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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RC.REV. 33/2018

INDER NARAIN GOYAL

..... Petitioner

Through : Mr.Shesh Datt Sharma, Advocate.

versus

SHASHI GOYAL

..... Respondent

Through : Mr.Vinod Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

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27.02.2019

CAV No.85/2018

In view of earlier appearance on behalf of respondent/caveator,
the caveat is discharged.

RC.REV. 33/2018, CM APPL Nos.3940/2018, 11136/2018

This petition challenges the orders dated 02.11.2017 and 30.11.2017 whereby the leave to defend application filed by the petitioner on 31.10.2017 after expiry of statutory period of 15 days from the date of service of summons on petitioner was not considered by the learned Trial Court on the strength of *Prithipal Singh vs. Satpal Singh (Dead) through LRs.* (2010) 2 SCC 15 wherein it was held the statutory period of 15 days for filing of leave to defend is sacrosanct and whatsoever has to be stated in the leave to defend application with respect to the facts and events happened prior to 15 days period must be stated in the application itself. Thus in the event of non-filing of application for leave to defend, in terms of Section 25(B)(iv) of the Act, the statement made by the landlord in the petition for eviction shall be deemed to be admitted by the tenant and the landlord shall be entitled for an order of eviction.

In the circumstances of this case the summons were directed to be served upon the petitioner herein personally as also by registered post . The summons were delivered to him personally on 14.10.2017 and the registered post was served upon him on 24.10.2017. The learned ARC rightly counted the 15 days statutory period from the date of initial service upon the petitioner herein i.e., on 14.10.2017 and hence has rightly passed the eviction order.

A review petition was also dismissed. I have perused both the orders and there is no illegality in the same as passed by the learned ARC.

Though the learned counsel for the petitioner raised an issue that per rent note dated 22.02.2008 the wife of the petitioner was a tenant of the premises but since the application for leave to defend of the petitioner has been dismissed, as was beyond the statutory period, this fact cannot be agitated before this Court. However, the said Smt.Rekha Goyal, wife of the petitioner may be well within her rights to avail/contest her claim, if any, in the execution proceedings, as per law.

Secondly it is submitted though the learned counsel for the petitioner in the trial Court was not competent enough to deal with the matter and could not file application for leave to defend in time but admittedly ignorance of law is no excuse.

Hence the petition is dismissed. Pending application, if any, also stands disposed of in terms of above.

YOGESH KHANNA, J.

FEBRUARY 27, 2019 /DU