

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

CR-6378-2018 (O&M)

Date of decision: 10.11.2022

Ashok Kumar

....Petitioner

Versus

Sood Sabha

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vivek Salathia, Advocate for the petitioner
 None for the respondent

ANIL KSHETARPAL, J (Oral)

1. Case has been called out twice. Learned counsel representing the respondent did not enter appearance.

2. The petitioner herein is a tenant in the premises owned by the respondent. The respondent filed an eviction petition seeking ejection of the petitioner. The same was dismissed by the Rent Controller. In first appeal, the Appellate Authority has remanded the case back to the Rent Controller to decide the matter afresh, after giving an opportunity to the parties to lead additional evidence. Challenging the correctness of the aforesaid order, this revision petition has been filed. Learned counsel representing the petitioner relies upon a Division Bench judgment passed in **Raghunath Jalota vs. Romesh Duggal and another AIR 1980 (Punjab) 188** to contend that the Appellate Authority constituted under the East Urban Punjab Rent Restriction Act, 1949 has no power to remand the case to the Rent Controller. While referring to para 23 of the said judgment, which is reproduced as under, the learned counsel submits that the order passed by the Appellate

Authority is against the law interpreted by the Division Bench:-

*“23. In **Tulsi Ram v. Mohan Krishan, 1979(1), R.L.R. (Pb & Hr.) 308**, the matter was only incidentally raised before Goyal, J. and it is apparent that the issue was not canvassed at any length. The argument was brushed aside with the following observation:-*

*****I am afraid, I am unable to agree with this contention. The provisions of Section 15(3) only envisage further enquiry when there has been a trial and the Appellate Authority for its satisfaction wants to make any further enquiry. Where there has been no trial, as in the present case and where the ex parte proceedings are set aside, if the contention of the learned counsel is accepted the Appellate Authority has to hold the trial from its very inception. In my view this is not the intention of the provisions of Section 15(3) of the Act which is meant to meet the contingencies noticed above. I have, therefore, no hesitation in overruling the objection of the learned counsel that the lower appellate Court had no jurisdiction to send back the case for fresh trial.”*

Even whilst making the present reference, the learned judge has made similar observations that if the Appellate Authority is denuded of the power of remand and decision afresh, then it has to perform the function of the Rent Controller itself. With great respect, this view does not commend itself to us. The plain language of Section 15 (3) clearly provides both alternatives in a wide ranging discretion to the Appellate Authority. He is entitled to make such further enquiry either himself or through the Controller. It is thus plain that in appropriate cases, if the Appellate Authority so desires, the matter can be sent to the Controller for the recording of further evidence and even the findings to be arrived at thereon. This procedure can obviously be closely analogous to the calling of a report from the trial Court under Order 41 Rule 25 of

the Civil Procedure Code. Therefore, the fear repeatedly expressed that the absence of the power of remand would inevitably and as a matter of law convert the Appellate Authority into a trial Court, in peculiar cases, appears to be not well founded. It would be wasteful to reiterate all the reasons given above and on their basis, there is no option, but to overrule the judgment on this point.”

3. This Court has considered the said submission. Though, it has been found that the Rent Controller while dismissing the petition primarily dismissed the case on the ground that there is no relationship of landlord and tenant between the parties in dispute, however, in view of the binding precedent laid down by the Division Bench of this Court, this Court is left with no other choice but for to set aside the order passed by the Appellate Authority on 04.04.2018. The Appellate Authority is requested to either decide the appeal while permitting the parties to lead further evidence or may seek a report from the Rent Controller on the particular issue.

4. The petitioner through his counsel is directed to appear before the Appellate Authority on 12.12.2022. The first appeal shall stand restored to its original number.

5. With all these observations, the revision petition stands disposed of.

6. All the pending miscellaneous applications, if any, are also disposed of.

10.11.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE