

**Champa Devi Vs. Sat Narain and ors.**

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**Court :** Delhi

**Decided On :** Mar-17-1972

**Reported in :** AIR1973Delhi35

**Judge :** Dalip K. Kapur, J.

**Acts :** [Delhi Rent Control Act, 1958](#) - Sections 38; [Code of Civil Procedure \(CPC\), 1908](#) - Order 14, Rule 2

**Appeal No. :** S.A.O. No. 228 of 1970, against order of G.C. Jain, R.C.T., Delhi, D/- 10-11-1970

**Appellant :** Champa Devi

**Respondent :** Sat Narain and ors.

**Advocate for Def. :** P.K. Duggal and ; J.S. Malhotra, Advs.

**Advocate for Pet/Ap. :** K.B. Rohtagi and; R.P. Gupta, Advs

**Judgement :**

1. It is only necessary to state the relevant facts for the purpose of deciding this appeal under Section 39 of the [Delhi Rent Control Act, 1958](#). An application for fixation of standard rent was brought by the tenants against Shrimati Krishna Piari who was the landlady of the premises in question. During the pendency of the standard rent petition the landlady died and her legal representative was brought

on record who is now the appellant before me. According to the legal representative, the interests of Shrimati Krishna Piari came to an end with her death and, therefore, the standard rent petition could not continue. This led her to file an application before the Additional Rent Controller which was dismissed on 13th December, 1968. An appeal was taken before Shri Mohan Lal Jain, the then Rent Control Tribunal, who accepted the same on 29th May, 1969, and held that the application of the legal representative claiming that the proceedings for fixation of standard rent should be dropped had been wrongly rejected by the Additional Rent Controller and a direction was issued to the Controller to proceed to decide this application.

2. The matter again came before the Additional Rent Controller, who apparently took evidence on this question. but decided that he would dispose of the application concerning the dropping of the standard rent proceedings only at the end of the case. This order was passed on 27th January, 1970.

3. An appeal was taken against the said order to the Rent Control Tribunal, which was rejected by an order dated 10th November, 1970. In this order it was held that the order deferring the decision of the application for dropping the standard rent proceedings was not appealable under Section 38 of the Act. It was not held that there was nothing in the order of Shri Mohan Lal Jain. Rent Control Tribunal showing that the question in issue should be tried as a preliminary issue and therefore even on merits the Additional Rent Controller was not wrong.

4. Against this decision, a second appeal has come before me. A preliminary objection has been raised at the hearing of this appeal by the learned counsel for the respondents in line with the objection already accepted by the Rent Control Tribunal to the effect that this appeal was not maintainable on the ground that the order was not an order dealing with substantive rights but was procedural in nature. Reliance was placed on the judgment of the Supreme Court in *Central Bank of India v. Gokal Chand* : [1967]1SCR310 .

5. On a consideration of the preliminary issue, it seems to me that the order of the Additional Rent Controller merely decides that the application for fixation of standard rent and the application for dropping the proceedings for fixation of

standard rent should be decided by one single judgment and not by two separate judgments. Under the provisions of Order 14, Rule 2 of the Code of Civil Procedure, a Court is entitled to try issues of law as preliminary issues if it is of the view that they are sufficient to dispose of the suit on the other hand, it may decide to deal with the issues of fact and law together at the end of the case. Virtually, the order passed by the Additional Rent Controller is a decision to decide both the issues of law and fact at the same time at the end of the case. Mr. Rohtagi, learned counsel for the appellant submits that this is not so. He submits that the application of the legal representative is an application for dropping the proceedings and by deciding to proceed with the proceedings, the Additional Rent Controller has in reality rejected the application. This is of course an attractive way of putting the argument but I do not think that words made any difference.

The purpose of the application is to say that the application for fixation of standard rent has become not maintainable in law. This is a preliminary issue just like any other preliminary issue. The decision either to drop the proceedings or to continue with the proceedings is another way of saying that the application is or is not maintainable. This decision when given will be appealable to the Court of the Rent Control Tribunal and, hence it can just as well be decided at the end of the case as at the beginning. I see no reason why the direction of the Rent Control Tribunal to the Additional Rent Controller to deal with this application should necessarily lead to this application being tried and decided before the rest of the case. thereforee, in my view, the order is a purely procedural order and does not affect substantive rights. It is still open to the Additional Rent Controller to finally decide that the proceedings have become infructuous and the standard rent matter has to be dropped. In that sense, the order is procedural and not substantial. thereforee, the preliminary objection succeeds and I come to the conclusion that the order in question does not affect substantive rights but is simply procedural and hence, this appeal does not lie.

6. As regards the merits of the case, I have already referred to Order 14, Rule 2 of the Code. The application in question raised the issue that the standard rent proceedings should be dropped. This is either a pure question of law or a mixed question of law and fact. If it is regarded as a question of law. it is discretionary

with the Additional Rent Controller to defer its decision. If it is an issue involving mixed questions of law and fact, then it necessarily has to be decided at the end of the case. In either event the Controller had authority to defer the decision to the end of the case.

7. Hence, this appeal fails and is dismissed. There will, however, be no order as to costs.

8. Appeal dismissed.

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