

(1998) 08 P&H CK 0017
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 123 of 1998

Mrs. Sudesh Kumari alias Mrs. Sarita Vij	APPELLANT
Vs	
Vijay Modi and Another	RESPONDENT

Date of Decision : 25-08-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
East Punjab Urban Rent Restriction Act, 1949 — Section 15(5)

Citation : (1998) 120 PLR 598 : (1999) 1 RCR(Civil) 233 : (1998) 2 RCR(Rent) 393

Hon'ble Judges : N.K. Agrawal, J

Bench : Single Bench

Advocate : R.C. Setia and Sidharth Sarup, for the Appellant; Ravinder Chopra, for the Respondent

Final Decision : Allowed

Judgement

N.K. Agrawal, J.—These are two civil revision petitions, by the land lady, raising common facts and questions.

2. An application seeking ejectment of the tenant was filed by the petitioner-land lady before the Rent Controller. Ejectment order was passed against the tenant. An appeal was filed by the tenant before the appellate authority and an application seeking permission to adduce additional evidence was also filed. The appellate authority allowed the said application, and permitted the appellant-tenant to prove his books of account and also to summon the income tax returns filed by the land lady in the Income Tax Department. Since ejectment of the tenant was sought by the land lady on the ground of non-payment of rent for 56 months amounting to Rs. 94,580/-, the appellate court took the view that the tenant may be allowed to rebut the plea of non-payment by not only producing his own books of account showing the payments but also the income tax returns filed by the land lady wherein income from property was said to have been shown.

3. Shri R.C. Setia, Sr. Advocate, learned counsel for the petitioner-land lady, has argued that a similar application was earlier filed by the tenant before the Rent Controller on November 8, 1993, seeking permission to lead additional evidence but that application was dismissed by the Rent Controller by order dated February 2, 1994. That order was challenged by the tenant by filing a revision petition before the High Court but the petition was got dismissed as withdrawn on February 18, 1994. Shri Setia has, therefore, argued that the tenant could not be permitted, at the appellate stage, to raise the same question again. The appellate authority has, therefore, wrongly allowed tenant's application.

4. Shri Ravinder Chopra, learned counsel for the respondent-tenant has, on the other hand, contended that the appellate authority, in order to do complete justice, rightly permitted the appellant-tenant to adduce additional evidence. There was no bar of res judicata in the matter even though the earlier application, filed by the tenant seeking permission to lead additional evidence, was dismissed. The tenant had not earlier sought the permission to summon the record relating to the income tax returns filed by the land lady. The only prayer in the earlier application related to the evidence of the tenant by way of producing his own books of account. The tenant did not earlier know as to where the income tax returns had been filed by the land lady. It was in these circumstances that no permission was sought from the Rent Controller for summoning the income tax records. Shri Chopra has further argued that the present civil revision was not maintainable against an order passed by the appellate court under Order 41 Rule 27 (b), Civil Procedure Code. Reliance is placed on a decision of the Supreme Court in Gurdev Singh and others Vs. Mehnga Ram and another, . That decision was followed by a learned Single Judge of this Court in Sher Singh and Another Vs. Kashmiri Lal Chaman Lal Saraf, . Shri Chopra has also argued that the appellate authority had jurisdiction to admit additional evidence. Reliance is placed on two decisions of this Court in Kishan and Another Vs. Narain Dass and Others, and Ganpati Udyog and Another Vs. Punjab National Bank and Others, . Shri Chopra has also placed reliance on a decision of the Supreme Court in Yudhishter Vs. Ashok Kumar, .

5. It may be noticed that the appellate court has power to allow additional evidence under Order 41 Rule 27, Code of Civil Procedure. Clause (a) of sub-rule (1) permits the appellate court to accept additional evidence at the appellate stage, if the court, from "whose decree appeal is preferred, had refused to admit evidence which ought to have been admitted. Clause (b) of sub-rule (1) also empowers the appellate court to allow additional evidence, if 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. As has been seen earlier, the respondent-tenant had filed an application before the learned Rent Controller, seeking permission to produce additional evidence but that was declined. The revision petition filed before the High Court was withdrawn. If once the tenant did not pursue the matter before the High Court and chose to withdraw his revision petition, without giving any reason and without seeking

permission to challenge the order else where, the matter came to an end and the appellate court had no justification to permit the tenant to produce additional evidence. Shri Setia has placed reliance on a decision of this Court in Balbir Singh Vs. Balkiar Singh and Another, . It was observed in that case that where the parties fully knew their case and had led evidence, the appellate authority, though had jurisdiction to admit additional evidence, could not allow a party to lead additional evidence, which would tantamount to filling the gaps in the evidence produced. Shri Setia has argued that the respondent-tenant had already led evidence to show the payment of rent to the petitioner-landlady and, if the evidence was once closed, the tenant could not be permitted to lead further evidence.

6. Shri R.C. Setia has also argued that the decision of the Supreme Court in Gurdev Singh and Ors. v. Mehnga Ram and Anr. (Supra) related to the revisional jurisdiction of the High Court u/s 115, CPC whereas the present revision petition has been filed by the land lady u/s 15(5) of the East Punjab Urban Rent Restriction Act, 1949 (for short, "the Act"). Sub-section (5) of Section 15 of the said Act reads as under:-

SECTION 15(5) :-

"VESTING OF APPELLATE AUTHORITY ON OFFICERS BY CENTRAL GOVERNMENT:

(1) to (4) XX XX XX XX XX XX

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

7. A perusal of the aforesaid provision makes it clear that the High Court may at any time call for and examine the records relating to any order passed or proceedings taken under the Act. u/s 115, Code of Civil Procedure, the High Court has been empowered to call for the record of any case which has been decided by any court subordinate to such High Court and in which no appeal lies. It is, therefore, clear that the power conferred on the High Court under sub-section (5) of Section 15 of the Act is wider than the power u/s 115, Code of Civil Procedure.

8. Shri Setia, learned counsel for the petitioner-land lady, has placed reliance on a decision of a learned Single Judge of this Court in Mrs. Rekha Sharma v. Smt. Shankar Devi and Anr. (1988) 3 P.L.R. 315. It has been held that this Court can go into the legality or the propriety of the order of the appellate authority as the scope of Section 15(5) of the Act is much wider than that of Section 115, Code of Civil Procedure.

9. In view of the fact that the respondent-tenant had filed an application for additional evidence before the learned Rent Controller, he cannot be permitted to

seek the same relief from the appellate court without sufficient reason. It is further to be kept in view that the said application was declined by the Rent Controller and the revision petition filed by the tenant before the High Court was dismissed as withdrawn. Therefore, the order of the appellate authority is found to be not sustainable. Once the order was challenged before the High Court but not perused by a party without assigning any reason, the same matter cannot be allowed to be agitated again before a lower appellate court.

10. The plea raised by the learned counsel for the respondent-tenant that the revision petition is not maintainable is also rejected inasmuch as the power u/s 15(5) of the Act is wider than that u/s 115, Code of Civil Procedure. In that view of the matter, the decision of the Supreme Court, on which learned counsel for the respondent has placed reliance, is found to be distinguishable.

11. Respondents' attempt to summon the Income Tax returns of the land lady from the Income Tax Department appears to be a deliberate design to delay the proceedings without showing that the returns were not within their knowledge and that the returns could not be summoned earlier despite due diligence.

12. In view of the above discussion, the revision petitions succeed and are allowed. The order dated January 6, 1998, passed by the appellate authority, Chandigarh, permitting the appellant-tenant to produce additional evidence, is quashed.