

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

CR-6830-2017(O&M)

Date of decision:-25.1.2023

Naresh Kumar Jhangra

...Petitioner

Versus

Preeti Bhatnagar

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Sherry K.Singla, Advocate
for the petitioner.

Mr.R.K. Shukla, Advocate
for the respondent.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that petitioner/landlady Preeti Bhatnagar had filed an ejectment petition against respondent Naresh Kumar Jhangra, which was dismissed by Rent Controller, Patiala vide order dated 17.9.2015.

2. Feeling aggrieved, the petitioner/landlady had preferred an appeal before District Judge-cum-Appellate Authority, Patiala, who vide order dated 8.9.2017 disposed it of by observing that appellant/petitioner be afforded an opportunity to cross-examine RW1 and RW2, therefore, the impugned order under appeal passed by Rent Controller was set aside and case was remanded to Rent Controller, Patiala with a direction to afford an effective opportunity to the petitioner to cross-examine RW1 and RW2, allow her to lead rebuttal evidence and pass a fresh order after hearing arguments of both the sides.

3. Such order left the respondent aggrieved and he has challenged the same by way of filing a revision petition before this Court, notice of which was given to respondent/landlady, who has put in appearance through counsel.

4. I have heard learned counsel for the parties besides going through the record.

5. Learned counsel for the revision petitioner relying upon the judgment **Raghu Nath Jalota Versus Romesh Duggal and another, 1980(1) RCJ 404** by a Division Bench of this Court, wherein it was observed that Appellate Authority under Rent Act has no jurisdiction to remand the case to Rent Controller for entirely fresh decision and the Appellate Authority can make only further enquiry either by itself or through Rent Controller; as well as judgment by a Single Judge of this Court in **Satish Kumar Versus Om Parkash, 2015(2) RCR(Rent) 274** has condemned the order passed by the Appellate Authority stating that the Appellate Authority has no jurisdiction to remand the case after setting aside the order passed by the Rent Controller.

6. Learned counsel appearing for the respondent/landlady has contended that the Rent Controller has wrongly treated the cross-examination of RW1 and RW2 as 'Nil' causing prejudice to the petitioner/landlady and on such illegality being pointed out to the Appellate Authority, that was set right by the said Authority by setting aside the order passed by the Rent Controller and remanding the case back and no fault can be found with such order.

7. After hearing the rival contentions, I find that the Appellate

Authority was not justified in setting aside the order dismissing the ejectment petition and remanding the case back to Rent Controller. If he found that the petitioner was wrongly denied opportunity to cross-examine RW1 and RW2, he should have directed the Rent Controller to make further enquiry in the form of allowing the petitioner to cross-examine RW1 and RW2 and then to send report to the Appellate Authority, thereafter, the Appellate Authority could have proceeded to decide the appeal.

8. Therefore, the order passed by the Appellate Authority, Patiala is not sustainable, the same is set aside. The Appellate Authority is directed to proceed further in the matter as already observed above. It can direct the Rent Controller, Patiala to afford an opportunity to petitioner/landlady to cross-examine RW1 and RW2 and thereafter to send report to the Appellate Authority, who may thereafter decide the appeal in accordance with law.

9. Keeping in view the issues framed in this case, there is only one issue i.e. issue No.5, onus of proving which lies upon the respondent i.e. with regard to jurisdiction of the Court to entertain and try the revision petition. The Rent Controller has not touched that issue in the order dismissing the ejectment. The Appellate Authority may ask the Rent Controller to send report on that issue also. Since jurisdiction is a mixed question of law and fact, in case the petitioner wants to lead evidence in that regard, her such request may be considered by the Appellate Authority as per law.

10. With such observations, the revision petition is accepted

partly and the case is remanded to Appellate Authority, Patiala for further proceedings in the matter in light of the directions issued above.

Since the main revision petition has been disposed of, the miscellaneous application(s), if any, stand disposed of accordingly.

25.1.2023

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(H.S.MADAAN)**JUDGE****Whether reasoned/speaking : Yes/No****Whether reportable : Yes/No**