

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No. 2549 of 2014 (O&M)
Date of decision: March 27, 2015

Ajaib Singh

...Petitioner

Versus

Vijay Kumar

...Respondent

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. **Whether Reporters of local papers may be allowed to see the judgment ? Yes**
2. **To be referred to the Reporters or not ? Yes**
3. **Whether the judgment should be reported in the Digest? Yes**

Present: Mr. MS Bedi Goel, Advocate,
for the petitioner.

Mr. Pawan Kumar Longia, Advocate,
for the respondent.

K. KANNAN, J. (Oral)

1. The revision is against the order of the appellate authority remanding the case to the Rent Controller and for giving an opportunity to the landlord to give evidence as well to the tenant to join issue on the point of contest and dispose of the rent petition. The order of remand came in a situation where the landlord had not availed several opportunities granted to him to tender his evidence before the Rent Controller. The evidence was, therefore, closed and the Rent Controller proceeded to dismiss the petition. In appeal by the landlord, the appellate authority set aside the order and afforded opportunities to both the parties to give evidence. It is against this order that the tenant has come in Revision before this court.

2. Before the arguments got underway, the counsel appearing on behalf of the respondent points out that after remand the landlord witnesses

were examined and his witnesses were also examined. Consequently, there is no need for consideration of the case on merit.

3. The learned counsel appearing on behalf of the petitioner, however, stated that passing of the final order has been stayed and was made to abide by the final decision. The counsel would argue that a Division Bench of this court has in Raghu Nath Jalota Versus Romesh Duggal and another AIR 1980 (Punjab) 1988 held that an appellate authority exercising the jurisdiction under the East Punjab Urban Rent Restriction Act, 1949 does not have a power to remand under Order 41 Rule 23 or Rule 25 of the Civil Procedure Code and it can only make any further inquiry itself or call for report from the Rent Controller. The power exercised by the appellate authority, therefore, according to the landlord's counsel, was not competent at all.

4. The learned counsel appearing on behalf of the respondent states that the above said Division Bench ruling itself was considered by a learned Single Judge in Balwant Rai Tayal Versus M/s Subhash Oil Company, Hisar 2003 (2) R.C.R. (Rent) 148 who held, where no evidence at all had been taken or where there was no consideration on merits on the preliminary point, the court will not be without power to direct remand and order fresh evidence to be taken. The learned Single Judge was also considering yet another Division Bench ruling of this court that did not completely rule out a case for remand to the appellate authority. The court made reference to the judgment in Krishan Lal Seth Versus Pritam Kumar, 1961 PLR 865 where a Division Bench was ruling the power of the appellate authority to remand for a fresh disposal on evidence when the previous dismissal had been on the basis of a preliminary objection. In yet

another judgment, in Om Parkash V. Tirshala and others 1979 (2) R.C.R. (Rent) 278, this court was making a further dent on the extent of power of remand, by innovating a new procedure that even if the appellate authority did not have the power and the matter was before the High Court, the High Court's power to make a remand would be supplanted and in justifiable cases the High Court itself can substitute the decision of the appellate authority and hold remand to be made.

5. It can be noticed from the consideration of the above judgments that an appellate authority which considered that some of the points raised before the Rent Controller has not properly considered, could direct a report to be sent after evidence is collected by Rent Controller but shall not remand a case for fresh consideration. The distinction made to the Division Bench ruling in Raghu Nath Jalota's case (supra) was to the extent that if the disposal of the Rent Controller was not on merit at all, such as when a preliminary objection was taken for maintainability of the petition or an occasion where the party had not given any evidence at all, then the appellate authority will not be without his power to direct the whole evidence to be given and the trial to start anew. This indeed was the view taken by yet another Bench in the case of Puran Singh Vs. Mahant Bhagwan Dass 2003 (1) RCR (Rent) 538.

6. I do not think that there was any error in the order passed by the appellate authority. It allowed fresh evidence to be taken in the peculiar circumstances when the case came to be dismissed without any evidence at all. Alternatively, the same way as was held in Om Parkash's case(supra), if the appellate authority had no such power, since the matter is before this court, I will endorse the view already taken and there ought to be an

opportunity to the landlord to afford his evidence. I am informed now, that evidence has already been led before the Rent Controller. The Rent Controller himself will decide the case on evidence brought and there is no requirement to send the evidence to the appellate authority. I sustain the order passed by the appellate authority in the light of the discussion made above and dismiss the revision petition.

March 27, 2015
prem

(K.KANNAN)
JUDGE