APPELLATE CIVIL

Before Prem Chand Pandit, J.

DURGA SWAROOP BHATNAGAR,—*Appellant.*

versus

MURARI LAL,—*Respondent.*

S.A.O. 172-D of 1963,

1963

Dec., 19th.

Delhi Rent Control Act (LIX of 1958)—Ss. 38, 39 and 43—Order striking out defence passed—No appeal filed against that order—Whether that order can be challenged in an appeal against the final order of eviction.

Held, that according to sections 38 and 39 of the Delhi Rent Control Act, 1958, an appeal lies from every order of the Controller made under the Act to the Rent Control Tribunal and a second appeal lies to the High Court in cases where some substantial question of law is involved. If no appeal is filed against an order it becomes final under section 43 of the Act. Since no appeal was filed against the order striking out the defence, it became final under section 43 of the Act and could not be challenged in an appeal from the order of eviction. Section 105 of the Code of Civil Procedure has no application to this case as the provisions of section 43 of the Delhi Rent Control Act, 1958, on this point are contrary to those contained in section 105 of the Code.

Second Appeal from the Order of Shri P. S. Pattar, Rent Control Tribunal, Delhi, dated 6th September, 1963, confirming that of Shri B. K. Agnihotri, 1st Additional Rent Controller, Delhi, dated 29th March, 1963, passing an order for eviction Under S. 14(1)(e) of the Act, in favour of the petitioner against the respondent with costs and granting the respondents, 6 months' time to vacate the premises.

RAUSHAN LAL, ADVOCATE, *for the* Petitioner.

L. C. KAPUR, ADVOCATE, for the Respondent.

ORDER

Pandit, J. PANDIT, J.,—Murari Lal, respondent, is the owner of the house in dispute. He had given it on rent to Durga Sarup Bhatnagar, petitioner, on a monthly rent of Rs. 125. The respondent filed an application for ejectment against the petitioner under section 14 of the Delhi Rent Control Act, 1958 (hereinafter referred to as the Act), on the ground that he bona fide required these premises for himself and the other dependent members of his family and that he had no other reasonably suitable residential accommodation with him.

This application was resisted by the petitioner, who admitted the tenancy, but controverted the grounds of ejectment. It was also pleaded that the rate of rent was Rs. 100 per mensem and not Rs. 125, as alleged by the respondent.

After hearing the counsel for the parties, on 29th December, 1962 the Additional Controller passed an order under section 15(2) of the Act, directing the tenant to deposit the rent at the rate of Rs. 110 per mensem with effect from 15th July, 1961 up-to-date, after deducting the amount already deposited by him, within one month and future rent at this very rate by the 15th of each following month. The petitioner did not comply with this order and, as a result, the respondent made an application on 25th February 1963 to strike out his defence. In reply, the petitioner submitted that his counsel did not inform him about the order dated 29th December, 1962 and that is why the default had occurred. Under the circumstances, he made a prayer for the condonation of the delay. The Additional Controller, however, after hearing the parties, struck off the defence of the petitioner on 28th March, 1963. The case was then adjourned to 29th March,

1963, on which date after recording the evidence of the respondent, the order of eviction was passed.

The petitioner, being aggrieved by this order filled an appeal before the Rent Control Tribunal, who came to the conclusion that since the tenant had not filed any appeal against the order, dated 28th March, 1963, striking out his defence, that order became final under section 43 of the Act and could not be challenged in appeal against the final order of eviction, On the evidence produced by the landlord, the learned Rent Control Tribunal confirmed the finding of the Additional Controller to the effect that he bona fide required the house for occupation as a residence for himself and the other members of his family. It was also found that the landlord had no other reasonably suitable accommodation with him. As a result, the appeal was dismissed. Against this order, the present second appeal has been filed by the tenant.

The sole contention raised by the learned counsel for the appellant is that the learned Rent Control Tribunal was wrong in holding that since the tenant did not challenge in appeal the order, dated 28th March, 1963, striking out his defence, the same had become final and could not be challenged in appeal against the order of eviction. He contended that under the provisions of section 105 of the Code of Civil Procedure, this order could be made a ground of attack in the appeal against the final order of eviction. In this connection, he relied on a Supreme Court decision in *Satyadhyam Ghosal and others* v. *Smt. Deorajin Debi and another* (1), Learned counsel for the respondent, on the other hand, submitted that under section 38 of the Act, an appeal lay against

(1) A.I.R. 1960 S.C. 941

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every order passed by the Controller and under section 43 of the Act, every order made by the Controller or an order passed on appeal under the Act would be final and could not be called in question. Since no appeal against the order striking out the defence was filed by the tenant, the same became final under section 43 of the Act.

Sections 38, 39 and 43 of the Act are in the following terms:—

[His Lordship read sections 38, 39 and 43 of the Act and continued].

A plain reading of section 38 would show that an appeal lies from every order of the Controller made under this Act to the Rent Control Tribunal. According to section 39, a second appeal against the order of the Rent Control Tribunal lies to this Court only in those cases where some substantial question of law is involved. Except as otherwise expressly provided in the Act, section 43 gives finality to every order made by the Controller of an order passed on appeal against the same and it shall not be called in question in any original suit, application or execution proceeding. It is, therefore, clear that section 43 of the Act gives finality to all orders whether passed by the Controller or the Rent Control Tribunal or this Court, if no provision to the contrary in contained in the Act. In the present cases, admittedly, there is no such provision. Moreover, Rule 23 of the Delhi Rent Control Rules, 1959, lays down that in deciding any question relating to the procedure, not specially provided by the Act and the Rules, the Controller and the Rent Control Tribunal, shall as far as possible, be guided by the provisions contained in the Code of Civil Procedure, 1908. Since it is clearly provided under this Act that every order made by the Controller or an order passed on appeal under

the Act shall be final, therefore, the provisions of section 105, of the Code of Civil Procedure, relied upon by the learned counsel for the appellant and which are in the following terms, cannot be attracted *in the present case*:—

[His Lordship, read section 105 of the Code of Civil Procedure and continued:].

Besides, the expression 'save as otherwise expressly provided' occurring in section 105 of the Code of Civil Procedure makes it clear that these provisions would not be applicable if a contrary provision has been made either under this Act or in any other Act. Since the provisions of the Rent Control Act, as mentioned in section 43, on this point are contrary to those contained in section 105 of the Code of Civil Procedure, therefore, the latter cannot be given effect to *in the present case*. The remedy of the appellant lay in filling an appeal against the order striking out his defence. Since he had failed to do so, therefore, in the present appeal, which is against the final order of eviction, that order, having become final under section 43 of the Act, cannot be challenged. The decision of the learned Rent Control Tribunal on this point, therefore, was correct. As regards the Supreme Court decision in *Satyadhyam Ghosal and others' case*, firstly, it is distinguishable on facts, and, secondly, it is of no help to the appellant because, as I have already held above, the provisions of section 105 of the Code of Civil Procedure are not attracted *in the present case*.

There is, thus, no force in this appeal, which is hereby dismissed. In the circumstances of this case, however, I will make no order as to costs in this court.

B.R.T.