

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

+ **RC. REVISION 350/2015**

Decided on: 26th November, 2015

RAM GOPAL Petitioner

Through: Mr. Sanjeev Bajaj, Advocate

Versus

M/S. RAM SWROOP AGGARWAL & SONS..... Respondents

Through: Mr. Gurmehar S. Sistani, Advocate with

Mr. R.K. Sharma, 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 01.06.2015 by virtue of which the learned Additional Rent Controller-II, Tis Hazari Courts, Delhi (ARC), has granted leave to defend to the respondent-tenant in Eviction Petition No.391/14/10 on the ground that the respondent-tenant has been able to raise triable issue with regard to the *bona fide* requirement of the petitioner-landlord.
2. I have heard the learned counsel for the petitioner. I have also

gone through the record including the eviction petition as well as the leave to defend application.

3. I do not find that there is any illegality, impropriety or jurisdictional error in grant of leave to defend to the respondent-tenant to contest the matter on the ground of bona fide requirement of the present petitioner.
4. Briefly stated the facts of the case are that the petitioner is the owner of property No.2860, Gali Ghasi Ram, Hauz Qazi, Delhi measuring 80 sq. yds. The property is built up on ground floor, first floor and the terrace floor. On the ground floor a portion has been let out to be used as a godown, *that is*, for non-residential purposes to the respondent-tenant on a monthly rent of Rs.240/-. The petitioner has stated that his family consists of four sons who are not having any premises of their own and are dependent for the purpose of having their own business on the petitioner. It is stated that because of this reason, the petitioner is suffering financially a great deal and therefore, wants to evict the respondent-tenant from the premises in question. The petitioner has also given the details

of his four sons in the eviction petition. It is stated that the eldest son is named, Ashok Kumar and his wife is one Smt. Anita and he has two children Rahul and Himanshi. Ashok Kumar is doing the business of sale of sarees and he gets sarees manufactured from outside and then supplies it to the wholesale market. It is stated that there is a paucity of accommodation for him for the purpose of doing his business.

5. Second son is Anil Kumar and his wife is one Smt. Laxmi Devi. He has two children Harsh and Krishna. Anil Kumar is doing the business of selling bathroom fittings at some shop in Chowri Bazar. The remaining two sons Dhan Prakash and Amit Kumar are stated to be both unmarried and acting as Tea vendors in a shop just below the staircase of the suit property which is stated to be grossly inadequate.
6. In addition to this, it is stated that the petitioner has three married daughters, namely, Mrs. Vandana, Mrs. Meenu and Manju, who kept on visiting the petitioner. The family members of the petitioner are also living in different portions of the house i.e. on

the first floor which consists of two rooms and one newly constructed room and terrace floor. The petitioner is alleging that the tenanted premises are being used by the respondent as a godown for storage of his goods. It is also stated that the residential premises which are under the occupation of the petitioner and other family members is grossly inadequate to meet his requirement hence, the eviction petition has been filed for eviction of the respondent-tenant from the premises in question.

7. The learned ARC after hearing the arguments has granted the leave to defend to the respondent-tenant on the ground of *bona fide* requirement regarding use of a godown being used for commercial purpose.
8. I do not find from the facts as have been presented by the petitioner that there is anything which is illegal or improper or that there is jurisdictional error on the part of the learned ARC in granting permission to contest the eviction petition. The reason is that it is not in dispute that two of the eldest sons who are married are having children are doing business outside the premises under the

occupation of the petitioner. Therefore, they are established in their own businesses and in case they want to start the business from the tenanted premises, they would require accommodation for commercial purpose which is in the nature of additional accommodation. So far as two unmarried sons are concerned they too as per their own averments are running tea vendor shop and supplying tea to various shops in the vicinity from a small shop under the staircase in the suit property itself. In their case also even if it is taken that they require accommodation to be more comfortable for the purpose of running their commercial activities, then it becomes a case of additional accommodation.

9. Therefore, in totality of circumstances, the nature of averments made by the petitioner is such that the retrieval of accommodation which is in the possession of the respondent-tenant and being used as a godown, is essentially seeking retrieval of an additional accommodation. The law is very clear that whenever additional accommodation is sought by a party, the tenant must be given permission to contest the matter.

10. Therefore, the learned ARC has rightly given permission to contest the petition to the respondent-tenant on the ground that he has been able to raise a triable issue.
11. For the above said reason, I feel that the present petition is totally misconceived and accordingly the same is dismissed.
12. Pending applications also stand disposed of.
13. Copy of the order be sent to the learned ARC for information.

V.K. SHALI, J.

NOVEMBER 26, 2015

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