

In the High Court of Punjab and Haryana, at Chandigarh**Civil Revision No. 6399 of 2019 (O&M)****Date of Decision: 12.09.2023**

Jangi Ram (Since Deceased) through his legal representatives

... Petitioner(s)

Versus

Ashok Kumar

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Ankur Jain and Mr. Nitish Garg, Advocates
for the petitioner(s).

Mr. Amit Jain, Senior Advocate
with Mr. Varun Parkash and Mr. Vaibhav Sehgal, Advocates
for the respondent.

Anil Kshetarpal, J.

1. In the eviction petition filed under the East Punjab Urban Rent Restriction Act, 1949, the tenant was ordered to be evicted by the Court of the Rent Controller.

2. Originally, the petition was filed by late Sh.Jangi Ram. The eviction was sought by late Sh.Jangi Ram on the ground that his son has a bonafide requirement of the premises. The petition was allowed on 07.08.2015 after a long trial of four years.

3. During the pendency of the tenant's appeal, Sh.Jangi Ram died. Three applications were filed by the parties. The first application was filed by the tenant for permission to amend the written statement in order to bring on record the subsequent events. The second application was filed by the landlord (son of late Sh.Jangi Ram) for permission to amend the petition in order to claim that he requires the premises for the expansion of his business. The third application was filed by the tenant under order XLI Rule 27 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC")

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for permission to lead additional evidence. The Appellate Authority has allowed all the three applications, However, without considering the case on merits, the Appellate Authority has simply remanded the case back to the Rent Controller for deciding it afresh.

4. As per the Order XLI Rule 23A CPC, the remand by the Appellate Authority is permissible only if the Appellate Authority reverses the decree and retrial is considered necessary. It is again debatable, “Whether the Appellate Authority, in the rent proceedings, has jurisdiction to remand the case back or not?”. Be that as it may. The Appellate Authority is entitled to record evidence or seek report from the Rent Controller. Without setting aside the judgment passed by the Rent Controller, on merits, it was not appropriate for the Appellate Authority to set aside the judgment.

5. Keeping in view the aforesaid facts, the order passed by the Appellate Authority to the extent that the order passed by the Rent Controller has been set aside, is declared null and void. The Appellate Authority is directed to proceed with the matter, in accordance with law.

6. With the observations made above, the present revision petition is disposed of. The miscellaneous application(s) pending, if any, shall also stand disposed of.

7. The parties, through their learned counsel, are directed to appear before the Appellate Authority on 06.10.2023.

(Anil Kshetarpal)
Judge

September 12, 2023

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No