Annexure 'A', against it, under sections 8 and 17(1)(e) of the Act, is quashed. There is no order in regard to costs, because at the time the learned Judge gave decision in the writ petition of the appellant-firm the prevailing view was that approved by the learned Judge, which has since been overruled by the decision in *Basant Singh's case*.

Mehar Singh, J.

D. FALSHAW, C.J.—I agree.

Falshaw, C.J.

B.R.T.

APPELLATE CIVIL

Before Harbans Singh, J.

MANGAT RAM,—*Appellant*

versus

OM PARKASH,—*Respondent*

Execution Second Appeal No. 643 of 1965

1965

September 16th.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 15(5) order of ejectment passed on revision by High Court—Whether executable—Section 17—Whether applies.

Held, that sub-section (5) of section 15 of the East Punjab Urban Rent Restriction Act, 1949, gives supervisory jurisdiction to the High Court, and for lack of any other name petitions made under this sub-section are categorised under the heading of revision petitions and thus all that High Court does is to correct mistake, if any, in the order of the appellate authority, and the order passed by the appellate authority as modified is the final order and, therefore, is to be treated as an order passed on appeal under section 15.

Held, that the words "every order passed on appeal under section 15" as used in section 17 of the Act are comprehensive enough to include every order passed by the High Court under sub-section (5) of section 15 of the Act and is executable as such.

Execution Second Appeal from the decree of the Court of Shri Sarup Chand Goyal, Additional District Judge, Gurdaspur; dated the 10th February, 1965, reversing that of Shri B. S. Teji, Sub-Judge 1st Class, Batala, dated 26th September; 1964, dismissing the execution petition of the decree-holder and leaving the parties to bear their own costs.

H. L. SARIN AND MISS ASHA KOHLI, ADVOCATES, for the Appellant.

S. L. PURI, ADVOCATE, for the Respondent.

JUDGMENT

Harbans Singh, J. HARBANS SINGH, J.—This execution second appeal has arisen out of an ejectment application filed by the landlord as far back as 1958. Ultimately the landlord got the order of ejectment from the High Court in revision filed by him *vide* order, dated 22nd of September, 1961. The High Court gave two months' time to the tenant to put the landlord in possession. The tenant not having done so, the landlord took out execution proceedings. The judgment-debtor raised the plea of a fresh tenancy having been created, but the objection was dismissed. Later, he took up another objection that he could not be dispossessed because he had set up some machinery. That objection was also dismissed by the executing Court. The judgment-debtor's appeal also failed. When the decree-holder sought police help, another objection was taken that a compromise had been reached. A number of witnesses were examined, and ultimately the trial Court held that this plea was false and it dismissed the objection burdening the objector with special costs amounting to Rs. 225. An appeal was taken to the District Judge. The learned Additional District Judge affirmed the finding of the executing Court that there was no compromise, that the objection taken was false and frivolous and that the special costs awarded were not unreasonable. The learned counsel for the appellant, however, raised what he called a legal objection that under section 17 of the East Punjab Urban Rent Restriction Act, 1949 (East Punjab Act No. 3 of 1949), only an order made under section 10, or section 13, and an order passed on appeal under section 15 is executable by a Civil Court, and that inasmuch as the present final order which is sought to be executed was passed by the High Court in revision the same was not executable by a Civil Court. This found favour with the Additional District Judge and he accepted the appeal and dismissed the execution application. The landlord has come to this Court in second appeal.

It has to be noted that originally section 15 only provided an appeal to the appellate authority. No revision was provided. Anybody aggrieved by an order of the appellate authority could come to the High Court under Article 227 of the Constitution for the appellate order to be revised. So long as the position stood like that, it could have been urged, possibly with some force, that

section 17 only provided for execution of an appellate order as provided in section 15, by a Civil Court and that an order under Article 227 of the Constitution, which by no stretch of imagination could be said to be under section 15 of the Act, was not executable by a Civil Court. However, there is no reported case in which such an objection was taken. By Punjab Act 29 of 1956, sub-section (5) was added to section 15 as follows:—

> "(5) The High Court may, at any time, on the application of any aggrieved party or on its own motion, call for and examine the records relating to any order passed or proceedings taken under this Act for the purpose of satisfying itself as to the legality or propriety of such order or proceedings and may pass such order in relation thereto as it may deem fit."

There is no dispute that the present order, which is sought to be executed, is an order passed under section 15. The sole point for consideration is whether the words used in section 17 "every order passed on appeal" can cover an order passed under sub-section (5) of section 15. This sub-section gives a supervisory jurisdiction to the High Court, and for lack of any other name such petitions are categorised under the heading of revision petition. In my view all that the High Court does is to correct mistake, if any, in the order of the appellate authority, and the order passed by the appellate authority as modified is the final order and, therefore, it could be treated as an order passed on appeal under section 15. Furthermore the word "appeal" has a wider meaning and can cover all orders passed by a superior Court modifying that of an inferior Court. There is no peculiar magic about the word "appeal". Before the appellate authority an appeal lies under section 15 and before the High Court an appeal or revision, whatever it may be called, lies under sub-section (5) of section 15. A similar question arose before the Madras High Court in *Chappan* v. *Moidin Kutti* (1) in which Mr. Justice Subramania Ayyar delivering the judgment on behalf of the Full Bench took the view that the expression "appellate jurisdiction" has a comprehensive meaning so as to include the powers to hear and decide a revision. Following this judgment Mr. Justice B. Upadhaya in *Bhagwan Dass* v.

(1) I.L.R. 22 Mad. 68.

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Ganga Prasad (2) came to the conclusion that the words "appellate jurisdiction" in section 37(a), Civil Procedure Code, have a wide meaning and are comprehensive enough to include revisional jurisdiction and consequently where a decree for costs is passed by the High Court in revision, the Court of first instance and not the High Court would have jurisdiction to execute that decree in view of section 38 read with section 37(a), Civil Procedure Code. While considering this matter it was observed as follows in paragraph 5 of the report:—

> "In Wharton's Law Lexicon an appeal is:
>
> 'The removal of a cause from an inferior to a superior Court for the purpose of testing the soundness of the decision of the inferior Court.'
>
> 'Appellate jurisdiction' means the power of a superior Court to review the decision of an inferior Court."

In the present case there can be no manner of doubt that the High Court under sub-section 5 of section 15 exercises the power to remove the cause from an inferior Court to test the soundness of the decision of the inferior Court.

In view of the above I have no hesitation in my mind to hold that the words "every order passed on appeal under section 15" as used in section 17 of the Act are comprehensive enough to include every order passed by the High Court under sub-section (5) of section 15.

The learned counsel for the respondent tenant tried to attack the judgment of the trial Court on other issues. I have, however, no hesitation in my mind that the concurrent finding given by the Courts below that the objection raised by the tenant was false and frivolous is well based. The landlord has been trying his best to eject the tenant since 1958 and was only successful in getting a decree for ejectment in the year 1961 from the High Court. He made two efforts prior to the present one to get that decree executed, but each time the tenant came forward with one objection or the other, which was ultimately dismissed. It cannot be expected of any reasonable person,

(2) A.I.R. 1959 All. 92.

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and there is no ground for holding that the landlord in the present case is not a person of the type, that he would have entered into any compromise with such a tenant after having made all that effort. The trial Court, which had the advantage of seeing the witnesses in the witness-box, came to a definite conclusion that the witnesses produced by the judgment-debtor tenant were not reliable and were not stating the truth. He went even to the extent of holding that the objections were false and frivolous. The lower appellate Court affirmed this finding and I see no reason to differ from the same. I would, therefore, accept this execution second appeal, set aside the judgment and decree of the lower appellate Court and restore that of the trial Court. The appellant will have his costs in this Court and the lower appellate Court from the respondent, in addition to the costs awarded by the Executing Court.

Parties are directed to appear before the executing Court on 5th of October, 1965, for further proceedings. No records were sent for. A copy of this judgment should be sent to the executing Court immediately.

R.S.

REVISIONAL CRIMINAL

Before D. Falshaw, Chief Justice

SADHU SINGH,—*Petitioner*

versus

THE STATE,—*Respondent*

Criminal Revision No. 196 of 1965

1965

September; 17th.

Evidence Act (I of 1872)—S. 27—Disclosures statement—When is of importance—Stock witnesses of the police—Whether to be believed.

Held, that a disclosure statement under section 27 of the Indian Evidence Act, only has any meaning at all if the place from where the incriminating article is recovered is really a place of concealment which it will be difficult or impossible for the police to discover without some assistance from the accused, and when stock witnesses are brought in to support a meaningless disclosure statement of the accused, no weight can be attached to their testimony.