



2025:DHC:6342



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 29th July, 2025*

+ CM(M) 1186/2025 & CM APPL. 39933-39934/2025

NIKHIL TRIPATHI

.....Petitioner

Through: Mr. Parikshit Mahipal, Advocate.

versus

NEELAM SHARMA

.....Respondent

Through: Mr. Gaurav Seth, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner is defending a suit for possession, recovery of arrears of rent and damages.
2. The case is already at the stage of final arguments.
3. The present petition challenges order dated 28.05.2025 whereby the learned Trial Court has dismissed two different applications. One application was moved under Section 45 of Indian Evidence Act, 1872 (corresponding Section 39 of Bharatiya Sakshya Adhiniyam, 2023) seeking expert opinion with respect to signatures appearing on the rent agreement dated 10.02.2022 and the other was moved under Order XVIII Rule 17 CPC seeking to examine one Mr. Vipin Malhotra.
4. When the present matter was taken up by this Court on 09.07.2025, the notice was issued only to the effect whether the defendant can be permitted to examine Mr. Vipin Malhotra
5. Relevant para of order dated 09.07.2025 reads as under:-

“2. After hearing arguments for some time, learned counsel for petitioner restricts his request with respect to only seeking permission to examine Mr.



Vipin Malhotra.”

6. Learned counsel for respondent appears pursuant to notice and submits that he would have no objection to such examination provided the witness has any relevancy with respect to the fact-in-issue.

7. He contends that the plaintiff has filed a suit for possession, recovery of arrears of rent and damages and her entire case is based upon one rent agreement.

8. He submits that when the written statement was filed by defendant, he came up with the plea that there was some *agreement to sell* between the parties but fact remains that no counter-claim has been filed by the defendant and no separate suit has either been filed seeking specific performance of any such alleged *Agreement to Sell*.

9. According to petitioner/defendant, there was one *Agreement to Sell* between the parties which was executed in June, 2017 and that he raised the money by entering into a separate sale transaction between him and one Mr. Vipin Malhotra and in relation to such sale-deed, the defendant had received Rs. 40,00,000/-, so that he could make payment to the plaintiff, in terms of alleged *Agreement to Sell*.

10. It is in the abovesaid backdrop that the defendant wants to examine Mr. Vipin Malhotra in order to show the he had requisite funds to honour such *Agreement to Sell*.

11. Fact, however, remains that, admittedly, there is no counter-claim. There is no suit from the side of defendant and he has not, as yet, sought any specific performance of the alleged *Agreement to Sell*.

12. The copy of sale transaction executed between the defendant and said



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Mr. Malhotra and the bank statement would be already before learned Trial Court and, therefore, in such a peculiar situation, examination of Mr. Vipin Malhotra, has no bearing of any nature whatsoever, with respect to the fact-in-issue.

13. This Court, therefore, does not find any merit in the present petition and the same is hereby dismissed.

14. Pending applications also stand disposed of in aforesaid terms.

15. However, the above observations are in context of disposal of present petition and would not have any bearing over the final adjudication.

(MANOJ JAIN)
JUDGE

JULY 29, 2025/sw/JS