(5) Perusal of section 68 of the Income-tax Act would show that in relation to the expression "books" the emphasis is on the word "assessee". In other words, such books have to be the books of the assessee himself and not of anyother assessee.

(6) In the present case, admittedly, the assessee maintained no books of account. The cash credit entry of which the sum in question form part, was found in the books the account of the partnership-firm, which in its own right is an assessee.

(7) In the above view of the matter, the books of the accounts of the partnership firm herein cannot be considered that of the individual assessee herein and, therefore, section 68 of the Income-tax Act would not be attracted to the present case.

(8) The above view receives support from *Laxmi Narain Gupta* versus *Commissioner of Income-tax, Bihar* (2).

(9) No decision taking a contrary view has been brought to our notice at the Bar.

(10) For the reasons aforementioned, we answer the question in the negative i.e. in favour of the assessee and against the Revenue and dispose of the reference accordingly. No costs.

S.C.K.

Before S. P. Goyal and Pritpal Singh, JJ.

MEHTAB SINGH,—*Petitioner.*

versus

TILAK RAJ ARORA AND ANOTHER,—*Respondents.*

Civil Revision No. 420 of 1984

October 13, 1987.

Code of Civil Procedure (V of 1908)—Order XXIII, Rule 1(4)—Application for eviction dismissed as withdrawn by the Rent Controller —No permission to file fresh application granted—Second application for eviction filed—Such application—Whether barred—Provisions of the Code—Whether applicable.

(2) (1980) 124 I.T.R. 94.

Held, that the laws of procedure are grounded on principles of natural justice. The procedure embodied in these rules is designed to facilitate justice and further its ends and enacted with a view that endeavour should be made to avoid swamp decisions and to afford litigants a real opportunity in fighting out their cases fairly and squarely. One of the maxims which governs all judicial or quasi-judicial proceedings whether in a Court, Tribunal or before *persona designata*, is *nemo debet bis vexari pro una Et. Eadem Causa*, i.e. no man should be vexed twice over the same cause of action. That even though Code of Civil Procedure, 1908 is not applicable as such to the proceedings before the Rent Controller but the general principles contained in Section 11, Order II, Rule 2, Order IX Rule 9 and Order XXIII Rule 1(4) of the Code which are based on justice, equity and good conscience do govern those proceedings. It is held that a second petition for the ejectment of the tenant on a ground on which an earlier petition was got dismissed as withdrawn without liberty to file a fresh petition would be barred and not maintainable.

(Para 5).

Ram Parkash vs. Nathu Ram, 1984 CJL (C & Cr.). 96

Raghbir Kaur *vs.* Gurmej Singh, 1985 (1) P.L.R. 266.

(OVERRULE)

Petition for revision under Section 15(5) *of Act III of* 1949 *(as made application to the U.T. Chandigarh) from the order of the Court of Shri O. P. Gupta, Appellate Authority, Chandigarh dated 9th November,* 1983 *affirming that the findings of Shri K. S. Bhullar, P.C.S., Rent Controller, Chandigarh dated 7th January,* 1983 *on issue Nos.* 1 *and* 4 *are correct and the same is hereby dismissed with costs.*

N. C. Jain, Sr. Advocate with B. S. Bhatia, Advocate, *for the Petitioners.*

Ashok Bhan, Sr. Advocate with B. S. Guliani, Advocate and Rakesh Garg, Advocate, *for the Respondents.*

JUDGMENT

S. P. Goyal, J.

(1) The question of law referred for consideration and decision by this Bench is as to whether a second petition for the ejectment of the tenant would be competent on a ground on which earlier petition was got dismissed as withdrawn without liberty to file a second petition.

(2) The facts leading to the said question are that the flat in dispute was leased out to the respondents by Miss Sarvjit Kaur through rent-note date 8th January, 1972. About two months thereafter she gave this flat in exchange to the petitioner,—*vide* exchange deed 30th March, 1972. In spite thereof she joined with the petitioner in the filing of the petition for the ejectment of the respondent from the demised premises in the year 1973, on three ground, out of which the only one which subsists for the purposes of this petition is that of subletting. During the trial of that petition, the petitioner got his name deleted from the array of parties and the proceedings were carried on by Miss Sarvjit Kaur alone. The allegations made in that petition were that the tenant had transferred his rights under the lease and sublet the **Barsati** portion of the shop-cum-flat to respondent No. 2 Inder Singh. The plea was turned down and the petition dismissed by the Rent Controller. His order was affirmed by the Appellate Court as well, as is evident from the copy of the judgment, Exhibit R-2, dated 13th Mach, 1980. The petitioner thereafter instituted the present petition on 7th August, 1980, seeking ejectment of the respondents, on the ground of subletting, based on the same set of facts as pleaded in the earlier petition. The Rent Controller ruled out the plea on the ground that it was barred by the principles of resjudicata. The Appellate Court affirmed its findings on the ground that the petitioner being successor-in-interest of Miss Sarvjit Kaur, was bound by the findings recorded in the earlier proceedings. The reason given by the Appellate Authority for holding that the petitioner was bound by the decision in the earlier proceedings was wholly misconceived, because the demised premises stood exchanged on 30th March, 1972 whereas the petition was filed by Miss Sarvjit Kaur in the year 1973. She having no interest in the demised premises when the earlier petition was filed, any finding recorded against her could not bind the petitioner. However, the learned counsel for the tenant contended that the petitioner was also a party in the earlier petition and he having withdrew from the same, the position in law could be that the earlier petition, so far as he was concerned, was got dismissed by him as withdrawn. As no permission was sought to file a fresh petition nor there is any change of circumstance providing a fresh cause of action, a second petition on the same set of facts would be barred.

(3) The learned counsel for the landlord contended that there being no provision in the East Punjab Urban Rent Restriction Act,

which debars the filing of the second petition on the same ground on which an earlier petition was filed and dismissed as withdrawn, the provisions of Order 23 rule 1 of the Code of Civil Procedure could not be invoked to debar the maintenance of a second petition. As there was no direct decision of this Court governing the question involved, which is of general importance and arising frequently, the matter was referred to a larger Bench.

(4) More than three decades back it was authoritatively held by a Full Bench of this Court in *M/s. Pitman's Shorthand Academy* v. *M/s. Lila Ram and Sons* (1), that the Rent Controller and the Appellate Authority under the Act are *persona designata* and not Courts and its correctness has not been doubted till today. Recently, in *Ram Dass* v. *Smt. Sukhdev Kaur and another* (2), a Division Bench of this Court held that the Authorities under the Act being not Courts, the provisions of Order 23, rule 1(3) as such were not applicable to the proceedings before them. However, no considered opinion was expressed as to whether the Rent Controller or the appellate Authority could invoke the principle Contained in Order 23 or various other provisions of the Code of Civil Procedure in deciding such petitions and the matter was left for the discretion of the Authorities under the Act, with the observations that they could devise their own procedure. This decision, therefore, provides no guidance in the matter in issue. There are two other decisions of this Court in *Ram Parkash* v. *Nathu Ram* (3) *Raqhbir Kaur* v. *Gurmej Singh,* (4) wherein it was held that the second application would not be barred if the first one was dismissed as withdrawn because of the absence of any provision in the Act. The matter however, was not considered and discussed in detail in either of these decisions.

(5) As observed by Bose J., in *Sangram Singh* v. *Election Tribunal,* Kotah and another, (5) the laws of procedure are grounded on principles of natural justice. The procedure embodied in these rules is designed to facilitate justice and further its ends and enacted with a view that endeavour should be made to avoid swamp decisions and to afford litigants a real opportunity in fighting out

(1) AIR 1950 East Punjab 181.
(2) 1981 P.L.R. 440.
(3) 1984 C.L.J. 96
(4) 1985 P.L.R. 266.
(5) A.I.R. 1955 S.C. 425.

their cases fairly and squarely. One of the maxims which governs all judicial or quasi-judicial proceedings whether in a Court, Tribunal or before *persona designata, is nemo debet bis vexari pro-una Et Eadem-Causa,* i.e. no man should be vexed twice over the same cause of action. The provisions contained in Section 11, order 2 rule 2, order 9 rule 9 and order 23 rule 1(4) of the Code of Civil Procedure are, *inter alia,* the various manifestations of the same maxim. Even though, the provisions of Section 11 of the Code of Civil Procedure would not apply in terms to the proceedings before any Tribunal or *Persona* designata, which is not a Court, still the trial of any matter or any issue which has been previously settled between the parties, would be barred by the general doctrine of *res-judicata* which is of universal application and governs all judicial and quasi-judicial proceedings, as has been repeatedly held by the Supreme Court and was reiterated in *Lal Chand (dead) by L, Rs. and others* v. *Radha Kishan,* (6) in the following terms :—

> "By the present suit, the respondent is once again asking for the relief which was included in the larger relief sought by him in the application filed under the Slum Clearance Act and which was expressly denied to him. In the circumstances, the present suit is also barred by the principle of *res judicata.* The fact that Section 11 of the Code of Civil Procedure cannot apply on its terms, the earlier proceeding before the competent authority not being a suit, is no answer to the extension of the principle underlying that section to the instant case, Section 11, it is long since settled, is not exhaustive and the principle which motivates that section can be extended to cases which do not fall strictly within the letter of the law. The issues involved in the two proceedings are identical, those issues arise as between the same parties and thirdly, the issue now sought to be raised was decided finally by a competent quasi-judicial tribunal. The principle of *res judicata* is conceived in the larger public interest which requires that all litigation must, sooner than later, come to an end. The principle is also founded on equity, justice and good conscience which require that a party which has once succeeded on an issue should not be permitted to be

(6) 1977 S.C. 789.

harassed by a multiplicity of proceedings involving determination of the same issue."

If the various provisions noticed above are held to be not applicable to the proceedings before the Rent Controller, it would necessarily result in the violation of the maxim that no man should be vexed twice over the same cause of action and the landlord or the tenant as the case may be, would be able to harass time and again on the same cause of action and for the same relief. For example, a landlord after the full trial of his petition for ejectment at the stage of arguments feeling that the petition is likely to fail, would get it dismissed as withdrawn and institute a fresh one again on the same cause of action. He would be able to repeat the same process time and again if the principles underlying the provisions of Order 23 Rule 1(4) are held to be not applicable to the proceedings before the Rent Controller. Similarly if the provisions of Order 2 rule 2 of the Code of Civil Procedure are held to be not applicable, a landord would be able to file ejectment application on one ground although many other grounds may be available for the same relief at a given time. After having failed on that ground till the highest Court, he would be able to institute another petition on the second ground and thus go on fighting litigation and harassing the opposite party. Same would be the situation with regard to the provisions of Order 9 Rule 9 of the Code of Civil Procedure and the landlord would be able to get his petition dismissed in default at any stage of the proceedings and file a fresh one on the same cause of action resulting in the abuse of the process of the Court and harassment of the opposite party All these principles as held in *Lal Chand's case* (supra), are conceived in the larger public interest and founded on equity, justice and good conscience, which require that no man should be vaxed twice on the same cause of action. We are, therefore, of the considered view that even though the Code of Civil Procedure is not applicable as such to the proceedings before the Rent Controller, but the general principles contained in the Code, including the one noticed above which are based on justice, equity and good conscience would govern those proceedings and the two decisions relied upon by the learned counsel for the respondents in *Ram Parkash* v. *Nathu Ram,* (7) and *Raghbir Kaur* v. *Gurmej Singh* (8) are, accordingly overruled.

(7) 1984 C.L.J. (C&Cr.) 96
(8) 1985 (1) P.L.R. 266.

(6) Before parting with the judgment, we may notice two more decisions which were relied upon by the learned counsel for the respondents. In *Dev Pal Kashyap* v. *M/s. Sant Ram Narinder Mohan Cloth Merchants and another,* (9) the question involved was as to whether an appeal would be barred by the provisions of Section 96(3) of the Code of Civil Procedure against a consent decree or not. The right of appeal is a substantive right and not a procedural one, and as such the provisions of the Code of Civil Procedure were rightly held to be not applicable. In the other case —*Punjab Chemi Plants Ltd.* v. *G. S. Malhotra,* (10) it was held that the provisions of Order 8 rule 10 of the Code being penal in nature could not be invoked to shut out the defence of the respondents. The case is obviously distinguishable and has no bearing on the issue in hand because the provision involved does not relate to any general principle of law governing the judicial or quasi-judicial proceedings.

(7) In the result, the question of law referred to us is answered in the affirmative and it is held that a second petition for the ejectment of the tenant on a ground on which an earlier petition was got dismissed as withdrawn without liberty to file a fresh petition would be barred and not maintainable. The case would now go back to the learned Single Judge for disposal of the petition on merits.

S. C. K.

Before M. R. Agnihotri, J.

OM PARKASH,—*Petitioner.*

versus

THE STATE OF HARYANA and another,—*Respondents.*

Civil Writ Petition No. 2015 *of* 1985.

November 11, 1987.

Land Acquisition Act (1 of 1894)—Section 5-A—Financial Commissioner's Standing Order No. 28—Para 19-A—Objections against acquisition—Inquiry under Section 5-A—Right of hearing—Notice of objections not issued to department—Ommission—Whether amounts to improper consideration and disposal of objections—Effect on acquisition—Stated.

(9) 1983 (2) R.C.R. 6.

(10) 1982 (1) R.L.R. 130.