

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

+ **RC. Rev. No.304/2015 & CM APP. 11293/2015**

Decided on: 30th September, 2015

DEEPAK GUPTA Petitioner

Through: Mr. Avadh Kaushik, Advocate with
Ms. Deepika Raghav, Advocate

versus

RAGHUBIR KAUR Respondent

Through: Mr. Nirmal Singh, Advocate with
Respondent in person.

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 05.02.2015 by virtue of which the leave to defend of the petitioner-tenant has been dismissed and an order of eviction has been passed in respect of a shop measuring 8 x 13.5 ft. forming part of property No.2235/66, Naiwala, Karol Bagh, New Delhi.
2. The learned counsel for the petitioner-tenant has urged three points.
First point which has been urged by the petitioner-tenant is that the

petitioner was given a notice on 25.04.2011 by the respondent-landlord for payment of rent which he allegedly was in arrears. It has been stated that this notice was replied by the petitioner in the month of June, 2011 itself. It has been further stated that immediately after expiry of two months or so, instead of filing a petition for recovery of rent, the present petition for eviction on the ground of bonafide requirement was filed and therefore, this petition is not a bonafide petition seeking eviction of the petitioner.

3. The second ground which has been urged is that the respondent-landlady has an alternative suitable accommodation available to her on the first floor. It has been contended that the case which has been filed by the respondent-landlady against the petitioner is that her daughter-in-law is intending to start a boutique for which she is duly qualified and she does not have any space in the suit property where she could open such a shop. Apart from the shop in question in respect of which eviction is sought there is no other alternative suitable accommodation available to her. It has been contended that the suit property has two big halls on the first floor

which were available to the respondent-landlady and which could have been used for the purpose of opening a boutique but these halls have been let out to be used as godowns by the respondent after filing of the present petition and therefore, the eviction of the petitioner is actuated with malafides.

4. Last but not the least it has been contended that so far as the daughter-in-law is concerned, she cannot be treated to be dependent on the respondent Raghbir Kaur, mother-in-law for the purpose of accommodation and accordingly the present petition ought not to have been allowed and a leave to defend application of the petitioner should have been allowed and leave be granted to contest the eviction petition.
5. I have carefully considered the submission made by the learned counsel for the petitioner, gone through the impugned order as well as the leave to defend application filed by the petitioner.
6. So far as the issuance of notice by the respondent-landlady regarding non-payment of rent and the reply thereto having been given by the present petitioner is concerned, that is not pleaded in

the leave to defend application. It has nowhere been pleaded that the present petition has been filed after expiry of two months from the date of receipt of reply to the notice under Section 14 (1) (a). Moreover, even if this would have been pleaded, the factum of petitioner being in arrears and notice being issued to him to clear the arrears it is statutory requirement before eviction of the tenant is sought on the ground of non-payment of rent. It would hardly be construed to be an action which would foreclose the right of the respondent to seek eviction on the ground of bonafide requirement. I fail to understand as to how giving of a notice under Section 14 (1) (a) of the DRC Act and receiving reply thereto can be made a basis for casting doubt with regard to the bonafides of the respondent so far as to eviction of the present petitioner in respect of shop in question is concerned. Therefore, I feel so far as this submission made by the petitioner is concerned, it is bereft of any merit and accordingly does not raise any triable issue.

7. Second ground which has been urged by the learned counsel for the petitioner is that the respondent-landlady had two big halls

available on the first floor which could have been used as an alternative suitable accommodation for the purpose of opening of a boutique and these halls have been let out to be used as godowns after filing of the present petition. This plea has also not been averred by the petitioner in his leave to defend application.

8. One of the fundamental principles for grant of leave to defend to the tenant is that the leave to defend application or the Affidavit filed thereto by the party must disclose or rather raise triable issue. The triable issue is a issue which if permitted to be proved by a party then in all probability it will be decided in favour of the party who has raised such an issue and it would disentitle the respondent-landlady to retrieve the possession from the petitioner. Curiously, in the instant case, no such plea has been taken by the petitioner in the leave to defend application or in the supporting affidavit filed in this regard. Therefore, this plea of the petitioner that there was an alternative accommodation available to the respondent-landlady is also of no consequence.

9. So far as last point is concerned that the daughter-in-law is not dependent on the respondent-landlady for the purpose of accommodation also does not hold good in the instant case. Though at first blush the point urged by the petitioner may seem to be very attractive that the daughter-in-law who has come from outside does not belong to the family, cannot be treated to be as a dependent on the mother-in-law, but the facts of the present case are slightly different. The husband of the daughter-in-law, namely, son of the respondent-landlady is stated to have expired in the month of February, 2015. Once the husband of the daughter-in-law who happen to be a son of respondent-landlady has expired admittedly it is not in dispute that the daughter-in-law along with her family/children is living with mother-in-law, she cannot be termed as not dependent on the mother-in-law for the purpose of accommodation. If that be so, then not only she too has a right to claim accommodation for herself but she can also file a petition for her daughter-in-law who along with children is living with her. Therefore, under these facts, I feel that the daughter-in-law for all

practical purposes has to be treated as dependent on the mother-in-law, i.e. respondent-landlady for the purpose of accommodation.

10. The next question arises is that as to whether accommodation which was consisting of two halls could be used for the purpose of setting up boutique and therefore could be said to be an alternative suitable accommodation.
11. With regard to the law of bonafide requirement it is no more res integra that it is not open for the tenant to dictate the terms to the landlord as to how she has to use the premises which is available at her disposal. By appreciating the plea of the present petitioner that the respondent-landlady should use two halls on the first floor for the purpose of boutique is giving a direction as to how the respondent-landlady is to conduct her affairs which is not permissible because of the catena of authorities of the Apex Court. In addition to this, seeing the proper perspective, the opening of boutique on the first floor cannot have the same impact which it will have in case it is open on the ground floor. The ground floor boutique is found to be more profitable as compared to the

boutique which will be opened on the first floor by the learned ARC. With no stretch of imagination, it cannot be said that the accommodation which is available on the first floor is an alternative suitable accommodation to the nature of business which is intended to be run by the daughter-in-law of the respondent-landlady. In addition of this, admittedly, it is not the case of the petitioner-tenant that the said two halls are available to the respondent-landlady. On the contrary, it has been prima facie established that both these rooms have been let out as to be used as a godown. Under these circumstances, the availability of both these rooms to the respondent-landlady is also in doubt and therefore, could not be considered to be an alternative accommodation. No other point has been raised or urged by the petitioner.

12. Having regard to the discussion hereinabove and the reasoning which has been given by the learned ARC, I find that there is no jurisdictional error in the impugned order and that there is no illegality or impropriety in rejecting the application of the

petitioner in not granting leave to defend to the petitioner. The necessary consequence to the same is that the order of eviction has been correctly passed by the learned ARC.

13. In view of the foregoing discussion, I find that the present revision petition is without any merit accordingly, the same is dismissed.
14. Pending application also stands disposed off.

V.K. SHALI, J.

SEPTEMBER 30, 2015

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