

It may be noticed that even under Article 311(1) the passing of an order of dismissal, removal or reversion by only an authority subordinate to that by which the official was appointed is prohibited, and that there is no bar to such major punishment being inflicted by an authority superior to that by which the Government servant was appointed . . . . . It is, therefore, clear that in the absence of any compelling reasons, there would be nothing abhorrent in an authority superior to the appointing one to give notice of retirement when such an authority is permitted to pass even an order of dismissal or removal from service."

Similar observations were also made by a Division Bench of this High Court in *The State of Haryana and another vs. Baldev Krishan Sharma and others* (8).

(9) The abovesaid ratio will also apply in the case of compulsory retirement. We, therefore, do not find any substance in the second contention of the learned counsel as well.

(10) For the aforesaid reasons, we dismiss this appeal with no order as to costs.

*S. S. Sandhawalia, C.J.*—I agree.

*S. C. K.*

*Before S. S. Sandhawalia, C.J. and S. P. Goyal, J.*

RAM DASS,—*Petitioner.*

*versus*

SUKHDEV KAUR and another,—*Respondents.*

*Civil Revision No. 1463 of 1978.*

April 7, 1981.

*East Punjab Urban Rent Restriction Act (III of 1949)—Sections 2(b), 15(1)(a), 16 and 17—Code of Civil Procedure (V of 1908)—Order 23 Rule 1(3)—Application for ejectment permitted to be*

(8) 1970 P.L.R. 635.

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*withdrawn with liberty to file a fresh one—Authorities under the Act—Whether competent to grant such a permission under Order 23 Rule 1 (3)—Provisions of Order 23 Rule 1 (3) of the Code—Whether applicable to proceedings under the Act.*

*Held*, that it would be manifest on principle as also from the relevant statutory provisions that the Civil Procedure Code as such does not govern the proceedings under the East Punjab Urban Rent Restriction Act, 1949 except to the limited extent provided for under Sections 16 and 17 thereof. Even by applying these provisions most liberally one cannot bring in either expressly or by necessary implication the rest of the provisions of the Civil Procedure Code. In particular, it would be evident that the specific and detailed provisions of Order 23 Rule 1 of the Code would not, therefore, be applicable *proprio vigore* to the rent jurisdiction. The Controllers and the Appellate Authorities being *persona designata* are entitled to devise their own procedure within the confines prescribed by the Act itself. Thus, the provisions of Order 23 Rule 1 (3) of the Code are not applicable to proceedings under the Act.

(Paras 5 and 10)

*Madan Lal vs. Vir Inder Kumar Koura*, 1978, P.L.R. 388.

*Shakuntla Devi and others vs. Ramesh Kumar and others*,  
1980 (1) R.L.R. 327 . OVERRULED.

*Case referred by Hon'ble Mr. Justice Harbans Lal,—vide Order, dated April 1, 1980 to the larger Bench for decision of the important question of Law involved in the case. The Division Bench Consisting of Hon'ble the Chief Justice Mr. S. S. Sandhwalia and Hon'ble Mr. Justice S. P. Goyal decided the question referred to on 7th April, 1981.*

*Petition under section 15(5) of the East Punjab Rent Restriction Act for revision of the Orders of the Court of Shrimati Harmohinder Kaur Sandhu, appellate Authority, Sangrur, dated the 25th May, 1978, dismissing the ejectment application as withdrawn with liberty to the applicants to file a fresh application on the same cause of action and leaving the parties to bear their own costs.*

Amarjit Markan, Advocate, for the Petitioner.

J. R. Mittal, with Pawan Bansal, Advocate, for the Respondents.

S. S. Sandhwalia, C.J.

(1) Whether clause (3) of rule 1 or Order 23 of the Code of Civil Procedure is *stricto-sensu* applicable to the proceedings under

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the East Punjab Rent Restriction Act, 1949, is the meaningful question which has necessitated this reference for decision by a Division Bench, by the learned Single Judge.

2. The facts are no dispute and may briefly be delineated. The respondent Smt. Sukhdev Kaur and others had instituted a petition against the petitioner Ram Dass, in the Court of the Rent Controller, Sangrur, way back on August 16, 1974. After a protracted trial over more than three years, the Controller, by a considered judgment dismissed the petition with costs on November 26, 1977. Aggrieved thereby the respondent preferred an appeal which came up for decision on merits before the Appellate Authority, Sangrur, on May 25, 1978. On that very day, the respondents put in an application expressly under Order 23 Rule 1(3) of the Civil Procedure Code, seeking that they may be permitted to withdraw the ejection petition with liberty to file a fresh petition on the same cause of action. This prayer was strenuously opposed on behalf of the petitioner but the appellate authority without even calling for any reply in writing from the petitioner allowed the said prayer of the respondents on that very day by the below quoted short order:—

“The appellant has filed an application to withdraw the application for ejection as it failed due to formal defects. Notice has been given to the counsel for the other party. He objects to the withdrawal. I have perused the file and find that the application under section 13 of the East Punjab Urban Rent Restriction Act, suffers on account of formal defects. The same is, therefore, dismissed as withdrawn. The applicant is at liberty to file a fresh application on the same cause of action. The appeal stands disposed of accordingly. Parties are left to bear their own costs.”

The present revision petition was then preferred primarily on the ground that Order 23 Rule 1 of the Civil Procedure Code was not applicable within the rent jurisdiction. When the matter came up before the learned Single Judge he noticed a conflict of precedent on this issue and has referred the matter to a larger Bench for its determination.

3. Now to appreciate the aforesaid legal question what calls for pointed attention at the out-set is the very nature of the tribunal

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exercising jurisdiction under the East Punjab Urban Rent Restriction Act, 1949 (hereinafter called 'the Act'). Section 2(b) of the Act defining the word 'Controller' is in the following terms :—

“‘Controller’ means any person who is appointed by the State Government to perform the function of a Controller under this Act.”

It would be manifest from the above that a wide ranging power is given to the State Government to appoint any person as a 'Controller' under the Act. Again reference to section 15(1)(a) empowering the State Government to appoint the Appellate Authority is instructive :—

“The State Government may, by a general or special order, by notification confer on such officers and authorities as they think fit, the powers of appellate authorities for the purposes of this Act, in such area or in such classes of cases as may be specified in the order.”

This would again show the wide amplitude of the power vested in the State Government to name the Appellate Authorities under the Act.

4. I may point out that considerable mis-apprehension and confusion sometimes arises in this context from the fact that usually the powers of the Controller under the Act have been conferred on Subordinate Judges and the powers of Appellate Authority now are also specifically vested by notification in the District Judges. This fortuitous circumstance, however, should not lead one to the error of assuming that thereby the Controllers or the Appellate Authorities became civil Courts as such. They retain their essential nature as tribunals or *persona-designata* under the special statute. It is instructive to remind oneself that under a sister statute, namely, Haryana Urban (Control of Rent and Eviction) Act, 1973, the powers of the Controllers were at one time taken away from the Subordinate Judges and vested in the Sub-Divisional Officers and similarly, the Deputy Commissioners of the districts were made the Appellate Authorities by a notification. By Section 15 clause (6) of the Haryana Urban (Control of Rent and Eviction) Act, 1973, the Financial Commissioner was designated by the statute itself as the

revisional authority to the exclusion of the High Court. Though there is recently a reversion to the old practice, the above circumstances rightly highlight the fact that it would be misleading to assume that the Controllers or the Appellate Authorities are necessarily Civil Courts.

5. I deem it unnecessary to labour the point because within this jurisdiction, it has been settled law that the Controllers and the Appellate Authority under the Act are not even courts and are indeed *persona designata*. Way back it was authoritatively held by the Full Bench in *M/s. Pitman's Shorthand Academy v. M/s. D. Lila Ram & Sons* (1), as follows :—

“..... With great respect, therefore, I must differ from the pronouncement of the Division Bench of Lahore High Court and it is clear to me that the intention of the Legislature was to appoint *persona designata* to perform specific duties and it was further the intention that these persons would not be governed by the ordinary rules of procedure, nor would their decisions be subject to appeal or revision in a Court of law, and I must, therefore, hold that the Rent Controller and the “Appellate Authority” are not Courts of law subordinate to the High Court within the meaning of S. 115, Civil P.C.”

Apart from the aforesaid authoritative enunciation, reference is also called for to the provisions of section 16 and 17 of the Act, which are in the following terms :—

“16. *Power to summon and enforce attendance of witnesses.*—

For the purposes of this Act, an appellate authority or a Controller appointed under the Act shall have the same powers of summoning and enforcing the attendance of witnesses and compelling the production of evidence as are vested in a Court under the Code of Civil Procedure, 1908”.

“17. *Execution of Order.*—Every order made under section 10, or 13, and every order passed on appeal under section 15 shall be executed by a Civil Court having jurisdiction in the area as if it were a decree of that Court.”

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(1) AIR (37) 1950 East Punjab 181.

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It would be thus manifest on principle as also from the relevant statutory provisions that the Civil Procedure Code as such does not govern the proceedings under the Act except to the limited extent provided for under sections 16 and 17 thereof. Even by applying these provision most liberally one cannot bring in either expressly or by necessary implication the rest of the provisions of the Civil Procedure Code. In particular it would be evidence that the epecific and detailed provisions of Order 23, Rule 1 of the Civil Procedure Code would not, therefore, be applicable *proprio vigore* to the rent jurisdiction. The Controllers and the Appellate Authorities being *persona designata* are entitled to devise their own procedure within the confine prescribed by the Act itself.

6. The aforesaid view deducible from principle and statutory provisions is equally supported by an over-whelming weight of precedent within this Court. By way of analogy, the Division Bench judgment in *Raghu Nath Jalota v. Romesh Dugal and another*, (2), may first be referred to. In essence the point before the Division Bench therein was—whether the appellate authority under Section 15(3) of the Act, had the jurisdiction to remand the whole case to the Rent Controller either expressly or impliedly, invoking the provisions of Order 41, Rules 23 and 25 of the Code? It was observed as follows:—

“From the aforementioned history and the provisions of the present and the preceding rent legislation, it appears to be self-evident that apart from the larger purpose of restricting rents and giving special protection to the tenants, the specific intent of the legislature was to provide a special and expeditious procedure for the disposal of the matters under the Act. The jurisdiction for the determination of these matters was designedly and meaningfully taken away from the ordinary run of Civil Courts and vested in the Controllers. They were left to devise their own procedure free from technicalities and formalities of the Civil Procedure Code which governed the Civil Courts. Sections 16 and 17 of the Act brought in the Civil Procedure Code only for the limited purpose of the summoning and enforcing the attendance of witnesses and the execution of the orders passed by the Controller or the Appellate Authority and by necessary implication exlude the strict application of

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(2) A.I.R. 1980 Pb. and Haryana, 188.

its provisions to the authorities under the Act. The underlying purpose was to rid the authorities under the Act from the shackles of technical procedure and to provide a summary and expeditious mode of disposal, is further evident from the fact that originally only one appeal was provided by the statute to the Appellate Authority and all further appeals or revisions were barred by Section 15(4) of the Act. ....”.

7. Adverting now to authorities directly covering the point, chronologically the first judgment though not very elaborate is that in *Goverdhan Dass v. Sodhi Dyal Singh etc.* (3). The facts therein were almost identical in so far as an application under Order 23 Rule 1(2) of the Civil Procedure Code to withdraw the proceedings with liberty to file a fresh application, was allowed at the appellate stage as in the present case. Mahajan, J. as his Lordship then was held as follows:—

“... It is now well settled that the Rent Control Act is a complete Code and the Rent Controller and the Appellate Authority cannot go outside its provisions to arm themselves with the powers which a Court normally has under the Code of Civil Procedure. The provisions of the Code of Civil Procedure are only applicable to rent control proceedings to a very limited extent. Suffice it to say that the provisions of Order 23, rule 1, Civil Procedure Code have not been made applicable. In fact, it has been held that there is no power of remand with the Appellate Authority in the Rent Control proceedings (See *inter alia*) the decision in *Krishan Lal Seth v. Pritam Kumari*, (4). It follows a fortiori that there is no power with the Appellate Authority to permit withdrawal of the application for eviction. But undoubtedly, a party has the right to withdraw proceedings which it has filed, that is, a party can withdraw an appeal. The effect of that withdrawal is a matter which does not fall for determination in this Court. No authority has been cited for the proposition that the Appellate Authority can permit the withdrawal of the application under section 13 of the East Punjab Urban

(3) 1969 (1) R.C.R. 938—1969 R.C.J. 1013.

(4) I.L.R. 1962 (1) Pb. 310.

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Rent Restriction Act with liberty to file a fresh application.”

The aforesaid view was then followed by R. N. Mittal, J. in *Shri Des Raj v. Faquir Chand and another* (5). A similar view was then taken by Harbans Lal, J. in *Mrs. Harmohinder Kaur alias Mohinder Kaur v. Shri Hari Singh*, (6). Apart from the other judgments of this Court, the learned Judge had also placed reliance on similar observations made in the judgment of the Delhi High Court (Himachal Bench at Simla) in *Messrs Lachhman Dass Sain Ditta Mal, v. Shri Hanuwant Dass Sud*, (7).

8. In fairness to Mr. J. R. Mittal, it may be mentioned that he had first sought to place reliance on Section 141 of the Code of Civil Procedure which is in the following terms:—

“*Miscellaneous Proceedings*.—The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable in all proceedings in any Court of Civil jurisdiction.”

From the above it would be plain that the contention of the learned counsel is not well conceived. The aforesaid provision makes the procedure applicable to proceedings in any court of Civil Jurisdiction. As has been already indicated above, it is well settled that the Rent Controllers are not courts *stricto-senso*, but are *persona designata*, as held by a string of judgments in this Court. Consequently Section 141 of the Code of Civil Procedure cannot be invoked in this context.

9. The learned counsel for the respondents had then placed reliance on *Madan Lal v. Vir Inder Kumar Kaura*, (8). However, reference to the judgment would show that the question was not even remotely raised far from being seriously canvassed before the Bench. Similarly in *Shakuntla Devi and others v. Ramesh Kumar and others* (9), the point was not at all raised and it appears that only on a concession by the learned counsel for the parties that the rent application was allowed to be withdrawn. If these judgments are to be considered as a warrant for the proposition that Order 23,

- (5) 1979 (2) R.L.R. 404.  
 (6) 1979 (2) R.L.R. 455.  
 (7) 1968 P.L.R. (Delhi Section) 174-B.  
 (8) 1978 P.L.R. 388.  
 (9) 1980 (1) R.L.R. 327.



Rule 1 of the Civil Procedure Code is applicable to the proceedings under the Act, we would respectfully differ and would overrule the same on this specific point for the detailed reasons indicated earlier.

10. To conclude, the answer to the question posed at the outset, is rendered in the negative and it is held that the provisions of Order 23, Rule 1 (3) of the Code of Civil Procedure are not applicable to proceedings under the East Punjab Urban Rent Restriction Act, 1949.

11. However, it is necessary to point out that we are in no way deviating from the settled view that the Controller and the Appellate Authority under the Act are entitled to devise their own procedure in the area which is not specifically covered by any statutory provisions. As to what is the scope or the limitations on the exercise of their powers in the context of allowing or refusing the withdrawal of an eviction application in a specific case, independently of the provisions of Order 23, Rule 1 of the Civil Procedure Code, is a matter, we are not called upon to answer for the present. Equally, we are disinclined to pronounce on the legal consequence that may well ensue from the withdrawal of an ejection application, if allowed. These are matters on which we have not had the benefit of the arguments of the learned counsel for the parties as they do not arise in this reference. These can be best decided in an appropriate case where they directly fall for determination.

12. In the light of the foregoing discussion and finding, it would follow that the order under revision of the Appellate Authority allowing the withdrawal of the application specifically under Order 23, Rule 1 (3) of the Civil Procedure Code, has necessarily to be, and is hereby set aside. However, it is axiomatic that the mere label of the provisions mentioned in the application made by the respondents is in no way conclusive. If any other relief within the ambit of the procedure which can be lawfully devised by the rent authorities can be made available to the respondent, he cannot be denied the same outright. The Appellate Authority is, therefore, directed to decide afresh the application of the respondents *de hors* the provision of Order 23, Rule 1 (3) of the Civil Procedure Code. There will be no order as to costs.

S. P. Goyal, J.—I agree.

S. C. K.