



2026:DHC:8166



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

Date of decision: 22.09.2026

CNR No. DLHC010414242025

+ **RC.REV. 198/2025 & CM APPL. 39843/2025 (Stay**

RAM DULARI THROUGH LR SUNITAPetitioner

Through: **Mr. Kunal Kalra and Mr. P.K. Chauhan, Advocates.**

versus

KAMLA DEVIRespondent

Through: **Mr. B.D. Sharma, Advocate.**

CORAM:

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

% **JUDGEMENT (Oral)**

1. The present Petition has been filed under Section 25-B(8) of the Delhi Rent Control Act, 1958 [**“DRC Act”**], assailing the Order dated 09.01.2025 [**“Impugned Order”**], passed by the learned ACJ-cum-CCJ-ARC (East), Karkardooma Courts, Delhi [**“learned ARC”**], in Eviction Petition being RC ARC 1217/2016 [**“Eviction Petition”**], titled *“Kamla Devi v. Ram Dulari”*, whereby the Application seeking leave to defend [**“Leave to Defend Application”**] filed on behalf of the Petitioner herein was dismissed on the ground that the same had not been filed within the prescribed statutory period and, consequently, an Eviction Order was passed in favour of the Respondent herein in respect of Property bearing shop No. IX/214, consisting of one room with kitchen on the ground floor and one room

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with toilet and bathroom on the first floor, situated at Ghas Mandi, Gandhi Nagar, Delhi-110031 [**“Subject Premises”**].

SUBMISSIONS ON BEHALF OF THE PETITIONER:

2. Learned counsel appearing on behalf of the Petitioner submits that, upon restoration of the Eviction Petition *vide* Order dated 27.02.2020, the statutory period for filing the Leave to Defend Application stood revived. It is submitted that, upon such restoration, the Petitioner became entitled to avail the statutory period prescribed under Section 25-B of the DRC Act for filing the Leave to Defend Application.

3. Learned counsel further submits that the Leave to Defend Application came to be filed on 11.02.2021, during the period when the directions issued by the Hon’ble Supreme Court in ***Suo Motu Writ Petition (Civil) No. 3/2020, In Re: Cognizance for Extension of Limitation¹***, were in operation. It is contended that, by virtue of the orders passed by the Hon’ble Supreme Court therein, the period of limitation stood extended/excluded on account of the COVID-19 pandemic and, consequently, the period prescribed for filing the Leave to Defend Application was required to be computed after giving effect to the benefit granted by the Hon’ble Supreme Court. On this basis, it is submitted that the Application filed on 11.02.2021 was within the prescribed period and the learned ARC erred in holding the same to be barred by limitation.

4. Learned counsel further submits that the learned ARC has failed to consider the contents of the Eviction Petition as also the pleadings and triable issues raised by the Petitioner in the Leave to Defend



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Application. It is contended that the Petitioner had raised specific grounds which disclosed triable issues and, therefore, the Leave to Defend Application could not have been rejected without examining the said grounds.

5. It is, accordingly, submitted that the learned ARC has failed to properly appreciate the case set up by the Petitioner and has proceeded to dismiss the Leave to Defend Application solely on the ground of limitation, without examining the triable issues raised therein.

6. Learned counsel, therefore, submits that the Impugned Order dated 09.01.2025 is liable to be set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENT:

7. **Per Contra**, learned counsel appearing on behalf of the Respondent submits that there is no infirmity or illegality in the Impugned Order and that the learned ARC has correctly rejected the Leave to Defend Application as having been filed beyond the statutory period prescribed under Section 25-B of the DRC Act.

8. On the aforesaid basis, learned counsel for the Respondent submits that the present Petition is devoid of merit and is liable to be dismissed.

9. No other submissions were advanced on behalf of the learned counsel for the parties.

ANALYSIS:

10. This Court has heard learned counsel for the parties at length and, with their able assistance, perused the relevant documents as also the Impugned Order.

¹ (2020) 19 SCC 10



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11. Before proceeding to examine the grounds of challenge urged on behalf of the Petitioner, it would be apposite to advert to the scope and ambit of the revisional jurisdiction vested in this Court under the proviso to Section 25-B(8) of the DRC Act.

12. The contours of the aforesaid jurisdiction are well settled. The Hon'ble **Supreme Court**, in **Sarla Ahuja v. United India Insurance Co. Ltd.**², **Hindustan Petroleum Corporation Ltd. v. Dilbahar Singh**³, and, more recently, in **Abid-Ul-Islam v. Inder Sain Dua**⁴, has consistently held that the jurisdiction exercised by the High Court under the *proviso* to Section 25B(8) of the DRC Act is supervisory and revisional in character and cannot be equated with the exercise of appellate jurisdiction.

13. The aforesaid principles have also been reiterated and relied upon by Coordinate Benches of this Court, *inter alia*, in **Pankaj Pahwa v. Prem Wati & Ors.**⁵, and **Sanjeev Hiranandani v. Sunny Grover**⁶.

14. In **Abid-Ul-Islam** (supra), the Hon'ble Supreme Court, while elucidating the legislative intendment underlying Section 25(B) of the DRC Act, observed that the omission of an appellate remedy against an Order passed by the learned Rent Controller is conscious and deliberate. The jurisdiction conferred upon the High Court is, therefore, one of superintendence over the decision-making process, including the legality and propriety thereof, and does not permit the High Court to substitute its own view for that of the learned Rent

² (1998) 8 SCC 119

³ (2014) 9 SCC 78

⁴ (2022) 6 SCC 30

⁵ 2024:DHC:9322

⁶ 2025:DHC:11285



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Controller merely because another view on the material available on record may be possible. The relevant observations of the Hon'ble Supreme Court read as under:

“23. The proviso to Section 25-B(8) gives the High Court exclusive power of revision against an order of the learned Rent Controller, being in the nature of superintendence over an inferior court on the decision-making process, inclusive of procedural compliance. Thus, the High Court is not expected to substitute and supplant its views with that of the trial court by exercising the appellate jurisdiction. Its role is to satisfy itself on the process adopted. The scope of interference by the High Court is very restrictive and except in cases where there is an error apparent on the face of the record, which would only mean that in the absence of any adjudication per se, the High Court should not venture to disturb such a decision. There is no need for holding a roving inquiry in such matters which would otherwise amount to converting the power of superintendence into that of a regular first appeal, an act, totally forbidden by the legislature.”

15. In ***Pankaj Pahwa*** (supra), a Coordinate Bench of this Court, upon considering the principles enunciated in ***Abid-Ul-Islam*** (supra), reiterated that the jurisdiction exercised by this Court under the proviso to Section 25B(8) of the DRC Act is limited in scope and that this Court is not expected to substitute or supplant its view for that of the learned ARC. The revisional scrutiny is confined to examining the decision-making process and determining whether the Impugned Order suffers from an error apparent on the face of the record or an absence of adjudication warranting interference.

16. In view of the foregoing discussion, the position which emerges is that, while exercising jurisdiction under the proviso to Section 25B(8) of the DRC Act, this Court is neither required nor permitted to undertake a fresh appreciation of the material on record with a view to arrive at an independent conclusion on the merits of the dispute. Interference would be warranted only where the Impugned Order

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suffers from a jurisdictional error, manifest illegality, material irregularity or perversity, or where the conclusion arrived at by the learned ARC is wholly unreasonable or founded upon an erroneous premise of law. Equally, where a material plea has been left unconsidered, or the decision-making process otherwise discloses an error apparent on the face of the record, exercise of revisional jurisdiction may be warranted.

17. It is within the aforesaid limited parameters of revisional scrutiny that the grounds urged by the learned counsel on behalf of the Petitioner against the Impugned Order are required to be examined. In this backdrop, it would be apposite for this Court to extract the relevant portion of the Impugned Order, which reads as under:

“4. The present petition was filed on 17.09.2016 and thereafter notice was issued to the respondent as specified in Third Schedule of DRC Act whereupon notices were received back with the report of refusal on 13.10.2016. On 19.11.2016, the respondent did not appear and the matter was fixed on 17.02.2017 and the respondent appeared on that day. Thereafter, the matter was adjourned to 03.05.2017, 27.07.2017 and ultimately on 26.10.2017, the matter was dismissed for non-prosecution.

5. On 17.01.2018, an application under Order 9 Rule 4 CPC was filed to restore the petition which was also dismissed in default on 03.01.2019. Again, on 04.02.2019 another application under Section 151 CPC was filed to restore the application under Order 9 Rule 4 CPC which was allowed on 10.10.2019. Finally, on 27.02.2020, the application under Order 9 Rule 4 CPC was allowed and the instant petition was restored. The respondent eventually filed his leave to defend on 11.02.2021.

6. Before traversing through grounds taken in the leave to defend application, it is noteworthy that the notice of the petition when instituted was refused by the respondent on 13.10.2016 but there is no finding on the record given by the court that the notice had been properly served. Even if refusal given on 13.10.2016 is overlooked, the respondent gave his appearance on 17.02.2017 and thus it could be presumed safely that the respondent was well aware of the proceedings going against him and still he could have filed leave to defend application within 15 days but the same was not done. Thereafter the matter was adjourned many times till it was

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ultimately dismissed for non prosecution on 26.10.2017. Even when the petition was eventually restored on 27.02.2020, still the respondent did not file his leave to defend within 15 days.

7. Hence, even if maximum liberal approach is taken, the statutory period fixed for filing leave to defend has not been complied with by the respondent.

8. In view of the same, leave to defend filed by the respondent cannot be read altogether and the petitioner is entitled for an eviction order. Reliance can be placed on the decision of Hon'ble Supreme Court of India titled as **Prithipal Singh vs Satpal Singh (Dead) through Lrs** Civil Appeal No. 8501 of 2009 (Arising out of SLP (C) No. 19921 of 2006) wherein it was held that leave to defend has to be mandatorily be filed within 15 days from the date of service of notice to the respondent and the said period cannot be condoned.

9. Accordingly, eviction order is passed in favour of the petitioner and against the respondent directing the respondent to vacate the tenanted premises i.e shop bearing no. IX/214 consisting 1 room with kitchen on the ground floor and 1 room with toilet & bathroom on the first floor of the property situated at Ghas Mandi, Gandhi Nagar, Delhi-110031 specifically shown in red colour in the site plan filed by the petitioner, in terms of Section 14 (1) (e) r/w Section 25-B of the Delhi Rent Control Act. The landlord, however, shall not be entitled to obtain possession thereof before the expiration of a period of six months from the date of this order."

18. The principal issue which arises for consideration is whether the Leave to Defend Application, filed by the Petitioner on 11.02.2021, could have been entertained, having regard to the statutory period prescribed under Section 25-B of the DRC Act.

19. The record, as noticed by the learned ARC in the Impugned Order, discloses that the Eviction Petition was instituted on 17.09.2016 and notice thereof was issued to the Petitioner, which was received back with the report of refusal on 13.10.2016. Though service stood effected due to the refusal of the Petitioner, no application for leave to defend came to be filed. On 19.11.2016, the Petitioner did not appear and the matter was thereafter fixed for 17.02.2017.

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20. The Petitioner admittedly appeared personally before the learned ARC on 17.02.2017. Even thereafter, however, the application seeking leave to defend was not filed within the prescribed statutory period. Thus, even if the benefit of reckoning the prescribed period from the date of actual appearance of the Petitioner, rather than from the earlier refusal of notice, were to be extended to the Petitioner, the Leave to Defend Application would nevertheless remain beyond the prescribed period.

21. Thereafter, the matter was adjourned to 03.05.2017, 27.07.2017, and, finally, to 26.10.2017, on which the date the Eviction Petition came to be dismissed for non-prosecution. Proceedings were thereafter undertaken by the Respondent seeking restoration of the Eviction Petition, by way of an Application under Order IX Rule 4 of the CPC filed on 17.01.2018, which Application came to be dismissed in default on 03.01.2019. An Application under Section 151 of the CPC came to be filed on 04.02.2019 seeking restoration of Application under Order IX Rule 4 of the CPC. The Application under Section 151 of the CPC was allowed on 10.10.2019 and the Application under Order IX Rule 4 of the CPC was restored.

22. Pursuant to the above, the Eviction Petition was eventually restored on 27.02.2020. The Leave to Defend Application, however, came to be filed only on 11.02.2021.

23. The legal position with respect to the statutory period prescribed for filing an application seeking leave to defend under Section 25-B of the DRC Act is no longer *res integra*. In **Prithipal Singh v. Satpal Singh (Dead) through LRs.**⁷, the Hon'ble Supreme

⁷ (2010) 2 SCC 15



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Court, while considering the very scheme of Section 25-B of the DRC Act, held that the statutory period of fifteen (15) days prescribed for filing an application seeking leave to defend is mandatory and that the provisions of the Limitation Act, 1963 or the CPC cannot be invoked to extend the said period. The Court further held that, in the absence of leave to defend, the consequences contemplated under Section 25-B(4) necessarily follow. The relevant portion of the aforesaid Judgment is reproduced hereinbelow:

“31. There is another aspect of this matter. It is difficult to understand how an application for leave to contest having been rejected, may be on the ground of delay, could be allowed when it is not disputed by the respondent tenant that no application for condonation of delay could be entertained by the Rent Controller as the provisions of the Limitation Act, 1963 could not be attracted. That apart, we have also carefully examined the special reason given by the respondent tenant in the original application for leave to contest and the present application after order of eviction was passed. On a reading of these two applications, we find that the same defence was taken by the tenant after the order of eviction was passed and therefore, we do not think that such reason can be considered to be a special reason within the meaning of Order 37 Rule 4 of the Code for allowing the tenant to defend the proceedings if Order 37 Rule 4 of the Code applies to a special Act.”

24. The aforesaid position has been consistently followed by this Court. In *M/s HIM Traders (P) Ltd. v. S.K. Gupta*⁸, the petition under Section 25-B(8) of the DRC Act arose from an order dismissing the application seeking leave to defend on the ground that it had been filed beyond fifteen (15) days. This Court, following *Prithipal Singh* (supra), reiterated that there cannot be a delay even of one day beyond the prescribed period for filing an application seeking leave to defend. The relevant portion of the aforesaid Judgment is reproduced

⁸ 2014 SCC OnLine Del 4052



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hereinbelow:

“2. The trial court has relied upon the judgment of the Supreme Court in the case of ***Prakash H. Jain v. Ms Marie Fernandes***, (2003) 8 SCC 431 : AIR 2003 SC 4591, however, now there is in fact a direct judgment of the Supreme Court under the Delhi Rent Control Act in the case of ***Prithipal Singh v. Satpal Singh (dead) through LRs***, (2010) 2 SCC 15 : (2010) 1 SCC (Civ) 271 which holds that there cannot be delay of even one day beyond the period of 15 days for filing of the leave to defend application.

3. In the present case, as per the trial court record, the petitioner was served on 8-10-2010 by the process server. Petitioner is a company and it was served through one Mr R.K. Gupta who is the Director and the authorized signatory of the petitioner/company. I note that as per the Order 29 of the Code of Civil Procedure, 1908 (CPC), service on a company can be effected through a principal officer and a Director of a company is surely a principal officer.

4. (i) As the service was effected on the petitioner/defendant on 8-10-2010 but the leave to defend application was filed only on 25-10-2010, whereas it had to be filed on or before 23-10-2010, the ratio of the judgment of the Supreme Court in the case of ***Prithipal Singh*** (supra) is squarely applicable.

(ii) A reference to the leave to defend application shows that the petitioner/defendant stated that it was served only on 10-10-2010, however, this was only a self-serving averment without any basis because the trial court record shows that service was in fact duly effected on the petitioner through the process server on 8-10-2010.

5. Counsel for the petitioner very vehemently sought to argue that service should be taken as 10-10-2010 because there was a second service by registered post on 10-10-2010, however, it is noted that this fact is not pleaded, inasmuch as the pleading/leave to defend application of the petitioner talks only of one service on 10-10-2010, and it is to be noted that it is also not stated in the leave to defend application that a second service is effected on 10-10-2010 by registered post. Further, there is nothing which is filed before this Court in this petition which is pending since the year 2011 that the petitioner was served through registered post for the second time on 10-10-2010.

6. In view of the above, there is no merit in the petition, and the same is therefore dismissed, leaving the parties to bear their own costs.”

25. Similarly, in ***Faridabad Manufacturing (Engineering Products) Pvt. Ltd. v. Yashpal Arora & Anr.***⁹, this Court, while

⁹ 2014 SCC OnLine Del 3735



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considering a challenge to an order refusing to condone delay in filing the application seeking leave to defend, held that once the application is filed beyond the prescribed period, there is no application for leave to defend which can be considered and, consequently, in terms of Section 25-B(4), the statements contained in the Eviction Petition are deemed to be admitted and the landlord becomes entitled to an Eviction Order. The relevant portion of the aforesaid Judgment is reproduced hereinbelow:

“2. Supreme Court in the judgment in the case of **Prithipal Singh v. Satpal Singh (dead) through LRs** (2010) 2 SCC 15 : (2010) 1 SCC (Civ) 271 has now laid down the law that the statutory period of 15 days which is provided under Section 25B read with relevant form for service and the schedule is a period in which leave to defend has positively to be filed, and if leave to defend is filed after 15 days the same cannot be looked into because delay of even one day cannot be condoned. Supreme Court in the case of **Prithipal Singh** (supra) has held that the provision of Section 5 of the Limitation Act, 1963 or the provision of CPC do not apply to the exhaustive procedure of bonafide necessity provided under Section 25B of the Act.

3. In the present case, admittedly the application for leave to defend has been filed beyond time because the petitioner/tenant was served on 12-8-2010 and the leave to defend application was filed on 9-9-2010. Once that is so, there is no application for leave to defend which is to be considered, and in view of Section 25B(4) the statements in the eviction petition are deemed to be admitted and the landlord is entitled to an eviction order.”

26. In the present case, the Eviction Petition was admittedly filed on 17.09.2016 and notice was issued to the Petitioner, which was received back with the report of refusal on 13.10.2016. Admittedly, no application for leave to defend was filed within the statutory period. Assuming, *arguendo*, that the said refusal of receipt of the notice is disregarded and the period is reckoned from the date on which the Petitioner appeared before the learned ARC in person, i.e., on 17.02.2017, even thereafter, the Petitioner did not file the application

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seeking leave to defend within the prescribed statutory period.

27. The matter was thereafter listed on 03.05.2017, 27.07.2017 and consequently the matter came to be dismissed for non-prosecution on 26.10.2017. At no stage during the aforesaid period did the Petitioner take steps to file the application seeking leave to defend. The subsequent dismissal of the Eviction Petition for non-prosecution and the proceedings undertaken thereafter for its restoration cannot efface the fact that the statutory opportunity to seek leave to defend had already not been availed within the prescribed period.

28. More significantly, even after restoration of the Eviction Petition on 27.02.2020, the Petitioner did not file the application seeking leave to defend within fifteen (15) days. The Leave to Defend Application was eventually filed only on 11.02.2021. The effect of the exclusion of the period of limitation, in terms of the Orders of the Hon'ble Supreme Court in ***Suo Motu Writ Petition (Civil) No. 3/2020, In Re: Cognizance for Extension of Limitation*** (supra) commenced only on 15.03.2020. After the restoration of the Eviction Petition on 27.02.2020, the Petitioner could have filed the application for leave to defend within the prescribed statutory period of fifteen (15) days.

29. In the present case, however, the Petitioner had already failed to avail the statutory opportunity to seek leave to defend on three occasions, namely, after refusing to accept the notice, thereafter upon appearing before the learned ARC on 17.02.2017, and even after the restoration of the Eviction Petition on 27.02.2020. The subsequent exclusion of the period from 15.03.2020 onwards, therefore, could not

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revive or enlarge a statutory right which had already remained unexercised within the prescribed period.

30. In any event, the contention of the Petitioner that restoration of the Eviction Petition on 27.02.2020 resulted in the commencement of a fresh period of fifteen (15) days for filing an application seeking leave to defend cannot be accepted. Restoration of the proceedings does not, by itself, obliterate the proceedings which had preceded the dismissal for non-prosecution, nor does it revive an opportunity which had already been lost by failure to comply with a statutory requirement within the prescribed period.

31. If such a contention were to be accepted, every restoration of an Eviction Petition dismissed for non-prosecution would result in the tenant obtaining a fresh opportunity to file an application seeking leave to defend, irrespective of whether the tenant had already acquired knowledge of the proceedings and failed to avail the statutory opportunity within time. Such an interpretation would be inconsistent with the special and time-bound procedure contemplated under Section 25-B of the DRC Act and would, in effect, render the statutory period liable to recommencement upon every restoration of the proceedings.

32. The learned ARC has, in the Impugned Order, considered the relevant chronology of the proceedings and has specifically recorded that the Petitioner had appeared before the Court on 17.02.2017, but had failed to file the application seeking leave to defend within the prescribed period. The learned ARC has further noticed that even upon restoration of the Eviction Petition on 27.02.2020, the Leave to Defend Application was not filed within fifteen (15) days. The

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conclusion arrived at by the learned ARC was thus founded upon the undisputed procedural history of the proceedings and the statutory requirement governing the filing of the Leave to Defend Application.

33. In these circumstances, the further contention of the Petitioner that the learned ARC failed to examine the triable issues or the pleadings sought to be relied upon in the Leave to Defend Application also requires to be considered in the correct statutory and jurisdictional perspective. The examination of the merits of the proposed defence would ordinarily arise when a legally entertainable application seeking leave to defend is before the learned ARC. Where the application itself has been filed beyond the mandatory statutory period, the question of examining the proposed defence on merits would ordinarily not arise. The failure to undertake such an examination, therefore, cannot, by itself, be treated as an absence of adjudication, unless the facts disclose a circumstance warranting interference in exercise of the revisional jurisdiction of this Court.

34. At this stage, it would also be apposite to consider the judgment of this Court in **Director Directorate of Education v. Mohd. Shamim**¹⁰. The said Judgment does recognise that the mere fact that an application seeking leave to defend has been filed beyond the prescribed period does not, in every case, completely foreclose the revisional jurisdiction of this Court. The relevant observations of the aforesaid Judgment have been reproduced hereinbelow:

“20. It is significant that the proviso to Section 25B(8) uses the words “according to law” and not the words “according to this Act”. Thus the jurisdiction of this Court under the proviso to Section 25B(8) is to satisfy itself that an order made by the Controller under Section 25B is according to law. Needless to state

¹⁰ 2019 SCC OnLine Del 11490



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that the word “law” has much wider ambit than the word “Act”, meaning the Delhi Rent Control Act. The jurisdiction of this Court under the proviso to Section 25B(8), in the judgments cited by the Senior Counsel for the respondent also, has been held to be akin to revisionary jurisdiction. It has been held in *Hindustan Petroleum Corporation Limited*¹¹ supra, *Shiv Sarup Gupta*¹² supra, *Boorugu Mahadev and Sons v. Sirigiri Narasing Rao*¹³, *Gandhe Vijay Kumar*¹⁴ supra and *Ravinder Jeet Singh v. Kanta Vadhera*¹⁵ that the function of the High Court while exercising revisionary jurisdiction extends to ensuring that no injustice is being done by the order impugned before it by way of revision. The High Court thus, when approached in exercise of its jurisdiction under the proviso to Section 25B(8) against an order of eviction under Section 25B(4), on failure of tenant to within the prescribed time apply for leave to defend, would be entitled to consider whether there is any substantial ground which prevented the tenant from, within the prescribed time, applying for leave to defend and any substantial reason which disentitles the landlord from an order of eviction on the ground of requirement of premises on deemed admission of such requirement by the tenant.

21. It is not as if a mere expression of requirement of the premises for own use by the landlord has been constituted as a ground of eviction under Section 25B. For a landlord to be entitled to eviction of tenant on the ground of own requirement of the premises, the requirement has to be bonafide, for occupation of the premises by the landlord or for member of his family and further that the landlord has no other reasonable suitable accommodation. Thus, a tenant is entitled to leave to defend if able to demonstrate that the requirement pleaded by the landlord is not bonafide or that the landlord has another suitable residential accommodation. It cannot be lost sight of that the applicability of the Rent Act, as far as Delhi is concerned, now is mostly confined to premises let out decades back, at the rate of rents which are now paltry in comparison to the prevalent rents of the said properties. Eviction of such tenants being prohibited by the Rent Act save on the grounds specified, the ground of requirement for own use is often found to be invoked by the landlord(s) to seek eviction of such old tenants paying paltry rents, even though the landlord, in real sense has no requirement or bonafide requirement of the premises for own use or has other alternate suitable premises available to him. The tenant, if able to demonstrate the requirement to be not bonafide or availability of other premises, can thwart such action for eviction.

¹¹ (2014) 9 SCC 78

¹² (1999) 6 SCC 222

¹³ (2016) 3 SCC 343

¹⁴ (2018) 12 SCC 576

¹⁵ 2018 SCC OnLine Del 13329



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22. Thus, when Section 25B(7) states that the procedure of a Court of Small Causes shall be followed while holding any inquiry in a proceeding under Section 25B, even though the Controller may pass an order on deemed admission, the High Court would certainly be entitled to set aside the said order if the petitioner, under proviso to Section 25B(8), is able to rebut the said deemed admission and/or make out a case for being given an opportunity for rebutting the same.

23. Mention in this regard may also be made of **Ramesh Kumar v. Kesho Ram**¹⁶, holding a deemed admission to be different from an actual admission.

24. The matter can be looked at from another point of view. Section 25B(3)(b) of the Act empowers the Controller to declare that there has been valid service of summons issued under Section 25B(3)(a) of the Act when an acknowledgement “purporting to be signed by the tenant or his agent” is received back by the Controller or when the registered article containing the summons is received back with an endorsement “purporting to have been made by a postal employee” to the effect that the tenant or his agent has refused to take delivery of the registered article. Thereunder the Controller is empowered to declare that there has been a valid service merely when there is an appearance of service or refusal. However Section 25B(4) empowers the Controller to order eviction on failure of the tenant so served to apply for leave to defend only when the summons is “duly served”. A summon purporting to be served or refused cannot be said to be “duly served” if it is shown that what was purporting to be signed by the tenant was indeed not signed by the tenant and/or what was purporting to be refusal of the tenant was indeed not refusal of the tenant. An order of eviction passed on purported service if allowed to stand notwithstanding being shown to be not duly served would be in violation of Section 37(1) prohibiting the Controller from passing any order without giving reasonable opportunity to show cause thereagainst and would also be in violation of the practice and procedure of a Court of Small Causes. For this reason also in our view **Prithpal Singh** supra cannot be read as closing all doors or remedy at least before this Court.

25. We, therefore, hold that merely because the Controller has passed an order of eviction in a proceeding governed under Section 25B, on failure of the tenant to, within the prescribed time, apply for leave to defend and merely because the Controller vide **Prithpal Singh** supra has been held to be not empowered to recall the said order, would not prevent this Court from, in exercise of powers under proviso to Section 25B(8), considering once a case for the landlord to be not entitled to an order of eviction to be

¹⁶ 1992 Supp (2) SCC 623



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deemed admission following non-filing of leave to defend within the prescribed time, the said order cannot be said to have been made according to law and would qualify as being contrary to law and liable to be set aside.

26. Having held so, we answer the question no. (A) framed in the referral order in the affirmative and with the condition that this Court would be empowered to set aside the order of eviction only if the tenant passes the dual test of prevented by reasons beyond control from applying for leave to defend within the prescribed time (as distinct from every default) and if makes out a substantial case for consideration of the application for leave to defend. We, however, in deference to **Prithipal Singh** supra choose/opt to not answer the question (B) framed in the referral order.”

35. The principle emerging therefrom is that, this Court, while exercising jurisdiction under the *proviso* to Section 25-B(8), may examine whether there exists a substantial ground which prevented the tenant from applying for leave to defend within the prescribed period, and whether there exists a substantial reason which would disentitle the landlord from an order of eviction notwithstanding the deemed admission contemplated under Section 25-B(4).

36. It is apparent that the only submissions articulated pertains to the filing of the Leave to Defend Application on 11.02.2021, and on which date the benefit of the Orders of the Hon’ble Supreme Court in ***Suo Motu Writ Petition (Civil) No. 3/2020, In Re: Cognizance for Extension of Limitation*** (supra) have been sought to be applied. The first limb of the parameters prescribed by the Hon’ble Division Bench of this Court in ***Director, Directorate of Education*** (supra), namely, that the tenant must demonstrate that he was prevented by reasons beyond his control from applying for leave to defend within the prescribed period, remains unsatisfied and resultantly there arises no need to examine the second limb at all.



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37. The Petitioner was admittedly aware of the pendency of the Eviction Petition and had appeared before the learned ARC on 17.02.2017. Despite such appearance, no application seeking leave to defend was filed within the prescribed period. The Petitioner thereafter participated before the learned ARC during the subsequent proceedings and, even after the Eviction Petition was restored on 27.02.2020, failed to file the application seeking leave to defend within statutory period of fifteen (15) days. No circumstance has been placed on record which prevented the Petitioner from availing the statutory remedy within time.

38. The aforesaid conclusion also flows from the statutory consequence envisaged under Section 25-B(4) of the DRC Act. The statutory scheme proceeds on the basis that where the tenant fails to apply for leave to defend within the period prescribed under the said provision, the statements made by the landlord in the eviction petition are deemed to be admitted. The relevant portion of Section 25-B of the DRC Act is reproduced hereinbelow:

“25B. Special procedure for the disposal of applications for eviction on the ground of bona fide requirement. –

(4) The tenant on whom the summons is duly served (whether in the ordinary way or by registered post) in the form specified in the Third Schedule shall not contest the prayer for eviction from the premises unless he files and affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided; and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction on the ground aforesaid.

”

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39. This is not a case where the learned ARC has rejected a timely application seeking leave to defend after examining the proposed defence and thereafter declined to find triable issues. Rather, the Leave to Defend Application itself was found to be beyond the statutory period and, consequently, incapable of being entertained in view of the mandatory procedure under Section 25-B of the DRC Act. As held in **Faridabad Manufacturing** (supra), once an application seeking leave to defend is filed beyond the prescribed period, there remains no legally entertainable application upon which the learned ARC is required to undertake an examination of the proposed defence.

40. Consequently, the mere assertion that the Leave to Defend Application contained certain pleas which, if examined independently, may raise questions requiring adjudication, cannot by itself displace the statutory consequence flowing from the failure to invoke the remedy within the prescribed period. To hold otherwise would effectively permit the merits of a belated defence to be examined notwithstanding the statutory bar governing the very entertainability of the application. Such an approach would dilute the special and expeditious procedure contemplated under Section 25-B of the DRC Act.

41. It is also pertinent that the learned ARC has not proceeded mechanically. The Impugned Order records the procedural history of the proceedings, notices the appearance of the Petitioner, considers the effect of the subsequent restoration of the Eviction Petition and thereafter applies the settled legal position governing the statutory period for filing an application seeking leave to defend. The learned ARC has, therefore, considered the material necessary for determining



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the issue which arose before it, namely, whether the Leave to Defend Application, filed on 11.02.2021, could be entertained having regard to the statutory period prescribed under Section 25-B of the DRC Act.

42. Thus, the grievance of the Petitioner is, in substance, directed not against any absence of adjudication, but against the consequence flowing from the finding that the Leave to Defend Application was filed beyond the prescribed statutory period. Once the learned ARC, upon consideration of the relevant chronology and the applicable statutory framework, concluded that the Leave to Defend Application could not be entertained, the non-consideration of the proposed defence on merits cannot, in the facts of the present case, be characterised as a material failure of adjudication or an error apparent on the face of the record warranting interference under Section 25-B(8) of the DRC Act.

43. In view of the foregoing discussion, this Court is of the considered opinion that the Impugned Order does not suffer from any jurisdictional error, manifest illegality, material irregularity or perversity warranting interference by this Court in exercise of its limited revisional jurisdiction under the proviso to Section 25-B(8) of the DRC Act.

44. Accordingly, the present Petition, being devoid of merit, stands dismissed.

45. The present Petition, along with pending Application(s), if any, stands disposed of in the aforementioned terms.

HARISH VAIDYANATHAN SHANKAR, J.
SEPTEMBER 22, 2026/rk/ma

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