBMISSIONS**

2. The petitioner is presently represented by her brother, Mr. Naved Yar Khan, who is purporting to act as her next friend. However, as discussed in the present judgment, the eligibility and correctness of appointing Mr. Khan as the petitioners next friend, is also a bone of contention between the parties.
3. It is the petitioners submission that her circumstances are factually similar to those in **Prithipal Singh vs. Satpal Singh**, (2010) 2 SCC 15 in which case the Supreme Court held that when the leave-to-defend application is filed beyond the 15-day period after receipt of summons, an eviction order on the ground of bona-fidé requirement, must follow.
4. The petitioner submits that section 25-B of the DRC Act is a complete code and the procedure prescribed therein must be followed strictly while dealing with a petition seeking eviction on the ground of bona-fidé requirement. It is submitted that in such a circumstance, the learned Rent Controller has no discretion but to allow the eviction petition.
5. It is further submitted on behalf of the petitioner, that the learned Rent Controller has erroneously admitted and allowed the application filed by the respondents under Order VII Rule 11 CPC after their leave-to-defend application stood dismissed on the ground of delay. The petitioner also disputes the applicability of the judicial precedent referenced in the impugned order, viz., **Ashok Kumar & Anr. vs. Ram Avtar Gupta**, 2017 SCC OnLine Del 9150 submitting that that judgment does not apply to a case where a leave-to-defend application is time-barred.
6. The petitioner asserts that the view taken by the learned Rent Controller to the effect that the bona-fidé need cited in the eviction petition was not of the petitioner but of Mr. Naved Yar Khan (purporting to act as the petitioners next friend) and the latters sons, is also misplaced, since the bona-fidé requirement cited in the eviction petition was that of the petitioner herself.
7. It is submitted that the petitioner, who suffers from cerebral palsy, and is therefore a person with disability, is represented by her brother as next friend; and that the appointment of Mr. Naved Yar Khan as next friend has been judicially recognized in certain legal proceedings, including before the Supreme Court.
8. It is further argued on behalf of the petitioner, that the learned Rent Controller has erroneously observed that no application was moved on behalf of the petitioner for appointing a next friend, since the petitioners brother had already been validly appointed as her next friend by orders of the Supreme Court. Reference in this behalf is made to Order XXXII of the CPC and to the Supreme Court Rules, which provide for such appointment. A copy of an order dated 01.08.2016 passed by the Supreme Court in SLP(C) Diary No. 36711/2015, allowing IA No.1 of 2016 by a short order, which is claimed to be supporting the petitioners contention as to his eligibility to be appointed as his sisters next friend, has been appended to the present petition.

9. The petitioner has also asserted, that the learned Rent Controller has committed other irregularities, such as ignoring material facts (e.g., rent default committed by the respondents) and relevant documentary evidence, which the petitioner contends, establishes the petitioners disability, her bona-fidé need, as well as the authority of the next friend to act on her behalf.

10. It is further submitted that the law of estoppel also applies against the respondents, since prior communications have been signed and addressed by the next friend on behalf of the petitioner, which have been acknowledged by the respondents; and that thereby, the respondents have also acknowledged the status of the next friend, which now bars them from questioning his authority to act on behalf of the petitioner.

### **RESPONDENTS SUBMISSIONS**

11. On the other hand, the respondents submit that the provision for eviction of a tenant on the ground of bona-fidé requirement under section 14(1)(e) of the DRC Act is available only to the landlord or landlady, who must institute the proceedings themselves; or, if incapable of acting due to any disability, through a properly appointed next friend.

12. It is submitted that in the present case, the landlady, Ms. Rubina Sultan, did not sign or file the eviction petition herself, and in view of her admitted incapacity due to the mental disability, a next friend should have been appointed in accordance with Order XXXII of the CPC. It is the respondents contention that Mr. Naved Yar Khan, who filed the eviction petition, did not comply with the procedure for his appointment as next friend and thus lacked the locus-standi to file or prosecute the eviction petition on behalf of the petitioner/landlady.

13. It is argued on behalf of the respondents, that since the correct procedure was not followed, the eviction petition as filed was fundamentally defective, and was liable to be struck-off the record. In support of this contention, the respondents have referred to multiple judicial precedents on the point of legal actions being filed by incompetent persons, or by persons without proper authorization, where the courts have held such actions to be a nullity.

14. The respondents also contend that the need projected in the eviction petition is not that of the landlady but of Mr. Naved Yar Khan and his two sons, which is not recognized as a valid ground for eviction under section 14(1)(e) of the DRC Act, since the benefit of eviction on this ground must go only to the landlord or dependent family members, and not to unrelated individuals.

15. The respondents point-out, that orders of various courts, including orders passed by the Competent Authority under the Slum Areas (Improvement & Clearance) Act 1956, by the High Court, as well as by the Supreme Court, have inter-alia held to the effect that Mr. Naved Yar Khans interests are adverse to that

of the petitioner Ms. Rubina Sultan; and have accordingly refused to appoint him as next friend.

16. It is submitted, that in fact, another individual, Sajida Baig, was previously appointed as the petitioners next friend by a court, negating Mr. Naved Yar Khans capacity to act on behalf of Ms. Rubina Sultan. It is the respondents contention that multiple judicial orders have restrained any dealings in Ms. Rubina Sultans property, pending decision on her capacity, which further supports the respondents case that the eviction proceedings instituted by Mr. Naved Yar Khan were unlawful, since they had been instituted without proper authority or representation on behalf of the petitioner.

17. The respondents have also placed reliance on certain judicial precedents, which hold that the burden to establish bona-fidé need is on the landlord; arguing, that in this case, Mr. Naved Yar Khan and his sons neither qualify as landlords nor as dependent family members; and have thereby failed to discharge the initial burden required for eviction under section 14(1)(e) of the DRC Act.

18. Numerous judgments have been cited by the respondents to support the procedural and substantive objections, including the requirement that pleadings must conform to Order VI and Order XXXII CPC; and that defects in pleadings are fatal to the institution and continuation of the proceedings before the learned Rent Controller.

19. The respondents contend, that at the revisional stage before the High Court, the defect in representation under Order XXXII CPC cannot be cured, since the jurisdiction of the High Court in revisional proceedings is strictly limited to examining the correctness of the learned Rent Controllers order; and does not allow for re-appreciation of evidence or rectification of defects in representation.

20. Addressing the issue concerning the welfare and future residence of Ms. Rubina Sultan, the respondents submit, that this issue is pending determination in separate proceedings before the High Court in CM(M) No. 75/2020, including the issue of appointment of a next friend for her, and the proposed sale of the property in question for her benefit.

### **AMICUS-CURIAES SUBMISSIONS**

21. The learned Amicus-Curiae has submitted that the DRC Act does not prescribe any specific procedure to be followed when an eviction petition is filed on behalf of a person described as being of unsound mind; and in such cases, Rule 23 of the Delhi Rent Control Rules, 1959 (DRC Rules) mandates that the principles contained in the CPC are to be followed.

22. Learned Amicus-Curiae points-out that order XXXII of the CPC prescribes the procedure where a suit is instituted by or against a person of unsound mind, which includes persons who are incapable of protecting their interests due to weakness or

mental infirmity.

23. It is the submission of the learned Amicus-Curiae that the cardinal principle, as envisaged in Order XXXII Rule 15 CPC, is for the court to conduct a preliminary inquiry to determine whether a party suffers from unsoundness or mental infirmity and whether the person is incapable of protecting their own interest in the litigation; and if found incapable, it is incumbent upon the court to appoint a suitable guardian or next friend to represent the interests of such person. As for the eligibility of a next friend or guardian, it is pointed-out that that aspect is governed by Order XXXII Rule 4 CPC; and only persons without any interest adverse to that of the litigant can be appointed as next friend.

24. The learned Amicus-Curiae has also argued that under Order XXXII CPC no formal application for appointment as a next friend is required; but an inquiry is mandatory and such inquiry can be conducted independently by the court to ensure fair and proper representation. As to the consequence of non-adherence with the provisions of Order XXXII CPC, it is submitted that failure to comply with those provisions while appointing a next friend is a curable irregularity, which may be rectified during the course of proceedings and does not render a decree passed as nullity, unless prejudice is shown.

25. Applying the principles of Order XXXII CPC to the present case, learned Amicus-Curiae submits that the petitioner is stated to be a 61-year-old, unmarried, illiterate woman, who also suffers from multiple disabilities, including permanent intellectual and locomotor disabilities; and is thus clearly unable to protect her own interests in the litigation. It is submitted that Mr. Naved Yar Khan is admittedly the petitioners brother and resides with her; and that he has claimed his suitability to act as her next friend; and further that his interest is not adverse to that of the petitioner insofar as the relief claimed in the eviction petition is concerned.

26. The learned Amicus-Curiae has also flagged the aspect that while deciding the suitability of Mr. Naved Yar Khan as next friend of the petitioner, the court must be satisfied that the appointment is appropriate, and most importantly, that any income generated from the subject premises, would be used for the petitioners benefit.

27. In relation to the respondents conduct in the eviction proceedings, the learned Amicus-Curiae has pointed-out that they had failed to file an application seeking leave-to-defend within the time stipulated in the Third Schedule read with section 25-B(4) of the DRC Act; and instead, they subsequently filed an application under Order VII Rule 11 CPC. It is submitted, that since the leave-to-defend application was not filed within the statutorily permissible time, the grounds that could otherwise have been raised in defence to the eviction petition, cannot be considered by way of any other application; and the contents of the eviction petition are to be deemed to be admitted under section 25-B(4) of the DRC Act, which also mandates that an

eviction order must follow.

28. Based on the aforesaid submissions, the learned Amicus-Curiae has advised that the court must hold a preliminary inquiry regarding the petitioners incapacity, and then decide the suitability of Mr. Naved Yar Khan to be appointed as her next friend, ensuring that the procedural safeguards under Order XXXII CPC are met. In particular, the court must ensure that Mr. Naved Yar Khan **does not entertain any interest that is adverse to that of the petitioner in relation to the subject premises.**

29. Furthermore, it is the learned Amicus-Curiae's suggestion, that since the respondents had failed to file a leave-to-defend application within the stipulated time, in light of the Supreme Court's decision in Prithipal Singh, the contents of the eviction petition are deemed to be admitted and, it is the Amicus submission, that the eviction petition ought to have been allowed.

### **DISCUSSION & CONCLUSIONS**

30. Based on the submissions made by Mr. Naved Yar Khan, appearing on behalf of the petitioner; Mr. Rambhakt Agarwal, learned counsel for respondents; as well as Mr. Jai Sahai Endlaw, learned Amicus-Curiae appointed in the matter, and upon perusing the record available before this court, the following queries require consideration of this court:

30.1. Firstly, whether Mr. Naved Yar Khan, who had signed and filed the eviction petition, was validly appointed as next friend of the petitioner for and in relation to the eviction proceedings instituted before the learned Rent Controller, as would entitle him to present and prosecute the eviction petition on the petitioners behalf;

30.2. Secondly, whether the learned Rent Controller was right in rejecting the leave-to-defend application filed by the respondents, on the ground that it had been filed beyond the statutorily prescribed time period; and

30.3. Thirdly, whether the learned Rent Controller was right in observing that the eviction petition was required to be rejected under Order VII Rule 11 CPC, since Mr. Naved Yar Khan had failed to show that he had been validly appointed as the petitioners next friend.

31. Before addressing the aforesaid queries, it may be noted, that as recorded in the impugned order, under a Family Settlement dated 26.07.1999 and a registered Partition Deed dated 17.02.2000 executed between the members of the petitioners family, the property that was subject matter of the eviction proceedings - viz., the premises ad-measuring about 116.2 sq. feet on the Ground Floor on the main road being part of Municipal No. 5193, Ballimaran, Delhi, as per the site plan appended to the eviction petition - had fallen to the share of petitioner, Ms. Rubina Sultan.

32. Furthermore, it also requires to be noted that upon issuance of summons under section 25-B(2) of DRC Act, the respondents, who are admittedly tenants in the subject premises, had failed to file a leave-to-defend application within the 15-day period stipulated in the Third Schedule of the DRC Act read with section 25-B(4) thereof.

33. Furthermore, though the eviction petition was signed and verified by Mr. Naved Yar Khan, claiming to be the petitioners next friend, since he is her brother; however no application was made by Mr. Naved Yar Khan seeking to be appointed as next friend and it was his claim that he had already been appointed as the petitioners next friend by order dated 01.08.2016 passed in I.A. No. 1/2016 in SLP(C) Diary No. 36711/2015, which order reads as follows:

**I.A. No.1 of 2016 is allowed.**

34. In the above backdrop, the queries set-out above are answered as below:

**Answer to the First Query:**

35. In view of the family settlement and partition deed referred-to above, it is the undisputed position that the subject premises had fallen to the share of the petitioner, Ms. Rubina Sultan, and were owned by her. Accordingly, Ms. Rubina Sultan was the landlady and the respondents were her tenants.

36. Admittedly, the eviction petition was neither signed nor verified by Ms. Rubina Sultan, since she suffers from cerebral palsy, alongwith several other ailments of a serious nature.

37. Given this backdrop, in the impugned order, the learned Rent Controller has observed as follows:

**11. In the present case it is admitted that the petitioner Rubina Sultan is under disability i.e., she is suffering from cerebral palsy. The present petition has been filed by her brother Mr. Naved Yar Khan as her next friend. However, no medical documents of the petitioner have been produced by the alleged next friend. No application seeking permission of the Court for appointment as next friend has been moved by Mr. Naved Yar Khan. The pleadings on record are not verified by the petitioner. Mr. Naved Yar Khan is alleging to be appointed as next friend on the basis of the order passed on 12.05.2015 by the Honble Supreme Court in IA No. 1 of 2016. However, perusal of the said order nowhere shows that he is appointed as the guardian of Rubina Sultan in this eviction petition. Thus, Mr. Naved Yar Khan cannot be allowed to act as guardian in this eviction petition without seeking permission from the Court and as per O32 R2 CPC where suit is instituted without next friend, plaint is to be taken off the file. Moreover, the proceedings of Civil Court wherein interim injunction order was passed has been admitted by petitioner.**

(emphasis supplied)

38. It must be noticed however, that SLP (Civil) Diary No. 36711/2015 did not arise from, or in connection with, the eviction petition that is the subject matter to the present proceedings; and I.A. No. 1/2016 that was allowed appointing Mr. Naved Yar Khan as next-friend of Ms. Rubina Sultan in those proceedings was in the nature of a formal order, without the Supreme Court having ruled upon Mr. Naved Yar Khans eligibility and suitability to be appointed as next-friend. In these circumstances, it cannot be said that order dated 01.08.2016 passed by the Supreme Court was conclusive or dispositive, either as to Mr. Naved Yar Khans appointment or his eligibility for appointment as next-friend of Ms. Rubina Sultan for purposes of the present proceedings.

39. On point of fact, the prayer of Mr. Naved Yar Khan for being appointed as next friend of the petitioner in another proceedings, bearing R.P. (C) No.3852/2015 in SLP (C) No.6034/2015 titled Mr. Naved Yar Khan & Anr. vs. Hayat Yar Khan & Ors., was dismissed by the Supreme Court vide order dated 14.01.2016, and while dismissing the review petition, the Supreme Court said the following:

**Applications for appointing a next friend and to appear and argue in person are rejected.**

40. Suffice it to say therefore, that the aforesaid orders of the Supreme Court one allowing Mr. Naved Yar Khans application to act as next-friend; and the second rejecting his prayer for that purpose clearly show that there has never been any order from the Supreme Court appointing Mr. Naved Yar Khan as the next-friend of Ms. Rubina Sultan, generally or for all purposes. In any case, it is trite law, that since one of the criteria for appointment as next-friend is that the applicant must not have any interest adverse to the party for whom he seeks to act as next-friend in relation to the subject matter of the litigation, Mr. Naved Yar Khan ought to have moved a specific, substantive application under Order XXXII Rule 2 CPC in the eviction proceedings, seeking his appointment as next friend in those proceedings, i.e., for appointment as guardian ad-litem, which however, he did not do.

41. The inevitable inference therefore is, that Mr. Naved Yar Khan, who had signed and filed the eviction petition, had not been appointed as next friend of the petitioner for and in relation to the eviction proceedings instituted before the learned Rent Controller. Mr. Naved Yar Khan was therefore not competent or entitled to present or prosecute the eviction petition on the petitioners behalf.

**Answer to the Second Query:**

42. It is the undisputed position that the respondents had not filed their application seeking leave to defend the eviction petition within the 15-day period prescribed in the Third Schedule read with section 25-B(4) of the DRC Act.



43. In Prithipal Singh the Supreme Court has held that if an application seeking leave-to-defend the eviction proceedings is not filed within the 15-day period stipulated in the Third Schedule read with section 25-B(4) of the DRC Act, the contents of the eviction petition are deemed to be admitted by the tenant and an eviction order must follow. The relevant portion of Prithipal Singh has been extracted below :

**15. Next comes the very important provision in Section 25-B of the Rent Act i.e. sub-section (4) of the same. It clearly provides that a tenant on whom the summons is duly served in the form specified in the Third Schedule shall not contest the prayer for eviction from the premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller, as hereinafter provided, and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction on the ground aforesaid.**

**16. From a careful perusal of sub-section (4) of Section 25-B of the Rent Act, it would be clearly evident that the tenant shall not be permitted to contest the prayer for eviction unless he files an affidavit before the Controller stating the ground on which he seeks to contest the application for eviction and obtains leave from the Controller. This section also clearly indicates that in default of his appearance in compliance with the summons or his obtaining such leave, the statement made by the landlord in the eviction proceedings shall be deemed to be admitted by the tenant and the landlord shall be entitled to an order for eviction on the ground mentioned in the eviction petition. At this stage, we may also note that in sub-section (4) of Section 25-B of the Rent Act read with the Third Schedule, it has been made clear by the legislature that if the summons of the proceeding is received by the tenant, he has to appear and ask for leave to contest the eviction proceedings within 15 days from the date of service of notice upon the tenant and if he fails to do so, automatically, an order of eviction in favour of the landlord on the ground of bona fide requirement shall be made.**

(emphasis supplied)

44. The unambiguous and unqualified exposition of the law in **Prithipal Singh - automatically, an order of eviction in favour of the landlord on the ground of bona fide requirement shall be made** - leaves no doubt that the 15-day period for filing an application seeking leave-to-defend, is inflexible and not condonable; and in the present case therefore, the respondents leave-to-defend application had to be dismissed, as having been filed beyond time. The learned Rent Controller was accordingly right in doing so.

### Answer to the Third Query:

45. Having said that the leave-to-defend application was correctly rejected by the learned Rent Controller, it must be observed that the objection taken by the respondents in their application under Order VII Rule 11 CPC, viz., that the eviction petition had not been validly filed or instituted, since Mr. Naved Yar Khan was not a duly appointed next friend for the petitioner, is itself a defence that may have been available to the respondents provided they had filed a leave-to-defend application within the statutorily prescribed time period. Admittedly, the respondents did not do so.

46. In this view of the matter, this court is of opinion, that once the leave-to-defend application filed by the respondents had been dismissed, as being belated, the learned Rent Controller could not have entertained the respondents application under Order VII Rule 11 CPC, since that was in effect a measure of defence to the eviction petition. The application under Order VII Rule 11 CPC should therefore, also have been rejected.

47. In the opinion of this court therefore, the learned Rent Controller has erred in observing that the eviction petition was required to be rejected **by allowing the respondents application** under Order VII Rule 11 CPC.

48. The queries having been answered however, the overarching question remains as to whether the learned Rent Controller committed any error in dismissing the eviction petition.

49. Now, it is settled law that the three essential ingredients for attracting the provisions of section 14(1)(e) of the DRC Act are:

49.1. The petitioner must be the owner and landlord of the tenant premises;

49.2. The petitioner must require the premises bona-fidé for herself or for members of her family dependent upon her; and

49.3. The petitioner should not have any other reasonable suitable accommodation (available to her).

50. In the present case, the eviction petition must fail on the very first ingredient cited above, namely that the petitioner before the learned Rent Controller was not the owner or landlord of the subject premises, since the petition had not been signed, verified, or filed under the hand and signatures of Ms. Rubina Sultan. And most importantly, the petition had also not been signed, verified or filed by a person validly appointed as next friend of the petitioner. The eviction petition had accordingly not been validly instituted.

51. That apart, as correctly recorded by the learned Rent Controller in her order, a reading of the eviction petition would show, that at least in-part, the so-called bona-fidé requirement cited on behalf of the petitioner is the requirement of Mr.

Naved Yar Khan and his two sons. This is evident from a perusal of the following portion of para 18(a) of the eviction petition:

**18(a) The ground on which the eviction of the tenant is sought:**

the ground on which the eviction of the tenants is sought is that there is bona fide requirement as there is no other alternative non-residential premises or shop of the Petitioner and she is an unmarried 61 years old lady and person under disabilities and is illiterate and cannot be directly employed and is dependent for her livelihood on meager aforementioned rent and interest accruing from her two saving accounts in banks and one in post office and fixed deposit and interest rates which have also fallen and one old saving account is operated by the Petitioners sister, Mrs. Fawzia Khan and she has not once applied for withdrawal from it since interim injunction order dated 25.1.2014 in CS No. 588/11 Hayat Yar Khan Vs. Naved Yar Khan, by the Court of Ms. Kadambari, Civil Judge: North, Tis Hazari Court, Delhi, which is presently pending as CS SCJ/0593929/2016, in the court of Shri Dheeraj Mittal, Civil Judge, Central District, Delhi. The Petitioner has various ailments, among others, Thyrox, Osteoporosis, hearing and eye sight problems, rickets, and requires times and again medical treatment and had fracture and steel plate/rod was put in her leg causing lots of expenses and she is unmarried and all expenses for livelihood, healthy living, social or family functions, are borne with utmost care from her incomes as aforementioned which are drying up and anxiety persist if there is God forbid serious ailment requiring her to be in ICU or CCU or major surgery or operation how would she get good medical treatment and there is natural need to supplement her income if the premises is vacated and the Petitioners abovenamed brother, Mr. Naved Yar Khan and his sons, Zaid and Hamza with whom she is residing/living are able to do business in the premises sought to be vacated by the tenants/respondents. The said brother, Mr. Naved Yar Khan sold his house in our ancestral house and went with in April 2012 to reside at the above-mentioned address along with his family and the Petitioner joined them in three bedroom apartment and since then. While almost all her brothers and sisters have travelled abroad and performed Umra or Haj pilgrimage the Petitioner howsoever desirous is unable to due to meager rent from the tenants/respondents and they have committed defaults earlier for which proceedings u/s 19 of the Slum (Improvement and Clearance) Act had to be filed by Mr. Naved Yar Khan for statutory permission to institute proceedings against the tenants/respondents herein vide Petition No. 132/09, Rubina Sultan Vs. Mohd. Ibrahim & another before the Competent Authority, Slum, Tis Hazari Court, Delhi and is pending for order on 22.12.2017 and the Petitioner is bearing expenses as the respondents/tenants have been adopting one or the other tactics to delay the disposal of the matter.  
(emphasis supplied)

52. Since Mr. Naved Yar Khan and his sons were not members of the petitioner Ms. Rubina Sultans family who were dependent on her, even the bona-fidé requirement cited was not a tenable ground for eviction. The eviction petition would accordingly also fail the test of the second ingredient referred-to hereinbefore.

53. It may be noted that Mr. Naved Yar Khans contention is that the income derived from the business proposed to be run by him and/or his sons from the subject premises would be used for the welfare of the petitioner. This contention has been rejected by the learned Rent Controller. In the opinion of this court, firstly, when an eviction petition is filed under section 14(1)(e) of the DRC Act based on the need of a family member, the petitioner has to make-out a case that the **bona-fidé need is of a family member who is dependent on the petitioner; not that the petitioner is dependent on the family member. Secondly**, this court is of the view that Mr. Naved Yar Khans contention, that the need cited in the eviction petition remains that of the petitioner, though the business would be run by Mr. Naved Yar Khan and/or his sons to subserve the financial needs of the petitioner, is far-fetched and does not commend acceptance.

54. It may also be mentioned for the sake of completeness, that Mr. Naved Yar Khan had already received his share in the ancestral property in the family settlement, being one of the legal heirs of late Nawab Sultan Yar Khan. This was the same family settlement under which the petitioner had received the subject premises. In view of the above, in the opinion of this court, it cannot be said with certainty that Mr. Naved Yar Khan did not entertain any interest in the subject premises that maybe adverse to that of the petitioner.

55. But what the learned Rent Controller ought to have done, for the reasons explained hereinafter, was to have rejected - and not dismissed - the eviction petition for failing to satisfy the first and the second ingredients referred-to hereinbefore by suo-motu invoking the principles of Order VII Rule 11 CPC. This would have been perfectly justified in view of the law laid down by the Supreme Court in **T. Arivandandam vs. T.V. Satyapal & Anr.**, (1977) 4 SCC 467 in particular, the following observations in that judgment:

**5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsifs Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful not formal reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10,**

**CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi:**

**It is dangerous to be too good.**

(emphasis supplied)

56. However, in the concluding part of the impugned judgment the learned Rent Controller has erred in observing that the eviction petition stands dismissed as rejected under Order VII Rule 11 CPC.

57. To be sure, the eviction petition was required to be rejected in suo-motu exercise of the learned Rent Controllers powers under Order VII Rule 11 CPC, which is different from an eviction petition being dismissed on merits. It would in fact be an anomalous situation, if the eviction petition was to be dismissed at the instance of a party (the respondents), which party has been denied leave to defend the eviction petition, since on denial of such leave, the eviction petition is otherwise required to be allowed.

58. This court would hasten to add, that this proposition may not be applicable generally to all civil proceedings; but, in a case covered by section 25B of the DRC Act, which prescribes a summary procedure, and in light of the decision of the Supreme Court in Prithipal Singh, once a tenant loses his right to defend the proceedings by his leave-to-defend application being dismissed (whether on merits or as being beyond time), any further application on behalf of the tenant, such as one under Order VII Rule 11 CPC, would not be maintainable.

59. As per settled law, even when the eviction petition is rejected for the reasons discussed above, it would be available to Ms. Rubina Sultan to file a fresh petition for eviction of the respondents, instituted through a validly appointed guardian ad-litem or next friend; citing her own bona-fidé need or the need of a family member who is dependent on her; and such petition would have to be adjudicated on its own merits.

60. In view of the above, the present revision petition is dismissed; however, specifically granting to the petitioner liberty to file a fresh eviction petition, on any ground as may be available to her under the DRC Act, through a validly appointed guardian ad-litem or next friend, in accordance with law.

61. Pending applications, if any, stand disposed-of.

62. Before concluding, this court would express its gratitude to Mr. Jai Sahai Endlaw, learned Amicus-Curiae for the able assistance rendered to the court.