
(2003) 05 P&H CK 0070
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2728 of 2002

Balwant Rai Tayal

APPELLANT

Vs

Subhash Oil Company and Another

RESPONDENT

Date of Decision : 20-05-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 16 Rule 1, Order 3 Rule 4
Haryana Urban (Control of Rent and Eviction) Act, 1973 — Section 13

Citation : (2003) 135 PLR 152 : (2003) 2 RCR(Rent) 148

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : R.S. Mittal and Sudhir Mittal, for the Appellant; Arun Jain, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This petition filed under Sub-section (6) of Section 15 of the Haryana Urban (Control) of Rent and Eviction Act, 1973 (for brevity, the Act) challenges order dated 4.5.2002 passed by the Appellate Authority, Hisar accepting the appeal of tenant-respondents wherein ex pane judgment dated 27.2.1998 passed by the Rent Controller, Hisar was challenged. The Rent Controller in his order dated 27.2.1998 has accepted the application of the landlord-petitioner by proceeding ex pane against the tenant-respondents and ordered their ejection. The ex parte order passed by the Rent Controller reads as under: -

"In evidence statement of Balwant Rai Tayal PW1 was recorded who stated on oath that he was owner and landlord of the demised property and the defendants were his tenants and the property in question was given to the respondents in the year of 1969 at the rate of Rs. 400/- per month therefore, from time to time the rent of the demised property was enhanced and now the defendants were paying Rs. 1250/- per month which was also not paid in time. PW1 further deposed that the respondent did not pay rent from the period of 1.1.95 to upto

date and stressed that the respondents are liable to be evicted only on this ground. In support of this contention rent note Ex.P1 and site plan of the demised property Ex.P2 were also presented. Thereafter, petitioner closed the evidence. The evidence of the petitioner is un-rebutted and un-challenged and there is no reason to disbelieve the same after perusal of the documents. Hence, keeping in view facts and circumstances of the case the eviction petition of the petitioners, succeeds. The respondent are directed to vacate the possession of the demised premises in question within a period of two months from passing this order. Memo of costs prepared accordingly. File be consigned to the record room after due compliance,"

2. Against the aforesaid order, the tenant- respondents filed an application which was dismissed on 15.6.1999, Therefore, order dated 15.6.1999 was challenged before this Court in Civil Revision No. 3238 of 1999 by the tenant-respondents. The judgment delivered by this Court in the aforesaid civil revision is reported as Subhash Oil Company and Ors. v. Sh. Balwant Rai Tayal and Ors. (2001)128 P.L.R. 82. This Court while setting aside the order dated 15.6.1999 had issued directions to the Appellate Authority to decide the following issues:-

- a) Application filed under Order XLI Rule 27 of the Code of Civil Procedure, 1908 (for brevity, the Code") praying for adducing of additional evidence filed by the tenant-respondents;
- b) Whether the appeal filed by the tenant-respondents was maintainable or whether the tenant-respondents could be considered to be the aggrieved person;
- c) Whether the appeal was, properly presented as the appeal was filed by the lawyer who did not hold power of attorney validly executed in his favour by the tenant-respondents.

3. The Appellate Authority came to the conclusion that the documents marked as Annexure A1 to A11 with the application filed under Order XLI. Rule 27 read with Section 107 of the code have to be taken on record because it was not possible to decide the controversy raised between the parties without proving on record those documents. On the aforementioned issues, the view of the Appellate Authority reads as under:-

"Firstly the scope of an application under Order 41, Rule 27 CPC is required to be referred here. Section 107 of CPC enables an appellate Court to take additional evidence or to require such other evidence to be taken subject to such conditions and limitations as are prescribed under Order XLI Rule 27 CPC. Principle to be observed ordinarily is that the Appellant Court should not travel outside the record of Lower Court and cannot take evidence on appeal. However, Section 107(d) CPC is an exception to the general rule and additional evidence can be taken only when the conditions and! limitations laid down in the said rule are found to exist. The Court is not bound under the circumstances mentioned under the rule to permit additional evidence and the parties are not entitled, as a right to the admission of such evidence and the matter is entirely in the discretion of

the Court which is, of course, to be exercised judiciously and sparingly. Order XLI, Rule 27 CPC envisages certain circumstances when additional evidence can be adduced.:

- i) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or
- ii) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of the due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or
- iii) the appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause.

A judgment of Hon^{ble} five Judges of the Supreme Court rendered in K. Venkataramiah Vs. A. Seetharama Reddy and Others, ruled that under Clause (1) (b) of Rule 27 of Order 41 CPC Appellate Court can receive additional evidence not only when it requires such evidence to enable it to pronounce judgment, but also for any other substantial cause. There may be cases where even though the court finds that it is able to pronounce judgment on the basis of evidence on record, but still considers that in the interest of justice something which remains obscure should be filled up so that it can pronounce judgment in more satisfactory manner.

In the present case, Sh. Balwant Rai Tayal, landlord, filed the eviction application u/s 13 impleading M/s Subhash Oil Company through its partner Virender Kumar Tayal his son and S/Sh. Virender Kumar Tayal and Raghu Nath Sahai. Such thus being the position, question of leading evidence by the present appellants did not arise. They were never made the parties to the eviction application. The only explanation put forth by the respondent in not making M/s Subhash Oil Company through its partner Sh. Phool Chand as a party to the eviction application was that he died before filing the eviction application. The point raised is untenable. From the documents referred to above, it is unhesitatingly clear that initially M/s Subhash Oil Company, a partnership firm was owned by three partners viz. Phool Chand, Virender Kumar Tayal and Raghu Nath Sahai. Balwant Rai Tayal has also initiated the ejectment proceedings against M/s Subhash Oil Company through its partner Phool Chand before the Rent Controller, Hisar (reference Annexure 6). By placing on record two deeds of dissolution that is Annexure A1 and A2, the present appellants that is the legal representatives of Phool Chand wants to prove that Virender Kumar Tayal and Raghu Nath Sahai retired on dated February 1, 1972 and December 15, 1975 respectively and that is why before adjudicating the ejectment application, it was necessary for the landlord to make them the parties so that they could put forth their case and thereafter let the ejectment application be decided in accordance with the law...."

4. On the question as to whether the appeal was maintainable or not, the learned

Appellate Authority reached the conclusion that the tenant-respondents were the persons aggrieved, therefore, they had a right to challenge the ex-parte ejectment order dated 27.2.1998. The Appellate Authority reached the conclusion that the tenant-respondents were persons aggrieved because the landlord-petitioner failed to implead the legal representatives of Phool Chand, a partner of the firm who had died. The fact that Phool Chand had died, was known to the landlord-petitioner. One of the serving partner, namely, Virender Kumar Tayal was the son of the petitioner i.e. Balwant Rai Tayal. The view of the Appellate Authority on this aspect reads as under:-

"Inarguably, it was in knowledge of the landlord that Phool Chand was one of the partners of M/s Subhash Oil Company. In a number of litigations, as has been gleaned from the documents referred to above while dealing with the application for leading additional evidence, Balwant Rai Tayal, landlord, has impleaded M/s Subhash Oil Company through its partner Sh. Phool Chand, of course with the other partners Virender Kumar Tayal and Raghu Nath Sahai. When it was in the knowledge of the landlord that Phool Chand was one of the partner of M/s Subhash Oil Company and he had died and the partnership firm qua partner Phool Chand had not been dissolved then why he did not opt to implead the legal representatives of Phool Chand as party to the ejectment proceedings: It is pertinent to mention here that ejectment application was filed against M/s Subhash Oil Company through Virender Kumar Tayal son of the landlord and Raghu Nath Sahai. Both of them appeared before the Rent Controller but did not contest the ejectment application and were proceeded ex parte. Accordingly, ex parte impugned order was passed. When a person is given a right to raise a contest in a certain matter, then he is certainly a person aggrieved. This being the position, the contention of the learned counsel for the respondent is devoid of merit that there was no necessity to implead the present appellants in the ejectment proceedings. Hence, it is repelled."

5. On the third issue as to whether the appeal has been instituted properly or not as the same was not accompanied by a power of attorney executed in favour of the counsel who presented the appeal, the Appellate Authority took the view that non filing of the power of attorney in favour of Mr. M.P. Aggarwal, Advocate would not be fatal irregularity because the power of attorney in favour of Mr. M.P. Aggarwal, Advocate was executed and the same was attached with the file of the executing Court. The Appellate Authority also concluded that in the facts and circumstances of the case, it would be proper exercise of power to remand the case to the Rent Controller because the matter was not decided on merits and retrial was imperative as the evidence adduced by the landlord-petitioner was ex parte and the order of ejectment dated 27.2.1998 was also ex parte. In this regard reliance was placed by the Appellate Authority on a judgment of this Court in the case of Om Parkash and Anr. v. Smt. Tirshala and Ors. 1979(2) R.L.R. 370.

6. Brief facts of the case necessary for deciding the controversy raised are that

the landlord-petitioner, namely, Balwant Rai Tayal filed an ejectment petition u/s 13 of the Act against the tenant-respondent, namely, M/s Subhash Oil Company. The tenant company has been a partnership concern having three partners, namely Sarvshri Virender Kumar Tayal son of Balwant Rai Tayal i.e., the son of the landlord-petitioner, Raghu Nath Sahai and Phool Chand. In the ejectment petition M/s Subhash Oil Company was impleaded as respondent through its partners Sarvshri Virender Kumar Tayal and Raghu Nath Sahai. The ejectment was sought on the ground of arrears of rent from 1.1.1995, material impairment of the value and utility of the demised premises and material alterations by the tenant-respondents by raising unauthorised construction of rooms. The notice in the ejectment petition is stated to have been served and at one stage Sarvshri Virender Kumar Tayal and Raghu Nath Sahai were represented by a counsel, namely, one Mr. Rajesh Garg, Advocate who was marked as present on behalf of the firm on 26.2.1997. Thereafter, the firm was proceeded ex parte. It is appropriate to mention that another ejectment petition filed by the landlord-petitioner on the ground of material alterations by unauthorisedly constructing rooms was dismissed vide order dated 27.5.1994 and the appeal against the aforementioned order was pending before the Appellate Authority. On account of the fact that on 27.2.1998 the Rent Controller had ordered eviction of the tenant-respondents ex parte, the appeal was withdrawn on 23.11.1998. It is also appropriate to notice that Virender Kumar Tayal died on 9.5.1997. When the order dated 27.2.1998 was challenged before the Appellate Authority, the appeal filed by the tenants-respondents was dismissed on 15.6.1999. The aforementioned order was challenged in the revision petition before this Court which was allowed and numerous directions were issued which have already been noticed as indicated in the judgment cited as Subhash Oil Company and Ors. v. Sh. Balwant Rai Tayal and Ors. (2001)128 P.L.R. 82.

7. Mr. R.S. Mittal, learned senior counsel has assailed the judgment of the Appellate Authority dated 4.5.2002 remanding the case of the Rent Controller by holding that the appeal was properly instituted and application under Order XLI Rule 27 of the Code was meritorious on the following grounds:-

a) That the appeal was not properly instituted and once the appeal is instituted without following the express provisions of the Code, then such an appeal must be rejected because such an appeal is no appeal in the eyes of law. Reliance has been placed by the learned counsel on the provisions of Order III Rule 2(a) of the Code to argue that only such an appeal could be deemed to be properly instituted which is presented by a duly authorised counsel holding a power of attorney. In support of his submission, the learned counsel has placed reliance on a Division Bench judgment of this Court in the case of Piara Singh and Ors. v. State of Punjab and Ors. (1983)85 P.L.R. 688 and also other judgments in the cases of Garib Chand v. Municipal Committee, Budhlada 1979 P.L.J. 565 and Pat Ram etc. v. Ekam Singh, etc. 1971 CLJ 294. He has also referred to the provisions of Order XLI Rule 1 of the "Code" and argued that an appeal must be signed and presented by a duly authorised agent or by the party himself. The

memorandum of appeal has to be signed by the appellant or his advocate provided the counsel had the authority from the party;

b) That the application under Order XLI Rule 27 of the Code could not be allowed without affording an opportunity of hearing to the landlord-petitioner. According to the learned counsel as a matter of fact there was no application under Order XLI Rule 27 of the Code because the simple application for placing on record certain documents was filed. He has drawn my attention to Annexure A-10 to show that it was not an application under Order XLI Rule 27 of the Code which accompanied Annexures A1 to A11. In support of his submission, the learned counsel has placed reliance on two judgments of the Supreme Court in the cases of Natha Singh and Others Vs. The Financial Commissioner, Taxation, Punjab and Others, and a Constitution Bench judgment in the case of Municipal Corporation for Greater Bombay Vs. Lala Pancham of Bombay and Others, . On the basis of aforementioned two judgments of the Supreme Court, the learned counsel has argued that the discretion permitted by Order XLI Rule 27 of the Code is a judicial discretion circumscribed by the limitation specified in that provision. According to the learned counsel, the discretion exercised by the Appellate Court in allowing the application is contrary to the provisions because no opportunity was given to the landlord-petitioner and the application cannot be treated to have been filed under Order Rule 27 of the Code:

c) That Sub-clause (o) of Clause 15 of the agreement of dealership with Indian Oil Corporation Ltd. prohibits any change in the nature or constitution of the partnership firm without previous consent in writing of the company during the currency of the agreement. The learned counsel has placed reliance on this clause as extracted in Annexure A-4 which is a memorandum of agreement dated 10.8.1968;

d) That the Appellate Authority cannot insist on the impleadment of legal representatives of Phool Chand. deceased as under Order XXX Rule 4 of the Code, there is no requirement to do so. In support of his argument, the learned counsel has placed reliance on two judgments of the Supreme Court in the cases of Sohan Lal and Others Vs. Amin Chand and Sons and Others, and Upper India Cable Co. and Ors. v. Bai Kishan AIR 1984 S.C. 1381. He has also placed reliance on a judgment of the Kerala High Court in the case of Smt. Lieya and Another Vs. Kaliappa Chettiar, . The learned counsel has argued that the eviction petition against partnership firm would be maintainable even if all the partners of the firm have not been impleaded as parties. According to the learned counsel, under Rule 4 of Order XXX of the Code, it has been specifically provided that if a partner dies during the pendency of the suit or before the institution thereof, it is not necessary to join the legal representatives of the deceased partner and such an ejectment petition cannot be considered as improperly instituted; and

e) That the Appellate Authority is not vested with the power of remand u/s 15 of the Act, Criticising the reasoning adopted by the Appellate Authority, the learned counsel has submitted that the Appellate Authority proceeded on the assumption

that the Rent Controller has decided the ejectment petition vide its order dated 27.2.1998 without entering on merits of the controversy, According to the learned counsel the assumption is based on the fact that no issues were framed as contemplated by Order XIV Rule 1 of the Code. The learned counsel has placed reliance on Sub-rule (6) of Rule 1 of Order XIV of the Code to argue that if no controversy arises, then in ex parte cases, no issues are required to be recorded and the controversy has to be decided on the basis of evidence led in support of his submission that on remand could be ordered, the learned counsel has placed reliance on two Division Bench judgments of this Court in the cases of Krishan Lal Seth v. Smt. Pritam Kumari (1963)65 P.L.R. 865 and Raghu Nath Jalota Vs. Romesh Duggal and Another, .

8. Mr. Arun Jain, learned counsel for the tenant-respondents supported the impugned order dated 4.5.2002 argued that the landlord-petitioner has played fraud on the Court because M/s Subhash Oil Company could not be represented by either of the impleaded partners i.e., Sarvshri Virender Kumar Tayal and Raghu Nath Sahai. The learned counsel pointed out that the partnership concern came into existence on 20.11.1969 with three partners, namely, Sarvshri Phool Chand, Raghu Nath Sahai and Virender Kumar Tayal. On 1.3.1972 a dissolution deed was recorded and Virender Kumar Tayal retired from the partnership as is revealed by Annexure A1 placed on record of this petition. The document Annexure A1 which is in Form "A" has been issued by the Registrar of Firms which shows that Virender Kumar Tayal had retired from the partnership of the firm on 21.1.1972. The form is duly signed by Virender Kumar Tayal and the change has been duly notified on 1.3.1974. The learned counsel has further pointed out that other partner Raghu Nath Sahai also retired on 15.12.1975 as is evident from Annexure A2, executed on 20.12.1975, another dissolution deed at pages 121-123 of the record. According to the learned counsel Phool Chand alone became the proprietor of the firm, namely, M/s Subhash Oil Company, Banvala Road, Hisar. Elaborating the contours of fraud played by the landlord-petitioner, the learned counsel has pointed out certain orders passed by the Rent Controller in the eviction petition filed by the landlord-petitioner. On 27.5.1994 the ejectment petition filed by the landlord-petitioner was dismissed by the Rent Controller and a copy thereof is placed on record as Annexure A3 at page 125 wherein Phool Chand has been impleaded as partner of the firm. Annexure A4 is an application to implead the legal representatives of Phool Chand who had died on 1.6.1995. This application filed by the landlord-petitioner is Annexure A4 at page 129 which shows that Smt. Chameli Devi widow, Smt. Sajni, Smt. Nirmla and Smt. Aruna daughters and Subhash Chander son of deceased Phool Chand were sought to be impleaded as legal representatives of the deceased. The learned counsel also made a reference to an interlocutory order dated 6.11.1995, Annexure A5, passed by the Additional District Judge, Hisar which shows that the landlord-petitioner was fully aware that Phool Chand had died leaving behind his heirs mentioned in the application dated 25.10.1994 and the question whether the firm is a partnership concern or a proprietorship concern was left open by the

Additional District Judge. Referring to the order dated 27.5.1994 passed by the Rent Controller, Hisar on the ejectment petition filed by the landlord-petitioner, the learned counsel argued that all these facts were well within the knowledge of the landlord-petitioner as is patent from paragraph 3. Reference has also been made to the proceedings initiated by Raghu Nath Sahai and Virender Kumar Tayal, the alleged erstwhile partners of the firm M/s Subhash Oil Company wherein the whole controversy has been unfolded in paragraph 15. According to the learned counsel, a calculated fraudulent method was devised by the land lord-petitioner and none of the legal representatives was impleaded before the Appellate Authority. Even in the memorandum of parties before this Court, the learned counsel points out that M/s Subhash Oil Company had been impleaded through Raghu Nath Sahai. On the basis of aforementioned factual background, the learned counsel raised the following submissions:-

- a) That fraud vitiates everything and a calculated designed procedure adopted by the landlord-petitioner would lead to only one conclusion that valuable rights of the tenant-respondents which is now a proprietorship concern were sought to be defeated by impleading non existing partners and by obtaining an ejectment order;
- b) That the power of remand can be exercised in such like cases because no finding could be considered to have been recorded on merits as Phool Chand who was the real contesting tenant representing the firm was not deliberately impleaded. Therefore, the law laid down in the case of Om Parkash (supra) and Brij Lal Puri and Another Vs. Muni Tandon, approving the view of Chief Justice Falshaw in Lajpat Rai v. Harkishan Dass, Civil Revision No. 676 of 1962. decided on 15.4.1963 would be fully attracted to the facts of the present case.
- c) That the provisions of Rule 4 of Order XXX of the Code do not apply to the facts of the present case because having not impleaded Phool Chand, no obligation was caused on the landlord-petitioner to implead his legal representatives and no order has been passed by the Appellate Authority. According to the learned counsel, therefore, no benefit can be derived by the land lord-petitioner.
- d) That the revision petition itself is not maintainable as no failure of justice has occasioned to the landlord-petitioner and the application for additional evidence has been lawfully allowed by the learned Appellate Authority by treating the same under Order XLI Rule 27 of the Code. By allowing an application Order XLI Rule 27, no irreparable loss or failure of justice has been caused to the landlord-petitioner. In support of his submission, the learned counsel has placed reliance on two Division Bench judgments of this court in the cases of Rangila Singh v. Jagtar Singh and Ors. 2001(2) P.L.J. 474 and Amarjit Kaur v. Surinder Singh and Ors. (2002) 132 P.L.R. 533; and
- e) That non-filing of power of attorney with the appeal instituted against the order of the Rent Controller dated 27.2.1998 is merely an irregularity which

would not result into any benefit to the landlord-petitioner. According to the learned counsel, the power of attorney in any case has now been filed on 7.8.2000 which even meets the requirement of law. If such a lacuna has been pointed out and is removed, then it cannot be argued that the appeal was not properly instituted. In support of his submission the learned counsel has placed reliance on a judgment of the Supreme Court in the case of Bihar State Electricity Board and Others Vs. Bhowra Kankanee Collieries Ltd. and Another, and a judgment of this Court in the case of Nehru Yuvak Kendra Sangthan Vs. Darshan Singh and Another, . The learned counsel argued that once the signed vakalatnama has now been filed by Mr. M.P. Aggarwal, Advocate, it cannot be concluded that the appeal was liable to be dismissed.

9. I have thoughtfully considered the respective submissions made by the learned counsel for the parties and have minutely perused the record and am of the considered opinion that this petition is devoid of any merit and is thus liable to be dismissed. Once it is established as a fact that Phool Chand has been impleaded by the landlord-petitioner in the earlier ejectment petition and after his death his legal representatives have also been impleaded by the landlord-petitioner himself as it clear from copy of the order dated 27.5.1994. Annexure A3 at pages 125-127 of the records of the Appellate Authority, Annexures A4 and A5 at pages 129-131, then there was no reason for the landlord-petitioner to refrain from impleading Phool Chand or his legal representatives in the ejectment petition. Although it is not to be decided in the instant proceedings as to whether Virender Kumar Tayal and Raghu Nath Sahai son of Inder Singh stood automatically retired from the partnership of the firm, namely, M/s Subhash Oil Company vide dissolution deed Annexure A1 at page 112 and Form "A" issued by the Registrar of Firms at pages 115-119 and dissolution deed Annexure A2, yet it cannot be concluded that Phool Chand was not required to be impleaded. The aforementioned documents Annexures A1 and A2 broadly indicate that Sarvshri Virender Kumar Tayal and Raghu Nath Sahai stood retired from the partnership of the firm on 1.3.1972 and 20.12.1975 respectively. It appears that the landlord-petitioner Balwant Rai Tayal who is father of Virender Kumar Tayal in a calculated and designed move devised a method of easing out Phool Chand or his legal representatives with an oblique motive of procuring an order of ejectment. Such a procedure and design is liable to be condemned by the Courts. The aforementioned facts high-light the contours of the method followed by the landlord-petitioner which borders on committing fraud. It is well known that such a fraudulent design and procedure would vitiate everything. Chief Justice Edward Coke of England long ago observed "Fraud avoids all judicial acts, ecclesiastical or temporal". Echoing and citing the opinion of Chief Justice expressed three centuries ago, the Supreme Court in S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, observed as under:-

"The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court,

however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to Court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the Court is being abused. Property-grabbers, tax-evaders, bank loan-dodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the Court. He can be summarily thrown out any stage of the litigation.

The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court, A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the Court auction on behalf of the Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ex.B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Ex.B-15 and non-suited the plaintiff. A litigant who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

10. The aforementioned view has been followed and applied by the Supreme Court in *United India Insurance Co., Ltd. v. Rajendra Singh* (2000)125 P.L.R. 787 (S.C.).

11. I am further of the View that there is no room to accept the contention that no remand order could be passed by the Appellate Authority. In the facts and circumstances of this case, I see no bar under Sub-section (2) of Section 15 of the Act which would come in play obstructing Appellate Authority from remanding the case to the Rent Controller. Moreover, in *Lajpat Rai's case* (supra) Chief Justice Falshaw has observed that the judgment like *Krishan Lal Seth's case* (supra) would not apply to cases where the decision is rendered on the

basis of preliminary objection raised. The view of the Chief Justice reads as under:-

"I do not, however, consider that decision applied 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."

12. Similar observations have been made in Brij Lal Puri's case (supra) as well as in Om Parkash's case (supra). When the principles enunciated in the aforementioned judgments rendered by this Court are applied to the facts of the present case, it becomes evident that the Rent Controller in the instant case by passing the judgment dated 27.2.1998 has been misled completely by the landlord-petitioner. The landlord-petitioner did not deliberately implead Phool Chand or his legal representatives who had highest stake in the ejectment petition. It is true that litigation with regard to effect of dissolution deed retiring Virender Kumar Tayal and Raghu Nath Sahai on 31.1.1972 and 15.12.1875 respectively is pending but for the same reason the claim of Phool Chand through his legal representatives has become serious in the ejectment petition. Therefore, in these facts and circumstances, it cannot be said that the Rent Controller has decided the ejectment petition by taking into consideration complete merits of the case. In any case, I would adopt the course adopted by this Court in the case of Om Parkash (supra) and exercise revisional jurisdiction under Sub-section (6) of Section 15 of the Act. The observations of this Court in Om Parkash's case (supra) read as under:-

"The matter of remand may be looked into from another 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 as to the legality, 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."

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 moto 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 ejectment application which was dismissed at the initial stage could be proceeded with a 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 decided the ejectment application on merits in accordance will law."

13. The other argument that the provisions of Rule 4 of Order III read with Order XVI Rule 1 of the Code have not been followed, would not require any detailed consideration because the power of attorney has subsequently been filed by Mr. M.P. Aggarwal, Advocate on 7.8.2000 and any objection in that regard stands removed. I am also not impressed with that argument because if Mr. M.P. Aggarwal, Advocate is appearing without any authorisation, it is for the respondent to disown such an advocate. The locus standi of the landlord-petitioner to raise such an objection is full of doubts. I am also not inclined to accept the argument raised by the landlord-petitioner relying on Rules 3 and 4 of Order XXX of the Code. The aforementioned provisions read as under-

"3. Service. Where persons are sued as partners in the name of their firm, the summons shall be served either -

a) upon any one or more of the partners, or

b) at the principal place at which the partnership business is carried on within (India) upon any persons having at the time of service, the control or management of the partnership business there.

as the Court may direct; and such service shall be deemed good service upon the firm so sued, whether all or any of the partners are within or without (India):

Provided that, in the case of a partnership which has been dissolved to the knowledge of the plaintiff before the institution of the suit, the summons shall be served upon every person within (India) whom it is sought to make liable.

4. Right of suit on death of partner.

(1) Notwithstanding anything contained in Section 45 of the Indian Contract Act, 1872 (9 of 1872), where two or more persons may sue or be sued in the name of a firm under the foregoing provisions and any of such persons dies, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representatives of the deceased as a party to the suit.

(2) Nothing in Sub-rule (1) shall limit or otherwise affect any right which the legal representative of the deceased may have-

a) to apply to be made a party to the suit, or

b) to enforce any claim against the survivor or survivors."

14. A persusal of Rule 4 shows that if two or more persons could sue or could be sued in the name of a firm under Rules 3 and 4, then in case of death of any

such person whether before the institution or during the pendency of the suit, it would not be necessary to join the legal representatives of the deceased as a party to the suit. No benefit of the aforementioned provisions could be claimed by the landlord-petitioner because in the facts and circumstances of the case, the party which is likely to be adversely affected by virtue of deed of dissolution showing that Virender Kumar Taval and Raghu Nath Sahai have retired from partnership to the knowledge of the landlord-petitioner have alone been joined as party and Phool Chand or his legal representatives have been conveniently omitted. Therefore, there is no merit in the argument raised on behalf of the landlord-petitioner,

15. For the reasons stated above, this petition fails and is dismissed with costs of Rs. 10,000/-. The parties through their counsel are directed to appear before the Rent Controller, Hisar on 18.7.202.