

Hari Kishan
and others
v.
Mst. Gaindi
and others

Harbans Singh, J.

For the reasons given above, while dismissing the appeal of the appellants, I further direct that the decree passed in favour of Mst. Gaindi is hereby set aside and the suit filed by Mst. Gaindi shall also stand dismissed. In the peculiar circumstances of the case there will be no order as to costs throughout.

It was stated at the bar by the learned counsel for the respondents that the vendees have since withdrawn the money and the possession is with Mst. Gaindi. The possession shall be obtained back by the vendees only on payment of the aforesaid amount and otherwise paying any compensation that may be due to them as provided under section 144 of Civil Procedure Code.

B. R. T.

APPELLATE CIVIL

Before S. S. Dulat and S. K. Kapur, JJ.

THE CENTRAL BANK OF INDIA LTD.,—*Appellant.*

versus

GOKAL CHAND,—*Respondent*

S.A.O. 182-D of 1965.

1966.

February 8th

Delhi Rent Control Act (LIX of 1958)—S. 38—Ambit and scope of—Orders that are appealable under the Act stated—Statutes giving right of appeal—Construction of.

Held, that whether or not an order is appealable under the Code of Civil Procedure does not have much bearing on the scope of section 38 of the Delhi Rent Control Act, 1958. The right of appeal having been conferred by section 38, it cannot be pertinent to enquire whether or not the order under consideration is appealable under the Code of Civil Procedure. The effect of section 37(2) of the said Act is to incorporate certain provisions of the Code of Civil Procedure into the Delhi Rent Control Act. If full effect is given to the provisions of section 37(2), it must be taken as if the procedural provisions of the Code of Civil Procedure as applicable to a Court of Small Causes are written with pen and ink in the Delhi Rent Control Act, 1958. It must, therefore, be held that subject to any rules that may be made under the Delhi Rent Control Act, 1958,

such provisions of the Code of Civil Procedure, as relate to the practice and procedure of a Court of Small Causes, stand incorporated in the Delhi Rent Control Act and an order made under any such provision would be an order made "under this Act" within the meaning of section 38 of the said Act.

Held, that an appeal under section 38 of the Delhi Rent Control, 1958, is competent only against "every order of Controller made under this Act". It follows, therefore, that an order not substantially affecting the rights of the parties cannot be termed as an order within the contemplation of section 38. But every order made by the Rent Controller either under the express provisions of the Act or under the provisions of the Code of Civil Procedure incorporated into it by virtue of section 37(2) would be appealable provided such an order finally decides a dispute between the parties or deprives a party of a substantial and important right and is not a mere formal or interlocutory order. In other words, every such order would be appealable except merely procedural orders or orders which do not affect the rights or liabilities of the parties. The nature of each order has to be seen to find out whether or not it falls within the category of appealable orders. The order declining to issue commission relates merely to mode of proof of a particular fact and is an order of a procedural nature and not affecting the rights or liabilities of the appellant and, therefore, not an appealable order.

Held, that the statutes pertaining to right of appeal should be given a liberal construction in favour of the right, since they are remedial. The right will not be restricted or denied, unless such a construction is unavoidable. Our Courts recognise the rule that an appeal of a cause is a valuable right to a litigant and in the absence of unmistakable indications to the contrary, statutes and rules regulating appeals are given a liberal construction. It is also recognised that an appeal is a remedy that is favoured in law and an important right, which should never be denied, unless its forfeiture or abandonment is conclusively shown and in case of doubt, an appeal should always be allowed rather than denied.

Second appeal from the order of Shri P. S. Pattar, Rent Control Tribunal, Delhi, dated 11th June, 1965, affirming that of Shri Asa Singh Gill, Rent Controller, Delhi, dated 29th May, 1965, allowing the application of the applicant and rejecting the application of the respondent and further ordering that the evidence of the respondent shall be considered as closed.

YOGESHWAR DAYAL AND K. L. MEHRA, ADVOCATES, for the Appellants.

S. S. CHADHA ADVOCATE, for the Respondent.

JUDGMENT

The Judgment of the Court was delivered by—

Kapur, J.

KAPUR, J.—The appellant in this Court, the Central Bank of India Limited, is a tenant under Gokal Chand, respondent in the premises in dispute. The landlord made an application for ejection of the tenant on the ground of personal *bona fide* requirement. Two miscellaneous applications were made by the tenant, the particulars whereof have been set out in the order of the Rent Controller, Delhi. In the first application, it was said that Partap Chand, whose requirement of the premises in occupation of the landlord had been made a ground for ejection, had ample accommodation at 51 Rajpur Road, Delhi, and, therefore, it was necessary to appoint a Commissioner to prepare a plan of the house. In the second application, the tenant claimed that the accommodation in the whole of the house situate at 17, Alipur Road, Delhi, where the landlord resides is more than three rooms as claimed by the landlord and, consequently, the landlord is not justified in saying that he *bona fide* requires premises in dispute for his residence. By this application, it was prayed that,—“It is, therefore, in the interest of justice most humbly prayed that a commission be appointed preferably a draughtsman or an engineer to go to 17, Alipur Road, Delhi, and to prepare and file a detailed plan of this premises.” The prayer in the other application, mentioned above, was,—“It is, therefore, prayed that a commission—a draughtsman or an engineer—be appointed at the expense of the respondent to prepare and file a detailed plan of the building 51, Rajpur Road, Delhi.” With respect to the application regarding 51, Rajpur Road, the Rent Controller decided that preparation of plan was not necessary in the circumstances of the case and could not, in any case, be allowed after the parties had closed their evidence and the case had been pending for a long time. Regarding the other application, the Rent Controller said,—“It is contended on behalf of the tenant that the accommodation in the whole of the house at 17, Alipur Road, Delhi, is much more than three rooms and a local commissioner may be appointed to prepare a plan of the whole of the house. The petitioner came into the witness-box and the respondent had full opportunity to cross-examine him, regarding the extent of accommodation in

his possession. He has stated that the other portions of 17, Alipur Road, Delhi, are in possession of other persons. Previously also, such an application was made by the tenant which was disallowed by me,—*vide* my order, dated 7th March, 1964. I see no further reason to review my previous order and allow this application." Aggrieved by this decision, the tenant appealed to the Rent Control Tribunal. The Tribunal, following the decision of this Court in *South Asia Industries Private Limited v. S. B. Sarup Singh* (1), held that the order of the Rent Controller was not an order made under the Delhi Rent Control Act (59 of 1958) and, therefore, not appealable.

The Central
Bank of India
Ltd.
v.
Gokal Chand
Kapur, J.

The matter came up before me for hearing and I felt that there was some conflict between the decisions of D. K. Mahajan, J., in *Pokar Mal v. Prem Nath and others* (2), and H. R. Khanna, J. in *Overseas Corporation Private Limited v. Faqir Chand*, S.A.O. 201-D of 1963, decided on 18th May, 1964. In view of this conflict, the matter was referred to a larger Bench and this is how the appeal has come up before us for decision.

The main point arising for decision in this case is the ambit and scope of section 38 of the Delhi Rent Control Act, 1958, which reads as under—

"38. (1) An appeal shall lie from every order of Controller made under this Act to the Rent Control Tribunal, (hereinafter referred to as the Tribunal) consisting of one person only to be appointed by the Central Government by notification in the Official Gazette.

(2) An appeal under sub-section (1) shall be preferred within thirty days from the date of the order made by the Controller:

Provided that the Tribunal may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(1) 1962 P.L.R. 65.

(2) I.L.R. (1964) 1 Punj. 323=1963 P.L.R. 1056.

The Central
Bank of India
Ltd.

Gokal, Chand

Kapur, J.

- (3) The Tribunal shall have all the powers vested in a Court under the Code of Civil Procedure, 1908 (5 of 1908), when hearing an appeal.
- (4) Without prejudice to the provisions of sub-section (3), the Tribunal may, on an application made to it or otherwise, by order transfer any proceeding pending before any Controller or additional Controller to another Controller or additional Controller and the Controller or additional Controller to whom the proceeding is so transferred may, subject to any special directions in the order of transfer, dispose of the proceedings.
- (5) A person shall not be qualified for appointment to the Tribunal, unless he is, or has been, a district Judge or has for at least ten years held a judicial office in India."

There have been several decisions on the construction of this section by this Court. The first one in the series is *South Asia Industries Private Limited's case*. In that case, Gosain, J. took the view that an order rejecting an application of a sub-tenant requesting the Rent Controller to dismiss the application of the landlord for the ejection of the tenant and the sub-tenant as the tenant had died and his name struck off the record was not an order made under the Delhi Rent Control Act and, therefore, not appealable. There is an earlier decision by Grover, J., reported as *Niadre v. Nanneh* (3), dealing with the provisions of the Delhi and Ajmer Rent Control Act (38 of 1952). In that case, the Court was concerned with the construction of section 34 of Act 38 of 1952, which, *inter alia*, provided that "any person aggrieved by any decree or order of a Court passed under this Act may,, prefer an appeal....." Grover, J., held that an order allowing substitution of legal representatives could not be said to have been made under the Delhi and Ajmer Rent Control Act, 1952. Two decisions of the Lahore High Court, to which a little more detailed reference will be made by me later, namely, *Sansar Chand v. Punjab Industrial Bank Limited* (4) and *Lala Mulk Raj*.

(3) I.L.R. (1960) 2 Punj. 76.

(4) A.I.R. 1929 Lah. 707.

Bhalla v. Official Liquidator of the Peoples Bank of Northern India Limited, Lahore (5) were noticed by Grover, J. Next in the series is the judgment in *Pokar Mal's case*. The question, there, under consideration was whether an order of the Rent Controller refusing to set aside an *ex parte* decree was an order made under the Act and, therefore, appealable. Mahajan, J. said,—“The short question that requires determination is whether the order of the Rent Controller refusing to set aside *ex parte* order is an order under the Act, of course if it is not an order under the Act, no appeal would be competent. That is axiomatic. In this connection, reference may be made to section 37 of the Act. Under this section, the procedure which the Rent Controller has to follow is the procedure prescribed for the Courts of Small Causes. I put it to the learned counsel for the respondent whether a Judge, Small Cause Court, had the power to set aside or refuse to set aside an *ex parte* order or decree. Learned counsel frankly conceded that he had the power. Therefore, if the Judge, Small Cause Court had the power, by virtue of section 37 of the Act, the Rent Controller had also that power and that being so the order refusing to set aside an *ex parte* order must be held to be an order under section 37. That being so, the order is clearly appealable and the Court below was in error in holding that it was not so appealable.” Then, there is the judgment in *Overseas Corporation Private Limited's case*. In that case, the Rent Controller had rejected an application under Order 1, rule 10, Code of Civil Procedure, and the Rent Control Tribunal took the view that the appeal against such an order was not competent. Khanna, J., upheld the order of the Tribunal and came to the conclusion that the order made by the Controller on an application under Order 1, rule 10, of the Code of Civil Procedure was not one made under the Act and was, therefore, not appealable. Khanna, J., distinguished the judgment of Mahajan J., on the ground that in that case the appeal was against an order refusing to set aside the *ex parte* order of ejection and such an order was appealable under the Code of Civil Procedure also.

The Central
Bank of India
Ltd.
v.
Gokal Chand

Kapur, J.

In my opinion, whether or not an order is appealable under the Code of Civil Procedure does not appear to have

The Central
Bank of India
Ltd.
v.
Gokal Chand
Kapur, J.

much bearing on the scope of section 38 of the said Act. The right of appeal having been conferred by section 38, it cannot be pertinent to enquire whether or not the order under consideration is appealable under the Code of Civil Procedure. Section 37(2) of the said Act provides that,—
“Subject to any rules that may be made under this Act, the Controller shall, while holding an enquiry in any proceeding before him, follow as far as may be the practice and procedure of a Court of Small Causes, including the recording of evidence.” It appears that the effect of section 37(2) of the said Act is to incorporate certain provisions of the Code of Civil Procedure into the Delhi Rent Control Act. If full effect is given to the provisions of section 37(2), it must be taken as if the procedural provisions of the Code of Civil Procedure as applicable to a Court of Small Causes are written with pen and ink in the Delhi Rent Control Act, 1958.

In *Harish Chandra Bajpai v. Triloki Singh* (6), their Lordships of the Supreme Court were considering the construction of certain provisions of the Representation of the People Act, 1951. One of the said provisions, which arose directly for consideration, was sub-section (2) of section 90, which, when read, is as under—

“Subject to the provisions of this Act and of any rules made thereunder every election petition shall be tried by the Tribunal, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (Act V of 1908) to the trial of suits.”

Their Lordships of the Supreme Court came to the conclusion that the provisions of Order 6, rule 17, of the Code of Civil Procedure, became applicable to the trial of an election petition.

It must, therefore, be held that subject to any rules that may be made under the Delhi Rent Control Act, 1958, such provisions of the Code of Civil Procedure as relate to the practice and procedure of a Court of Small Causes, stand incorporated in the Delhi Rent Control Act and any order made under any such provision would be an order

made "under this Act" within the meaning of section 38 of the said Act. It is known rule of construction that statutes pertaining to right of appeal should be given a liberal construction in favour of the right, since they are remedial. The right will not be restricted or denied, unless such a construction is unavoidable. Our Courts recognise the rule that an appeal of a cause is a valuable right to a litigant and in the absence of unmistakable indications to the contrary, statutes and rules regulating appeals are given a liberal construction. It is also recognised that an appeal is a remedy that is favoured in law and an important right, which should never be denied, unless its forfeiture or abandonment is conclusively shown and in case of doubt, an appeal should always be allowed rather than denied.

The Central
Bank of India
Ltd.
v.
Gokal Chand

Kapur, J.

That becomes all the more important under the present Act having regard to a very limited scope of second appeal to the High Court provided under section 39 of the said Act, confined as it is only to the consideration of substantial questions of law. Holding that an appeal is competent only under the express provisions of the Delhi Rent Control Act, 1958, would not only be ignoring the effect of section 37(2) and unnecessarily cutting down the scope of section 38, which, on its face, appears to be quite wide, but may also entail disastrous results. In that view an order of a Controller declining to restore an application for ejection under the said Act, dismissed in default on most unjustifiable grounds, would not be subject to review by any Court or Tribunal. Similar would be the fate of an order refusing to set aside an *ex parte* judgment. The question still remains as to what is the precise scope of section 38? Does it mean that every order including an order adjourning a case for recording evidence would be appealable under section 38, or have some limitations to be placed on the right of appeal? One thing is obvious and that is that an appeal is competent only against "every order of Controller made under this Act". It follows, therefore, that an order not substantially affecting the rights of the parties cannot be termed as an order within the contemplation of section 38. The only decisions having a bearing on the matter are decisions under section 202 of the Indian Companies Act, 1913. *Sansar Chand's case* was decided by a Full Bench and the scope of section 202 of the Indian Companies Act, 1913, was considered. The relevant portions of the said section are: "Appeals from any order made

The Central
Bank of India
Ltd.
v.
Gokal Chand
Kapur, J.

in the matter of the winding up of a company may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order..... of the same Court in cases within its ordinary jurisdiction." The Full Bench rejected the contention that the right of appeal under this section was co-extensive with the right of appeal conferred by the Code of Civil Procedure, that is to say, if the order complained of could be appealed against after it had been passed under the Code of Civil Procedure, it could be appealed against under section 202 of the Indian Companies Act—otherwise not. The conclusion of the Full Bench may be stated in their own language. It was said—

"In *C. M. De Souza v. S. B. Billimoria* (7), Jai Lal, J. and I held that the phraseology of section 202 was wide enough to admit of an appeal against an order refusing inspection and after giving due weight to the arguments advanced at the Bar I am still of opinion that the language of section 202 is wide enough to cover appeals against all orders made in the matter of the winding up of a company provided such an order finally decides a dispute between the parties or deprives the appellant of a substantial and important right and is not a mere formal or interlocutory order."

Lala Mulk Raj Bhalla's case is another decision on the said section 202. Tek Chand, J., followed the aforesaid decision of the Full Bench and said,—“It was held by the Full Bench that a party aggrieved from an order passed in the course of liquidation proceedings by the District Judge, in exercise of his jurisdiction under the Companies Act, is entitled under section 202 to appeal to the High Court, irrespective of the provisions of the Civil Procedure Code which restrict the right of appeal to specified orders, section 202 being wide enough to cover appeals against any order made in the matter of the winding up of a company, provided such an order finally decides the dispute between the parties or deprives the appellant of a substantial and important right, and is not a mere formal or interlocutory order”. The same provision of the Indian Companies Act came up for

consideration before the Bombay High Court in *Bachharaj Factories Limited v. Hirjee Mills Limited* (8). The Bombay High Court agreed with the Full Bench decision of the Lahore High Court, Chagla, C.J., referred to an earlier judgment of the Bombay High Court reported as *Mahomed Haji Essack v. Abdul Rahman* (9), and the following quotation from the judgment of the learned Chief Justice,—

The Central
Bank of India
Ltd.

Gokal Chand

Kapur, J.

“.....Of course there may be orders which are merely orders regulating procedure for the convenience of the Court or for the convenience of the parties. Such orders, we take it, are not affected by these provisions. The orders made must be judicial orders intended to decide some point judicially;

and said—

“With respect, we do not understand what the learned Chief Justice means by a Judicial order, because even a procedural order is a judicial order. But what the learned Chief Justice really meant was that it must be an order which must decide some point judicially.”

The Bombay High Court, therefore, concluded that an order made by a learned Single Judge refusing to wind up the company and adjourning the petition after hearing it on merits to a future date was an order appealable under section 202 of the Indian Companies Act. The last word on the scope of section 202 was said by the Supreme Court in *Shankarlal Aggarwala v. Shankarlal Poddar* (10), Ayyangar, J., referring to the above-mentioned Bombay judgment observed—

“We thus agree with Chagla, C.J., that the second part of the section which refers to ‘the manner’ and ‘the conditions subject to which appeals may be had’ merely regulates the procedure to be followed in the presentation of the appeal and of hearing them, the period of limitation

(8) A.I.R. 1955 Bom. 355.

(9) A.I.R. 1915 Bom. 273 (1).

(10) A.I.R. 1965 S.C. 507.

The Central
Bank of India
Ltd.
v.
Gokal Chand

Kapur, J.

within which the appeal is to be presented and the forum to which appeal would lie and does not restrict or impair the substantive right of appeal which has been conferred by the opening words of that section. We also agree with the learned Judges of the Bombay High Court that the words 'order or decision' occurring in the first part of section 202, though wide, would exclude merely procedural orders or those which do not affect the rights or liabilities of parties."

It is necessary to refer to two more judgments, one by Grover, J., under Delhi Rent Control Act (59 of 1958) reported as *Balwant Singh v. Sant Ram Sharma* (11), and *C. M. DeSouza v. S. B. Billimoria* (7). The latter judgment is under section 202 of the Indian Companies Act, 1913. In *Balwant Singh's case*, Grover, J., held that a decision by the Rent Controller about the existence of relationship of landlord and tenant was not an order 'under the Act'. This decision is in accord with the judgments of Gosain, J., in *South Asia Industries Private Limited's case*, and of Grover, J. in *Niadre's case*. In *C.M. DeSouza's case*, it was held that an order refusing an application for the inspection and copies of the statements of persons examined under section 196 of the Indian Companies Act, 1913, could be appealed under section 202 thereof.

The respondent has also relied on a Full Bench decision of the Allahabad High Court reported as *Bhatele Ramesh Chand v. Dr. Shyam Lal* (12). It was, there, held that an order of a special Judge in proceedings under the U.P. Encumbered Estates Act, whereby a review application had been rejected, was not an appealable order. Section 45(1) of the U.P. Encumbered Estates Act, reads, ——— "An appeal against any decree or order finally disposing of the case of a Special Judge of the first grade under this Act shall lie to the High Court or Chief Court, as the case may be.....". That case construed the provisions of U.P. Encumbered Estates Act and largely turned on the question that the order of review was not one finally disposing of the case, as the case had been 'finally disposed of' by an earlier order which was sought to be reviewed.

(11) I.L.R. (1964) 2 Punj. 127.

(12) A.I.R. 1946 All. 34.

Having considered all the judgments on the subject, I am of the opinion that the best guide for interpreting section 38 of the Delhi Rent Control Act, 1958, is provided by the decision of the Supreme Court in *Shankarlal Aggarwala's case* and every order made by the Rent Controller either under the express provisions of the Act or under the provisions of the Code of Civil Procedure incorporated into it by virtue of section 37(2) would be appealable provided such an order finally decides a dispute between the parties or deprives a party of a substantial and important right and is not a mere formal or interlocutory order. In other words, every such order would be appealable except merely procedural orders or orders which do not affect the rights or liabilities of the parties. It may be asked that if, in view of the wide language of section 38, every order is appealable, then where is the justification for limiting the rights of appeal by excluding orders, which are either merely procedural or orders which do not affect the rights or liabilities of the parties. The answer is furnished by the decision of the Supreme Court, the object of the provision of the Act and the implied limitation in the use of the expression 'order'. When an order is made appealable, it must in the context mean that it is an order affecting the rights or liabilities of the parties. So far as the exclusion of the procedural orders is concerned, appeals could not have been intended by the statute at an interlocutory stage, for, really speaking, such orders do not seriously affect the rights or liabilities of the parties in the sense that any irregularities in procedure would always be open to challenge at the final appeal stage. The very fact that appeals have been provided at intermediary stages would lend support to the view that mere procedural irregularities are not intended to be made appealable at that stage. As I have said earlier, restricting the appeal to orders made under express provisions of the Act would lead to serious injustice, but apart from that I see no justification in cutting down the scope of a provision conferring a right of appeal. The above discussion, therefore, yields this result that every order made by the Rent Controller, except merely procedural orders or orders not affecting the rights or liabilities of the parties, would be appealable, provided it is made under the provisions of the Act or under the provisions of the Code of Civil Procedure made applicable and the nature of each order has to be seen to find out

The Central
Bank of India
Ltd.
v.
Gokal Chand

Kapur, J.

The Central
Bank of India
Ltd.
v.
Gokal Chand

Kapur, J.

whether or not it falls within the category of appealable orders. The order in question declining to issue commission relates merely to mode of proof of a particular fact and is, in my opinion, an order of a procedural nature and not affecting the rights or liabilities of the appellant and, therefore, not an appealable order.

We have been asked to send back the case to the Tribunal to decide whether or not, in the light of the facts and circumstances of this case, the order affects the rights and liabilities of the parties. I do not find any justification for the same, because the entire matter is before us and having regard to the nature of the controversy, I see no impediment in my deciding that the order is not one against which an appeal could be had to the Tribunal.

In the result, this appeal must fail and is dismissed leaving the parties to bear their own costs.

B.R.T.

LETTERS PATENT APPEAL

Before D. Falshaw, C.J. and D. K. Mahajan, J.

JIWAN SINGH,—*Appellant*

versus

RAM KISHAN AND OTHERS,—*Respondents.*

L.P.A. 262 of 1961.

1966.

February 10th.

Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act (VIII of 1953)—S. 3 Widow of last male holder creating occupancy rights in ancestral land—Suit by reversioners of last male holder for declaring the transaction to be void decreed—Alienees acquiring proprietary rights under the Act—Whether entitled to hold such rights only up to the death of the widow—S. 3—Whether nullifies decrees.

Held, that when alienees acquire occupancy rights from the widow of a last male holder, their rights are not only precarious but become void by reason of a declaratory decree obtained by the reversioners of the last male holder. The decree keeps alive their rights so long as the alienor lives. They come to an end on his death and in case he leaves a widow on her death. Therefore, whatever comes by reason of those rights will form part and parcel of the same and will