

(1961) 08 P&H CK 0018
In the Punjab And Haryana At Chandigarh
Case No : S.A.F.O. No. 39-D of 1961

South Asia Industries Private Ltd.

APPELLANT

Vs

S.B. Sarup Singh and Others

RESPONDENT

Date of Decision : 30-08-1961

Acts Referred:

Arbitration Act, 1940 — Section 39
Companies Act, 1956 — Section 202
Delhi Rent Control Act, 1958 — Section 38
Provincial Insolvency Act, 1920 — Section 75

Citation : AIR 1962 P&H 369

Hon'ble Judges : K.L. Gosain, J

Bench : Single Bench

Judgement

(1) Shri Sarup Singh and his sons brought a petition for ejectment of Messrs. Allen Berry Company(Calcutta) Private Limited, and Messrs. South Asia Industries Private Limited, from premises No. 5 Block M, Connaught Circus, New Delhi. While the case was pending, Messrs Allen Berry Company (Calcutta) Private Limited went into liquidation and its name was therefore, struck off the record. Messrs South Asia Industries Private Limited then made tow applications-one on the 10th of November, 1960, and the other on the 19th of November, 1960, alleging that the name of the tenant having been struck off the record the application of the landlords for ejectment of Messrs South Asia Industries Private Limited, who were merely sub-tenants, could not proceed as the case had ceased to be one between a landlord and a tenant. These applications were rejected by the Rent Controller. An appeal against this order was filed by Messrs South Asia Industries Private Limited but the same was dismissed on the ground that the order in question was not an appealable one. The Rent Control Tribunal, who decided the appeal, held that an appeal u/s 38 of the Delhi Rent Control Act, 1958, was allowable only against a final order and not against an interlocutory order. Feeling aggrieved against the decision of the lower appellate Court Messrs South Asia Industries Private Limited have come up to this Court in Second

appeal.

(2) The only point that falls for decision in this appeal is whether the order of the Rent Controller referred to above could be appealed against u/s 38 of the Delhi Rent Control Act, 1958. It is contended on behalf of the appellant that the aforesaid provision of law provides for appeals against all orders of the Controller and not merely against his final orders. Reliance for this proposition is placed on a large number of cases, some of which were decided u/s 202 of the old Companies Act and the others u/s 75 of the Provincial Insolvency Act. It is laid down in all of them that the right of appeal under the said sections is not limited merely to the final order but also exists in respect of all others orders subject only to the condition that they do not partake the nature of merely formal or procedural orders. The language of the aforesaid sections of the Indian Companies Act and of the Provincial Insolvency Act is, however materially different from that of section 38 of the Delhi Rent Control Act, 1958, under which the appeal in question was filed. Sub-section (1) of this section, which alone is relevant in the present case reads as under:-

"An appeal shall lie from every order of Controller made under this Act to the Rent Control Tribunal (hereinafter referred to as the Tribunal) consisting of one person only to be appointed by the Central Government by notification in the Official Gazette."

(3) The Words "made under this Act" in the above provision of law are very pertinent in deciding whether any appeal is or is not permissible against any particular order. Various provisions of this Act authorize the Controller to pass certain orders and it is those orders alone which can be said to fall within the ambit of the words "made under this Act" as used in section 38 of the Act. Some of them may be in the nature of interim orders, for example fixation of interim rent, deposit of rent by the tenant, striking out tenant's defence for non-compliance with the order of the Court regarding deposit of rent etc. While some others may be in the nature of final orders for example eviction of a tenant or fixation of standard rent etc. etc. All these orders when made must be deemed to have been made be appealable. I am supported in this view by that taken by Chopra, J., in *Lachhman Das Moti ram v. Shori Lal* 1960 62 PLR 451, as also by the one taken by a Division Bench of the Allahabad High Court in *Sri Krishen and Another Vs. Radha Kishen and Another*, In the case before Chopra, J., a petition for revision had been filed u/s 35 of the Delhi and Ajmer Rent Control Act, 1952, and a preliminary objection was taken by the respondent that the same was not competent because the order was an appealable one and no appeal against the same had been preferred. This objection was repelled by the learned Judge on the ground that the order in question was not one under the Delhi Rent Control Act, 1958, and could not, therefore, be appealed against. Almost similar were the facts in the case decided by Grover J., and referred to above.

In the Allahabad case an appeal had been filed against an order which did not fall within the ambit of section 39 of the Indian Arbitration Act but which had all the

same arisen out of the arbitration proceedings. A preliminary objection was taken at the hearing of the said appeal that the same was not competent as only certain specific order and no others had been made appealable under the Indian Arbitration Act. This objection was repelled by Agarwala and P. L. Bhargava, JJ. who referred to the provisions of section 39(1) of the Indian Arbitration Act, and held that "the phrase "and from no others" refers to orders passed under the Act, i. e., under the express provisions of the Act. It has no reference to appeals which the CPC provides from orders passed under the provisions of that Act. Similarly the Words "under the Act" refer to the express provisions of the Act and not to the provisions contained in the Civil Procedure Code. Hence an appeal lies when an application for restoration of an application made under the Arbitration Act is dismissed for default."

(4) The order in question in the present case cannot by any stretch of imagination be held to fall within the purview of orders made under the Rent Control Act and does not, therefore, fall within the ambit of section 38 of the said Act. The order as it stands, does not also fall within the ambit of appealable orders as mentioned in Order 43, Rule 1 or section 104 of the Civil Procedure Code. The lower appellate Court was, in my judgment, perfectly correct in refusing to entertain the appeal. This second appeal, therefore fails and is dismissed with costs

(5) Appeal dismissed.