railways in due course of law and not through the agency of the criminal courts as fine. I am in agreement with the learned counsel. The Magistrate should not have decided the amount due from the respondents to the railways as freight or wharfage charges. This has to be done under the provisions of the Indian Railways Act by the authorities named therein. The proper order for return of the goods would have been that these should be handed over to the respondents subject to any charge of the railway department under the law on the same. The learned counsel for the respondents vehemently urged that the respondents should not be made to pay the sum of Rs. 1,653 as wharfage charges because the goods were detained by the railways in their own interest and not on account of any neglect on the part of the respondents. This matter will be gone into by the railway department under the law while determining the liability of the respondents for payment of freight or any other charges due from them.

For the above reasons, the revision preferred by the State of Punjab is allowed in part; the direction of the learned Magistrate in regard to the return of goods to the respondents is modified and the goods are ordered to be returned to them subject to the charge of the railway department on the same. If the railway department under the law is entitled to detain the goods till the amount due from the respondents has been paid, they may so detain the goods.

The railway department should try to settle the dispute within a short period in any case not later than 30th of December, 1967.

R.N.M.

REVISIONAL CIVIL

Before Mehar Singh, C.J.

DEVKI NANDAN NAGPAL,—*Petitioner.*

versus

M/S SILVER SCREEN ENTERPRISES,—*Respondent*

Civil Revision No. 189 of 1966.

October 31, 1967.

East Punjab Urban Rent Restriction Act (III of 1949)—S. 13—Appeal filed by landlord before appellate authority against the order of Rent Controller dismissing application for ejectment of his tenant—Compromise effected between landlord and

tenant in another court—Whether can be pleaded by tenant before the Appellate Authority to compel landlord to withdraw his appeal in accordance with the compromise.

Held, that a landlord and a tenant may be bound by the terms and conditions of the compromise arrived at by them in another court, but even so the compromise does not amount to an application by the landlord before the Appellate Authority for the withdrawal of his appeal against the tenant. The landlord cannot be compelled to make such an application. The tenant cannot bring the compromise to the notice of the Appellate Authority with the request to treat it as an application by the landlord for withdrawal of his appeal. While the landlord has the power and the right to withdraw his appeal and have it dismissed, he cannot be compelled to make an application for withdrawal of the same, nor a document executed by him somewhere else can be treated, not at his instance but at the instance of the opposite party, as an application by the landlord for the withdrawal of his appeal.

Petition under Section 15(5) *of the East Punjab Urban Rent Restriction Act,* 1949, *for revision of the order of Shri H. D. Lomba, District Judge, Gurdaspur (Appellate Authority), dated January* 5, 1965, *affirming that of Shri T. R. Handa, Rent Controller, Amritsar, dated November* 15, 1962, *and dismissing the appeal.*

H. L. Sarin, Senior Advocate, with Bahal Singh Malik, Balraj Bahal and Amrit Lal Bahri, Advocates, for the Petitioner.

Bhagirath Dass, Advocate, for the Respondent.

JUDGMENT

Mehar Singh, C.J.—The premises in dispute is a cinema let by the landlord to the tenant. An application was made under section 13(2)(i) of the East Punjab Urban Rent Restriction Act, 1949 (East Punjab Act 3 of 1949), by the landlord for the ejectment of the tenant on the ground of non-payment of arrears of rent. The application was dismissed by the Rent Controller, and the landlord filed an appeal against the order of the Rent Controller under section 15 of that Act.

In this High Court as between the same parties another litigation was pending with regard to the same cinema building, and the parties entered into a compromise putting an end not only to that litigation but also to other litigation between them including the litigation about the ejectment of the tenant from the cinema at the

stage of the appeal before the Appellate Authority. A compromise was arrived at on January 7, 1964, and it said that the landlord shall withdraw the appeal pending before the Appellate Authority in his application for ejectment of the tenant, and that the tenant will withdraw his application, pending before the Rent Controller, for fixation of fair rent under section 4 of the Act. The tenant withdrew his application which was of course then dismissed, but the landlord refused to withdraw the appeal before the Appellate Authority against the order of the Rent Controller dismissing his application for ejectment of the tenant. On that the tenant made an application before the Appellate Authority that the compromise between the parties be enforced and the appeal of the landlord be dismissed. The landlord raised a number of objections to that application. The Appellate Authority referred to clauses 12 and 13 of the compromise between the parties which read thus. "12. That in case the landlord does not carry out the terms of this compromise, he shall be held responsible for all the losses that the lessee may suffer because of its breach. 13. That in case, the lessee does not carry out the terms of this compromise, he shall be held responsible for all the losses that the landlord may suffer because of its breach." And the Appellate Authority was of the opinion that if there is some term of the contract of compromise between the parties which has not been carried out by the tenant, the landlord can seek damages under clause 13, but that he was bound by the compromise in so far as it relates to the withdrawal of the appeal. So the Appellate Authority by its order of January 5, 1965, accepted the application of the tenant and finding that the compromise was lawfully entered into between the parties, he proceeded to dismiss the appeal of the landlord, leaving the parties to their own costs; and it is the landlord, who appeals against the order of the Appellate Authority.

There is just one argument urged by the learned counsel on behalf of the landlord and that is that, although the landlord entered into the compromise upon which the tenant has relied, but that was an agreement to withdraw the appeal, and the landlord cannot be so to speak physically forced to present an application for withdrawal of the appeal and the Appellate Authority could not treat the compromise between the parties, not arrived at before it, but in another forum, as an application for withdrawal of the appeal by the landlord. The learned counsel presses that the landlord has a right to withdraw his appeal and the landlord may withdraw his

appeal, but he cannot be forced to make an application for withdrawal of the appeal, nor could the Appellate Authority treat a document signed by him with the tenant in another forum as an application to it for withdrawal of the appeal of the landlord pending before it. The learned counsel refers to sub-section (3) of section 15 of the Act which says that "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," and he contends that the Appellate Authority must decide the appeal of the landlord on merits. The reply of the learned counsel for the tenant is reliance upon *Harikisan* v. *State of Maharashtra* (1), in which he says further an award in arbitration had been made, the parties having superseded the award by an agreement between themselves, their Lordships held them bound by such an agreement, and he urges that the parties to the present litigation are bound by the terms of the compromise arrived at by them in this Court on January 7, 1964.

The parties may be bound by the terms and conditions of the compromise arrived at by them in this Court on January 7, 1964, but even so the compromise does not amount to an application by the landlord before the Appellate Authority for the withdrawal of his appeal against the tenant. The landlord cannot be compelled to make such an application. The tenant cannot bring it to the notice of the Appellate Authority the compromise and ask the Appellate Authority that it should be treated as an application by the landlord for withdrawal of his appeal. While the landlord has a power and the right to withdraw his appeal and have it dismissed, he cannot be compelled to make an application for withdrawal of the same, nor a document executed by him somewhere else can be treated, not at his instance, but at the instance of the opposite party, as an application by the landlord for withdrawal of the appeal. The approach of the Appellate Authority that the landlord can have recourse to clause 13 of the compromise because the tenant may have committed breach of the compromise is equally available against the tenant who can have recourse to clause 12 of the compromise to have himself compensated by damages for any breach committed by the landlord for instance in his refusing to withdraw the appeal against the tenant before the Appellate Authority.

(1) A.I.R. 1962 S.C. 911.

The Appellate Authority was not thus, from any angle, justified in reaching the conclusion that the compromise between the parties arrived at on January 7, 1964, is to be almost treated as an application for withdrawal of the appeal by the landlord. Further, even if the compromise could be treated as an application by the landlord for withdrawal of the appeal, the Appellate Authority could only take cognizance of it and proceed to act upon it if it was presented to it by the landlord and not on the fact of it having been brought to its notice by the tenant. The landlord has not taken any step to withdraw the appeal and so the Appellate Authority was wrong in dismissing his appeal. What are the consequences according to the terms of the compromise on the landlord not having withdrawn the appeal before the Appellate Authority in view of their compromise, is a matter which the parties can, if so advised, have settled in a proper forum. So the order of the Appellate Authority is set aside and the direction is that it shall re-enter the appeal of the landlord in its register of appeals and then set it down for hearing on merits at an early date. There is no order in regard to costs in this revision application.

K.S.K.

LETTERS PATENT APPEAL

Before S. B. Capoor and Shamsher Bahadur, JJ.

THE FAZILKA-DABWALI TRANSPORT COMPANY (PRIVATE) LTD., *Appellant*

versus

MADAN LAL,—*Respondent*

Letters Patent Appeal No. 301 of 1967

November 9, 1967.

Motor Vehicles Act (IV of 1939)—S. 110-D—Order passed by Single Judge of the High Court in appeal against the award of the Claims Tribunal—Letters Patent Appeal against that order—Whether competent.

Held, that a Letters Patent Appeal under clause X of the Letters Patent is not competent against the order passed by a learned Single Judge of the High Court in an appeal under section 110-D of the Motor Vehicles Act, 1939, against the award made by the Claims Tribunal under section 110-B of the said Act. The Claims Tribunal has been invested with status different from a Civil Court and