

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 208 of 2017**

- Dayaram Bhagwani S/o Late Geman Bhagwani Aged About 80 Years R/o Sindhi Colony Bhakt Kanwarram Nagar, Tehsil And District- Bilaspur, Chhattisgarh

---- Petitioner**Versus**

- Ashok Kumar Bhagwani S/o Dayaram Bhagwani Aged About 51 Years R/o Sindhi Colony Bhakt Kanwarram Nagar, Tehsil And District- Bilaspur, Chhattisgarh

--- Respondent

For Petitioner	:	Mr. Rakesh Pandey, Advocate
For Respondent	:	Mr. Shishir Dixit, Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order on Board**Per Thottathil B. Radhakrishnan, Chief Justice****02.05.2017**

1. We have heard learned Counsel for the Petitioner and the learned Counsel for the Respondent.
2. Keeping aside, for the time being that the 80 year old Writ Petitioner is the father and 51 year old Respondent tenant is also his son, we have heard learned Counsel for the parties purely on the rights relatable to the Rent Control Act.
3. The jurisdiction under Article 227 of the Constitution is invoked on the premise that notwithstanding the provision in the Chhattisgarh Rent

Control Act, 2011 for an appeal to the Supreme Court, in terms of the decision of the Apex Court in *L. Chandra Kumar v. Union of India* reported in AIR 1997 SC 1125, the Petitioner is entitled to seek judicial review of the Tribunal's order.

4. The Rent Control Petition filed on the ground of bonafide need was proceeded with after setting aside the ex-parte order against Respondent tenant. However, ultimately the Landlord's application for eviction stood dismissed. The Landlord filed appeal before the Tribunal. That appeal was allowed by the Tribunal thereby setting aside the dismissal of the application for eviction, and the case was remitted to the Rent Controller. Obviously therefore, the parties are entitled under law to contest proceeding de-novo before the Rent Controller. To enable them to do so, the Respondent Tenant was given opportunity to file pleading and adduce evidence in opposition to the Rent Control Petition. This is challenged by the Landlord on the premise that while setting aside the dismissal of the Rent Control Petition and ordering remit for reconsideration, the Rent Control Tribunal ought not to have set aside the decision through which the tenant was declared ex-parte by the Rent Controller; meaning thereby that, the tenant was ineligible to contest the remitted proceeding. If we accept this pleaded argument in that regard, the consequences that would follow would be clear infraction of justice. The order declaring the tenant ex-parte has obviously, merged in ultimate dismissal of the Rent Control Petition by the Rent Controller. The final order of the Rent Controller went against the Landlord. The Tenant is not therefore one who continues to be aggrieved about the order setting him ex-parte. Therefore, when ultimately, an order of remand was made by the

superior authority for reconsideration of the proceeding by the court of first assistance, that could not have been made with dice loaded against tenant, by tying him down to the fact that he was set exparte pending the proceedings before the Rent Controller. Hence, we do not see any jurisdictional error or illegality committed by the Rent Control Tribunal requiring visitation by this Court under Article 227 of the Constitution of India. This application therefore fails.

5. In the result the Writ Petition is dismissed.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge