
(1979) 10 P&H CK 0025
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 335 of 1979

Amar Chand

APPELLANT

Vs

Bhim Sain

RESPONDENT

Date of Decision : 04-10-1979

Acts Referred:

Haryana Urban (Control of Rent and Eviction) Act, 1973 — Section 23

Citation : (1979) 10 P&H CK 0025

Hon'ble Judges : Rajendra Nath Mittal, J

Bench : Single Bench

Advocate : P.N. Aggerwal, for the Appellant; H.L. Sarin, Mr. M.L. Sarin and Mr. R.L. Sarin, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Nath Mittal, J.—This revision petition has been filed by Amar Chand tenant against the order of the Rent Controller, Rewari dated November 21, 1977.

2. Briefly, the facts are that Bhim Sain filed an application for ejectment of the tenant from the shop inter alia on the ground that he had not paid the rent, The Court proceeded ex parte against the tenant as he did not appear in spite of service. He further held that the tenant had not paid the rent. Consequently, he vide order dated February 16, 1976, ordered his ejectment The tenant filed an application for setting aside exparte order on March 19, 1976, wherein he stated that he was not served in the rent petition and that he came to know about it from one Bal Mukand, his nephew. The application was opposed by the landlord. The rent Controller came to the conclusion that he had the knowledge about the proceedings and was deliberately avoiding the service. He, consequently, dismissed the application on November 21, 1977. The tenant filed an appeal against that order in the Court of the appellate authority on December 19, 1977 and a revision petition before the Financial Commissioner, who had the revisional jurisdiction, on February, 20, 1978. An objection was raised by the counsel for the landlord before the appellate authority that no appeal was maintainable

against that order. The said authority found force in the contention of the learned Counsel and dismissed the same on that short ground. After filing of the revision petition, the jurisdiction to hear revision petition was taken from the Financial Commissioner and conferred on the High Court. Consequently, the revision petitions pending before the Financial Commissioner were transferred to (his Court. That Is how the matter in being heard in this Court.

3. Three preliminary objections have been raised by the learned Counsel for the Respondent; first, that the order of the Rent Controller merged into the order of the appellate authority and therefore, no revision was maintainable against the order of the Rent Controller ; secondly that certified copy of the order of the Rent Controller was not attached with the grounds of revision at the time when the revision was filed and consequently the revision was incompetent; and thirdly, that the revision was not filed within limitation.

4. Mr. Sarin, learned Counsel for the Respondent has argued that the order of the Rent Controller has merged with the order of the appellate authority and consequently no revision petition is maintainable against the order of the Real Controller. He submits that the revision petition was maintainable against the order of the appellate authority. I regret my inability to accept the contention. The appeal was filed against the order of the Rent Controller dated November. 21, 1977. An objection was raised on behalf of the landlord that no appeal was maintainable. The appellate authority came to the conclusion that he had no jurisdiction to hear the appeal and consequently he dismissed it. If he had no Jurisdiction to hear the appeal, then the question of merger of Rent Controller order with that of the appellate authority does not arise. I am, therefore, of the opinion that the contention has no merit and is liable to be rejected.

5. The next contention of Mr. Sarin is that the revision was filed on February 20, 1978, beyond a period of 99 days without a certified copy of the Rent Controller's order. He submits that the revision without a certified copy was not maintainable. He further submits that even the revision petition was barred by limitation on the date. According to the learned Counsel, the certified copy of the order was filed on March 24, 1979. He urged that even if the days for obtaining the copy are taken into consideration, the revision on that day would be barred by limitation. On the other hand, the learned Counsel for the Petitioner has vehemently argued that the Petitioner had already applied for the copy, when he filed the revision petition and consequently, it cannot be said that it was filed on February 20, 1978 after limitation. He further urges that the Petitioner later on filed the copy of the order and if there is any delay, that may be condoned.

6. I have heard the parties at a considerable length. The Petitioner had applied for the copy on February 13, 1978, and it was attested on February 20, 1978. The copy was obtained by the Petitioner from the copying Agency on March 8, 1978. The Petitioner is entitled to take into consideration, the days from the date when he applied for the copy upto the date when it was attested and ready for delivery Thus he was entitled to 8 days for counting the limitation. Even if the

days upto March 8, 1978, when he took the delivery of the copy are taken into consideration, then he is entitled to 24 days. It was the duty of the Petitioner to have filed a certified copy of the order as soon as he obtained it from the copying agency. He, however, for the reasons best known to him did not file the same till March 24, 1979, The revision will be taken to be filed on the date when the certified copy was filed. Rules have been framed u/s 23 of the Haryana Urban (Control of Rent and Eviction) Act, 1973. Rule 10 provides that every application made under Sub-section (6) of Section 15 shall be signed by the applicant or his recognised agent presented to the revisional authority or such other officer as may be authorised by him. Every application u/s 15(6) of the Act shall be accompanied by a certified copy of the order of the Rent Controller or the appellate authority, as the case may be. Thus Rule 10 makes it mandatory for a Petitioner to file the certified copy of the order. As no certified copy was filed by the Petitioner in the first instance and it was filed on a later date, therefore, the revision will be deemed to be a proper revision on the date when the certified copy was filed. No explanation has been given by the Petitioner as to why he did not file the certified copy from March 8, 1979 to March 23, 1979. It is the duty of the Petitioner to explain each and every day of delay. In the circumstances, I am of the opinion that the revision petition is not within limitation and liable to be dismissed on this ground.

7. Faced with the aforesaid situation, the learned Counsel for the petitions sought to argue that the rule making power had no(sic) authority to frame Rule 10. He further submits that the Legislature by virtue of Section 23 has conferred very wide discretion on the State Government to frame rules and therefore the section as well as the Rules is liable to be struck down. I am not convinced with this contention of the learned Counsel. Section 23 says that the State Government, may make rules to carry out all the purposes of the Act. It is well settled that the purposes for which the Act has been enacted can be ascertained from the preamble and other provisions of the Act. The preamble of the Act says that it is an Act to control the increase of rent of certain buildings and rented land situated within the limits of urban areas and the eviction of tenants therefrom. From various sections also the legislative intent of the Act can be found out. It is not possible for the Legislature to make provisions regarding procedure in short Acts and therefore it confers on the Government the powers to frame rules to carry out the purposes of the Act. In my view, it cannot be held that Section 23 is liable to be struck down on account of excessive delegation. The rules referred to by the counsel for the Petitioner also do not go beyond the purposes of the Act. Therefore, I am unable to hold that Rule 10 ultra vires Section 23.

8. The learned Counsel for the Petitioner has next urged that Rule 9 relates to the filing of appeal wherein similar provision has been made. He further contends that sub Rule 3 of Rule 9 provides that if the appeal is not accompanied by a certified copy of the order appealed against, it may be rejected or returned to the Appellant for the purpose of being amended or attaching to it a certified copy of the order appealed against, as the case may be, within a time to be fixed by

the appellate authority. According to the learned Counsel, no such rule has been framed under Rule 10 and therefore, the revision cannot be dismissed on the ground that the certified copy of the order was not annexed with the revision petition. I do not find any merit in this contention as well. From the perusal of Rule 10, it is evident that a certified copy of the order is required to be annexed with the petition. If no rule for rejection of the memorandum is provided under this rule, it does not make any difference. The consequence of not filing the certified copy is that it will not be treated to be a revision. It will be treated to be a revision on the date when the certified copy is filed. On that date as already held above, the revision in this case was barred by limitation by about one year. It may also be highlighted that when the revision petition was filed, on that date, it was, barred by one day. Even if it might not be, it does not make any difference. In the circumstances, it is liable to be dismissed on the ground, of limitation.

9. The learned Counsel for the Petitioner, has next argued that the Petitioner had applied for the certified copy and later on he annexed the same. He submits that the delay in filing the copy may be condoned. He has referred to *Firm Chhota Lal v. Firm Basao Mall* AIR 1926 Lab, 404 and *Amar Nath v. Brij Bhushan* AIR 1964 P&H. 443 I regard my inability to accept the contention. As I have already held above, it was the duty of the Petitioner to explain each and every day of delay. In the present case the certified copy was filed after more than one year but the delay has not been explained. The cases referred to by the learned Counsel for the Petitioner, are distinguishable and the ratio in them will not be applicable to the facts, of the present case.

10. For the reasons recorded above the revision petition is dismissed with no order as to costs.