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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RC.REV. 664/2015 & C.M. No.30642/2015 (stay)

NOOR MOHAMMAD

..... Petitioner

Through

Mr.Dinesh Kumar, Advocate.

versus

KANTA AGGARWAL

..... Respondent

Through

Mr.Ravi Shankar Garg, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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18.05.2016

Impugned orders are the orders dated 06.5.2016 as also 16.10.2015. Vide the first order the ARC had decreed the eviction petition in favour of the landlord as no application seeking leave to defend had been filed within the stipulated period. Vide the second impugned order, a review petition seeking a recall of the earlier order dated 06.5.2014 had been dismissed.

Record has been perused. Arguments have been heard.

Learned counsel for the petitioner/tenant submits that he had never been served and admittedly the procedure contained in Section 25B of the DRCA which mandates that service has to be effected upon the tenant both by registered AD as also by ordinary process had not been carried out. This submission is correct. The eviction petition had been filed and the first date of hearing was 05.10.2013 on which date the matter had been posted for consideration for 11.10.2013. Notice had been ordered to be issued to the respondent/tenant in the prescribed format clearly noting that the

respondent should be served in the format prescribed under Schedule III of the said Act and the matter was thereafter adjourned for 13.12.2013. Since on 13.12.2013 Presiding Officer was on leave the matter was adjourned for 21.02.2014. On 21.02.2014, it has been noted that the respondent had appeared with some counsel. Power of attorney of the said counsel was not on record. Trial Court record has been requisition to substantiate this submission. This Court notes that up to 21.02.2014 there was no power of attorney filed on behalf of the tenant/petitioner. The tenant/petitioner submits that he was in fact not present on 21.02.2014 and some other person had impersonated as him in order that service could be shown for the benefit of the landlord. On the following date which was 06.5.2014 since the application seeking leave to defend had not been filed, the eviction petition stood decreed in favour of the landlord.

Learned counsel for the petitioner submits that a fraud has been played upon him by the landlord. The Trial Court record shows that power of attorney on behalf of the respondent-tenant was filed only on 06.5.2014. Mr.Dinesh Kumar, Advocate had filed his power of attorney only. On the same day, the Court had noted that service had been effected on 21.02.2014, the period of 15 days already stood expired and leave to defend not having been filed, the landlord was entitled to a decree.

This Court is of the view that the impugned order is liable to be set aside as admittedly notice was required to be served upon the tenant in the format which has been prescribed in the procedure contained in Section 25B. This procedure has to be necessarily

followed and a strict compliance of the same has to be effected as in the absence of the same, the landlord would be entitled to the benefit of summary procedure and get a decree straightway into his pocket. If this procedure is not followed this would be prejudicial to the interest of the tenant.

This submission of the learned counsel for the petitioner is also borne out from the record. On 21.02.2014, the Trial Court had noted that the respondent was present along with his counsel but the record shows that no power of attorney on behalf of the tenant was on record. His submission that on that date he had been impersonated as he was not present in the court is also noted.

Since a valuable right has been lost to the tenant as the landlord has got the decree straightway without following the procedure as contained in Section 25B of the DRCA and noting the aforementioned submissions, the impugned order is set aside. Leave to defend be filed by the tenant within a period of 15 days from today with an advance copy to the learned counsel for the landlord who may file reply thereto. Trial Court shall endeavour to dispose of the eviction petition expeditiously.

Parties are directed to appear before the ARC on 24.5.2016.

Petition disposed of.

Order dasti under signatures of the Court Master.

INDERMEET KAUR, J

MAY 18, 2016

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