
(1981) 05 P&H CK 0019
In the Punjab And Haryana At Chandigarh
Case No : Civil Revn No. 2147 of 1980

Ved Parkash

APPELLANT

Vs

Om Parkash Nirwania

RESPONDENT

Date of Decision : 01-05-1981

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 13

Citation : AIR 1981 P&H 263 : (1982) 1 ILR (P&H) 106 : (1981) 2 RCR(Rent) 317

Hon'ble Judges : S.S. Sandhawalia, C.J;S.P. Goyal, J

Bench : Division Bench

Judgement

Sandhawalia, C.J.—Whether the provisions of the East Punjab Urban Rent Restriction Act, 1949, impliedly bar the trying of an issue as a preliminary one by the Rent Controller is the significant question which had necessitated the admission of this revision petition for decision by a Division Bench.

2. The facts are not in dispute and lie within a narrow compass. Om Prakash Nirwania, respondent-landlord has preferred an application u/s 13 of the East Punjab Urban Rent Restriction Act (herein after called the Act) for the ejectment of Ved Parkash petitioner tenant on the ground on non-payment of rent and further that the tenant had materially impaired the value and the utility of the premises leased out to him. The petitioner-tenant contested the application and also tendered the rent which was accepted by the respondent landlord under protest on the ground that the same was not complete and legal. On the pleadings of the parties the court struck the following issues:-

1. Whether the respondent is liable to ejectment on ground mentioned in the application ?
2. Whether the tender is not valid?
3. Whether the application is not verified in accordance with law?

4. Whether the written reply is not correctly verified. ?

5. Relief.

Whilst framing the same, issue No. 2 was treated as a preliminary issue. The matter was then adjourned for argument thereon but later the petitioner tenant moved an application taking the firm stand that issue No. 2 could not be treated as a preliminary issue and that the earlier order be modified accordingly. The application was opposed by the respondent-landlord. On a full consideration of the objection raised on behalf of the petitioner-tenant that no issue could be tried as a preliminary one in the rent jurisdiction the Rent Controller took a contrary view. He further held that because the decision of issue No. 2 in favour of the landlord-respondent would finally dispose of the ejectment application the said issue could rightly be treated as a preliminary one. Consequently the application of the petitioner-tenant was rejected and aggrieved thereby the present civil revision has been preferred.

3. As is eve manifest from the admitting order itself the core of the argument of the learned counsel for the petitioner is that under the Act the Ren Controller is debarred from trying any issue in the proceedings before him as a preliminary one. Counsel contended that there was no specific provision in the act which vested the controller with any such power and the absence thereof must be construed by implication as a total bar to d so. Reliance for this slippery submission was sought to be tenuously placed on Dharam Paul v. Roshan Lal (1980) 1 R CR 503(Punj).

4. The aforesaid contention, despite some vehemence with which is was advanced, appears to us patently not well-conceived. A bare look at the 21 section of this short statute in general and to the provisions of Sections 16 and 17 in particular would make it manifest that it is only for the very limited purposes specified in these two section that the relevant provision of the CPC are attracted to the proceedings before the Rent controller and the subsequent execution of the orders made by the original and the appellate authorities thereunder. At this stage it would perhaps be apt to read section 16 and 17 of the Act :-

"Section 16. For the purpose of this Act, an appellate authority or a Controller appointed under the Act shall have 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 Code of Civil Procedure, 1908.

Section 17. Every order made u/s 10, or section 13 and every order passed on appeal u/s 15 shall be executed by a civil court having jurisdiction in the area as if it were a decree of that court."

Now it is well settled that beyond the circumscribed Limits of the aforesaid two provision in which the relevant section of the CPC may be attracted, the Rent controller is not bound by any intricate shackles and is wholly free to devise his

own procedure. This legal position in law is now so well-accepted within this jurisdiction that it would be rather wasteful to examine the point on first principles. In *Shri Ram Dutta Gupta v. The Financial Commissioner Haryana* (1976) 78 PLR 791 it was concluded as follows:-

"**** In view of the above discussion, I am of the view that the Rent Controller is at liberty to formulate his own procedure so long as it does not violate the fundamental principles of judicial enquiry or the principles on natural justice."

And again in the recent Division Bench judgment reported as *Raghu Nath v. Romesh Duggal* AIR 1980 PNH 188 after an examination of the issue in some depth it has been observed as follows (at pages 190-191 of AIR):-

"From the aforementioned history and the provisions of the present and the preceding rent legislation, it appears to be self-evident that apart from the larger purpose of restricting rents and giving special protection to the tenants the specific intent of the legislature was to provide a special and expeditious procedure for the disposal of the matters under the Act. The jurisdiction for the determination of these matters was designedly and meaningfully taken away from the ordinary run of Civil Courts and vested in the Controllers. They were left to devise their own procedure free from technicalities and formalities of the CPC which governed the Civil Courts. Section 16 and 17 of the Act brought in the CPC only for the limited purpose of the summoning and enforcing the attendance of witnesses and the execution of the orders passed by the Controller or the appellate Authority and by necessary implication exclude the strict application of its provision to the authorities under the Act. The underlying purpose was to rid the authorities under the Act from the shackles of technical procedure and to provide a summary and expeditious mode of disposal is further evident from the fact that originally only one appeal was provided by the statute to the appellate Authority and all further appeals or revision were barred by Section 15(4) of the Act. It was not till 1956 that by the Punjab Act No. XXIX, sub-section (5) was added to section 15 of the Act vesting the High Court with special revisional jurisdiction thereunder."

5. Once it is held, as it must inevitably be, that the Rent Controller is free to devise his own procedure in the field or area not covered by Section 16 it appears to us plain that no bar, express or implied can possibly be raised with regard to his competence to try one of the issues framed by him as the preliminary one. We are unable to see any such implicit obstacle in his way in this context either in the Act itself or on larger principle. Merely because the Act does not expressly provide at all for the framing of issues or trying any one of them as a preliminary one cannot be a ground for assuming even remotely that it bars the latter procedure. In this context, it is again apt to recall the view in *Ram Dutta Gupta's case* 1976) 78 PLR 791(supra) that even the very framing of issues is not compulsory for the Rent Controller when exercising jurisdiction under the closely analogous provision of the Haryana Urban Rent Restriction Act, 1973. Even a bird's eye view of the provision of the Act makes it manifest that

the present Act is not a procedural statute and does not provide in any great detail for the mode and manner of the trial of proceedings before the controller and later before the appellate authority. It is because of this very fact that it has been repeatedly held judicially that the Controllers have been left free to devise their own procedure. Therefore the absence of a specific provision cannot lead to any presumption of a implied bar against trying an issue which may conclude the matter as a preliminary one by the Rent Controller.

6. Coming now to the precedent on the point the only judgment that was cited by Mr. N. C. Jain is Dharam Paul's case (1980) 1 R CR 503(Punj))(supra). It would appear that the reliance of the learned counsel thereon stems from a superficial readings of the head note thereof which, it must be observed appears to be slightly misleading. A closer analysis of the judgment would show that there is no warrant eve remotely for the proposition that there is a legal bar to the trial of an issue as a preliminary one by the Rent controller. Indeed in the said case the position was the converse one, whether the Rent Controller on the application of one of the parties had rightly declined to try issue No. 3 as a preliminary one, the landlord then preferred the revision petition and the learned judge in a brief judgment after noticing the contentions of the counsel declined to interfere with the order of the Trial Court. Far from supporting the stand of the learned counsel for the petitioner the following observation in the said judgment would be a clear pointer to the contrary:-

"**** Furthermore, no request was made to treat issue No. 3 as a preliminary issue at the time of framing of the issues. Only when the witnesses of the tenant had come to court to make their statements, the application was filed, obviously, with a view to delay the proceedings. It was within the discretion of the Rent controller to treat issue No. 3 as a preliminary issue or not. He has exercised his jurisdiction and given cogent reasons for reaching the conclusion. These reasons cannot by any stretch of imagination, be termed as perverse. This order has not occasioned perverse, This order has not occasioned failure of justice or caused any irreparable injury to the petitioner."

7. Both on principle and precedent we conclude that the answer to the question formulated at the outset must be rendered in the negative and hold that there is no bar against the Rent Controller trying an issue as a preliminary one.

8. In the light of the aforesaid legal position we are unable to find the least infirmity in the order of the Rent controller. He held, and in our view rightly, that if issue No. 2 were to be decided in favour of the landlord the application disposed of thereby. In this context the Order directing the trying of issue No. 2 as a preliminary one appears to us as wholly unassailable. The revision petition is without merit and is hereby dismissed. There will, however, be no order as to costs.

9. Revision petition dismissed.