

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

Civil Revision No.8683 of 2014

Mohd. Hussain

... Petitioner

Versus

Mohd. Ashgar

... Respondent

(2)

Civil Revision No.8685 of 2014

Mohd. Hussain

... Petitioner

Versus

Mohd. Ashgar

... Respondent

Decided on : 11.05.2017

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Arihant Jain, Advocate
for the petitioner.

Mr. G.N. Malik, Advocate
for the respondent.

G.S. Sandhawalia, J. (Oral)

The present order shall dispose of two revision petitions i.e.

Civil Revision No.8683 and 8685 of 2014. The facts are being taken from
Civil Revision No.8683 of 2014 'Mohd. Hussain Vs. Mohd. Ashgar'.

The present revision petitions filed by the landlord are directed against the remand order of the Appellate Authority, Sangrur dated 07.11.2014 (Annexure P-2), whereby the Rent Controller has been directed to reconsider the evidence led by the parties and decide afresh under correct heads/issues expeditiously. Resultantly, the appeals filed by the respondent-tenant have been allowed.

Counsel for the petitioner has relied upon the Division Bench judgment of this Court in '**Raghu Nath Jalota Vs. Romesh Duggal and another**' 1980 AIR (Punjab) 188 to argue that under the provisions of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the Act') and in view of Section 15 (3), the Appellate Authority has to re-decide the issue either by himself or through the Rent Controller. The power of remand as such accordingly to the Appellate Authority was held to be not existing under the Act. The question referred to the by the Division Bench and the answer reads as under:-

*“Whether the appellate authority under Section 15(3) of the East Punjab Rent Controller Act, 1949, has the jurisdiction to remand the whole case to the Rent Controller for decision afresh is the sole, though meaningful, question which falls for determination in these two civil revision petitions before us on a reference. Directly linked therewith is also the issue of the correctness of the view expressed first by Grover J., in **Civil Revision No. 54 of 1957 - Moti Ram s/o Daulat Ram v. Ram Sahai S/o Chamba Ram**, decided on April 29, 1958, and its categoric affirmance by the Division Bench in **Shri Krishan Lal Seth v. Shrimati Pritam Kumari, 1961, PLR 865.***

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7. From the aforementioned history and the provisions of the present and the preceding rent legislation, it appears to be self-evident that apart from the larger purpose of restricting rents and giving special protection to the tenants. The specific intent of the legislature was to provide a special and expeditious procedure for the disposal of the matters under the Act. The jurisdiction for the determination of these

matters was designedly and meaningfully taken away from the ordinary run of Civil Courts and vested in the Controllers. They were left to devise their own procedure free from technicalities and formalities of the Civil Procedure Code which governed the Civil Courts, Sections 16 and 17 of the Act brought in the Code of Civil Procedure only for the limited purpose of the summoning and enforcing the attendance of witnesses and the execution of the orders passed by the Controller or the Appellate Authority and by necessary implication exclude the strict application of its provisions to the authorities under Act. The underlying purpose was to rid the authorities under the Act from the shackles of technical procedure and to provide a summary and expeditious mode of disposal, is further evident from the fact that ordinarily only one appeal was provided by the statute to the Appellate Authority and all further appeals or revisions were barred by Section 15(4) of the Act. It was not till 1956 that by the Punjab Act No. XXIX, Sub-section (5) was added to Section 15 of the Act vesting the High Court with special revisional jurisdiction thereunder.

8. Now it may be recalled that under the Punjab Rent Restriction Act, 1941, the rent jurisdiction had continued to vest in the ordinary Civil Courts and therefore, was squarely covered by the Civil Procedure Code, 1908, including its appellate provisions laid out in Order 41 thereof. However, when the Punjab Urban Rent Restriction Act, 1947 was enacted, the Civil Procedure Code generally was excluded from the rent jurisdiction apart from the specific provisions thereof mentioned in the said statute itself. The framers of the Act of 1947 and the successor statute therefore, must be deemed to be more than well aware of the general law of procedure contained in the Civil Procedure Code and in particular the appellate powers thereunder which had earlier governed the rent jurisdiction as well. In particular

reference in this connection is called to the provisions of Rule 23 and Rule 25 Order 41 of the Code, which may be first read for facility of reference :-

"23. Remand of case by Appellate Courts :-

Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded and shall send a copy of its judgment and order of the Court from whose decree the appeal is preferred, with direction to readmit the suit under its original number in the register of civil suits and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand."

24. Where Appellate Court may frame issues and refer them for trial to Court whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required.

And such Court shall proceed to try such issues and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor."

The aforesaid provisions are plain and it is evident that whilst Rule 23 in terms confers on the Appellate Court a power of remand, directing a decision afresh. Rule 25

confers a limited power on the Appellate Court, to specifically refer an issue or other questions of fact etc. for additional evidence and findings thereon by the trial Court, which for case of reference is sometime called a report from the trial Court for the final decision of the appeal. Again Rule 27 provides the limitations within which the production of additional evidence in the appellate court is to be allowed. It must inevitably be assumed that the legislature was amply and fully conversant with the power of the appellate court specifically conferred by the Civil Procedure Code. However, when it came to conferring the said power on the appellate authority constituted under Act, Section 15(3) seems to have designedly chosen to refer only to the power of making further enquiry either by the Appellate Authority itself or through the Controller. In effect, therefore, the framers chose in concise language the appellate power spelt out in Rules 25 and 27 of the Code of Civil Procedure to the deliberate exclusion of the power of remand and decision afresh as stood specifically laid out in Rule 23. To give an example, if Rule 23 of the Code were to be designedly repealed by the Parliament, could it possibly be said that nevertheless a power to remand for decision afresh would continue to vest in the Appellate Authorities to which the Code applies. It appears to me that the answer to such a question must inevitably be in the negative. It is significant that in Section 15(3) the very word 'remand' is conspicuous by its absence and there is not the least reference of sending the case back to the trial Court for a fresh determination thereof. Indeed it appears to me that once it is held that the framers of the statute were well aware of the appellate powers, so well known and fully spelt out in the Civil Procedure Code,

the couching of Sub-section (3) in the terms in which it has now been laid, cannot have any other meaning except that either expressly or in any case impliedly the intent of the legislature was to exclude the power of remand and decision afresh as laid down in Rule 23.

9. In the aforesaid background, Mr. J.L. Gupta learned counsel for the petitioner appears to be on firm ground in contending that the legislature had a clear-cut and purposeful rationale in excluding the power of remand and a decision afresh under Section 15(3) of the Act. It was pointed out that one of the major premises of the statute was to take away the rent jurisdiction from the ordinary gamut of Civil litigation and to put it in more expeditious and a quicker procedural remedy laid out under the Act and emancipate it from the limitations and technicalities of Civil Procedure. It was in line with this intent that the legislature again expressly chose the relatively speedier mode of disposal of appeals by providing that there could only be either an enquiry through the Controller or itself by the Appellate Authority in order to prevent the whole matter from being put back into the boiling pot of litigation by a remand of the whole case and its trial and decision afresh. It was highlighted that by its very nature the issues of eviction and others arising under the rent jurisdiction are urgent in nature calling for an expeditious final decision. The very purpose of the statute may indeed be frustrated if this jurisdiction is again bogged down into the quagmire of the ordinary civil process. It was, therefore, submitted with considerable plausibility that a reading of the power of remand and decision afresh in Section 15(3) with the consequential result of a retrial and an appeal and revision therefrom would virtually reduce the expeditious procedure sought to be devised by the Act to the tardy process of the ordinary Civil suit from which it was sought to be liberated

by special legislation.

10. The above view is patently buttressed by the recent 77th Report of the Law Commission of India, where in Chapter-10, it has been stated as follows :-

"10. 1. There are certain cases which, by their very nature, have an element of urgency about them and call for speedy disposal. Quite a number of these cases are under special Act. ---.

10. 2. A second category of cases which call for early disposal are 'eviction cases' especially those on the ground of bonafide personal necessity of the landlord. Such cases obviously call for an early disposal."

11. The case in hand is itself an example (though much more glaring ones are also available) of the delay in the courts below which may nevertheless occur despite the legislature's intent to provide an expeditious procedure for the rent jurisdiction which prima facie cries out for urgent disposal. The application for ejectment was preferred way back on the 20th of January, 1971, but it was not till more than four years later that on the 10th of March, 1975 the case came to be decided by the Controller. The Appellate Authority proceeded with relative quickness, but nevertheless, it was not till a year and three months thereafter that the judgment under revision was rendered. If the matter were to be remanded for a fresh decision, the parties would be thrown back into the mill of a fresh trial which conceivably may take as long as the earlier one. Therefrom, inevitably would arise fresh rights of a regular appeal under Section 15(3) and the possibility of a revision thereafter have equally to be conceived of. It were perhaps such like eventualities which had motivated the legislature that at least within the rent jurisdiction, the appeal would remain before the Appellate Authority even though fresh enquiry may be necessary in order to prevent the start of the cycle all over again.

12. It was then faintly sought to be argued before us on behalf of the respondent that despite the fact that Section 15(3) does not spell out any such power, there is nevertheless an inherent power to remand the matter for a decision afresh by the Appellate Authority. In view of what has been said above, this argument cannot hold water even for a moment. Once it is held that the legislature of the framers of the Act, by express or implied implication excluded the power of remand from the ambit of the appellate power under Section 15(3), then no question of any such inherent power vested in the Appellate Authority can arise. Holding otherwise would be introducing by the back door what the legislature had expressly excluded by barring the front one. It is then to be recalled that the Controller or the Appellate Authority are not a court of law. They are only persons designata under the Act. Therefore, any theory of these quasi judicial tribunals exercising any inherent powers is of little validity. Equally it deserves highlighting that there is no provision even remotely analogous of Section 15 of the Civil Procedure Code in the Act from which any such power could possibly be derived. Therefore, in the context of a special tribunal, the concept of inherent appellate power does not at all appear tenable. It has been held not once, but repeatedly that even the very right of appeal is a mere creature of the statute and there is no fundamental right of appeal from an original forum. Once it is so, then obviously where a special statute provides an appellate forum, its powers must be limited within the narrow confines of what has been conferred on it by the statute. As noticed already there is no inherent power of appeal nor can it be said that a special Appellate Tribunal has inherent powers other than what are expressly laid upon it by the provision creating it. Reference in this connection may be made to the elaborate Division Bench judgment in **Shri Chand and others v. State**

of Haryana, 1978 Punjab Law Reporter 660.

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*19. To conclude therefore the history of the legislation, its object and purpose, the specific language of Section 15(3) of the Act and both principle and precedent, all tend to render an answer in the negative to the mention formulated at the outset. It is, therefore, held that there is no jurisdiction in the Appellate Authority to remand the whole case to the Controller for entirely a fresh decision and the view in **Moti Ram s/o Daulat Ram v. Ram Sahai s/o Chamba Ram, C.R. No. 641 of 1975 decided on April 29, 1958 and Shri Krishan Lal Seth v. Shrimati Pritam Kumari, 1961 Punjab Law Reporter 865**, is reaffirmed.*

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25. In accordance with the answer to the main question of law rendered earlier, both the revision petitions are hereby allowed and the order of the Appellate Authority is hereby set aside with the direction that he shall proceed to decide the appeals himself in the right of the observation made above.

Appeal allowed.”

Keeping in view the above law, the order of the Appellate Authority has to be considered.

Counsel for the petitioner has rightly submitted that two petitions bearing Rent Application Nos.7 and 40 had been filed for eviction of the respondent. One was on the ground of non-payment of rent from 01.09.1997, which was instituted on 05.03.2001. Similarly, Rent Application No.40 was filed on 18.11.2000, which was on the ground of material impairment and bonafide requirement. The issues were framed respectively in the two eviction petitions on 09.06.2001 and

28.07.2001. On account of the consolidation of the two petitions on 07.11.2003, another set of issues was framed on the same date. The same reads as under:-

- “1. What is the rate of rent? OPP*
- 2. Whether the tender made by the respondent in eviction petition dated 19.09.2000 is short and invalid? OPP*
- 3. Whether the tender made in the eviction petition filed on 17.11.2000 is short and invalid? OPP*
- 4. Whether the respondent/tenant has made material alterations diminishing the value and utility of the demises premises? If so, its effect? OPP*
- 5. Whether the petitioner/landlord is in bonafide need of the premises for his personal use and occupations prayed for? OPP*
- 6. Whether the ground taken in the subsequent eviction petition filed by the landlord are barred u/s @ rule 2 CPC? OPR*
- 6A. Whether the rate of rent of the demises shop is Rs.1,000/- per month or Rs.700/- p.m? OPR*
- 7. Whether the petitions are maintainable? OPP*
- 8. Relief.”*

The Rent Controller, thereafter, proceeded to give findings on the evidence which was recorded. The statement of the petitioner-Mohd. Hussain was taken into consideration and similarly statement of the tenant was also taken into consideration alongwith the rent note, since the dispute was of rate of rent as to whether it should be ₹700/- or ₹1,000/-. It was also noticed that the respondent had tendered the arrears of rent w.e.f. 01.09.1997 to 28.02.2001 @ ₹1,000/- per month.

Resultantly, it was held that it could not be held that the rent

was reduced from ₹1,000/- to ₹700/- per month as held out by the tenant and, therefore, the findings were recorded on the consolidated Issue Nos.1, 2, 3 and 6-A regarding the rate of rent whether the tender made is short and similarly whether it was ₹1,000/- or ₹700/-. No doubt the headings as such have not been rightly worded by the Rent Controller. Similarly, under consolidated Issue No.4 on the issue of material impairment categorical discussion has been made that material construction has been done and, accordingly, the issue has been decided in favour of the landlord and keeping in view the raising of the construction and covering of the open space etc. Similarly, regarding Issue No.5 on the ground of bonafide requirement, the principle was kept in mind that the requirement was for the son of the landlord, namely, Mohd. Anwar. Similarly, the plea taken that two petitions were not maintainable were also dealt with, which were to be under Issue No.6 & 7 whether the second petition was barred under 2 Rule 2 whether the petition was maintainable or not. It was, accordingly, held that it is a separate cause of action.

In such circumstances, keeping in view the settled law, this Court is of the opinion that the Appellate Authority was admittedly in error in remanding the matter. Resultantly, the impugned order dated 07.11.2014 (Annexure P-2) cannot be sustained and is, accordingly, set aside.

The Appellate Authority shall re-decide the issues on the basis of the evidence which has already come on record, as held out by

the Division Bench in *Raghu Nath Jalota (supra)* under Section 15 (3) of the Act, it can make such further inquiry.

Keeping in view the fact that the case is old one, the exercise be completed within a period of 3 months from the receipt of the certified copy of this order.

The parties are directed to appear before the District Judge, Sangrur on 30.05.2017, for appropriate entrustment.

With the abovesaid observations, the present revision petitions stand disposed of.

MAY 11, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No