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**(2012) 02 P&H CK 0270**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Revision No. 2268 of 2008 (O and M)

Tirlok Singh Anand, M.D., M/s Anand Manufacturing Co. Pvt. Ltd APPELLANT

Vs

M/s Prem Chand and Sons and others RESPONDENT

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**Date of Decision :** 25-02-2012

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 16 Rule 16, Order 9 Rule 13  
East Punjab Urban Rent Restriction Act, 1949 — Section 10, 12, 13, 13(2)(i), 15  
Haryana Urban (Control of Rent and Eviction) Act, 1973 — Section 15(6)

**Citation :** (2012) 166 PLR 648 : (2012) 4 RCR(Civil) 118

**Hon'ble Judges :** Rakesh Kumar Jain, J

**Bench :** Single Bench

**Advocate :** Kashmir Singh, for the Appellant; Chetan Mittal with Mr. Kunal Mulwani, for the Respondent

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## Judgement

Rakesh Kumar Jain, J.—This revision is filed by the tenant u/s 15(5) of the East Punjab Urban Rent Restriction Act, 1949 [for short "the Act"] against order dated 01.02.2008 passed by the learned Rent Controller, Chandigarh by which his application under Order 9 Rule 13 of the Code of Civil Procedure, 1908 [for short "CPC"] for setting aside the ex-parte proceedings dated 17.03.1994 and the ex-parte eviction order dated 06.09.1994 in respect of the first floor portion of the SCO No. 24, Sector 17-E, Chandigarh (demised premises), has been declined. Notice of motion was issued in this revision petition on 21.04.2008 and on 26.07.2011, the following order was passed by this Court:

Vide impugned order the Rent Controller has rejected the application of the petitioner for setting aside the ex-parte decree. The instant revision petition has been filed challenging the same. The Hon'ble Apex Court in the case of Harjit Singh Uppal Vs. Anup Bansal, has observed as under -

Section 15(1)(b) of the 1949 Rent Act provides, to a person aggrieved by an order passed by the Rent Controller, a remedy of appeal. The Section provides

for limitation for filing an appeal from that order and also the forum to which such appeal would lie. The provision, for maintaining the appeal, does not make any difference between the final order and interlocutory order passed by the Rent Controller in the proceedings under the 1949 Rent Act. There is no specific provision in the Section that if a party aggrieved by an interlocutory order passed by the Rent Controller does not challenge that order in appeal immediately, though provided, and waits for the final outcome, whether in the appeal challenging the final order of the Rent Controller, the correctness of the interlocutory order from which an appeal lay could or could not be challenged in the appeal from the final order.

Thus, as per the aforesaid observations, there is no distinction between the final and interlocutory order passed by Rent Controller in the proceedings under 1949 Rent Act, whether in view of the aforesaid judgment, the present revision is competent or not. Learned counsel for the petitioner seeks short adjournment to address arguments. List on 29.08.2011.

2. In view of the aforesaid order, submissions have been made by both the learned counsel for the parties regarding maintainability of the revision petition.

3. Learned counsel for the petitioner has submitted that the impugned order is revisable u/s 15(5) of the Act. In support of his submissions, he has relied upon the following authorities:

1. Gumnditta Ram v. Murari Lal and another,<sup>2</sup> (1974)76 P.L.R. 579;
2. Bikramjit Singh Paul v. Jaswant Singh,<sup>3</sup> (1976)78 P.L.R. 16;
3. Daya Chand Hardayat v. Bir Chand,<sup>4</sup> (1983)85 P.L.R. 775 (Full Bench);
4. Chander Mohan Mittal v. Bihari Lal Gupta,<sup>5</sup> (1985-1)87 P.L.R. 458;
5. Shri Krishan Lal and another v. The Punjab, Backward Classes Land Development and Finance Corporation, Chandigarh,<sup>6</sup> 1985(2) R.C.R. (Rent) 59.

4. Learned counsel for the respondents has submitted that all orders passed by the Rent Controller are appealable and the present revision petition is, thus, not maintainable. In support of his submission, he has referred to the following judgments:

1. Harjit Singh Uppal v. Anup Bansal.<sup>1</sup> (2011-3)163 P.L.R. 520 (S.C.), J.T. 2011(6) S.C. 236;
2. Sham Sunder and others v. Ravinder Nath Sharma.<sup>7</sup> 2011 (2) R.C.R. (Rent) 608.

5. I have perused the aforesaid decisions.

6. In Gumnditta Ram's case (supra), the alleged sub-tenant filed a revision petition u/s 15(5) of the Act against order of the Rent Controller by which he permitted the landlord to produce evidence in rebuttal after the conclusion of

evidence of the tenant and the sub-tenant in spite of the fact that the burden of proof of all the issues framed in the application for ejectment was on the landlord and the onus probandi of no issue was on either the tenant or the sub-tenant. One of the objection was raised that order of the Rent Controller is appealable and revision is, thus, not competent. The objection, however, was turned down on the grounds firstly, the order under revision cannot be said to have been passed u/s 16. That provision confers on the Rent Controller the same powers of summoning and enforcing the attendance of witnesses and compelling the production of evidence as are vested in a Court under the CPC. Powers of summoning and enforcing the attendance of witnesses are the routine powers referred to in Order 16 of the CPC and do not include the powers to decide whether a party is or is not entitled to give evidence on a particular point at a particular stage. Secondly, even an order which falls within the purview of Section 16 of the Act would not be appealable as the provision in the 1947 Act corresponding to Section 16 of the present Act is not mentioned in the notification issued by the State Government under sub-section (1) of Section 15 of the 1947 Act.

7. In *Bikramjit Singh Paul*'s case (supra), the revision was filed by the tenant against order of the Rent Controller by which his application filed under Order 9 Rule 13 of CPC against the ex-parte order was dismissed. It was argued that the revision is not competent but the Court, while relying upon a decision in the case of *Lakhi Ram v. Sa-gar Chand*, 8(1963)65 P.L.R. 691 and *Guranditta Ram*'s case (supra), held that (he order is not appealable and is rather revisable in terms of Section 15(5) of the Act.

8. In *Daya Chand Hardayal*'s case, the question that came up for decision before the Full Bench of this Court was as to whether "any" or "every order" of the Rent Controller is appealable u/s 15(2) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 [for short "the Haryana Act"] by virtue of notification dated 08.05.1978. It was held that the said notification of 1978 is confined only to the forum for the appellate jurisdiction and does not affect the classes of cases which alone had been made earlier appealable by notification dated 14.04.1947 which continues to hold the field.

9. In *Chander Mohan Mittal*'s case (supra), the tenant filed an appeal before the Appellate Authority against the order of ex-parte eviction. An objection was raised before the Appellate Authority that appeal is not maintainable and the order is revisable but the Appellate Authority did not agree on the ground that as per notification of the Union Territory, Chandigarh Administration dated 25.11.1972, the District Judge, Chandigarh, had been empowered with the power of Appellate Authority under the Act who had the jurisdiction to hear the appeal. It was decided that "it can be said that the order setting aside ex-parte proceedings against the tenant was passed by the Rent Controller under the Act. As observed earlier, such an order was passed by him in the service of his inherent powers and, therefor no appeal as such was competent against such an

order. The only remedy against such an order was to file a revision to this Court u/s 15(5) of the Act, which contemplates that the High Court may at any time call and examine the records relating to "any order passed or proceeding taken" under the Act.

10. In *Shri Krishan Lal and another's case* (supra), the tenant was proceeded against ex-parte and his application filed under Order 9 Rule 13 CPC was dismissed, which was, however, reversed in appeal by the Appellate Authority. The landlord was, thus, before this Court raised a grievance that appeal was not competent as the order of the Rent Controller was revisable. This Court followed the decision in *Chander Mohan Mittal's case* (supra) and allowed the revision petition.

11. In *Harjit Singh Uppal's case* (supra), the question for determination was that "if a tenant does not avail his remedy to challenge the order of the provisional rent fixed u/s 13(2)(i) proviso to the East Punjab Urban Rent Restriction Act, 1949 (for short, "1949 Rent Act") by filing an appeal u/s 15(1)(b) within 15 days from date of such order, whether the order fixing provisional rent becomes final and cannot be challenged subsequently, particularly, in the appeal challenging the order of eviction". This question was answered by the Supreme Court by observing that "the legal position, in our opinion, is this: Where a tenant does not challenge the order of the fixation of provisional rent passed u/s 13(2)(i) proviso in appeal u/s 15(1)(b) and also fails to comply with that order, the order of eviction must follow as per the provisions contained in the 1949 Rent Act but when the tenant challenges the order of eviction in appeal and therein also challenges the order determining the provisional rent, it is not open to the Appellate Authority to refuse to consider the legality and validity of the order determining the provisional rent on the ground that the correctness of such order cannot be examined as no appeal was filed from that order though an appeal lay therefrom". In para No. 25 of this case, it was, however, observed that "Section 15(1)(b) of the 1949 Rent Act provides, to a person aggrieved by an order passed by the Rent Controller, a remedy of appeal. The Section provides for limitation for filing an appeal from that order and also the forum to which such appeal would lie. The provision, for maintaining the appeal, does not make any difference between the final order and interlocutory order passed by the Rent Controller in the proceedings under the 1949 Rent Act".

12. In *Sham Sunder and others' case* (supra), the application of the tenant for setting aside the ex-parte order of eviction was dismissed and his appeal against that order was not entertained being not maintainable. He filed the revision in this Court which has been dismissed, on the ground that the appeal is maintainable, by making a reference to the notification dated 29.04.1976 issued by the Government of Punjab and the observations made in para No. 25 of *Harjit Singh Uppal's case* (supra).

13. Learned counsel for the petitioner has submitted that the decision in *Harjit Singh Uppal's case* (supra) has not addressed the issue in hand as it has dealt

with only Section 15(1)(b) of the Act, whereas Section 15(5) specifically provides for revision against "any order" passed or "proceedings" carried out by the Rent Controller during the trial and the notification dated 29.04.1976 has been completely misread in the case of Sham Sunder and others" case (supra). He has submitted that if all orders are made appealable u/s 15(1)(b) of the Act, then Section 15(5) of the Act would become redundant. It is also submitted that the orders, which are made appealable u/s 15(1)(b) of the Act, were notified on 14.04.1947 which continues to hold field.

14. As against this, learned counsel for the respondents has submitted that since there is an observation by the Supreme Court in Harjit Singh Uppal's case (supra) that all orders of the Rent Controller are appealable u/s 15(1)(b) of the Act, therefore, the decision in the case of Sham Sunder and others" case (supra) cannot be questioned.

15. I have heard both the learned counsel for the parties and perused the record with their able assistance.

16. In order to appreciate the controversy, it would be appropriate to refer to the provisions of Section 15 of the Act and the Haryana Act, which are reproduced as under:

The East Punjab Urban Rent Restriction Act. 1949

The Haryana Urban (Control of Rent & Eviction) Act, 1973

15. Vesting of appellate authority on officers by State Government.-

(1)(a) The State Government may, by a general or special order, by notification confer on such officers and authorities as they think fit, the powers of appellate authorities for the purposes of this Act, in such area in such classes of cases as may be specified in the order.

15. Appellate and revisional authorities:- (1) The State Government may, by a general or special order, by notification, confer on such officers and authorities as it may think fit, the powers of appellate authorities for the purposes of this Act, in such area or in such classes of cases as may be specified in the order.

(2) Any person aggrieved by an order passed by the Controller may, within thirty days from the date of such order or such longer period as the appellate authority may allow for reasons to be recorded in writing, prefer an appeal in writing to the appellate authority having jurisdiction. In computing the period of thirty days the time taken to obtain a certified copy of the order appealed against shall be excluded.

(b) Any person aggrieved by an order passed by the Controller may, within fifteen days from the date of such order or such longer period as the appellate authority may allow for reasons to be recorded in writing, prefer an appeal in writing to the appellate authority having jurisdiction.

(3) On such appeal being preferred, the appellate authority may order stay of further proceedings in the matter pending decision on the appeal.

In computing the period of fifteen days the time taken to obtain a certified copy of the order appealed against shall be excluded.

(4) The appellate authority shall decide the appeal after sending for the records of the case from the

(2) On such appeal being preferred, the appellate authority may order stay of further proceedings in the matter pending decision on the appeal.

Controller and after giving the parties an opportunity of being heard and, if necessary after making such further inquiry as it thinks fit either personally or through the Controller.

(3) The appellate authority shall decide the appeal after sending for the records of the case from the Controller and after giving the parties an opportunity of being heard and, if necessary, after making such further inquiry as it thinks fit either personally or through the Controller.

(5) The decisions of the appellate authority and subject to such decision, the order of the Controller shall be final and shall not be liable to be called in question in any court of law except as provided in sub-section (6) of this section.

(6) The High Court, as revisional authority, may, at any time, on its own motion or on the application of any aggrieved party, made within a period of ninety days, call for and examine the record

(4) The decision of the appellate Autho-

rity and subject only to such decision, an order of the Controller shall be final and shall not be liable to be called in question in any Court of Law except as provided in subsection (5) of this section.

(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.

17. Sections 15(1)(a) & (b) of the Act and Sections 15(1) & (2) of the Haryana Act are almost similar except for one difference that in the Act the limitation to prefer an appeal is of 15 days, whereas in the Haryana Act, it is 30 days. Sections 15(3), (4) & (5) in both the Acts are also similar. Section 15(5) of the Act does not lay down any time for approaching the High Court, whereas a period of 90 days has been provided for filing a revision in the High Court in terms of Section 15(6) of the Haryana Act. It requires pertinent notice that the word used in Section 15(1)(b) of the Act is "by an order" and the similar term has been used in Section 15(2) of the Haryana Act and the word used in Section 15(5) of

the Act is "of any order passed" or "proceedings taken under this Act" is similar in the Haryana Act as well.

18. In *Daya Chand Hardayal's* case (supra), the dispute was in respect of an appeal filed by the tenant before the Appellate Authority against the order of assessment of provisional rent passed by the Rent Controller. The stand of the tenant before the Appellate Authority was that "any" and "every order" of the Rent Controller is appealable in view of the notification dated 08.05.1978 by which all the District Judges of the area concerned were conferred the powers of Appellate Authority. The Bench extracted the Legislative history in para No. 5 of its judgment and observed that in terms of Section 15(1), the Government can prescribe, by a special or general order, by way of notification, i) the classes of cases in which appeals would lie, ii) the forum for filing such appeal i.e. before such officers and authorities as may be prescribed, and iii) the geographical area with regard to each such form. By virtue of a notification dated 14.04.1947, the Government of Punjab conferred on all the District Judges in Punjab, in respect of the urban areas in their respective existing jurisdiction, the powers of Appellate Authority for the purposes of the Act with regard to the orders passed by the Rent Controller under Sections 4, 10, 12 and 13 of the Act. While concluding, it was observed that the notification dated 14.04.1947 still holds the filed and the orders passed by the Rent Controller under Sections 4, 10, 12 and 13 of the Act are only appealable.

19. However, in *Sham Sunder and others'* case (supra), this Court has though observed that "there is no dispute with the applicability of the aforesaid notification dated 14.04.1947 till date" but while referring to the notification dated 29.04.1976, issued under the provisions of the Act, it was observed as under:

11. Thus, a perusal of the aforesaid notification would show that vide aforesaid notification all the Additional District Judges in the State of Punjab have been empowered to hear appeals arising out of all orders of the Rent Controllers passed in the proceedings under the said Act, whereas in the notification of 1947 the Appellate Authorities under the said Act were vested with powers of Appellate Authority only with respect to orders passed by the Rent Controllers under sections 4, 10, 12 and 13 only. In fact, under the aforesaid notification dated 29.04.1976, the Appellate Authorities under the provisions of the East Punjab Urban Rent Restriction Act, 1949, have been vested with much wider powers for the purpose of the said Act to be exercised by them in their respective jurisdiction in respect of such appeals arising from orders passed by the Rent Controllers, whereas, vide earlier notification dated 14.4.1947, the Appellate Authorities were vested with the powers of the Appellate Authority only with respect to the orders passed by the Rent Controllers under sections 4, 10, 12 and 13 of the Act only. In fact, the notification dated 29.04.1976 was not brought to the notice of the Hon'ble Full Bench of this Court in *M/s Daya Chand Hardayal's* C.R. No. 5454 of 2011's case (supra).

20. With utmost respect, in my humble view, the notification dated 29.04.1976 has not superseded the notification dated 14.04.1947 and while conferring powers of appeal on all the Additional District & Sessions Judges in the State of Punjab which was earlier being exercised only by the District and Sessions Judges, it has not vested them with the power to hear appeal arising from all the orders passed by the Rent Controller in the proceedings under the Act. The notification dated 29.04.1976 has not conferred much wider power to the District Judges or the Additional District Judges to hear appeal against all the orders except the orders passed under Sections 4, 10, 12 and 13 of the Act.

21. Insofar as the observation made in para No. 25 of the Harjit Singh Uppal's case (supra) is concerned, it was not in context of the controversy in hand in that case and has a reference only to Section 15(1)(b) of the act which pertains to appeal against "an order" but not with regard to the remedy against "any order" or "proceedings taken under the Act" for which remedy is separately provided u/s 15(5) of the Act or Section 15(6) of the Haryana Act.

22. Since large number of revisions are being filed in this Court everyday by either of the parties against the orders or proceedings taken under the Act or the CPC and in all the cases, the question of its maintainability is being raised by the other side and as there are a conflicting views expressed by the Single Benches, thus, it would be appropriate, if the matter is referred to a Division Bench to decide the following issues:

a) If the notification dated 14.04.1947 is still holding the field by which only an order passed under Sections 4, 10, 12 and 13 is made appealable, then whether all orders passed by the Rent Controller have become appealable in terms of the notification No. 4137/2-CII-76717354 dated 29.04.1976 issued by the government of Punjab?

b) Whether the observation of the Supreme Court in para No. 25 of the Harjit Singh Uppal's case (supra), while referring to Section 15(1)(b) of the Act only, is an observation in context of the facts of that case as there was no issue of maintainability of appeal or revision arising out of interlocutory orders before it and there is no reference to Section 15(5) of the Act or Section 15(6) of the Haryana Act.

c) Whether the orders passed by the Rent Controller during the proceedings exercising its inherent powers like in the case of amendment of pleadings, impleadment of parties, setting aside of ex-parte proceedings, restoration of petition etc. etc... are revisable u/s 15(5) of the Act?

Keeping in view the urgency in the matter, let the papers of the present case be placed forthwith before Hon"ble the Chief Justice for appropriate orders.