

(1971) 03 AHC CK 0032
In the Allahabad High Court
Case No : Second Appeal No. 1027 of 1969

Smt. K.L. Sehgal

APPELLANT

Vs

The Commissioner, Allahabad and Others

RESPONDENT

Date of Decision : 16-03-1971

Acts Referred:

Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 3(3)

Citation : AIR 1971 All 573 : (1971) 41 AWR 248

Hon'ble Judges : V.G. Oak, C.J.; S.N. Katju, J

Bench : Division Bench

Advocate : S.N. Kacker and Ravi Dhavan, for the Appellant; K.M. Dayal, for the Respondent

Final Decision : Allowed

Judgement

Oak, C.J.—The main question raised in this special appeal is whether a revision u/s 3 of the U. P. (Temporary) Control of Rent and Eviction Act (hereinafter referred to as the Act) can be dismissed in default. The matter relates to a certain house at Kanpur. Dr. (Smt.) Mitter is the owner of the house; and Smt. Sehgal occupied a portion of the house as Dr. (Smt.) Mitter's tenant. The landlady applied for permission u/s 3 of the Act for eviction of the tenant. The Additional District Magistrate, Kanpur passed an order on 9-12-1968 granting the requisite permission to the landlady. The tenant filed a revision against the Additional District Magistrate's order granting permission. The Commissioner, Allahabad fixed the hearing of the revision at Kanpur on 19-3-1969. When the Commissioner took up the case at Kanpur on 19-3-1969, no one appeared before him on behalf of the tenant-revisionist. The Commissioner thereupon dismissed the tenant's revision in default.

2. Against the Commissioner's order dated 19-3-1969, Smt. Sehgal filed a writ petition. The writ petition has been dismissed by a single Judge of this Court. Smt. Sehgal has, therefore, filed the present special appeal.

3. The main contention of Mr. Ravi Dhavan appearing for the appellant is that the Commissioner, Allahabad could not dismiss the appellant's revision before him in default. The revision had to be decided on merits. On the other hand, Mr. K. M. Dayal appearing for respondent No. 3 has supported the view taken by the learned single Judge that it was open to the Commissioner to dismiss the appellant's revision in default.

4. In *Gajrani and Others Vs. Ram Rati and Others*, it was held by a Division Bench of this Court that Order 41, Rule 17, C.P.C. permits an appellate Court to follow the procedure of Rule 30 and dismiss an appeal on merits even though the appellant is absent. All that was decided in *Smt. Gajrani's* case was that it is open to the appellate Civil Court to dispose of a civil appeal on merits in spite of the appellant's absence. The problem in the instant case is the reverse. The question for consideration here is whether a revision can be dismissed in default.

5. In *G. P. Dixit v. State of U. P.* 1969 All LJ 460 it was held by Satish Chandra, J. that if a power to dismiss an application for default of appearance is deemed to be in the Rent Control Officer, the reverse power would go with it. The Rent Control Officer has the requisite authority to set aside his earlier order dismissing an application. The question that arose for consideration was whether the Rent Control Officer had the power to restore an application that had been dismissed in default. The Court was not directly concerned with the question of the competence of the Rent Control Officer to dismiss an application for default of appearance of the applicant. Moreover, the Court was concerned with the proceedings before the Rent Control Officer. In the instant case we are concerned with the proceedings before the Commissioner under Sub-section (3) of Section 3 of the Act.

6. In *Duryodhan Vs. Sitaram and Others*, it was held by a Full Bench of this Court that the power of dismissal for non-appearance has been expressly conferred upon Election Tribunals under Sections 90 and 92 of the Representation of the People Act, 1951, The Court noticed that Orders 9 and 17 of CPC have been made applicable to trial of election petitions. Mr. K. M. Dayal conceded that the provisions of the CPC do not in terms apply to proceedings before a Commissioner u/s 3 of the Act.

7. In *Hindustan Metal Works Vs. The Sales Tax Officer and Others*, it was held by Manchanda, J. that Section 9 of the U, P. Sales Tax Act, 1948 rules out the possibility of dismissal of an appeal for default.

8. It is settled law that a criminal appeal cannot be dismissed in default. A criminal appeal has to be disposed of on merits. On the other hand, a civil appeal may be dismissed in default. Order 41, Rule 17, C.P.C. provides for dismissal of an appeal for appellant's default. This is an express provision in the Code of Civil Procedure. There is no such express provision in the U. P. (Temporary) Control of Rent and Eviction Act.

9. Mr. Ravi Dhavan relied upon a decision of the Supreme Court in *Commissioner*

of Income Tax, Madras Vs. S. Chenniappa Mudaliar, . In that case the Supreme Court had occasion to interpret Section 33 of the Indian Income Tax Act, 1922. Sub-section (4) of Section 33 of the Indian Income Tax Act, 1922 ran thus:--

"The Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, and shall communicate any such orders to the assessee and to the Commissioner."

It was held by the Supreme Court that the scheme of the provisions of the Indian Income Tax Act, 1922 relating to the Appellate Tribunal is that it has to dispose of an appeal by making such orders as it thinks fit on the merits. It follows from the language of Section 33 (4) and in particular the use of the word "thereon" that the Tribunal has to go into the correctness or otherwise of the points decided by the Departmental authorities in the light of the submissions made by the appellant. This can only be done by giving decision on the merits on questions of fact and law and not by merely disposing of the appeal on the ground that the party concerned has failed to appear.

10. Section 3 of the U. P. (Temporary) Control of Rent and Eviction Act deals with restrictions on eviction. Subsection (1) of Section 3 lays down that no suit shall, without the permission of the District Magistrate, be filed in a civil Court against a tenant for his eviction except on one of the specified grounds. Sub-section (2) of Section 3 states:--

"Where any application has been made to the District Magistrate for permission to sue a tenant for eviction from any accommodation and the District Magistrate grants or refuses to grant the permission, the party aggrieved by his order may apply to the Commissioner to revise the order."

Sub-section (3) of Section 3 of the Act states:--

"The Commissioner shall hear the application made under Sub-section (2).... and he may, if he is not satisfied as to the correctness, legality or propriety of the order passed by the District Magistrate or as to the regularity of proceedings held before him, after or reverse his order, or make such other order as may be just and proper."

11. In order to decide whether a revision u/s 3 of the Act can be dismissed in default, the entire plan of Subsection (3) has to be carefully examined. Sub-section (3) opens with the words: "The Commissioner shall hear the application." Sub-section (3) further indicates that the Commissioner has to satisfy himself as to the correctness, legality or propriety of the order of the District Magistrate or as to the regularity of proceedings before him. Thirdly, it is mentioned in Sub-section (3) that the Commissioner may alter or reverse the District Magistrate's order or make such other order as may be just and proper.

12. Now, it is obvious that the Commissioner cannot satisfy himself as regards the correctness, legality or propriety of the District Magistrate's order or as to the regularity of proceedings, unless the Commissioner examines the

proceedings before the District Magistrate and goes through the revision application. Sub-section (3) contemplates three possible orders. The Commissioner may alter the District Magistrate's order. The Commissioner may reverse the District Magistrate's order. Or, the Commissioner may make such other order as may be just and proper. Obviously, a decision altering or reversing the District Magistrate's order must be a decision on the merits of the case. It appears that the third alternative enabling the Commissioner to make such other order as may be just and proper is of the same nature. In other words, all these possible orders under Sub-section (3) must be on the merits of the case.

13. There is no indication in Section 3 of the Act that the Commissioner may dismiss a revision in default of the applicant. On the other hand, the entire plan of Sub-section (3) indicates that the revision application has to be disposed of on merits. The appellant is, therefore, right in her contention that the Commissioner of Allahabad was wrong in dismissing the revision before him in default of the appellant. Since the Commissioner did not decide the revision in accordance with law, he will have to restore the revision and dispose of it in accordance with law.

14. The special appeal is allowed with costs against respondent No. 3. The writ petition is allowed with costs against respondent No. 3. We quash the Commissioner's order dated 29-3-1969 (Annexure G to the Writ Petition), direct him to restore the revision to its original number, and dispose of the revision in accordance with law.