



203

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-879-2023 (O&M)
Date of decision: 24.09.2025

LAJPAT RAI MALHOTRA

..Petitioner

Versus

ATAM DEV SOOD (DECEASED) THROUGH LRS. & ANR

..Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Ms. Bhavna Kapur Advocate
for the petitioner.

Mr. Nikhil Sabherwal, Advocate
for respondent No.1 and 2.

Mr. R.S. Chauhan, Advocate
for respondent No.3.

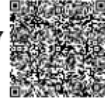
SUDEEPTI SHARMA, J. (Oral)

1. The challenge in the present revision petition is to order dated 25.11.2022 passed by the Appellate Authority, Kapurthala, whereby Appellate Authority has remanded the matter to the trial Court.

Submissions of learned counsel for the parties:-

2. Learned counsel for the petitioner contends that the Appellate Authority has no power to remand the matter as per Section 15(3) of the East Punjab Urban Rent Restriction Act, 1949 (in short '1949 Act'). She further contends that respondent No.3 never filed written statement and he never agitated for the same.

3. She further contends that appeal has been filed by respondent No.1 and 2 and not by respondent No.3.



4. Learned counsel for the petitioner in support of her contentions relies upon the following judgments:-

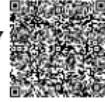
- i) ***Raghu Nath Jalota Vs. Romesh Duggal and another, Civil Revision No.965 of 1976, decided on 01.08.1979;***
- ii) ***Ashok Kumar Vs. Sood Sabha, Civil Revision No.6378 of 2018, decided on 10.11.2022;***
- iii) ***Smt. Shakuntla Devi Vs. Ramji Lal, Civil Revision No.334 of 1980, decided on 23.03.1981.***

5. She therefore, contends that the present petition be allowed and order dated 25.11.2022 passed by the Appellate Authority, Kapurthala, be set aside.

6. Per contra, learned counsel for respondents denies the contentions of the petitioner on facts, whereas, are not able to rebut the power of Appellate Authority to remand the matter as per the provisions of Section 15(3) of 1949 Act.

7. I have heard learned counsel for the parties and have gone through the file of this case with their able assistance.

8. A perusal of the impugned order shows that Appellate Authority has set aside the order under appeal *in toto* and the matter was remanded to the trial Court with the direction to give an opportunity to respondent No.3 to file written statement and thereafter, frame fresh issues and then give effective opportunities to the parties to lead evidence in support of their contentions in case they want and then pass a fresh order.



9. The only question involved in the present revision petition is as to whether the Appellate Authority has power to remand the matter to the Rent Controller. The answer to this is in negative.

10. It would be apposite here to reproduce Section 15(3) of 1949 Act:-

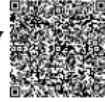
“15. Vesting of appellate authority on officers by State Government.

(3) The appellate authority shall decide the appeal after sending for the records of the case from the Controller and after giving the parties an opportunity of being heard and, if necessary, after making such further inquiry as it thinks fit either personally or through the Controller.”

11. A perusal of the above shows that the scope of remand is not within the power of Appellate Authority. The Appellate Authority is mandatorily to decide the appeal after calling for the records of the case from the Controller and after giving the parties an opportunity of being heard and, if necessary, after making such further inquiry as it thinks fit either personally or through the Controller.

12. The above referred to provision is very clear regarding the power of the Appellate Authority to remand the matter. The Appellate Authority has no power to remand the matter to the Rent Controller rather it has power to decide the appeal after making inquiry himself or through the Controller.

13. The language of the above referred to Section 15(3) of 1949 Act itself reads the intention of the framers of the statute and if the intention of the framers of statute was to be otherwise it could have been specifically

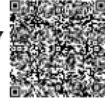


mentioned in Section 15(3) of 1949 Act regarding the power of Appellate Authority with respect to remand of the matter for fresh decision.

14. Now coming to the judgments referred to by learned counsel for the petitioner in **Raghu Nath Jalota Vs. Romesh Duggal and another, Civil Revision No.965 of 1976, decided on 01.08.1979**, wherein it has been held as under:-

“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 Code of Civil Procedure, 1908, including its appellate provisions laid out in Order 41 thereof. However, when the Punjab Urban Rent Restriction Act, 1947 was enacted, the Code of Civil Procedure 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 Code of Civil Procedure 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 of Order 41 of the Code, which may be first read for facility of reference:-

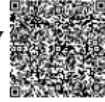
“23. Remand of case by Appellate Court. Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgement and order to 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 case 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 there for."

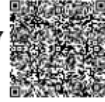
The aforesaid provisions are plain and it is evident that whilst Rule 23 in terms confers on the Appellate Court a power of remand, directing a decision afresh, Rule 25 confers a limited power on the Appellate Court, to specifically refer an issue or other questions of fact etc. for additional evidence and findings thereon by the trial court, which for ease 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 powers of the appellate court specifically conferred by the Code of Civil Procedure. However, when it came to conferring the said powers on



the appellate authority constituted under the 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 Rr. 25 and 27 of the CPC 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 Code of Civil Procedure 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.”

15. In **Ashok Kumar Vs. Sood Sabha, Civil Revision No.6378 of 2018, decided on 10.11.2022**, it has been held as under:-

“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.”

16. In **Smt. Shakuntla Devi Vs. Ramji Lal, Civil Revision No.334 of 1980, decided on 23.03.1981**, it has been held as under:-

“5. After a careful consideration of the contentions raised by the learned counsel on either side, I do not find any merit in the submission made on behalf of the learned counsel for the respondent. It has been held in Raghu Nath's case supra that under Section 15 (3) of the East Punjab Urban Rent Restriction Act, 1949, which is identical to the provisions of Section 15 (4) of the Haryana Act that the Appellate Authority has no jurisdiction to remand the whole case to the Rent Controller. The proper course to be adopted by the Appellate Authority in case he disagrees with the conclusion of the Rent Controller is to ask for a report from the Rent Controller on the basis of evidence already on record or even after recording of the evidence. In para 21 of the judgment a contention similar to the one raised by the learned counsel for the respondent has been dealt with wherein it has been held that even if the Rent Controller has disposed of a case on the basis of a preliminary issue, still the Appellate Authority while upsetting the conclusion of the Rent Controller on that issue has no jurisdiction to remand the case to the Rent Controller for decision afresh.”



17. In above referred to judgments, this Court has categorically held that Appellate Authority under 1949 Act has no jurisdiction to remand the case to Rent Controller for entirely fresh decision.

18. In view of the above discussion, Appellate Authority cannot remand the case to the Rent Controller to decide afresh since Appellate Authority constituted under the 1949 Act has no power to remand the case to Rent Controller.

19. Accordingly, the present petition is allowed. Order dated 25.11.2022 is set aside. The matter is remanded to the Appellate Authority to decide the appeal in accordance with Section 15(3) of 1949 Act.

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

September 24th, 2025

Ayub

(SUDEEPTI SHARMA)
JUDGE

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