

Raj Kumar Vs. Harish Kumar and ors.

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Court : Delhi

Decided On : Nov-22-1967

Reported in : 4(1968)DLT488

Judge : I.D. Dua, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 38 and 39; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 115; [Transfer of Property Act, 1882](#) - Sections 106

Appeal No. : Civil Revision Appeal No. 163 of 1963

Appellant : Raj Kumar

Respondent : Harish Kumar and ors.

Advocate for Pet/Ap. : B.J. Nayar and; Shyam Kishore, Advs

Judgement :

I.D. Dua, J.

(1) Harish Kumar and his brtoher applied in the Court of Rent Controller for the eviction- of Ram Kumar and his brtoher Ram Kishan on the grounds of (i) default in payment of rent, (ii sub-letting and , bona fide personal requirement. These pleas were controverter and it was added that Ram Kishan being the real brtoher of Ram Kumar, was living with him and there was no question of sub -tenarcy On September 9, 1960, claim against Ram Kishan was -given up and Ram Kumar

being absent ex-parte evidence was led on the basis of which an order of eviction based on the ground of sub letting was passed against Ram Kumar

(2) An application for setting aside the ex Parte order was made by Ram Kumar, but the same was dismissed in default. An application for restoration of that application was also dismissed in default on 17th January, 1962. The same day, a further application was made for restoration of the earlier application for restoration dismissed in default on 17th January, 1962. This later application was dismissed on the merits on 12th April, 1962 on the finding that no sufficient ground was shown for the absence of appearance on 17th January 1962, when the case was called. An appeal against this order was dismissed by the Rent Control Tribunal on 1st December, 1965 on the ground that no appeal lay under section 38 of the Delhi Rent Control Act as the impugned order was not one made under the provisions of the said Act. Reliance for this view was placed on a decision by Gosain, J. in *South Asia Industries v. S. B. Sarup Singh*.

(3) It is against this order that the present revision has been preferred, Sri Shayam Kishore. The learned counsel for the respondents, has raised a preliminary objection that in appeal lies against the impugned order under section 39 of the Delhi Rent Act and that the same is barred by time. No revision would in the circumstances be entertainable. On the merits also, it is contended that no explanation for absence on 17th January, 1962 is forthcoming, with the result that the impugned order deserves to be upheld.

(4) The petitioner Ram Kumar has, it may be pointed out, also filed an application dated 31st October, 1967 seeking amendment of the memorandum of the grounds of revision by adding a ground to the effect that without a valid notice under section 106, F. P. Act, the eviction application was not maintainable. At the bottom of this application, there is a note that if no revision is held to lie, then the same may be treated as a writ petition.

(5) Sri Bikramjit Nayar, the learned counsel for Ram Kumar, has cited the decision in *Porur Mal v. Pram Nath*, in which D. K. Mahajan, J. held that an order refusing to set aside an ex parte order is appealable and distinguished the decision in the case of *South Asia Industries* on the ground that in the earlier case

it had been held as a fact by Gosain, J. that the impugned order appealed against, was not an order under the Rent Act. *Dulat and S. K Kaput Jj in The Central Bank of India Ltd. v. Gokal Chand*, considered the conflict in the decisions of the Punjab High Court and following the decision of the Supreme Court in *Shankarlal Aggarwal v. Shankarlal Poddar*, laid down that an order finally deciding the dispute between the parties -or depriving a party of a substantial and important right would be appealable. An order declining to issue a commission was, however, considered to be an order merely of a procedural nature not affecting the rights and liabilities of a party and, therefore, not appealable.

(6) Assuming, as urged by Sri Bikramjit Navar that the impugned order of the Rent Controller dated 12th April, 1962 was appealable under section 38 of the Delhi Rent Control Act, the order of the Rent Control Tribunal dated 1st December, 1962 dismissing the appeal against the order dated 12th April, 1962 on the ground that no appeal was competent under section 38 of the Delhi Rent Control Act must also, in my view, be open to appeal in this Court under section 39 of the said Act if that be so, then the present revision under section 113, Code of Civil Procedure, would obviously be incompetent. The Delhi Rent Control Act being a self-contained code on the subject of appeals and finality of the orders made in the proceedings under the Act, it would not be permissible to press into service section 115, Code of Civil Procedure, for the purpose of filing revisions in this Court from the orders of the Rent Control Tribunal. Section 38 provides for appeal to the Tribunal and section 39 for second appeal to the High Court on a substantial question of law. Section 43, providing for finality of orders, renders every order made by the Controller and every order passed on appeal final, not liable to be called in question in any original suit, application or execution proceedings except where the said Act itself expressly provides to the contrary. It is also open to question if the Rent Controller or the Rent Control Tribunal can be said to be Courts subordinate to the High Court within the contemplation of section 115, Code of Civil Procedure. But this apart where an appeal to this Court is competent, the revisional power under section 115 is expressly ruled out by the section itself.

(7) Turning now to the order of the Tribunal, I find that it was passed on 1st December, 1962. The application for its certified copy was made on 11th

December, 1962 and the same was attested on 26th December, 1962. This shows that 16 days were taken in securing its copy which may be excluded as time requisite while computing the period of limitation for second appeal. The period of limitation prescribed by section 39 is sixty days, with the result that the appeal in this Court could have been filed within 76 days after 1st December, 1962. The present revision was presented in this Court on the March 1963 without a certified copy of the order of the Rent Controller. From the record. it appears that the certified copy of the Rent Controller was applied for on 5th March, 1963 and the same was made available on 26th March, 1963. It is obvious that the days spent in securing this copy can on no account be excluded for computing the period of limitation for appeal because it was evidently applied for after the expiry of the said period. I have dealt with these dates for the purpose of declining to treat the revision as an appeal which course, in the interests of justice, I would have liked to adopt if there was no question of limitation. The revision, for the foregoing reasons, is indisputably incompetent and I feel equally helpless to treat it as an appeal.

(8) As observed earlier, the petitioner has also filed an application for amending the grounds of revision and along with this application, he has attached the memorandum of the grounds of revision as amended. The plea at the bottom of the grounds of revision that in case no revision is competent, it may be treated as a writ petition, is wholly misconceived because this Court would be wholly disinclined to allow its writ jurisdiction to be invoked where a competent appeal has not been filed and the limitation for the same has been allowed to expire. There are far stronger reasons for denying the writ Jurisdiction to be invoked than for disallowing a revision when the statute has provided for appeal, however restricted its scope. As a matter of fact technically speaking, it would be the power of superintendence under Article 227 of the Constitution which may in a given case be permitted to be invoked and not the writ jurisdiction within the contemplation of Article 226 of the Constitution. The jurisdiction under Article 227 of the Constitution also, in my view, is not open to the present petitioner in view of remedy of appeal being available to him under section 39 of the Delhi Rent Control Act.

(9) The question of amendment of the grounds of revision in this Court would in the present case hardly arise ; but even it did, the plea of notice, it may be pointed out, depends on the facts and circumstances of each case and to permit such a plea to be raised in this Court would be highly unjust and prejudicial to the opposite party : see *Pritam Singh v. Suraj Pershad* S.A.O./257 of 1967 decided on 21st November, 1967. It is of interest to note that the petitioner has not tried to seek amendment of his pleadings before the Rent Controller, with the result that the amendment of the ground of revision on the existing record can be of no avail to the petitioner, for the plea that he seeks to urge is not a plea of pure question of law which has nothing to do with the pleas of facts.

(10) For the foregoing reasons, this revision fails and is dismissed with costs.

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