

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

Reserved on: 26th March, 2012

Pronounced on: 30th March, 2012

+ **CM (M) 53/2012**

INDER MOHAN SACHDEVA Petitioner
Through: Mr. Davender Singh, Sr. Adv.
with Mr. Vatsala Singh, Adv.

versus

USHA INTERNATIONAL LTD. Respondent
Through: Mr. Sanjeev Sachdeva, Sr. Adv.
with Mr. Chaman Lal Saxena,
Ms. Priyam Mehta, Adv.
Mr. Abhimanyu Chora, Adv.

CORAM:
HON'BLE MR. JUSTICE G.P. MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. An Eviction Petition on the ground of bonafide requirement under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 (the Act) was filed by the Petitioner on 19.02.2010. By an order dated 11.05.2011 an application seeking leave to contest filed by the Respondent tenant was allowed by the Rent Controller. The case was fixed for filing of the written statement on 07.07.2011. None appeared on behalf of the Petitioner (the landlord) and the Eviction Petition was dismissed in default under Order IX Rule VIII of the Code of Civil Procedure

(CPC).

2. On 08.07.2011, the counsel for the Petitioner came to know that the Petition was dismissed in default on 07.07.2011 and an application for restoration was moved on 12.07.2011 on the ground that the counsel could not appear before the Controller because of wrong noting of the date. The application was however dismissed on 03.11.2011.
3. The primary question for determination in the Petition is whether the Petition under Article 227 of the Constitution of India is maintainable against the order passed by the Controller or he should have pursued the remedy of Appeal under Section 38 of the Act.
4. The learned counsel for the Petitioner states that only the orders which affect the rights or liabilities of the parties have been made Appealable under the Act. Any procedural order passed by the Controller is not Appealable under Section 38 of the Act. It is urged that the order of dismissal of the Petition in default passed under Order IX Rule VIII CPC was such a procedural order and therefore, the Petition under Article 227 of the Constitution of India is maintainable. Reliance is placed on a judgment of this Court in *Smt. Bhagwati Devi & Ors. v. Haji S.M. Sayeed*, 1979 (2) RCR 142 where it was held that an order refusing an amendment of pleading was not such an order which affects the rights and liabilities of the parties. A similar

view was taken in *S.K.Aggarwal v. Abdul Aziz*, 81 (1999) DLT 278.

5. On the other hand, learned counsel for the Respondent states that an order dismissing the Eviction Petition cannot but be an order affecting the rights and liabilities of the parties and, therefore, the only remedy available to the Petitioner was to file an Appeal. Learned counsel for the Respondent places reliance on *Surendra Kumar v. Krishna Dwivedi*, 2005 (6) AD (Delhi) 508 where the judgment in *S.K.Aggarwal (supra)* was also referred to. The learned Single Judge held as under:-

“6. The legal position which emerges from the above cited authorities is that an order allowing or rejecting an application under Order VI Rule 17 CPC is appealable if it effects the rights of the parties. In the case in hand the rejection of the application is on the ground that the proposed amendment has the effect of withdrawing the admission and also change the nature of the case, in the opinion of this court, effects the right of the party seeking amendment. In any case whether the amendment has been wrongly declined is a legal question. Having regard to the background of this case i.e. the various judicial proceedings between the parties and the predecessor-in-interest of Smt. Krishna Dwivedi, this Court is of the opinion that the appeal lay under Section 38 of the Act against such an order of rejection of the application under Order VI Rule 17 CPC.....”

6. Thus, the learned Single Judge took the view that wherever there is an amendment which affects the rights or liabilities of the parties an order would be Appealable, otherwise Appeal would not be maintainable.

7. In *Central Bank of India v. Gokal Chand*, AIR 1967 SC 799, the Supreme Court dealt with the object of granting a remedy of only in respect of the orders affecting the rights or liabilities of the parties. Paras 2 and 3 of the report are extracted hereunder:-

“2. The Delhi Rent Control Act, 1958 empowers the Controller to pass orders for fixing the standard rent or lawful increase thereof, eviction of tenants and various other orders on the applications filed before him by the landlord or the tenant. Under Sections 36 and 37(2), the Controller may pass interlocutory orders in a pending proceeding. Under Section 36, he may pass orders for the summoning of witnesses, the issue of commissions for examination of witnesses, discovery, production and inspection of documents and inspection of premises. By Section 37(2), he is required to follow as far as may be the practice and procedure of a court of Small Causes, and following such practice and procedure, he may pass other interlocutory orders. Section 38 gives a right of appeal to the Rent Control Tribunal from every order of the Controller made under the Act. The Tribunal has all the powers vested in a court under the Code of Civil Procedure, 1908 when hearing an appeal. Under Section 39, an appeal lies to the High Court from an order of the Tribunal if the appeal involves some substantial questions of law. By Section 43, save as expressly provided in the Act, every order made by the Controller or an order passed on appeal under the Act is final and cannot be called in question in any original suit, application or execution proceeding. Section 38(1) reads:

“An appeal shall lie from every order of the Controller made under this Act to the Rent Control Tribunal (hereinafter referred to as the Tribunal) consisting of one person only to be appointed by the Central Government by notification in the

Official Gazette.””

“3. The object of Section 38(1) is to give a right of appeal to a party aggrieved by some order which affects his right or liability. In the context of Section 38(1), the words “every order of the Controller made under this Act”, though very wide, do not include interlocutory orders, which are merely procedural and do not affect the rights or liabilities of the parties. In a pending proceeding, the Controller may pass many interlocutory orders under Sections 36 and 37, such as orders regarding the summoning of witnesses, discovery, production and inspection of documents, issue of a commission for examination of witnesses, inspection of premises, fixing a date of hearing and the admissibility of a document or the relevancy of a question. All these interlocutory orders are steps taken towards the final adjudication and for assisting the parties in the prosecution of their case in the pending proceeding; they regulate the procedure only and do not affect any right or liability of the parties. The legislature could not have intended that the parties would be harassed with endless expenses and delay by appeals from such procedural orders. It is open to any party to set forth the error, defect or irregularity, if any, in such an order as a ground of objection in his appeal from the final order in the main proceeding. Subject to the aforesaid limitation, an appeal lies to the Rent Control Tribunal from every order passed by the Controller under the Act. Even an interlocutory order passed under Section 37(2) is an order passed under the Act and is subject to appeal under Section 38(1) provided it affects some right or liability of any party. Thus, an order of the Rent Controller refusing to set aside an ex parte order is subject to appeal to the Rent Control Tribunal.”

8. Thus, the Supreme Court was of the view that some of the orders can be agitated while preferring an Appeal against a final

order and if an innocuous order (though wrong) is passed the legislature did not intend that the same should become an instrument of harassment or delay by giving a remedy of Appeal against such an order.

9. In my view, the order declining to set aside the order dismissing an Eviction Petition in default is very much an order affecting the rights and liabilities of the parties. Therefore, Appeal under Section 38(1) of the Act is maintainable. The alternative remedy being available, this Court would not interfere with the impugned order in its jurisdiction under Article 227 of the Constitution of India.
10. Accordingly, the Petition is dismissed with liberty to the Petitioner to take appropriate remedy available to him under the law.

(G.P. MITTAL)
JUDGE

MARCH 30, 2012
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