

\* **HIGH COURT OF DELHI AT NEW DELHI**

+ **RC. Rev. No.300/2015 & C.M. No.11180/2015**

**Decided on : 24<sup>th</sup> September, 2015**

RAKESH GUPTA ..... Petitioner  
Through: Mr. Anupam Dwivedi, Advocate

Versus

NIRMAL NANDA ..... Respondent  
Through: Mr. Gurmit Singh Hans, Adv. With  
Ms. Aarti Manchanda, Adv. &  
Ms. Rashmi, Advocate

**CORAM:**  
**HON'BLE MR. JUSTICE V.K. SHALI**

**V.K. SHALI, J. (ORAL)**

1. This is a revision petition filed by the petitioner against the order dated 01.04.2015 passed by Shri Shailender Malik, the learned Rent Controller, Rohini Courts, Delhi in case No. ENo.4/15, titled Nirmal Nanda v. Rakesh Gupta by virtue of which the leave to defend of the present petitioner was dismissed and an order of eviction was passed.
2. I have heard the learned counsel for the petitioner as well as the learned counsel for the respondent. The learned counsel for the

petitioner has raised before this Court only one point on the basis of which he has contended that the bonafide requirement of the respondent-landlord is suspected in the instant case which ought to have been treated as giving rise to a triable issue. It was contended that the petitioner-tenant is in occupation of a shop on the ground floor of property No.B-1/21, Rana Pratap Bagh, Delhi and the respondent-landlord has sought his eviction on the ground that he and his wife are senior citizens and therefore, unable to climb to the second floor of the suit property where they are living along with their married son. It has been stated that because of the old age problems it is becoming very difficult for them to climb the stairs and to reach the second floor and therefore, would like to shift to the ground floor. However, on the ground floor there is only one room, kitchen and a washroom which is under the occupation of younger son of the respondent-landlord. In case, the shop which is basically a room under the occupation of the present petitioner-tenant is vacated, they will convert this into a bedroom and use the same. It was contended by the learned counsel that the respondent-landlord has talked about the ground floor and the

second floor but he had not purposely mentioned about the accommodation on the first floor where also respondent-landlord has two rooms available with him and therefore, that can be treated as an alternative suitable accommodation to the respondent-landlord. It has also been stated by the learned counsel for the petitioner-tenant that the respondent-landlord could have shifted to the ground floor by relocating his own son to the first floor. But the learned Rent Controller has brushed aside this submission of the petitioner-tenant by observing that the tenant cannot dictate terms to the landlord.

3. The aforesaid facts having been considered by the learned counsel for the petitioner-tenant to be sufficient to raise a triable issue with regard to the bonafide requirement of the respondent-landlord, this should have resulted in grant of leave to defend.
4. The learned counsel for the respondent-landlord contested the aforesaid and submitted that the first floor of the suit premises belongs to the elder brother of the respondent-landlord and is occupied by him and, therefore, the first floor could not be considered to be an alternative suitable accommodation available to

the respondent-landlord. He has further contended that all other objections raised by the petitioner-tenant in his leave to defend have been rejected by the learned Rent Controller by a speaking and a reasoned order.

5. I have considered the submissions made by the respective counsels and have gone through the record. I find considerable merit in the submissions of the learned counsel for the petitioner-tenant. The landlord who files an eviction petition on the ground of bonafide requirement must in the first instance disclose all the facts which will have bearing on his bonafide requirement. This would include not only the availability of all such accommodation including residential and commercial available to him but also the number of family members. Even the ownership of this property has to be necessarily disclosed. It is not good simply saying that the respondent-landlord does not have any alternative suitable accommodation available to him and then leave it to the tenant to do recce or conduct an investigation either himself or through a specialized agency in order to find out what other properties are owned by respondent-landlord who has filed an eviction petition.

6. In the instant case, the respondent-landlord in the eviction petition does not disclose the fact that he is the co-owner or a part owner of the entire property. As a matter of fact, the eviction petition is couched in such form that it gives an impression that he is the owner of the entire property. In such circumstances, during the course of argument to contend that the first floor of the suit property is not available to him as the same is owned by his brother or occupied by his brother seems to be only an afterthought which is raised because of the ambiguous pleadings made by the respondent-landlord. The respondent-landlord ought to have in the beginning stated all these details. The petitioner-tenant is justified in contending that the bonafides of the respondent-landlord are suspected because he fails to disclose that he is in possession of the rooms on the first floor also which are two in number. Therefore, that can be considered to be an alternative accommodation as climbing to first floor in comparison to the second floor would be less onerous. Moreover, the learned Rent Controller has also noted the disparity in the ages of the respondent-landlord as the case which has been set up is that they are senior citizen but from the

appearance, the learned Rent Controller has noted that the age of the respondent does not seem to be more than 50 years. Therefore, this fact also becomes relevant. The age, health condition, which is attributed to old age seems to be only a ploy to draw the sympathy of the Court. These facts, in my view, if permitted to be proved by the petitioner-tenant would show that the respondent-landlord had sufficient alternative accommodation available to him in the suit property itself to take care of his needs where the learned Rent Controller has erroneously faulted at.

7. The learned Rent Controller has no doubt rightly observed that it is not for the tenant to dictate the terms when the present petitioner has taken up the plea that the respondent-landlord could ask his younger son who is occupying the premises on the ground floor to shift to the first floor, it becomes a relevant fact because it casts doubt on the bonafides of the respondent-landlord.
8. Having regard to the totality of the circumstances and because of the aforesaid points raised, I feel this should have been good enough to raise triable issue, which if permitted to be proved by the present petitioner, would disentitle the petitioner from claiming the

possession of the suit premises on the ground of bonafide requirement.

9. I accordingly, set aside the order dated 01.04.2015 rejecting the leave to defend application of the petitioner and passing an eviction order. The parties are directed to appear before the learned Rent Controller on 01.10.2015 at 2:00 p.m. for further proceedings.
10. However, in the meantime, the present petitioner-tenant shall file his written statement within 30 days from today with advance copy to the respondent-landlord.
11. With these observations, the revision petition is allowed.
12. Pending application also stands disposed off.

**V.K. SHALI, J.**

**SEPTEMBER 24, 2015**

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