
(2015) 08 RAJ CK 0057
In the Rajasthan High Court
Case No : Civil Writ Petition No. 16492 of 2011

Kapil Chandla

APPELLANT

Vs

Rent Tribunal, Kota and Others

RESPONDENT

Date of Decision : 11-08-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 5

Citation : (2015) 08 RAJ CK 0057

Hon'ble Judges : Ajay Rastogi, J;J.K. Ranka, J

Bench : Division Bench

Advocate : Shailesh Prakash Sharma, for the Appellant; Pradeep Mathur, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Ajay Rastogi, J—The instant matter has been listed before us to examine the legal questions which have been referred by the Id. Single Judge vide order dt. 19.02.2014 on two conflicting views which have been expressed by two coordinate Single Benches of this court in reference to interpretation of Sec. 19(10) and Sec. 20(3) of the Rajasthan Rent Control Act, 2001. Primarily, the question which arise for our consideration, is as to whether the Appellate Rent Tribunal, in a pending appeal, against order of the Rent Tribunal, has a discretion vested to pass interlocutory order u/Sec. 19(10) of the Act, 2001 or it is dependent and has to be in consonance/conformity with sub-sec. (3) of Sec. 20 of the Act, 2001.

2. The Id. Single Judge of this court in Naveen Sharma Vs. Ram Dayal and Others, (2011) 3 RLW 2060 after examining the scope of Secs. 19(10) & 20(3) of the Act, 2001 has observed that the discretion vested with the Appellate Rent Tribunal of passing interlocutory orders, pending appeal, u/Sec. 19(10) has to be restricted for grant of mesne profit, which cannot be at a rate more than provided/contemplated u/sub-sec. (3) of Sec. 20 of the Act, 2001. The relevant extract of the judgment passed by the Id. Single Judge in Naveen Sharma's case

(supra) is reproduced ad infra:-

"7. A perusal of Sub-section (3) of Section 20 shows that if a tenant does not vacate the premises within three months from the date of issuance of certificate of recovery, he shall be liable for payment of mesne profit at the rate of two times if the premises is residential and three times if the premises is commercial. Such mesne profits becomes payable from the date of issuance of recovery certificate. Explanation to Sub-section (4) of Section 20 provides about powers of Appellate Rent Tribunal. By virtue of explanation, it comes out that Appellate Rent Tribunal is having authority to pass order otherwise, in any case, it should not pass an order to pay mesne profit over and above mentioned under Sub-section (3) of Section 20 of the Act, 2001 because, at last, if, certificate of recovery issued by the Rent Tribunal is maintained by the Appellate Rent Tribunal, mesne profit remains at the rate provided under Sub-section (3) of Section 20 of the Act. The explanation clarifies the above.

8. - 10. XX XX XX XX

11. Perusal of paras show that Section 38 of Delhi Rent Control Act of 1958 confers the Tribunal, with all the powers vested in a Court under the Code of Civil Procedure, that, Order 41 Rule 5 Code of Civil Procedure becomes applicable. It is in reference to the aforesaid statutory provisions that judgment has been given. Since Act of 2001 does not provide application of the provisions of Order 41 Rule 5 of Code of Civil Procedure, the Appellate Rent Tribunal can provide rate of mesne profit as given under Section 20(3) of the Act or less than it but not above, because if the order of Rent Tribunal is maintained finally, mesne profit remains payable at the rate provided under Section 20(3) of the Act. At times the market value is taken into consideration by the Appellate Rent Tribunal for grant of mesne profit. In my opinion, such liberty does not exist with Appellate Rent Tribunal for grant of mesne profit. It cannot be at a rate more than provided under Sub-section (3) of Section 20 of the Act of 2001. It is well settled law that No. judgment can nullify statutory provisions unless struck down. Thus Atma Ram's judgment (supra), cannot be applied in rime of the provision of Act of 2001."

3. It appears that prior thereto this very question arose for consideration before the Id. Single Judge of this court at the Main Seat, Jodhpur in the case of Paras Mal Dhariwal Vs. LRs of Amardatt Vyas & Ors. (S.B. Civil Writ Petition No. 6548/2008) decided on 14.09.2009 regarding the discretion vested with the Appellate Rent Tribunal for passing interlocutory order as contemplated u/sub-sec. (10) of Sec. 19 of the Act and taking note of the wholesome view of the matter and so also Sec. 19(10) & Sec. 20(3) along with Explanation appended thereto of the Act, 2001, the Id. Single Judge was of the view that the discretion vested with the Appellate Rent Tribunal for grant of interlocutory order cannot be circumscribed by any conditions and cannot be precluded from staying the payment of mesne profit at the enhanced rate of rent as provided u/sub-sec. (3) of Sec. 20 of the Act, 2001 during pendency of appeal and as regards grant of

interlocutory order, pending appeal, is concerned, the Id. Single Judge was of the view that it has to be considered and decided by the Appellate Rent Tribunal exercising its discretion reasonably, judicially and on the basis of settled principles governing the grant of interim relief. The relevant extract of the judgment dt. 14.09.2009 is reproduced ad infra:-

"9. As notices above, Sub-section (10) of Section 19 of the Act empowers the Appellate Rent Tribunal in its discretion to pass such interlocutory order, during the pendency of the appeal which the facts and circumstances of the case require. Indisputably, the power conferred on the Appellate Rent Tribunal as aforesaid to grant the interim relief is not circumscribed by any conditions therefore, it is not precluded from staying the payment of mesne profit at the enhanced rate of rent in terms of Sub-section (3) of Section 20 during the pendency of appeal. But then, the matter with regard to grant of stay pending appeal has to be decided by the Appellate Rent Tribunal exercising its discretion reasonably, judicially and on the basis of settled principles governing the grant of interim relief."

4. The Id. Single Judge was of the firm view that the discretion vested with the Appellate Rent Tribunal for passing interlocutory order u/Sec. 19(10), in any manner, not dependent upon the restrictions which have been referred to u/sub-sec. (3) of Sec. 20 of the Act, 2001.

5. It appears that the earlier order passed by the Id. Single Judge at the Main Seat, Jodhpur examining the self same controversy, dt. 14.09.2009 was not brought to notice of the coordinate Id. Single Judge of this court when the matter came to be examined at a later stage and while considering the self same controversy expressed a converse view on the subject in Naveen Sharma's case (supra).

6. It could not finally rest here and yet another coordinate Single Bench at Main Seat, Jodhpur of this court again examined the self same controversy with regard to interpretation of sub-sec. (10) of Sec. 19 and sub-sec. (3) of Sec. 20 of the Act, 2001 in Vijay Vyas Vs. Abhishek Goyal and Others, (2012) 1 RLW 891 : (2012) 1 WLN 195 and both the orders of different coordinate Single Benches were placed before the court are referred to by the Id. Single Judge in his later judgment relying upon the earlier judgment of the Single Bench of this court in Paras Mal Dhariwal (supra) decided on 14.09.2009 and the later judgment of Naveen Sharma Vs. Ram Narayan & Others (supra) dt. 10.02.2011 and the Id. Single Judge was of the view that it is for the Appellate Rent Tribunal to exercise discretion while passing interim orders provided u/sub-sec. (10) of Sec. 19 of the Act, 2001 but such discretion must be based upon reasonableness, keeping in view the settled principles governing the grant of interim relief and observed that Sec. 20(3) of the Act, 2001 is applicable in the execution proceedings before the Rent Tribunal and not by the Appellate Rent Tribunal. The relevant extract of the judgment passed by the Id. Single Judge in the case of Vijay Vyas (supra) is reproduced ad infra:-

"14. On the basis of the above discussion, it is held that the Appellate Rent Tribunal can exercise discretion while passing interlocutory order as per Section 19(10) of the Act of 2001 but the said discretion must be based upon reasonableness and till pendency of appeal if the Appellate Rent Tribunal deems fit that execution of the judgment of the Rent Tribunal deserves to be stayed, then, no unreasonable condition should be imposed. Further, order under Section 20(3) of the Act can be passed in execution proceedings of the order passed by the Rent Tribunal and not by the Rent Appellate Tribunal, therefore, whatever provision is provided under Section 20 of the Act are to be applied during the execution proceedings because the Legislature has purposely provided Section 20 for execution of the orders passed by the Rent Tribunal, if the tenant does not vacate the premises within three months from the date of attaining finality of the judgment of the Rent Tribunal. Therefore, no appellate Rent Tribunal can apply sub-section (3) of Section 20 of the Act, 2001 while passing interlocutory order during the pendency of the appeal."

7. When the self same controversy again came before the Id. Single Judge of this court, taking note of the different views expressed by different Single Benches of this court, considered it appropriate to refer the matter to be considered by the Division Bench of this court vide order dt. 19.02.2014 and after the matter was placed before Hon"ble the Chief Justice, it has been assigned to this court to examine & answer the questions referred to by the Id. Single Judge.

8. We consider it appropriate to quote the questions which emerge for our consideration & deciding the controversy in the instant case:-

"Q. 1 Whether provision of Section 20(3) of the Act of 2001 applies only in execution or it comes in effect by afflux of time after issuance of certificate for recovery of possession.

Q. 2 Whether the Appellate Rent Tribunal is precluded to pass interlocutory order by exercising powers under Explanation below Section 20 of the Act of 2001, as held by this Court in the case of Vijay Vyas (supra).

Q. 3 Whether Appellate Rent Tribunal is having power to specifically order otherwise than what has been provided under Sub-section (3) to Section 20 of the Act of 2001."

9. In the instant proceedings, the Appellate Rent Tribunal passed an interlocutory order dt. 15.09.2011 directing the appellant/petitioner to deposit a sum of Rs. 28,110/- and further to deposit mesne profit at the rate of three times the rent for getting execution/eviction proceedings stayed but we have been informed that, pending writ petition, the appeal in which interim/interlocutory order dt. 15.09.2011 was passed by the Appellate Rent Tribunal and impugned in the proceedings has been finally decided and the instant writ petition for all practical purposes has become infructuous but we are not examining the fate of the interlocutory order which is the subject matter of challenge in the instant proceedings, as a matter of fact question has been referred to this court to settle

the controversy because of the conflicting views, as stated supra.

10. To summarize in brief, in appreciating the controversy & the questions which has been raised for our consideration, let us first take a glance of the scheme of Rajasthan Rent Control Act, 2001 in brief.

11. Prior to enactment of the Act, 2001 to control eviction from, letting of, and rents for, certain premises in Rajasthan and further ancillary matters, the State Government enacted the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 and after its publication in official gazette, the State Government notified and made the Act, 1950 effective in various Districts of the State of Rajasthan from 1950 but by passage of time, it revealed that it needs replacement and with an object to provide for control of eviction from, letting of, and rents for, certain premises in the State of Rajasthan and matters incidental thereto, the Rajasthan Rent Control Act, 2001 came to be enacted by the State Government which received assent of the President on the 25th day of February, 2003.

12. The Act, 2001 is a complete Code in itself providing mechanism of examining the disputes covered under the jurisdiction of the Act, 2001 by the Rent Tribunal which is constituted u/Sec. 13 and the appeals are to be heard by the Appellate Rent Tribunal constituted u/Sec. 19 of the Act and the decision of the Appellate Rent Tribunal shall be final and no further appeal/revision shall lie against the order, in view of Sec. 19(11)(c) of the Act, 2001. The litigating parties under the Act, 2001 are either landlords or tenants in regard to the premises which are referred to u/Sec. 2(f) of the Act, 2001. The procedure for eviction of a tenant has been provided u/Sec. 15 and after undergoing the mechanism/in-built procedure, the Rent Tribunal u/sub-sec. (7) of Sec. 15 of the Act where it decides the petition in favour of the landlord, has to mandatorily issue a certificate for recovery of possession from the tenant but such certificate for recovery of possession shall not be executable for a period of three months from the date of decision in case of premises let out for residential purpose and at the same time in case of premises let out for commercial use, such certificate for recovery of possession shall not be executable for a period of six months from the date of decision. It will be appropriate to quote/refer sub-secs. (7) & (8) of Sec. 15 of the Act, 2001 ad infra:-

"15. Procedure for eviction of tenant.-

(1) to (6) XX XX XX XX

(7) Where the Rent Tribunal decides the petition in favour of the landlord, it shall issue a certificate for recovery of possession from the tenant.

(8) The certificates issued under sub-section (7) shall not be executable for a period of three months from the date of decision:

[Provided that in case of premises let out for commercial use such certificate shall not be executable for a period of six months from the date of decision.]"

13. The certificate for recovery of possession issued by the Rent Tribunal u/sub-sec. (7) of Sec. 15 is appealable before the Appellate Rent Tribunal and the procedure to be followed by the Appellate Rent Tribunal can be discerned from sub-secs. (7) & (8) of Sec. 19 of the Act, 2001 but the Legislature in its wisdom was conscious of this fact and to safeguard interest of the litigating parties, vested discretion to the Appellate Rent Tribunal for passing of the interlocutory orders, during pendency of appeal, as it may deem fit and proper obviously taking note of the rights of litigating parties under consideration u/Sec. 19(10) of the Act. It may be appropriate to quote/refer relevant sub sections and Explanation of Sec. 19 of the Act, 2001, which reads ad infra:-

"19. Appellate Rent Tribunal, Appeals and limitation thereof.-

(6) From every final order passed by the Rent Tribunal, an appeal shall lie to the Appellate Rent Tribunal, within the local limits of whose jurisdiction the premises is situated and such an appeal shall be filed within a period of sixty days from the date of final order alongwith copy of such final order.

(10) The Appellate Rent Tribunal may in its discretion pass such interlocutory order, during the pendency of the appeal, as it may deem fit.

(11)(b) The Appellate Rent Tribunal shall issue appropriate recovery certificate according to the decision rendered by it.

(11)(c) The decision of the Appellate Rent Tribunal shall be final and no further appeal or revision shall lie against its order.

Explanation. The expression "final order" referred to in sub-section (6) shall mean an order by which any proceeding pending before the Rent Tribunal is finally disposed of."

14. At the same time, the Rent Tribunal has been empowered on application of any party, to execute the final order or any other order passed under this Act by adopting any one or more of the modes/mechanisms provided obviously for execution of the final order or any other order passed under the provisions of the Act, 2001 and ordinarily under the Civil Procedure Code, power of the executing court is restricted to execute a decree but it cannot go beyond the terms of the order/decreed for execution.

15. However, in the instant scheme of the Act, 2001, the Legislature intended that after the landlord who is holding a certificate for recovery of possession, but execution may take its time, to protect the interest pending execution sub-sec. 3 of Sec. 20 of the Act mandated that till the tenant does not vacate the premises, after three months of the date of issuance of certificate for recovery of possession, the Rent Tribunal, at the stage of execution, is left with no other option but to mandate in fulfillment of the intent and purport of Sec. 20(3) of the Act, 2001 and to make the tenant, liable from the date of issuance of certificate for recovery of possession to pay mesne profits at the rate of two times the rent in case of the premises let out for residential purposes and at the same time at

the rate of three times the rent in case of premises let out for commercial purposes and under the mechanism which has been provided for a class of identified landlords, laying down a special procedure for recovery of immediate possession provided u/Sec. 16 of the Act, in such of the cases, the mesne profits shall be three times the rent in case the certificate for recovery of immediate possession has been issued u/Sec. 16 of the Act and the procedure which the Rent Tribunal has to follow/conduct while proceeding in the execution proceedings, has been contemplated u/sub-sec. (4) of Sec. 20 of the Act, 2001 and the Explanation appended thereto if read alongwith sub-sec. (3) of Sec. 20 of the Act envisages that mere filing of an appeal or other proceeding against the order of issue of certificate for recovery of possession or immediate possession will not save the tenant from his liability to pay mesne profits. The relevant extract of Sec. 20 of the Act, 2001 are reproduced ad infra:-

"20. Execution of the orders.-

(1) The Rent Tribunal shall, on application of any party, execute, in the manner prescribed, a final order or any other order passed under this Act by adopting any one or more of the following modes, namely:-

(a) attachment and sale of the movable or immovable property of the opposite party;

(b) arrest and detention of the opposite party;

(c) attachment of any one or more bank accounts of the opposite party and satisfaction of the amount of order to be paid from such account;

(d) attachment of salary and allowance of a Government Servant or employee of any nationalised bank, local authority, corporation, Government company;

(e) appointing any advocate as Commissioner on such remuneration as may be fixed or deputing any officer of the Tribunal or local administration or local body for execution of the order.

(f) delivery of possession of the premises to the applicant.

(2) XX XX XX XX

(3) If the tenant does not vacate the premises within three months of the date of issue of certificate for recovery of possession, he shall be liable, from the date of issue of certificate for recovery of possession to pay mesne profits at the rate of 2 times the rent in case of premises let out for residential purposes, at the rate of 3 times the rent in case of premises let out for commercial purposes and at the rate of 3 times the rent in case certificate for recovery of immediate possession has been issued under section 16.

(4) The Rent Tribunal shall conduct the execution proceedings in relation to a final order or any other order passed under this Act in summary manner and dispose of the application for execution made under this section within forty five

days from the date of service of notice on opposite party.

Explanation: Filing of an appeal or other proceedings against the order of issue of certificate of recovery of possession or immediate possession will not save the tenant from his liability to pay mesne profits, at the rates specified under sub-section (3), unless specifically ordered otherwise by the Appellate Rent Tribunal or the Court before which such an order is under challenge and if the order of issue of recovery certificate is finally maintained, the tenant shall be liable to pay mesne profits at the rate specified under sub-section (3) from the date on which the recovery certificate was initially issued."

16. It is well recognized that in selecting out different interpretations the court will adopt that interpretation which is just, reasonable and sensible rather than that which is none of those things. Justice G.P. Singh in his book "Principles of Statutory Interpretation" has quoted the speech of Lord Simon of Glaisdale *ad infra*:-

"Parliament is *prima facie* to be credited with meaning what is said in an Act of Parliament. The drafting of statutes, so important to a people who hope to live under the rule of law, will never be satisfactory unless Courts seek whenever possible to apply the golden rule" of construction, that is to read the statutory language, grammatically and terminologically, in the ordinary and primary sense which it bears in its context, without omission or addition. Of course, Parliament is to be credited with good sense; so that when such an approach produces injustice, absurdity, contradiction or stultification of statutory objective the language may be modified sufficiently to avoid such disadvantage, though no further."

17. The Apex Court in several cases has accepted the doctrine of purposive construction of interpreting the statute. In the case of *National Insurance Co. Ltd. Vs. Laxmi Narain Dhut*, (2007) 2 ACC 28 : (2007) ACJ 721 : AIR 2007 SC 1414 : (2007) 136 CompCas 678 : (2007) 4 JT 169 : (2007) 146 PLR 510 : (2007) 4 SCALE 36 : (2007) 3 SCC 700 : (2007) 3 SCR 579 : (2007) AIRSCW 1782 : (2007) 2 Supreme 800 , it has been opined that more often than not, literal interpretation of a statute or a provision of a statute results in absurdity and, therefore, while interpreting statutory provisions, the courts should keep in mind the object or purpose for which the statute has been enacted. The Apex Court reiterated the principles relating to interpretation of statutes *ad infra*:-

"27. Golden Rule" of interpretation of statutes is that statutes are to be interpreted according to grammatical and ordinary sense of the word in grammatical or liberal meaning unmindful of consequence of such interpretation. It was the predominant method of reading statutes. More often than not, such grammatical and literal interpretation leads to unjust results which the Legislature never intended. The golden rule of giving undue importance to grammatical and literal meaning of late gave place to "rule of legislative intent". The world over, the principle of interpretation according to the legislative intent is

accepted to be more logical.

28. When the law to be applied in a given case prescribed interpretation of statute, the Court has to ascertain the facts and then interpret the law to apply to such facts. Interpretation cannot be in a vacuum or in relation to hypothetical facts. It is the function of the legislature to say what shall be the law and it is only the Court to say what the law is."

18. Taking note of principles of Golden Rule of Interpretation of statute (supra), when the law to be applied in a given case, the Court has to ascertain the facts and then interpret the law to apply to such facts. It goes without saying that interpretation of statutes cannot be in a vacuum or in relation to hypothetical facts. It is the function of the legislature to say what shall be the law and it is only the Court to say what the law is.

19. In the light of the scheme of Act which, in extenso, has been discerned by us is self explicit and leaves no manner of doubt for any interpretation of the enactment but as there are conflicting views expressed by different coordinate Single Benches of this court, we consider it appropriate, in the interest of the parties, to settle the issue at least once & for all.

20. As we have noticed the Rent Control Act, 2001 is a complete Code in itself and after the procedure which is to be followed by the Rent Tribunal, for eviction of a tenant or for recovery of immediate possession for a kind of landlords who are eligible for claiming immediate possession, the Rent Tribunal if finally decides the petition in favour of the landlord and issues a certificate for recovery of possession from tenant u/sub-sec. (7) of Sec. 15 of the Act has to keep the certificate of recovery for possession in abeyance for a period of three months, in case the premises are let out for residential purposes and in case where the premises are let out for commercial purposes, such certificate for recovery of possession from tenant shall be kept in abeyance for a period of six months but if no appeal is preferred, the certificate for recovery of possession, after expiry of 3-6 months, in the given circumstances, becomes executable by the Rent Tribunal u/Sec. 20 of the Act and sub-sec. (3) thereof becomes operational and the Rent Tribunal while executing the certificate for recovery of possession, after expiry of the period of 3-6 months, as the case may be, as contemplated u/sub-sec. (8) of Sec. 15 of the Act, is left with no other discretion but to direct the tenant to pay mesne profit at the rate of two times the rent in case of premises let out for residential purposes and at the rate of three times the rent in case of premises let out for commercial purposes from the date of issue of certificate for recovery of possession until the summary inquiry is concluded, executing the order or vacant possession of the premises is handed over to the landlord as provided u/sub-sec. (4) of Sec. 20 of the Act.

21. But in a given situation, where appeal has been preferred by the tenant against certificate for recovery of possession u/Sec. 19 of the Act, an in-built procedure has to be complied with, despite all constraints which have been

enacted in the mechanism, it cannot be ruled out that despite all efforts delay is caused in final conclusion which we are not supposed to examine any further but in given fact situation, the Legislature in its wisdom considered it appropriate to grant discretion to the Appellate Rent Tribunal to pass such interlocutory orders, as it deems fit during pendency of appeal u/Sec. 19(10) and we concur with the view which the coordinate Single Bench at the Main Seat, Jodhpur has expressed in the case of *Paras Mal Dhariwal Vs. LRs of Amardatt Vyas & Ors.* [S.B. Civil Writ Petition No. 6548/2008] decided on 14.09.2009 that sub-sec. (10) of Sec. 19 of the Act confers power on the Appellate Rent Tribunal to grant interim relief/interlocutory orders in the facts & circumstances of the case as it deem fit which is not circumscribed by any conditions and is not dependent upon the payment of mesne profit at the enhanced rate of rent, as contemplated u/sub-sec. (3) of Sec. 20 of the Act, during pendency of appeal and the matter with regard to grant of interim/interlocutory orders, pending appeal, has to be decided by the Appellate Rent Tribunal exercising its discretion reasonably, judicially and on the basis of settled principles governing the grant of interim relief, which is otherwise a sine-qua-non and the object behind is that the Appellate Rent Tribunal while exercising discretionary jurisdiction to pass interlocutory orders, during pendency of appeal, should put the tenant on terms and the tenant having suffered an order for eviction must comply and vacate the premises and his right of appeal being statutory but his prayer for grant of interlocutory order is always to be dealt with in exercise of equitable discretionary jurisdiction of the Appellate Rent Tribunal and while passing interim/interlocutory orders, the Appellate Rent Tribunal has to be alive to the fact that it is depriving the successful landlord of the fruits of the order for eviction and is postponing its execution and it is always reasonable and justified for the Appellate Rent Tribunal, while exercising its equitable discretionary jurisdiction for passing interlocutory orders, pending appeal, to put the tenant on terms and direct him to compensate the landlord by payment of reasonable mesne profit which may be considered to be just and equitable in the case on hand.

22. We may further make it clear that it is always a discretion of the Appellate Rent Tribunal to pass interlocutory order, as it deems fit in the facts & circumstances of the case on hand and we may not be misconstrued that in every appeal preferred against the certificate for recovery of possession mesne profit has to be ordered as a matter of right. It is always open for the Appellate Rent Tribunal to consider and exercise its equitable discretionary jurisdiction reasonably, judicially and on the basis of settled principles governing the grant of interim relief, as already observed by us, keeping in mind the pros and cons of the matter and striking a balance between two conflicting interests. Subject to the order, if any, passed by the Appellate Rent Tribunal in exercise of its discretion to pass interlocutory order envisages u/Sec. 19(10) of the Act.

23. At the same time, Sec. 20(3) of the Act, 2001 along with explanation appended thereto, the Rent Tribunal, while executing the orders after expiry of the period of 3-6 months from the date of issuance of certificate for recovery of

possession from tenant, with no discretion left the tenant has to pay mesne profit at the rate of two times the rent in case of premises let out for residential purposes and in case of premises let out for commercial purposes, at the rate of three times the rent, which the tenant is under an obligation to pay from the date of issue of certificate for recovery of possession. That further makes it clear if interlocutory order has been passed by the Appellate Rent Tribunal, pending appeal, u/Sec. 19(10) that overrides the requirement to be complied with and it has not been circumscribed by any conditions as provided u/sub-sec. (3) of Sec. 20 of the Act before the Rent Tribunal, during pendency of appeal and the parties have to abide by the interlocutory order passed by the Appellate Rent Tribunal until disposal of the appeal.

24. If there is no interim order of the Appellate Rent Tribunal u/sub-sec. (10) of Sec. 19 of the Act, mere pendency of appeal will not come in way for execution of the certificate for recovery of possession, pending appeal, by the Rent Tribunal under the procedure provided u/sub-sec. (3) of Sec. 20 read with the Explanation appended thereto which has to be mandatorily complied with for payment of mesne profit, pending appeal, but it is always be subject to the interlocutory order, if any, being passed by the Appellate Rent Tribunal u/sub-sec. (10) of Sec. 19 of the Act.

25. At the same time, in a case where the appeal stands finally decided by the Appellate Rent Tribunal and application is filed before the Rent Tribunal for execution of the certificate for recovery of possession issued by the Appellate Rent Tribunal u/sub-sec. 11(b) of Sec. 19 of the Act and the order is put to execution before the Rent Tribunal, the same be executed as per the mode and mechanism provided u/sub-sec. (1) of Sec. 20 of the Act, 2001 and at the same time, as regards mesne profit is concerned that has to be paid in terms of sub-sec. (3) of Sec. 20 of the Act, 2001 until the certificate for recovery of possession is finally executed as per the mechanism provided u/Sec. 20(4) of the Act.

26. We accordingly answer the questions as follows:-

Ans. 1:- Sec. 20(3) of the Act, 2001 applies only in execution of final order or other orders on application of any party before the Rent Tribunal and Sec. 19(10) is neither dependent nor interrelated to Sec. 20(3) of the Act.

Ans. 2 & 3:- From the detailed analysis of the Act, 2001 which has been taken note of by us, the Appellate Rent Tribunal u/Sec. 19(10) has a discretion to pass such interlocutory order, during pendency of appeal, which it may deem fit and proper in the facts & circumstances of the case keeping in view the inter-se rights of the litigating parties, while exercising equitable discretionary jurisdiction vested with the Appellate Rent Tribunal and exercise of discretion u/Sec. 19(10) is not restricted/dependent upon Sec. 20(3) of the Act and the Explanation appended thereto is in the form of a clarification for the Rent Tribunal while executing the orders passed under the Act, 2001 not to put the proceedings in abeyance mere on filing of appeal or other proceedings, if any, against order of

issuance of certificate for recovery of possession and use of premises or immediate possession, before the Appellate Rent Tribunal but that is always subject to interlocutory orders, if any, passed by the Appellate Rent Tribunal u/ Sec. 19(10) of the Act, 2001.

27. The questions are answered accordingly.

28. As already observed by us, since the appeal has been decided by the Appellate Rent Tribunal in the instant case, the writ petition has become infructuous and there is no requirement to refer the matter back to the Id. Single Judge and the writ petition is accordingly disposed of in the above terms.