

Om Parkash and others *v.* Smt. Tirshala and others (G. C. Mital, J.)

(8) The petitioner has already filed his previous suit for possession by specific performance and if he is able to make out a case for grant of decree for specific performance, he would get a decree for possession of the land also on payment of the balance purchase price and on execution of the sale deed through the Court he would be able to recover possession of the land from the defendants.

(9) For the reasons recorded above, I dismiss the revision petition with costs.

S. C. K.

Before G. C. Mital, J.

OM PARKASH and others,—*Petitioners.*

versus

SMT. TIRSHALA and others,—*Respondents.*

Civil Revision No. 1536 of 1978

July 12, 1979

Haryana Urban (Control of Rent and Eviction) Act (11 of 1973)—Section 15(6)—Application for ejection dismissed as having abated—Order of dismissal—Whether appealable—Case remanded for trial on merits—Appellate authority—Whether has power to pass such a remand order.

Held, that if it is a case where the Rent Controller has held that there is no abatement and wants to proceed with the ejection application then there will be no appeal as the order will be treated purely as an interlocutory order not finally decided either the rights of the parties or disposing of the claim application finally. If on the other hand, the Rent Controller comes to the conclusion that the ejection application is to be dismissed for not bringing the legal representatives on record then it will be a final order and appeal against the same would be competent. (Para 3).

Held that where the Rent Controller rejects an application for ejection without going into the merits of the same and the appellate authority is not satisfied with the said decision, the latter has

no option but to remand the case to the Rent Controller to complete the trial of the case and to decide the same in accordance with law.

(Para 7).

Revision under section 15(6) of the Haryana Urban (Control of Rent & Eviction) Act, 1973, for revision of the order of the Court of Shri Balbir Singh, Appellate Authority (Haryana) Gurgaon (Camp Hissar) dated 17th September, 1976 reversing that of Shri Balbir Singh, Rent Controller, Hansi, Tehsil and District Hissar, dated 24th February, 1975, ordering the Rent Controller to entertain the application for impleading legal representatives of Shri Tilok Chand deceased decide the case on merits. Parties to bear their own costs. Both the parties have been directed to appear in the Court of Rent Controller, Hansi on 15th October, 1976.

Ram Rang, Advocate, for the Appellants.

V. M. Jain, Advocate for the Respondents.

JUDGMENT

Gokal Chand Mital, J.

(1) This is a tenant's revision against the order of the Appellate Authority, Gurgaon, dated September, 17, 1976, whereby it held that there was no abatement of the ejection application on the death of Tilok Chand, while the ejection application was pending before the Rent Controller as there was no limitation for bringing the legal representatives of Tilok Chand on the record of the case before the Rent Controller under the Haryana (Control of Rent and Eviction) Act, 1973, as the provision of Order 22, Rule 3 of the C.P.C. and the limitation of 90 days applicable thereto was not applicable to the proceedings under the aforesaid Act. He also came to the conclusion that since the ejection application was filed by two landlords; one having died, the other landlord could proceed with the same as initially also one of the two landlords could bring on application for ejection. Since the Rent Controller had dismissed the ejection application on the point of abatement without trying the same at the initial stage, the Appellate Authority remanded the case to the Rent Controller to proceed with the ejection application. Dissatisfied with the order of the Appellate Authority, the tenant has come in revision before this Court.

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(2) To appreciate the points raised by the learned counsel for the petitioner, the facts of the case may be noticed. Tilok Chand and Tirshala Devi applied for ejection of their tenants on the ground of subletting, change of user and arrears of rent, etc. in respect of rented land situate at Uklana Mandi district Hissar and impleaded the sub-tenants also as party. While the application for ejection was pending before Rent Controller, Hissar, on May 9, 1974 Tilok Chand landlord died. In the meantime Uklana Mandi was included in the part of Hansi Tehsil because of some re-organization of tehsils and districts by the State of Haryana and as such the jurisdiction for Uklana Mandi cases came under the jurisdiction of the Rent Controller, Hansi and as such the file of this case was transferred from the Rent Controller, Hissar to the Rent Controller, Hansi. When the case came up for consideration before the Rent Controller Hansi, the counsel for the landlord found that the application for bringing the legal representatives of Tilok Chand on record, which was filed before the Rent Controller, Hissar on 29th May, 1974 was not on the file of the case and as such an application, dated 8th February, 1975 along with an affidavit of Shri Mahabir Parshad Jain, Advocate, Hissar was filed before the Rent Controller, Hansi, to the effect that the aforesaid Advocate had filed an application on 29th May, 1974 to bring on record the legal representatives of Tilok Chand, who had died on 9th May, 1974, a copy of which was in the brief of Shri Mahabir Parshad Jain Advocate, Hissar. These facts, stated in the application were duly supported by the affidavit of the aforesaid Advocate. No reply or counter-affidavit was filed thereto on behalf of the tenants and in spite of that the Rent Controller, Hansi,—*vide* order, dated 24th February, 1975 dismissed the ejection application by passing the following two-line cryptic order:

“Counsel for the parties are present. Arguments have been heard. The suit having abated is hereby dismissed.”

Against the aforesaid order of the Rent Controller, Hansi, the legal representatives of Tilok Chand, landlord and Tirshala Devi, who was still alive filed an appeal before the Appellate Authority which was allowed on 17th September, 1976 and it was held that there was no abatement and the case was remanded to the Rent Controller to entertain the application for impleading the legal representatives of Tilok Chand and for disposal of the case on merits. Against the aforesaid order the tenants have come up in revision.

(3) Shri Ram Rang, counsel for the petitioner, at the outset has urged that the order of the Appellate Authority is wholly illegal and without jurisdiction as no appeal was competent before him against the order, dated 24th February, 1975 passed by the Rent Controller, which was in the nature of interlocutory order. In support of his submission he has relied upon *Bant Singh Gill v. Shanti Devi and others*, (1). According to him the decision of the Supreme Court relates to the proceedings under Rent Control Act and with regard to case of abatement and, therefore, it is of great help in deciding the present case. He read para 3 of the aforesaid decision and drew my pointed attention to the following in support of his argument:—

“On the other hand, if, as in the present case, it is held that the suit has not abated and its trial is to continue, there is no final order deciding the rights or liabilities of the parties to the suit. The rights and liabilities have yet to be decided after full trial has been gone through. The decision by the court is only in the nature of a finding on a preliminary issue on which would depend the maintainability of the suit. Such a finding cannot be held to be an order for purposes of S. 34 of the Act of 1952, and, consequently, no appeal against such an order would be maintainable.”

But while he was reading paragraph 3, I noticed the paragraph prior to the above quoted paragraph which would be applicable to the facts of this case and which is underlined in the following quotation from the aforesaid decision:—

“In the case before us also, all that was done by the application presented by the appellant on the 13th March, 1961, was to raise a preliminary issue about the maintainability of the suit on the ground that the suit had abated by virtue of S. 50(2) of the Act of 1958. The Court went into that issue and decided it against the appellant. If the decision had been in favour of the appellant and the suit had been dismissed, no doubt there would have been a final order in the suit having the effect of a decree (see the decision of the Full Bench of the Lahore High Court in *Ram Charan Dass v. Hira Nand*, (2).”

(1) A.I.R. 1967 S.C. 1360.

(2) A.I.R. 1945 Lah. 298 (FB).

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Now a reading of both the paragraphs would show that if it is a case where the Rent Controller has held that there is no abatement and wants to proceed with the ejectment application, according to the aforesaid first quotation of the Supreme Court decision, there will be no appeal as the order will be treated purely as an interlocutory order not finally deciding either the rights of the parties or disposing of the ejectment application finally. If on the other hand the Rent Controller comes to the conclusion that the ejectment application is to be dismissed for not bringing the legal representatives on record then it will be a final order and appeal against the same would be competent. After the aforesaid first quotation, it was further noticed by the Lordships of the Supreme Court by making reference to their another decision reported in *Central Bank of India Ltd. v. Gokal Chand* (3), wherein it was held that in case where no appeal lies from an interlocutory order, such an order can be challenged by the appellant only in appeal from the final order passed in the proceedings for eviction. Therefore, in both the situations both the parties are allowed the opportunity to challenge the order of Rent Controller passed one way or the other. In case the Rent Controller had held that there is no abatement no appeal would have been competent before the Appellate Authority and possibly the tenant would have come up to this Court in revision or would have raised the point in appeal from the final ejectment order. On the other hand, if the Rent Controller decides as in this case that there is abatement and dismisses the application then it is subject to appeal immediately. Therefore, in view of the Supreme Court's decision itself the appeal before the Appellate Authority was properly presented and cannot be held to be incompetent and as such I over-rule the point raised by Mr. Ram Rang, counsel for the petitioner.

(4) The next point which now falls for consideration is whether there was an application filed for bringing legal representatives of Tilok Chand deceased landlord on record or not and if no such application was filed then what is its effect. It is not disputed by the counsel for the petitioner that when the ejectment application came up for consideration before the Rent Controller, Hansi, on behalf of the landlord an application, dated 8th February, 1975 duly signed by Shri Mahabir Parshad Jain, Advocate, Hissar and supported by his affidavit was filed stating therein that an application for bringing legal representatives of Tilok Chand deceased was filed by him on

29th May, 1974 before the Rent Controller, Hissar and this was necessitated when it was found from the record that that application is not with the file of the case. It is asserted by the counsel for the respondent-landlords, which is not disputed by the counsel for the petitioner-tenant, that Shri Mahabir Parshad Jain, Advocate Hissar is one of the Senior Most Advocates of great eminence and unquestionable integrity and that if the facts were not true he would not have filed an affidavit. Once this is so, there is no reason to ignore his affidavit and accepting the same I would hold that an application for bringing legal representatives of Tilok Chand deceased landlord was filed by Shri Mahabir Parshad Jain, Advocate, Hissar, on behalf of the legal representatives of the deceased which even according to the other submissions made by the learned counsel for the petitioner-tenant would be within limitation. Once I come to this conclusion no point with regard to limitation or no limitation for filing of application for bringing legal representatives on the record of a case under the Rent Control Act would arise. Accordingly I leave this point open to be decided in some other case.

(5) Since the original application, dated May 19, 1974 is missing from the file, in the interest of justice and in order to complete the record of the case, I direct that the Rent Controller shall allow the landlord to prepare a copy of the application from the brief of the counsel for the landlord in order to place the same on record of the Rent Controller and that shall be treated as an application having been filed on May 29, 1974. I am adopting this course in order to avoid the delay as otherwise I would have ordered the reconstruction of that application which might have taken longer time in completing the formalities. The matter of these preliminary points is hanging fire for the last more than five years already and in order to avoid any further delay on such a trivial matter I am directing that this course be adopted.

(6) Faced with the aforesaid situation the counsel for the petitioner raised yet another technical point and that is that the Appellate Authority had no power to remand the case to the Rent Controller in view of a Division Bench judgment of this Court in *Shri Krishan Lal Seth v. Smt. Pritam Kumari*, (4). The aforesaid decision has been doubted by S. P. Goyal, J. and has referred the

(4) 1961 P.L.R. 865.

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matter to a larger Bench. I have also my doubts about the aforesaid decision as neither on principle nor on any authority apart from the aforesaid decision it can be held that an Appellate Court or an Appellate Tribunal has no inherent jurisdiction to remand the case to the original Court or the authority, when the Appellate Court or the Appellate Tribunal has the jurisdiction to upset in whole or in part or to uphold the order of the lower Court or Authority. If an Appellate Authority has jurisdiction to completely upset the order of the lower Authority then I see no reason why it cannot upset in part or after setting it aside as a whole remand the case to the original Authority for fresh decision either in accordance with law or on the basis of observations made by the Appellate Authority. I am saying this especially in the absence of any express or implied bar in any of the provisions under which the original or the Appellate Authorities are deciding the matters. Be that as it may, since the aforesaid point is not arising in the present case, it is not necessary to await for the decision of the Larger Bench. Here the facts are entirely different. The order of the Rent Controller has been quoted above which is a two-line order while dismissing the application for ejection which shows that he did not decide the merits of the case and ejection application was dismissed at a preliminary stage as one of the landlords died within a couple of months of the filing of the ejection application and much of proceedings had not been taken before the Rent Controller. Mr. Vigyan Mohan Jain, counsel for the landlord has brought to my notice an unreported decision of Chief Justice Falshaw in *Lajpat Rai v. Harkishan Dass*, (5) and wants me to read the following quotation contained therein:—

“I do not, however, consider that the decision applies to the present case in which it is not so much a matter of the learned Rent Controller’s not having dealt satisfactorily with some point which arose in the case as of his not having dealt with the merits at all after accepting certain preliminary objections. In my opinion, there is nothing in the words of the section which prohibits a remand in such a case”.

(5) C.R. No. 667 of 1962, decided on 15th April, 1963.

(7) A reading of the aforesaid quotation from the judgment of Chief Justice Falshaw shows that *Krishan Lal Seth's case* (Supra) was brought to his notice which he distinguished with the above observation with which I entirely agree. The aforesaid observation of Chief Justice Falshaw has been approved by M. R. Sharma J., in *Brij Lal Puri and another v. Smt. Muni Tandon*, (6). The present case is quite similar to the case if not better than the one which was being considered by the Chief Justice. Accordingly, *Krishan Lal Seth's case* (Supra) is clearly distinguishable on the facts and circumstances of this case and in my opinion there was no option with the Appellate Authority, but to remand the case to the Rent Controller to complete the trial of the case and to decide the same in accordance with law. In *Krishan Lal Seth's case*. (Supra) the Rent Controller had decided the case on merits and on appeal the Appellate Authority was not satisfied with the decision and in that eventuality the Division Bench held that if the Appellate Authority was not satisfied with the decision of the Rent Controller, the Appellate Authority itself could have decided the case instead of remanding the case to the Court of the Rent Controller. As such *Krishan Lal Seth's case* (Supra) is clearly distinguishable from the facts of the present case. The decision of Chief Justice Falshaw in *Lajpat Rai v. Harkishan Dass* (Supra) is squarely applicable and following the same I uphold the order of remand passed by the Appellate Authority.

(8) The matter of remand may be looked into from another view point and that is this. The jurisdiction of the High Court to entertain revision under the Haryana Urban (Control of Rent and Eviction) Act, 1973 is contained in sub-section (6) of section 15 of the aforesaid Act which is as follows:—

“The High Court, as revisional authority, may, at any time, on its motion or on the application of any aggrieved party, made within a period of ninety days, call for and examine the record relating to any order passed or proceedings taken under this Act for the purpose of satisfying itself

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as to the legality of propriety of such order or proceedings and may pass such order in relation thereto as it may deem fit. In computing the period of ninety days the time taken to obtain a certified copy of the order shall be excluded”.

(9) A reading of the aforesaid sub-section (6) of section 15 of the Act shows that the power of revision of the High Court is either on its own motion or on the application of any aggrieved party. Even if I had found any difficulty in upholding the order of remand passed by the Appellate Authority, I would have been inclined to exercise my *suo motu* power in this revision petition of making an order of remand to the Rent Controller on the peculiar facts of this case so that the ejection application which was dismissed at the initial stage could be proceeded with and decision on merits by the Rent Controller instead of giving this cumbersome process to the Appellate Authority. So viewing the matter of remand from any angle it is just and proper on the facts and circumstances of this case that the Rent Controller decides the ejection application on merits in accordance with law.

(10) For the reasons recorded above, I find no merit in this revision petition and dismiss the same with costs. The parties through their counsel have been directed to appear before the Rent Controller, Hansi on 6th August, 1979.

(11) Before parting, it would be necessary to mention that this case has been hanging fire since beginning of 1974 and the application for ejection is still at the infancy stage. The Rent Controller, Hansi, before whom this case will now go back for decision would take necessary steps for its speedy trial so that, if possible, the case is finally decided within this year. In order to do this, he will ensure that unnecessary and long adjournments are not granted.