

Moti Singh and another v. Devinder Singh (G. C. Mital, J.)

Before G. C. Mital, J.

MOTI SINGH AND ANOTHER,—Petitioners.

versus

DEVINDER SINGH,—Respondent.

Civil Revision No. 2412 of 1989.

16th November, 1990.

*East Punjab Urban Rent Restriction Act, 1949 (III of 1949)—S. 13(4)—Code of Civil Procedure, 1908 (V of 1908)—O. 41, rl. 14(4)—(As amended by the Punjab & Haryana High Court Rules and Orders)—Amendment made in O. 41, rl. 14(4) does not strictly apply to proceedings before the Rent Controller.*

Held, that the amendment made in Order 41, Rule 14(4) C.P.C. by this Court would not strictly apply to the proceedings before the Rent Controller as the Court of Rent Controller is *persona designata*. In the Act there is no provision for dispensing with the issue of notice at the appellate stage if before the Rent Controller the opposite party does not appear and is proceeded *ex parte*.

*Petition under section 15(v) of the Rent Restriction Act, for revision of the order of the Court of Shri M. L. Singal, Appellate Authority, Patiala under the East Punjab Urban Rent Restriction Act, 1949, dated 16th March, 1989, reversing that of Shri B. S. Sidhu, PCS, Rent Controller, Patiala, dated 15th February, 1989 succeeding the appeal and accepting it and ordering appellant Dr. Davinder Singh to be put into possession of this house and possession is ordered to be restored to him.*

*Claim :—Application under Section 13 Sub-Section 4 of the East Punjab Urban Rent Restriction Act, for restoration of possession of the house No. 1071/1, Tripari Town, Patiala.*

*Claim in Revision; For reversal of the order of lower appellate court.*

D. V. Gupta, Advocate, for the Petitioners.

Nemo, for the Respondents.

#### JUDGMENT

Gokal Chand Mital, J.

(1) Gurdeep Kaur obtained and electment order, dated 16th May, 1983 against Dr. Davinder Singh in respect of a residential house

situated in the town of Patiala from the Court of the Rent Controller on the ground of personal necessity. In execution of the ejectment order she obtained possession of the premises on 25th July, 1985.

(2) The ejected tenant filed an application under Section 13(4) of the East Punjab Urban Rent Restriction Act, 1949 before the Rent Controller who had passed the order of ejectment for restoration of possession of the ground that the landlord did not occupy the building for continuous period of twelve months from the date of taking possession as she was living in Indore and continued to live there and the premises was lying locked and the electric connection had also been disconnected. Notice of the application was issued to the landlord and it was reported that she was not living in the premises in dispute and the same was lying locked. Then she was got served through affidavit and ultimately the application was decided *ex parte*. On the evidence led in the case, the Rent Controller was not satisfied that the landlord had not occupied the premises for twelve months after taking possession and declined to restore possession to the ejected tenant,—*vide* order, dated 15th February, 1989. Feeling aggrieved the ejected tenant went up in appeal in March, 1989 (as the date typed on the grounds of appeal is 7th March, 1989), before the appellate authority. The appellate authority disposed of the appeal on 16th March, 1989 after dispensing with the service of notice of appeal on the landlord on the ground that she was proceeded against *ex parte* before the Rent Controller and had not contested the proceedings there. On appraisal of evidence the appellate authority came to the conclusion that after obtaining possession the landlord did not occupy the premises for twelve months and the house remained locked and that is why the electric connection was also disconnected as throughout she remained at Indore. On these findings, the appeal was allowed and it was ordered that possession be restored to the ejected tenant.

(3) Two sons of the landlord filed revision in this Court along with an application to bring them on record as heirs of the deceased landlord (inference from this can be drawn that they wanted to file revision in this Court as the landlord was dead). In the application and the grounds of revision it was stated that the landlord died on 22nd February, 1989, before the appeal was filed but after the decision of the Rent Controller and challenged the order of the appellate authority ordering restoration of possession *inter alia* on the grounds that the appeal was preferred against a dead person and

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that the landlord was not heard at the time of the decision of the appeal.

(4) None has appeared on behalf of respondent despite service. Accordingly, I proposed to decide the revision *ex parte*.

(5) The amendment made in Order 41, Rule 14(4) C.P.C. by this Court would not strictly apply to the proceedings before the Rent Controller as the Court of Rent Controller is *persona designata*. In the Act there is no provision for dispensing with the issue of notice at the appellate stage if before the Rent Controller the opposite party does not appear and is proceeded *ex parte*.

(6) Even if Order 41, Rule 14(4) was applicable the facts of this case show that before the appeal was filed the landlord was dead. The resultant effect is that appeal was directed against a dead person and on such appeal the matter could not be decided against the legal representatives of the landlord without bringing them on record and affording them an opportunity of hearing. Hence the order cannot be sustained.

(7) In this view of the matter, the revision is allowed, the order of the appellate authority is set aside and the matter is remitted to that authority to decide the appeal afresh on merits after hearing the legal representatives of the landlord. The ejected tenant need not bring legal representatives of the landlord on the record of the appeal by filing a formal application as they have come to this Court in revision and they should be deemed to be parties to the appeal, which has become pending before the appellate authority by virtue of this order. In this behalf necessary corrections can be made in the memo of parties before the appellate authority by inserting the names of Moti Singh and Sujjan Singh sons of Smt. Gurdip Kaur as her legal representatives.

(8) Moti Singh and Sujjan Singh are directed through their counsel to appear before the appellate authority on 14th January, 1991 when the appellate authority will give notice of the appeal to the ejected tenant.

No costs.

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R.N.R.