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

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Date of decision: 03.08.2016

+ CM(M) 736/2016

MOHD.IBRAHIM AND ORS. Petitioners

Through Mr.Bahar U.Barqi, Advocates.

versus

SHUJA-UDDIN

..... Respondent

Through None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

1. By the present petition, the petitioners seek to impugn the order dated 22.07.2016 by which the application of the petitioners under Order VIII Rule 1-A CPC was dismissed by the learned CCJ-Cum-ARC-1 (Central), Tis Hazari Courts, Delhi.
2. The respondent has filed an eviction petition against the petitioners for eviction of Shop No.6512, Ground Floor, Main Road, Bara Hindu Rao, Delhi- 110006 under Section 14(1)(e) read with Section 25-B of the DRC Act.
3. The petitioners have filed their application for leave to defend. Subsequently, they moved the present application under Order VIII Rule 1-A read with Section 151 CPC seeking place on record electricity bills with respect to another property bearing Kh.No.140(1-0), 146(0-10-1/21), Ground Floor, Village Ibrahimpur City, Delhi-110036 which according to them is the alternative accommodation owned by the respondent.

4. A perusal of the impugned order shows that the trial court relying upon the judgments of the Supreme Court in the case of *Prithipal Singh v. Satpal Singh*, (2010) 2 SCC 15/(MANU/SC/1920/2009) and judgment of this court in *Madhu Gupta v. Gardenia Estate Pvt. Ltd.*, 184 (2011) DLT 103 dismissed the application holding that the electricity bills do not relate to the subsequent event, which has taken place after filing of leave to defend application. There is no explanation as to why the bills could not be filed at the time of filing of the application of leave to defend.

5. The learned counsel for the petitioners has argued that reliance of the trial court on the judgment of *Madhu Gupta v. Gardenia Estate Pvt. Ltd.* (supra), is misplaced as he is not intending to move any amendment to his leave to defend application. All that he seeks to file documents to support his submission which is already there in the application seeking leave to defend filed by the petitioners. Hence, he submits that the impugned order is erroneous.

6. In my opinion, there is no merit in the contention of the petitioner. The Supreme Court in *Prithipal Singh v. Satpal Singh* (supra), held as follows:

“16. From a careful perusal of Sub-section (4) of Section 25B 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 proceeding 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 25B of the Rent Act read with 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 proceeding 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.”

7. The learned Single Judge of this court in *Sh.Mirajuddin v. Mohammad Habib & Ors., R.C. Rev. No.488/2011*, decided on 24.07.2014, held as follows:

“9. Learned counsel for the petitioner wanted to argue orally before this Court by placing reliance upon certain documents by stating that facts have now come to notice which entitle grant of leave to defend, however, this is not permitted in law in view of the judgment of the Supreme Court in the case of Prithipal Singh Vs. Satpal Singh (dead) through LRs (2010) 2 SCC 15 and which holds that whatever has to be stated for grant of leave to defend has to be necessarily and only stated within 15 days in the leave to defend application and the statutory period of 15 days is sacrosanct. Supreme Court has held in the case of Prithipal Singh (supra) that there cannot be condonation of delay of even one day in filing of an application for leave to defend because neither the provision of Section 5 of the Limitation Act, 1963 nor the provisions of CPC, 1908 apply to the exhaustive procedure for bonafide necessity under Section 25 B of the Act. Once the period of 15 days is sacrosanct, it is not permissible to a tenant after the period of 15 days to keep on filing affidavits or documents to urge grounds for seeking leave to defend, and which if permitted to be done, will be violative of the ratio of the judgment of the Supreme Court in the case of Prithipal Singh (supra) that 15 days period for filing of leave to defend application is non-flexible and a fixed period, and every aspect for seeking leave to defend has to be stated within 15 days only and not thereafter. Therefore, the so called

subsequent events which are sought to be urged cannot be urged on behalf of the petitioner.”

8. Similar view was taken by the learned Single Judge of this court in ***Sh.Sanjeev Gupta & Ors. v. Sh.Subhash Kumar Gupta & Anr., R.C.Rev. No.270/2013***, decided on 27.08.2014, wherein it was held as follows:

“2. Supreme Court in the case of Prithipal Singh Vs. Satpal Singh (dead) through LRs (2010) 2 SCC 15 has held that the statutory period for filing of leave to defend is sacrosanct and there cannot be condonation of delay of even one day in filing of the leave to defend application. A learned single Judge of this Court in the case of Ms. Madhu Gupta Vs. M/s. Gardenia Estates (P) Ltd. 184 (2011) DLT 103 has held that there cannot be filed an application for amendment of the leave to defend application after a period of 15 days because that would amount to destroying the sanctity of the 15 days period as stated in the case of Prithipal Singh (supra).

3. In view of the above, it is clear that whatever has to be stated by a tenant for seeking leave to defend has to be stated within 15 days, and after a period of 15 days, no application for leave to defend should be entertained nor any additional affidavit or document be allowed to be taken on record/considered or an application to amend the leave to defend application be entertained on the ground that certain additional facts or documents are required to be considered.”

9. Similar view was also taken by the learned Single Judge of this court in ***Mohd. burhan. v. Shri Triloki Nath Nirmal, R.C.Rev. No.240/2013***, decided on 25.08.2014 and in ***Punjab Stainless Steel House v. Sangeeta Kedia MANU/DE/2055/2014; C.M.(M) No.1354/2011***.

10. Hence, the settled legal position is that the time period stipulated under Section 25-B of the DRC Act has to be adhered to. No additional documents can be filed as are sought to be done.

11. In the light of the above, it is not permissible for the petitioners at this stage to start filing any new document. The present petition is without any merits and is dismissed.

JAYANT NATH, J.

AUGUST 03, 2016/v