

In the High Court of Punjab and Haryana at Chandigarh

CR- 2103 of 2018(O&M)
Date of Decision:22.1.2019

Shiv Raj Sablok

---Petitioner

vs.

Gurmeet Singh and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Deepanshu Matya, Advocate
for the petitioner

Mr. Mayank Bansal, Advocate
for respondent No. 1

Rekha Mittal, J.

The present petition directs challenge against order dated 22.12.2017 passed by the Appellate Authority, Ambala whereby appeal against order dated 6.5.2017 qua assessment of provisional rent by the Rent Controller, Ambala was allowed, the impugned order was set aside and the matter was remitted to the Rent Controller with a direction to pass a fresh order for provisional assessment of rent by taking into account documents discussed in the order impugned.

Counsel for the petitioner has submitted that order impugned remitting the case for assessment of provisional rent afresh is beyond jurisdiction of the Appellate Authority, therefore, cannot be allowed to

sustain. It is further argued that the Appellate Authority can only order a fresh enquiry either by the Rent Controller or at its own level for deciding the case but can not remit the matter to the Rent Controller for decision of the matter afresh as has been done in the present case. In support of his contention, he has relied upon judgment of Division Bench of this Court **Raghu Nath Jalota vs. Romesh Duggal and another 1979(2) RCR(Rent) 501** and Single Bench judgment of this Court **Smt. Urmila Devi vs. Davinder Singh 2014(1) RCR(Rent) 242**.

Counsel for respondent No. 1 is not in a position to support the impugned order when examined in the light of enunciation laid down in the referred authorities.

I have heard counsel for the parties and find that the petition is meritorious and deserves to be accepted.

The Division Bench of this Court in **Raghu Natha Jalota's case (supra)** has held that in Section 15(3), the 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. It appears that once the framer of the statute were well aware of the appellate powers, so well known and fully spelt out in the Code of Civil Procedure, couching of sub Section 3 in the terms in which it has not 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 24 of Order 41 CPC.

In **Smt. Urmila Devi's case (supra)**, this court set aside the order passed by the Appellate Authority by holding that the order

remanding the case to the Rent Controller for decision afresh cannot be sustained and deserves to be set aside.

In the case at hand, the Appellate Authority has remitted the case to the Rent Controller for assessment of provisional rent afresh by taking into account the documents discussed in the order. If the Appellate Authority was of the view that documents which are a part of records of the Rent Controller and relevant for deciding the question of provisional assessment of rent have not been taken into consideration at this stage, the Appellate Authority was well within its jurisdiction to consider those documents and pass an appropriate order warranted in the circumstances. However, the Appellate Authority cannot exercise the power of remand in the given circumstances when examined in the light of Division Bench judgment **Raghu Nath Jalots's case (supra)**. As such, the order impugned cannot be allowed to sustain and accordingly set aside.

In view of what has been discussed hereinbefore, the petition is allowed. The impugned order is set aside. The matter is remitted to the Appellate Authority for decision of the appeal afresh, in accordance with law.

(Rekha Mittal)
Judge

22.1.2019
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No