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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 2220 of 2017***(Arising out of order dated 04.07.2017 in Misc. Appeal No.7 of 2017 of the Rent Control Tribunal, Raipur)*

Mahendra Singh Rajpal S/o Late Santokh Singh Rajpal, Aged About 57 Years
 Royal Boot House, Shyam Talkies Road, Raigarh, R/o Danipara, Raigarh, Tahsil
 & District Raigarh (Chhattisgarh).

---- Petitioner**Versus**

Rajesh Kumar Jagatramka S/o Shri Ganesh Kumar Jagatramka, R/o Shyam
 Talkies Road, Nai Sadak, Raigarh, Tahsil & District Raigarh (Chhattisgarh).

---- Respondent**And****Writ Petition (C) No. 2222 of 2017***(Arising out of order dated 04.07.2017 in Misc. Appeal No.6 of 2017 of the Rent Control Tribunal, Raipur)*

Mahendra Singh Rajpal S/o Late Santokh Singh Rajpal, Aged About 57 Years
 Royal Boot House, Shyam Talkies Road, Raigarh, R/o Danipara, Raigarh, Tahsil
 & District Raigarh (Chhattisgarh).

---- Petitioner**Versus**

Rajesh Kumar Jagatramka S/o Shri Ganesh Kumar Jagatramka, R/o Shyam
 Talkies Road, Nai Sadak, Raigarh, Tahsil & District Raigarh (Chhattisgarh).

---- Respondent

For Petitioner	:	Shri Rajeev Shrivastava, Advocate.
For Respondent	:	Shri Sunil Pillai, Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sharad Kumar Gupta, Judge.

Order on Board**Per Thottathil B. Radhakrishnan, Chief Justice****16/08/2017**

- These two writ petitions are filed challenging a decision of the Rent Control Tribunal; for short, "Tribunal", constituted in terms of Article 323-B of the Constitution of India, under the provisions of the Chhattisgarh Rent Control Act, 2011; "Act", for short. That Tribunal is one whose decision is final in terms of the Act.

2. Heard the respective learned counsel for the Petitioner and the Respondents.
3. The Respondent-landlord filed an application seeking eviction on the ground referable to the ground at S.No.11(h) among the landlord's right enumerated in Schedule 2 read with Section 12(I) of the Act. If that application is pursued to its logical end, the landlord may stand tied down to a condition that he shall not lease out the premises at a higher rent for at least twelve months thereafter. The landlord filed a second application for eviction on the allegation that the tenant is a habitual defaulter in payment of rent; that is, on a ground falling under Serial No. 11(a) in Schedule 2 of the Act. Pleading that both the applications for eviction cannot stand together, the tenant applied to the Rent Controller seeking dismissal of the applications for eviction, invoking Order II Rule 2 of CPC. The Rent Controller rejected that plea. Tenant filed two appeals before the Tribunal under Section 8(b) of the Act. The Tribunal dismissed those appeals holding that Order II Rule 2 of the CPC does not apply to proceedings under the Act. Hence these writ petitions.
4. The learned counsel for the Petitioner argued that though the provisions of the Code of Civil Procedure; for short, 'CPC', including Order II Rule 2 thereof, are not made applicable *mutatis mutandis* to proceedings under the Act, the contents and principles of provisions like Section 11 and Order II Rule 2 of CPC are appropriate guidelines for due procedure in all competent civil jurisdictions. The principles underlying Order II Rule 2 and Section 11 etc. of the CPC are founded on public policy as well.
5. But, in our considered opinion, the question is as to whether we should entertain these matters under Article 227 of the Constitution of India.
6. Speedy conclusion of the decision making process is one of the foundations of the justice delivery system. Speedy justice is a component of social justice. Whatever may be the nature of the litigation, speedy adjudication and decision on litigations

is fundamental to a vibrant judicial system. This is an inbuilt component of the doctrine of equality before law and the avowed concept of “access to justice”, which is the formidable tool to overreach the socio, economic and other challenges. It does not matter whether the proceedings are pending before the traditionally civil or criminal Courts or before the Tribunals, which are bestowed with the role of adjudication in the justice dispensation system. See: *Noor Mohammed v. Jethanand*, (2013) 5 SCC 202. Every litigation has to reach its logical end, be it before any adjudicating authority. A *lis* may be in the Courts or Tribunals. They could also be before other competent adjudicating authorities, including quasi-judicial authorities or executive authorities bestowed with the power to determine the issues and resolve disputes. The sum and substance of the aspirations of a person who goes to the Court is to reach at the result of an adjudication to which that person's claims and disputes are subjected to. That logical end is the result for which the litigants wait. That cannot be never-ending. Practical wisdom in the adjudicating sector would aid an adjudicator to easily recall different modalities of prolonging trials by resorting to dilatory tactics. When a party resorts to such actions, it results in harassment of the opposite party and wastage of the adjudicator's time. This is a grave reason for the clogging of the existing system of administration of civil litigation.

7. The idea of Tribunalization cropped up as a measure of providing specialized adjudicating fora and to ensure that the delay component in the traditional litigations sector is detonated by fast tracking the adjudication of specific class of litigations. The litigations in the sector of leasing of accommodation, by balancing the interest of the landlords and the tenants, is the purpose of the Act in hand which provides for adjudication of matters connected therewith. It will not be in tune with the object sought to be achieved by the Act to permit the original proceedings to be dragged through repeated obstructive interlocutory applications that may be placed with the sole and oblique motive protracting the trial and conclusion of the original proceedings. Invocation of superior jurisdictions,

including appellate and, in particular, the supervisory; intermittently and repeatedly, during pendency of trial proceedings ought to be curbed because such repeated scouting to higher fora is anathema to the free flow of the due procedure aimed at delivering timely and qualitatively wholesome justice.

8. Under Sub-section 1(b) of Section 8 of the Act, the Tribunal functions as Appellate Authority to consider applications of all person(s) aggrieved by any order of the Rent Controller. Sub-section (1) of Section 13 of the Act provides the right to appeal to the Tribunal from any order of the Rent Controller. The learned counsel for the Respondent is right in referring to Sub-section (1) of Section 10 of the Act which provides, *inter-alia*, that the Rent Controller and the Tribunal shall not be bound by the procedure laid down by the CPC, but shall be guided by the principle of natural justice and subject to the other provisions of the Act or the Rules made thereunder and shall have powers to regulate their own procedure. Rules of natural justice are not embodied rules. They being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. See: *Swadesh Cotton Mills v. Union of India*, AIR 1981 SC 818. It is not possible to lay down any rigid rule as to which principle of natural justice is to be applied. There is no such thing as technical natural justice. The requirement of natural justice depends upon the facts and circumstances of the case, the nature of the enquiry, the rules under which the Tribunal is acting, the subject-matter to be dealt with and so on. The concept of fair play in action which is the basic natural justice must depend upon the particular *lis* between the parties. See: *Sawai Singh v. State of Rajasthan*, (1986) 3 SCC 454 and *V.K.Thampi v. CCE*, 1990 (48) ELT (Ker). Describing natural justice as a pervasive facet that enlivens legislation, administration and adjudication, to make fairness a creed of life, the Apex Court stated in *Mohinder Singh Gill v. Chief Election Commissioner*, (AIR 1998 SC 851) that it has many colours and shades, many forms and shapes and, save where valid law excludes it, applies when people are affected by acts of Authority, and further that, today its application must be sustained by current

legislation, case law or other extant principle. As rightly pointed out by the learned counsel for the Petitioner, the cardinal provisions of the CPC could be treated as appropriate guidelines in competent jurisdictions dealing with civil litigations. Many principles of public policy which are intended to operate against multiplicity of proceedings; repeated scouting of Courts, etc. can be traced as part of the core doctrines that are contained in the CPC. Thus, that Code, in its larger frame, holds a bundle of common sense. While it has to be ensured that the rules of procedure as contained in the CPC are not abused to retard the furtherance of the course of justice, the underlying principles therein which may be situationally conducive for application, could be borne in mind by the adjudicating authorities dealing with civil litigations even through Tribunals. It is worthwhile to recall in this context that the scenario of adjudication and court procedures in civil jurisdiction called for legislative intervention from time to time, essentially with the intention to put the adjudicating houses as vibrant institutions which are to deliver timely and qualitative justice, thereby meaningfully liquidating the litigations on merits. In this context, it needs to be noted that even in proceedings before a Civil Court to which the CPC undisputedly applies with all its vigour, that Code forbids the Court from deciding any issue as a preliminary issue unless it is an issue of law and such issue relates to the jurisdiction of the Court or a bar to the suit created by any law for the time being in force. Therefore, when an issue or point is raised by a litigant, it cannot be decided except at the final disposal of the suit unless such issue falls within the said two categories. This is a principle which furthers the process of expeditious disposal of the main matter. There is no reason why such a fundamental principle cannot be adopted in other civil jurisdictions, including the Rent Controller and the Tribunal, on the basis of principles of due procedure, to render timely, qualitative and substantive justice in litigations which are predominantly civil in nature.

9. The provisions of the Act are intended to provide quick remedy. Section 9(2) of the Act provides that all proceedings before the Rent Controller shall ordinarily

conclude within six months from the date of first appearance of the respondent in response to the summons issued for his appearance in the case or from the date on which the respondent is set *ex-parte*. Section 10(2) provides that Rent Control Tribunal shall not grant any adjournment without written application and recording the reasons therefor in writing. Expedition of final result of the proceedings under the Act is among the clear and salient objects sought to be achieved through the Act. This is a clear intendment of the Legislature in making the Act. The Act is a special enactment governing the landlord and tenant relationship and disputes. It does not provide any second appeal or revision to the High Court. In *Laxmikant Revchand Bhojwani v. Pratapsingh Mohansingh Pardeshi*, (1995) 6 SCC 576, the Hon'ble Supreme Court dealt with a case under Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. Noticing that the said enactment is a special legislation governing landlord-tenant relationship and disputes, it was laid down thus:

“9.....The legislature has, in its wisdom, not provided second appeal or revision to the High Court. The object is to give finality to the decision of the appellate authority. The High Court under Article 226 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to case of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.”

Fortifying the aforequoted principle, the Apex Court held in *Koylerian Janaki v. Rent Controller (Munsiff) Cannanore*; (2000) 9 SCC 406, that the purpose behind not providing such appellate or revisional remedy is to give finality to the order passed under the Act and that the power under Article 227 is not an appellate power and is exercisable only where it is found that due to a grave error, injustice has been caused to a party. Therefore, decisions on interlocutory applications should not be permitted to be carried for judicial review through jurisdiction under Article 227 of the Constitution except in extremely exceptional and shockingly irreconcilable situation of unsurmountable breach of jurisdiction and authority, or

flagrant violation of law, resulting in failure of justice, which ought to be remedied instantaneously. This would not deprive the parties of any of the substantial or procedural rights, but would enable them to preserve all their contentions against interlocutory orders, to be raised if and when they may arise for consideration in the event of final decision of the Rent Controller or the Tribunal as the case may be.

10. The factual premise on which the writ petitioner-tenant has invoked Article 226 of the Constitution is that, according to him, the landlord's two applications seeking the tenant's eviction; one on the ground of due notice in terms of Schedule 2, S.No. 11(h), and the other on the ground of habitual default in payment of rent, referable to S.No. 11(a) of Schedule 2 of the Act; are hit by the principles contained in Order II Rule 2 of CPC. It is trite that an objection based on Order II Rule 2 of the CPC is not one affecting the jurisdiction of the Court and the defendant raising such objection has to establish it with reference to pleadings and facts. Hence, a plea made with reference to Order II Rule 2 of CPC cannot generate an issue which would be a question of law only; and, one which relates to the jurisdiction of the Court or bar to the suit created by any law for the time being in force. Merely because the Rent Controller's decision has been confirmed by the Tribunal, it does not improve the content of this petition under Article 227 to be anything more than being one against an interlocutory order which relates to an issue that does not affect the jurisdiction or, as regards a bar to suit, which could be dealt with otherwise than by adjudicating on pleadings, facts and materials that may be tendered at trial. Hence, we see no reason to entertain this petition under Article 227 of the Constitution.

11. For the aforesaid reasons, reserving the right of the Petitioner to raise the plea of Order II Rule 2 of the CPC in the due subsequent round as against the decision now handed down by the Tribunal, if that becomes necessary, and also preserving the right of the Respondent-landlord to oppose any such plea, these

writ petitions are disposed of without peril and prejudice to the contentions of both the sides on the merits of the case before the Rent Controller in both the Rent Control petitions.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(Sharad Kumar Gupta)
JUDGE

Anu