Subhash Chander Vs. Rehmat Ullah

Subhash Chander Vs. Rehmat Ullah

SooperKanoon Citation : sooperkanoon.com/689682

Court : Delhi

Decided On : Sep-26-1972

Reported in : ILR1973Delhi181; 1972RLR154

Judge : S.N. Andley and; T.P.S. Chawla, JJ.

Acts : Delhi Rent Control Act, 1958 - Sections 37(2); Delhi Rent Control Rules, 1959 - Rule 23; Code of Civil Procedure (CPC), 1908 - Sections 151 - Order, Rule 13; Provincial Small Cause Courts Act, 1887 - Sections 17(1)

Appeal No. : Second Appeal Nos. 150 and 151 of 1971

Appellant : Subhash Chander

Respondent : Rehmat Ullah

Advocate for Pet/Ap. : S.L. Watel,; R.C. Beri,; I.S. Mathur ands;

Judgement :

T.P.S. Chawla, J.

(1) In these two appeals (S.A.OS. Nos. 150 and 151 of 1971) certain questions have arisen under the Delhi Rent Control Act 1958 which Mr. Justice V. S. Deshpande has referred for consideration by a larger Bench. They are abstract questions of law and undoubtedly of general importance. Although there is nothing special or unusual in the facts which might affect the result, we will state them so

far as they are relevant to provide a backdrop for the discussion.

(2) On 9th August 1967, the appellant Subhash Chander (the landlord) commenced proceedings under the Delhi Rent Control Act 1958 for evicting the respondent Rehmatullah Khan (the tenant) from premises located in Pataudi House, Darya Ganj, Delhi. Twice, personal service was sought to be effected on the respondent. On both occasions the process server reported that he found the premises locked and was unable to trace the respondent . So, on 17th October 1967 the Additional Rent Controller, before whom the proceedings were pending, ordered substituted service on the respondent by publication in the newspaper 'Chitra' for 20th November 1967. The notice was duly published. On 20th November 1967, no one appeared for the respondent; hence the Controller ordered proceedings to continue ex parte, and adjourned the hearing to 24th November 1967. ex parte evidence was recorded on the adjourned date, and an ex parte order for eviction was made on 1st December 1967. Then, on 7th December 1967, the appellant applied for and obtained a warrant for possession; and obtained possession of the premises on 16th December 1967. He claims to have inducted a new tenant into the premises on that very day.

(3) On 18th December 1967, an application was moved jointly by Kaniz Begum (the respondent's wife) and Manmohan Nath (the manager of the factory owned by the respondent) for setting aside the ex parte order for eviction and for restoration of possession of the premises. This application was dismissed on 5th January 1968 on the ground that it was not shown how the wife or the manager of the respondent was entitled to maintain it. Another application to the like effect was moved by Manmohan Nath on 16th February 1968 as attorney for the respondent. The original power of attorney dated 17th January 1968, executed by the respondent in favor of Manmohan Nath is marked Exhibit JD-/2. In this application it was said that the respondent had been arrested under the defense of India Rules and Security Regulations on 4th December 1965, and had ever since remained in detention in the Central Jail, Srinagar; and that he got to know of the proceedings and the ex parte order for eviction for the first time on 17th January 1968, when he received a communication from his people whilst he was still in jail. By an order made on 10th February 1970 the Controller allowed this application

and set aside the ex parte order of eviction. The respondent applied for restoration of possession on 11th February 1970. There were some intervening proceedings to which it is not necessary to refer. Ultimately, by an order made on 6th May 1970 the Controller refused to stay restoration any further, and issued a warrant for delivery of possession to the respondent.

(4) Against these orders of 10th February 1970 and 6th May 1970, the appellant took appeals to the Rent Control Tribunal. Both the appeals were dismissed on 23rd July 1971. That led to the two appeals in this court. One of them (S.A.O.No. 150 of 1971) seeks reversal of the order of 10th February 1970 made by the Controller, and the other (S.A.O. No. 151 of 1971) of the order of 6th May 1970. They were heard by Mr. Justice V.S. Deshpande and he has referred the following questions :

(1)Whether the expression 'practice and procedure' of a Court of Small Causes used in section 37(2) of the Delhi Rent Control Act 1958 includes the power of the Controller to set aside an ex parte order, on the principle underlying Order Ix rule 13 Civil Procedure Code Alternatively, if this can be done by the Controller in exercise of his inherent powers analogous to the powers of a civil court exercisable under section 151 Civil Procedure Code?. (2) If the Controller has a power to set aside the ex parte order for eviction, then can he exercise such a power as an inherent power at any time or whether an application in this respect has to be made within the period of 30 days which is the limitation prescribed for such an application by Article 123 of the Schedule to the Limitation Act Or alternatively, whether the Limitation is governed by Article 137 of the Schedule of the said Act? Whether the expression 'practice and procedure' would include not only the principles underlying the provisions in the Code of Civil Procedure but also the provisions of the Limitation Act regulating the steps to be taken under the Code of Civil Procedure? and (3) The knowledge of the decree which is the starting point of the running of the limitation under Article 123 of the Schedule of the Limitation Act in the present case was first obtained by Shri Manmohan Nath, the factory manager of the tenant and later on by the tenant himself. Under section 229 of the Contract Act, the knowledge and information of the agent within the course of the business of agency would be attributable to the principal. While

Manmohan Nath was in charge of all the affairs of the tenant including the management of his house, he did not have either a written authority to receive summons on his behalf or a written authority to appear for him in a court as required by Order Iii of the Civil Procedure Code. The question, thereforee, is whether the knowledge of Manmohan Nath only that an order for eviction has been passed against his principal, the tenant, could be attributed to the tenant himself. Could it be said that in case such a difficulty it was the duty of the agent Manmohan Nath to communicate with his principal under section 214 of the Contract Act

(5) The first question has two parts. We will consider them in the sequence in which they are stated. The procedure which the Controller is required to follow is described in section 37(2) of the Act. It states :

SUBJECT to any rules that may be made under this Act, the Controller shall while holding an enquiry in any proceeding before him, follow as far as may be the practice and procedure of a court of small causes, including the recording of evidence'.

(6) Thus the practice and procedure of a Court of Small Causes is the prototype which the Controller is enjoined to copy. But, this is subject to any rules that may be made under the Act. The only relevant rule is Rule 23, which reads:

'IN deciding any question relating to procedure not specially provided by the Act and these rules the Controller and the Rent Control Tribunal shall, as far as possible, be guided by the provisions contained in the Code of Civil Procedure, 1908'.

(7) On its own terms the rule is residuary, and offers the Civil Procedure Code as a guide only on any question not specially provided by the Act and the rules. Can section 37(2) be regarded as a special provision within the meaning of those wprds in the rule it mates a great difference whether it can or not. If it can be so regarded, the resulting position is that the Controller is to follow the practice and procedure of a Court of Small Causes so far as they extend: and on other matters the Code of Civil Procedure is to be taken as a guide; if section 37(2) cannot be so

regarded, the rule is free from restraint and is controlling in the matter of procedure. That means the Controller is not bound to follow the procedure of a Court of Small Causes, but is only required to guide himself generally by the Code of Civil Procedure. Thus the rule will annihilate the section.

(8) In our opinion, the words 'specially provided by the Act' which occur in Rule 23 do not mean only a provision dealing with a particular or specific question of procedure. An express provision in the Act is 'specially provided by the Act' even if it deals with the matter of procedure in general terms. And a question of procedure is dealt with nonetheless though it is covered only by such a general provision. The words 'specially provided', in the context, mean no more than expressly provided. They refer not to the content of the provision, but its occurrence in the Act. Their purpose is to exclude resort to implications in the Act in deciding matters of procedure. In this way, section 37(2) must be regarded as specially provided by the Act, and Rule 23 ought to be read subject to it.

(9) Apart from the question of construction, on which we have indicated our view the contrary conclusion leads to serious difficulties. The words 'subject to any rules that may be made under this Act' at the beginning of section 37(2) were surely not intended to arm the rule making authority with power to frame a rule which would obliterate the section. The general drift of the section would seem to suggest that the rules contemplated are such as may be necessary to adapt or modify the practice and procedure of a Court of Small Causes to meet the requirements of the Controller; but the general rule of procedure stated in the section is to remain. If Rule 23 is interpreted contrary to our view, it goes against this understanding of the section. The view we have taken reconciles them. The other difficulty created by the opposite view is that the Controller does not follow the practice and procedure of a Court of Small Causes (because section 37(2) is suppressed by the rule), but instead takes the Code of Civil Procedure as a guide. He will then follow the ordinary procedure prescribed in the Code, which is not as expeditious as that of the Court of Small Causes. This result goes entirely against the legislative history of Rent Control Legislation in Delhi. Under the Delhi and Ajmer-Merwara Rent Control Act 1947 proceedings for fixation of rent and eviction were tried by a court in accordance with the procedure prescribed by the Code of Civil

Procedure (see sections 7 and 9 of that Act). Under the Delhi and Ajmer Rent Control Act, 1952 the court was required to hold a summary inquiry and follow the practice and procedure of a Court of Small Causes (see section 37 of that Act). The Delhi Rent Control Act 1958 sets up Controllers to try such matters, and ousts the jurisdiction of civil courts. All these changes are perfectly comprehensible in the desire to secure expeditious disposal of proceedings between landlord and tenant. Very strong reasons would need to be shown why the rule making authority should want to reverse the trend, if Rule 23 is to be interpreted contrary to our view. No such reasons have been suggested before us. Indeed, one of the stated objects of the Delhi Rent Control Act, 1958 is 'to devise a suitable machinery for expeditious adjudication of proceedings between landlords and tenants'. It is not justifiable to suppose that the rule making authority intended to go against the very objects of the Act.

(10) We are, thereforee, satisfied on a conjoint reading of section 37(2) and rule 23 that the Controller is to follow the practice and procedure of a Court of Small Causes as far as they extend. On other matters he is to be guided by the Code of Civil Procedure. Such other matters will include the provisions of the Code made inapplicable to a Court of Small Causes by section 7 and Order 50 of the Code. This manifests the reason and the purpose of the rule. To take an example, the Court of Small Causes has no jurisdiction to try a suit for the possession of immovable property. So there can be no practice and procedure of a Court of Small Causes on such a matter. But, the Controller is authorised to make an order for the recovery of premises and to execute it. By what rules should he proceed? Section 37(2) will give no answer. The rule will. Thus the rule comes into play only when the section is exhausted. The former is a supplement to the latter.

(11) These conclusions lead to the next : Section 17(1) of the Provincial Small Cause Courts Act 1887 shows that Order 9 Rule 13 ofthe Code of Civil Procedure is one of the rules applicable to proceedings in a Court of Small Causes, and thereforee the Controller can follow it. It is not, however, accurate to say that this rule (Order 9 Rule 13) applies to proceedings before the Controller, because the words in section 37(2) are 'follow as far as may be' and not 'shall apply'. Like wise, the words in Rule 23 are 'shall, as far as possible, be guided'. The draftsman

presumably had the earlier Delhi and Ajmer Rent Control Act of 1952 before him, which he intended to supplant. Section 37 of that Act, which prescribed the procedure, used the words 'shall, as far as may be, apply....' The words 'shall apply' are handy words in the law. Yet, the draftsmen rejected them for other words. The words actually used in section 37(2) and Rule 23 are obviously designed to free proceedings before the Controller from the technicalities and the rigours of a strict application of the Code of Civil Procedure, and allow a certain degree of flexibility. Hence the words 'as far as may be' and 'as far as possible'. The underlying object is again expeditious disposal. But, the section and the rule as they stand will justify only the statement that the Controller is to follow Order 9 Rule 13 of the Code of Civil Procedure, and not that it applies. This is what Mr. Justice P. N. Khanna said in The Life Insurance Corporation of India V. M/s. Meghraj Mannulal, 1970 R.C.R. 794. Although we have held while deciding S.A.OS. Nos. 6 and 54 of 1968 entitled Kedar Nath & Another V. Smt. Mohani Devi etc. on 9th August 1972 that his observations are not sound in respect of an appeal coming to the High Court under section 39 of the Delhi Rent Control Act 1958, we agree with them so far as they were intended to state position before the Controller. However, this distinction though significant for certain purposes (e.g. Articles 120 and 121 of the Schedule to the Limitation Act, 1963), is not material for the present one.

(12) It was contended for the appellant that even if the Controller was entitled to follow Order, 9 Rule 13 of the Code of Civil Procedure that did not give him power to set aside an order made ex parte By reference to sections 36, 40, 41 and 42 of the Act, a contrast was sought to be made between procedure and the conferment of power. It was said that those were the sections which conferred powers on the Controller, and so the words 'practice and procedure' in section 37(2) must not be read as conveying any power. We would have thought the point is not even stateable; for what good can it do that the Controller should follow the procedure in Order 9 Rule 13, and have no power to set a side an ex parte order? Still, we will examine it. To begin with, jurisprudence does not recognise any antithesis between 'procedure' and 'power', but only between substantive law and the law of procedure, though even there no precise or perm tannin distinction can be drawn : see M/s. Bharat Barrel and Drum Mfg. Co. Ltd. and Another V. The Employees

State Insurance Corporation. : (1971)IILLJ647SC . So the argument is grounded in a misconception. The meaning attributed to the word 'practice' in Power V. Minors 7 Q.B.D. 329 that in its larger sense it is like procedure to which is the basis of the definition of that word in Stroud's Judicial Dictionary (Third Edition) - does not impinge upon the point. Most, if not all, rules of procedure carry with them the power to do that which they say, for otherwise they D/72-2. would be largely ineffectual. This is what Chagla,C.J. called 'procedural power' in Sitaram Hirachand Birla, Yograjsingh Shankar Singh Parihar and others : AIR1953 Bom293 . In that case the very argument raised before us was urged in respect of sections 90(2) and 92 of the Representation of People Act, 1951, which were similar to sections 37(2) and 36(2) respectively of the Delhi Rent Control Act 1968. It was rejected for the same reason that we have given. Again, in Harish Chandra Bajpaiand another V. Tirloki Singh and another, : [1957]1SCR370 the argument was repeated in respect of the same sections of the Representation of People Act, 1951, and the Supreme Court said at page 454 of the report : 'We do not see any antithesis between 'procedure' in section 90(2) and 'powers ' under section 92.' That demolishes the suggested dichotomy and is really a complete answer to the point.

(13) Nevertheless, it needs to be explained why some other sections in the Delhi Rent Control Act 1958 give the Controller 'powers' which ought otherwise to be derivable from the principle stated in section 37(2) that he is to follow the practice and procedure of a Court of Small Causes. Why, for instance, does section 36(2) give the Controller power to summon witnesses, order discovery and production of documents and issue commissions for the examination of witnesses when all these powers should flow from section 37(2). To understand this, it is necessary to stray a little. Perhaps, the best way is to take a specific situation. When a court issues summons to a witness, no one ever doubts that the summons is to be obeyed. If it is not obeyed various provisions of law state what the consequences shall be and how obedience will be obtained. But what is it that imposes the duty to obey, and where is it stated? In legal theory all judicial power originally vests in the sovereign authority. The courts are created by authority of the sovereign : see Halsbury's Laws of England, (3rd Edition), Volume 9 page 344. They exercise the judicial power of the sovereign. In Shell Company of Australia Limited V. Federal

Commissioner of Texation 1931 A. C. 275 the Privy Council said :

'the authorities are clear to show that there are tribunals with many of the trappings of a court which, nevertheless, are not courts in the strict sense of exercising judicial power'.

(14) From which it appears that what distinguishes a court from a tribunal is the fact that the former exercises the judicial power of the State while the latter does not. The Privy Council accepted in that case the definition of 'judicial power' given by Griffith C. J., in Huddart Parker & Co. Proprietary Ltd. V. Moorehead, 8. C.L.R. 330, where he says :

'I am of the opinion that the words 'judicial power' in section 71 of the Constitution mean the power which every sovereign authority must of necessity have to decide controversies between its subjects, or between itself and its subjects where the rights relate to life, liberty, or property'.

(15) These ideas have been accepted by the Supreme Court in Brajnandan Sinha V. Jyoti Narain, : 1956 CriLJ156 . They lead to the result that the orders of a court exercising 'judicial power' must be deemed to be the commands of the sovereign and so must be obeyed. That is the unspoken postulate of the system. A summons issuing from a court is a command by the sovereign to attend, and thereforee compels obedience.

(16) In the case of a tribunal, this theory does not hold because it does not exercise the 'judicial power' of the sovereign. Its orders are not thereforee, the commands of the sovereign. In general, tribunals are merely fact finding bodies and their position is not assimilated to that of Courts of Law or Courts Justice : see Brajnandan Sinha V. Jyoti Narain, : 1956 CriLJ156 . While, thereforee, the Controller under the Delhi Rent Control Act, 1958, may, following the practice and procedure of a Court of Small Causes under section 37(2), issue summons, there will be no duty on anyone to obey for they are not issued in the exercise of 'judicial power' and so lack the authority necessary to compel obedience; see Capital Multi-Purpose Co-operative Societies, Bhopal and others V. State of Madhya Pradesh and others etc. : [1967]3SCR329 . This would make the working of the

Controller impossible for the purpose intended. The obvious way to meet the difficulty is to raise the orders of the Controller in such matters to the same plane of authority as those of a Court, so that they are obeyed. Section 36(2) of the Act achieves this transmutation with the words 'The Controller shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of the following matters, namely.....'. Similar provisions are to be found in most statutes by which tribunals of one kind or another are created. Their purpose is the same. They raise the authority of the tribunal in specified matters to the same level as that of a court, and the word 'power' is used in that sense. We think, this is what the Supreme Court meant in Harish Chandra Bajpai and another V. Triloki Singh and another : [1957]1SCR370 , when it said :

'it was obviously the intention of the Legislature to put the powers of the Tribunal in respect of the matters mentioned in section 92 as distinguished from the other provisions of the Code on a higher pedestal, and as observed in Sitaram V. Yograjsing : AIR1953 Bom293 they are the irreducible minimum which the Tribunal is to possess'.

(17) For the same or similar reasons section 41 deems the Controller to be a magistrate under the Code of Criminal Procedure for the purpose of recovery of a fine imposed by him; and section 42 gives him all the powers of a civil court for the purpose of executing an order made by him or an appeal which is to be treated as a decree. Here also there is need, to place his authority on a higher pedestal.

(18) The Explanationn for section 40 of the Act is altogether different. It enables the Controller to correct any clerical or arithmetical mistakes in any order passed by him or errors arising there in from any accidental slip or omission. Because this section is a replica of section 152 of the Code of Civil Procedure, it was suggested that this was a strong circumstance to show that 'powers' (in this instance the power to correct an order) were not intended to be transmitted by the words of section 37(2); for otherwise there was no need for section 40 of the Act, as it was indisputable that section 152 of the Code applied to proceedings in a Court of Small Causes. In our opinion, that is not the true Explanationn for section 40. The

real reason for that provision is to overcome the possible argument that the Controller is functus officio after having made an order, and has no power to correct it. Such arguments have been propounded where the provision was missing, and have almost succeeded : see V. Kesavan V. K. S. Raghavan and Others : [1951]20ITR572(SC) .

(19) It was also urged that a right to set aside an exparte order or decree, like the right of appeal or review, should not be inferred but must be given by the statute. We were referred to various provisions in the Rent Control Acts in force in Andhra Pradesh, Kerala, Madras and Mysore which expressly contemplate the making of rules for setting aside ex parte orders under those Acts. The cases citied for this proposition viz. Khaja Gulam Chouse Saqualian V. Collector Dist. Medak and Others, A. I. R. 1958 A.P. 442 Ruplal Sitaram Bhagat V. Sheo Shankar Awasilal and Others A. 1. R. 1953 Nag 191: Sitaram Khandu V. Bapurao Mukundrao and others, Air 1953 Nag 153 and Pitchika Somanna and others V. Putchala Chinnayya : AIR1945 Mad107 do certainly support it. They are based on the observations made by Seshagiri Aiyar, J., in Gadi Neelaveni V. Marappareddigari Narayana Reddi, 53 1. C. 847 to the effect that the right to set aside an ex parte decree belongs to the same category as an appeal or a review, because in either case the effect of entertaining the proceeding is to vacate a decree which was obtained by one of the parties to the suit. In that case the question referred to the Full Bench was whether a court had power, apart from Order 9 Rule 13, Civil Procedure Code, to set aside an ex-parte decree passed by itself. All the judges held that there was no such power, but the weight of those observations made by Seshagiri Aiyar, J., is considerably affected by the fact at neither of the other judges constituting the court assented or even referred to the principle of law state in them. A different view was taken in Maulvi Abdul Jabbar Palwan V. Moulvi Azizar Rahaman Mea, : AIR1937 Cal425 . We are far from sure that the right to apply for setting aside an order or decree made ex parte is of the same kind or nature as a right of appeal or review or, indeed, a right at all in the legal sense; but whether it is or no, the Supreme Court has now held in Asnaw Drams (Private) Ltd. and others V. Maharashtra State Finance Corporation and others, : [1972]1SCR351 , even as regards the right of appeal, that the words 'in the manner provided in the Code of Civil Procedure' are sufficient to confer it. Such

words were used in section 32(8) of the State Financial Corporation Act 1951 and the Supreme Court said :

'It's difficult to understand why the scope of the language should be cut down by not including appeals provided under the Code of Civil Procedure within the ambit of the words 'in the manner provided in the Code of Civil Procedure'. 'Manner' means method of procedure and to provide for an appeal is to provide for a mode of procedure'.

(20) Consequently, the observations made by Seshagiri Aiyar, J., and the cases which followed can no longer prevail. The provisions in the Acts in other States are easily accounted for as intended to quell doubts created by the state of the case law at the time they were enacted.

(21) Nor do we accept the argument that since section 43 of the Delhi Rent Control Act, 1958 makes every order by the Controller final and not liable to be called in question in any original suit, application or execution proceeding, it negatives the power to set aside an ex parte order, even if it otherwise exists, because it is not expressly provided in the Act. The words 'final' in that section refers to the correctness of the order and bars proceedings, other than those expressly allowed by the Act, in which the correctness of the order is sought to to be questioned. Thus, an appeal under the Letters Patent against the order of a Single Judge of a High Court made on an appeal under the Act, is barred because it is not expressly provided by the Act and goes to question the correctness of the order of the Controller or an order passed on an appeal under the Act : South Asia Industries (P) Ltd., v. S. B. Sarup Singh and others, : [1965]2SCR756 What the Supreme Court said in that case about section 43 is important :

'the section imposes a total bar. The correctness of the judgment in appeal cannot be questioned by way of appeal or by way of collateral proceedings'.

(22) So also a Revision under section 115 of the Code of Civil Procedure will be barred because it questions the correctness of the order sought to be revised : Ram Kumar v. Harish Kumar & another 1968 D.L.T. 74. But in a proceeding to set aside an order made ex parte, that is not the position. There, the applicant does

not question the correctness of the order made; but only whether, right or wrong, in the circumstances it ought to have been made at all. Paradoxically, the order made ex parte may be perfectly sound on the record as it stood when it was made, and yet be set aside if the absent party establishes sufficient cause for not appearing when the case was called. Such a proceeding, thereforee, does not question the finality attaching to the correctness of the order. So the bar in section 43 does not apply. There is also available a statutory demonstration for this proposition. In the Provincial Small Cause Courts Act, 1887, section 27 makes the order of such a Court 'final'. There is no question that a Small Cause Court can set aside a decree made ex parte because the proviso to section 17 of that Act expressly contemplates it. Which goes to show that a proceeding to set aside an order made ex parte does not touch upon its finality, but its existence. A contrary view as to the meaning and effect of the word 'final' such in a provision does appear to have been expressed in Khaja Gulam Chaus Saqalain v. Collector Dist. Medak and others Air 1958 A. P. 442 and Ruplal Sitaram Bhagat v. Sheo Shankar Awasilal and others Air 1953 Nag 191 but they contain no discussion of the point, nor do they cite any authority. With respect, we are unable to agree.

(23) There was also a small suggestion that the words 'while holding an inquiry' in section 39(2) of the Act showed that the practice and procedure of a Court of Small Causes could be followed by the Controller only in an enquiry contemplated by the act, and a proceeding to set aside an ex parte order was not such an inquiry. The short answer is that the full words in the section are 'while holding an inquiry in any proceeding', and it was not suggested that an application to set aside an order made ex parte does not give rise to a proceeding.

(24) For the question we have to decide, it does not help to know that in some circumstances what might have been a good ground for setting aside an order made ex parte, is also a ground for appeal : see Suranjan Kanjilal v. Malati Datt, : AIR1970 Cal229 and Jnanendra Mohan Bhadhuray and another v. Profullananda Goswami and others, : AIR1928 Cal812 . We agree with what was said in Smt. Durga Devi and others v. Bhagwan Das Jayswal 67 C.W.N. 935 that in the vast majority of cases the remedy by way of appeal will not be satisfactory since the appeallate court is normally confined to the record as it stands, and presumably

will not disclose the sufficient cause that prevented a party from appearing, as otherwise the ex parte order would not have been made. As was emphasised in that case, the scope of an appeal is different from that of an application for setting aside an ex parte order. Though the two remedies may occasionally overlap, they do not cover the same ground. In our opinion, the availability of an appeal against an order made ex parte is irrelevant for deciding whether the Controller has power to set it aside.

(25) It only remains to say that the view we have taken is in accord with Pokar Mal v. Prem Nath and Others (1963) 65 P.L.R. 1056 in which it was held that the Controller has power to set aside an order made ex parte. In The Central Bank of India Ltd. v. Gokal Chand 1967 D.L.T.I. while giving an example of an order appealable under the Act, the Supreme Court said : 'Thus, an order of the Rent Controller refusing to set aside an ex parte order is subject to appeal to the Rent Control Tribunal'. That strongly suggests that the Controller has the power. A Division Bench of this court has already held in Jamil Ahmad Taban and others v. Mst. Khair-Ul-Nisa and Others, 1970 D.L.T. 268 that the words 'practice and procedure' in section 37(2) of the Act 'include also the 'power' to make the orders contemplated thereby'. Indeed, the question before us is really concluded by that case. The argument before us was commenced with the suggestion that that case was wrongly decided and did not correctly apply the ration'sdecidendi of The Central Bank of India Ltd. v. Gokal Chand, 1967 D.L.T. and Harish Chandra Bajpai and anothers : [1957]1SCR370 . We have, thereforee, re-examined the matter at some length and have come to the same conclusion. In our opinion, that case was correctly decided. Accordingly, our answer to the first part of the first question referred, is that the Controller has power to set aside an ex parte order.

(26) The other part of the first question, requires us to decide whether the Controller has any inherent powers like those of a civil court. On this question whether statutory tribunals have such powers, there is a great conflict in the cases. We were referred to Mavilsami Gounder v. Rammoorthi Chettiar and another : (1970)1MLJ606 Ruplal Sitaram Bhagat Sheo Shankar Awasilal and Others Air 1953 Nag 191 Maulvi Abdul Jabbar Palwan v . Maulvi Azizar Rahaman Mea. : AIR1937 Cal425 ; Gadi Neelavani v. Marappareddigari Narayana Reddi, 53 1. C.

847 and A. Arunagiri Nadar v. S. P. Rathinasami, Air 1971 Mad 162 to show that they had not, and to Manohar Lal v. Mohan Lal, 1957 P.I..R. 38 Mathra Dass v. Om Parkash and others, 1957 P.L.R. 45 Dwarka Deviandothers v. Hans Raj, 1963 P.L.R. 705 Nimal Charan Kamila v. Sham Mohan Nandi . : AIR1953 Ori254 and Smt. Durga Devi & Others v. Bhagwan Das Jayswal 67 C.W.N. 935 to show that they had. In the circumstances, we propose to examine the question on first principles. The method we will adopt is to ascertain the reasoning by which it is found that a civil court has inherent power, and then apply it to the Controller to see where it takes us.

(27) Consider a civil court governed by the Code of Civil Procedure. How is it known whether it has inherent power? It is known because section 151 of the Code of Civil Procedure says : 'Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court. . . . . .'. Those words show that the section does not confer inherent power. But, it recognises it, and protects and safeguards it. thereforee, the power exists. One does not post a sentinel to guard an empty space. So the conclusion that the court has inherent power is inferred.

(28) Since section 151 does not confer that power, where from does it come It comes from the fact that the court is created for a purpose and has to proceed to achieve it. To charge with the duty to decide is also to provide the power to proceed. That is why the power to proceed inheres. It is said in Halsbury's Laws of England (Third Edition) Volume 9 at page 344 : 'A court exercising judicial functions has an inherant power to regulate its own procedure, save in so far as its procedure has been laid down by the enacted law. . . . . .' Speaking of practice and procedure, Lush, L. J., says in Poyser v. Minors 7 Q.B.D.334 'apart from statutory restriction such rules are within the competence of every court to make for itself'. And, the Supreme Court says in Padam Sen and another v. The State of Uttar Pradesh : 1961 CriLJ322 that such powers 'have their source in the court possessing all the essential powers to regulate its practice and procedure', and again in Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal, : AIR 1962 SC527 it says: 'The inherent power has not been conferred upon the court; it is a power inherent in the court by virtue of its duty to do justice between the parties before it'. It is frequently described as a 'previously existing power', which exists

unless taken away; the Code of Civil Procedure binds the courts so far as it goes, but beyond the inherent power reigns ; see Hukum Chand Boil v. Kamala Nand Singh I.L.R. 33 Cal 927 ; Panchannan Singhs Roy v. Dwarka Nath Roy and others 3 C.L.J. 29. The Code is superimposed upon the power. If the Code did not exist, the court would still forge a procedure to do its task, because it must. The power 'is as necessary for the preservation of the existence of the courts as is the natural right of self-defense to the preservation of human life' : see Messrs Jawahar Singh Sobha Singh v. Union of India and Others 1957 P.L.R. 537. Which is why it is called a 'protective power'. That is the legal reasoning in relation to a court.

(29) Now, how is at with the Controller? Section 151 of the Code of Civil Procedure undoubtedly applies to a Court of Small Causes; consequently, the Controller is required by section 37 of the Act to follow it. Paraphrased section 151 will read :

'nothing in this Code shall be deemed to limit or affect the inherent power of the Controller. . . .'.

The sentinel is there, so the inherent power of the Controller can be inferred. Is there anything in the reasoning with regard to the source of the inherent power in relation to a court, which may be inapplicable to the Controller? We see none. If section 37(2) had not required the Controller to follow the Code of Civil Procedure, he would have still had to devise his own procedure to perform his task, and so been the master of it. Section 37(2) merely restricts his freedom, but does not destroy it. thereforee, we conclude that the Controller has inherent power.

(30) The conclusion we have reached is confirmed by Martin Burn Ltd., v. R. N. Banerjee, : (1958)ILLJ247SC . In that case the respondent moved the Labour Appellate Tribunal to .set aside an order made ex-parte. The Tribunal, in exercise of the powers conferred upon it by the Industrial Disputes (Appellate Tribunal) Act 1950, made orders to regulate its practice and procedure. Order 3 Rule 4, so made, was analogous to section 151 of the Code of Civil Procsdure.. The Supreme Court held thatthe Tribunal had inherent power to make the order setting aside, as it was 'evidently necessary for the ends of justice or to prevent the abuse ofthe process of the Court'. We think, the case of the Controller for the inherent

power is stronger. He gets the inference not from some statutory rule framed by himself, but directly from section 151 of the Code. We hold, he has the inherent power.

(31) The second question referred has many facts. The basic question is whetherthe Limitation Act 1963 applies to proceedings before the Controller. We have heard an extensive argument on this question and many cases were cited. No purpose will be served in reviewing them, because, on reflection, the opinion we have formed is that the matter is concluded by two decisions of the Supreme Court. In Nityanand M. Joshi and another v. The Life Insurance Corporation of India and others, : (1969)IILLJ711SC , the Supreme Court had to decide whether an application under section 33C(2) of the Industrial Disputes Act 1947 was governed by Article 137 of the Limitation Act. That depended on whether the Limitation Act applied to proceedings in the Labour Court. This is what the Supreme Court said.

'in our view Article 137 only contemplates application to Courts. In the Third Division of the Schedule to the Limitation Act, 1963, all the other applications mentioned in the various articles are applications filed in a court. Further section 4 of the Limitation Act, 1963, provides for the contingency when the prescribed period for any application expires on a holiday and the only contingency contemplated is 'when the court is closed'. Again under Section 5 it is only a court which is enabled to admit an application after the prescribed period has expired if the court is satisfied that the applicant had sufficient cause for not preferring the application. It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963'.

(32) Whatever doubts there may ones have been, that passage establishes conclusively and authoritatively that the Limitation Act 1963 applies only to a Court. We would have thought, that it also shows that the word 'Court' is used in the strict sense and not the larger one which it often bears. This was disputed. To resolve it, one has only to turn to the earlier case Town Municipal Council. Athani v. Presiding Officer. Labour Court. Hubli and others, : (1969)IILLJ651SC on which

the Supreme Court relied. In that earlier case the question for decision was prisely the same. After referring to the changes brought about in the Limitation Acts from time to time, the judgment proceeds :

'at best the further amendment now made enlarges the scope of the third division of the schedule so as also to includes some applications presented to courts governed by the Code of Criminal Procedure. One factor at least remains constant and that is that the applications must be to courts to be governed by the articles in this division. The scope of the various articles in this division cannot be held to have been so enlarged as to includes within them applications to bodies other than Courts, such as a quasi-judicial tribunal, or even an executive authority. An Industrial Tribunal or a Labour Court dealing with applications or references under the Act are not courts and they are in no way governed either by the Code of Civil Procedure or the Code of Criminal Procedure. We cannot, thereforee. accept the submissions made that this article w:ll apply over to applications made to an Industrial Tribunal or a Labour Court. The alterations made in the article and in the new Act cannot, in our opinion, justify the interpretation that even applications presented to bodies, other than courts, are now to be governed for purposes of limitation by Article 137'.

(33) And, in the next paragraph, disagreement with a judgment of Bombay High Court is expressed :

'The High Court ignored the circumstance that the provisions of Article 137 were sought to be applied to an application which was presented not to a Court but to a Labour Court dealing with an application under Section 33C of the Act and that such a Labour Court is not governed by any procedural code relating to civil or criminal proceedings.'

'AND,a little further down : In the long title, thus, the words 'other proceedings' have been added; but we do not think that this addition necessarily im- plies that the Limitation Act is intended to govern proceedings before any authority, whether executive or quasi-judicial, when, earlier, the old. Act was intended to govern proceedings before civil courts only'.

And, finally :

'The question still remains whether this alteration can be held to be intended to cover petitions by a petitioner to authorities other than Courts. We are unable to find any provision in the new Limitation Act which would justify holding that these changes in definition were intended to make the Limitation Act applicable to proceedings before bodies other than courts'.

(34) It is obvious from these passages in the judgment, that the Supreme Court was using the word 'Court' in the strictest sense and excluding quasi-judicial tribunals and other bodies.

(35) We think it is unarguable that the Controller is a Court in the strict sense. Sections 36(2), 41 and 42 of the Act refute that suggestion entirely. They would not transmute the Controller into a court for certain purpose, if he were that already. Similar provisions have led to the conclusion that a Commissioner appointed under the Public Servants (Inquires) Act 1850, and an Employees' Insurance Court constituted under the Employees State Insurance Act 1948, are not courts : see Brajnandan Sinha v. Jyoti Narain, : 1956 CriLJ156 ; M/s. Popular Process Studio and another v. Employees' State Insurance Corporation, : AIR1970 Bom413 . Mr. Justice V. S. Despande, has also held that the Controller is not a Court : see Kulwant Kaur v. Jiwan Singh I.L.R. (1972) Delhi 15. The contrary view taken in Krishnan v. Radha Lakshmi Amma, 0043/1972 : AIR1972 Ker145 was based on the definition of 'Rent Control Court' in the Act there under consideration. Besides, that case does not notice the judgments of the Supreme Court to which we have already referred. Cases under various other statutes showing the kinds of bodies or tribunals that have been held to be courts to not assist us, because it must always depend on the meaning attributed to that word in a particular contest : as witness, the Rent Controller in Punjab has been held, by a Full Bench, to be a civil court for purposes of the Criminal Procedure Code : see Smt. Vya Devi v. Firm Madan Lal Prem Kumar (1971) 73 P.L. R. 61; and, by another Full Bench, not for purposes of the Code of Civil Procedure : see Pitman's Shorthand Academy v M/s B. Lila Ram & Sons A. I. R 1950 P&h; 181. As regards the Limitation Act 1963 the judgmentsof the Supreme Court are clear. In our opinion. though the Controller

under the Delhi Rent Control Act 1958 may have some of the trappings of a Court, he is not a court stricto sensu and so not within the meaning of the Limitation Act.

(36) It was suggested thatthe statutes of limitation are a part of the procedural law, and that when section 37 of the Delhi Rent Control Act 1958 refers to the 'practice and procedure' of a Court of Small Causes it means to include the Limitation Act. Alternatively, that the Controller, in proceedings before him, ought to act onthe analogy of that statute. We do not agree. It seems to us, that had the Legislature intended that the Limitation Act should apply, it would not, on such an important matter, have resorted to so devious a method of statement instead of the direct manner. On such matters,the Legislature usually speaks with a clear voice.

(37) We have pondered, so far as we could, the consequences resulting from our view. Had we held that the Limita,.ion Act 1963 applied, there is very little in it that could hive applied to proceedings before the Controller. The First and Second Divisions of the Schedule to that Act deal with suits and appeals, and can have no application to such proceedings; at best, only some of the Articles in the Third Division may possibly have applied. That could well have been one of the reasons why the Limitation Act was not applied. The only difficulty we foresee is the absence of a provision like section 12 of the Limitation Act. Rule 17(2) of the Delhi Rent Control Rules, requires every memorandum of appeal under the Act to be accompanied by a copy of the order of the Controller appealed from. A copy means a certified copy : see Reasat Ah Khan v. Mahfuz Ali Khan and others, A.I.R. 1929 Lahore 771; State of Uttar Pradesh v. C. Tobit and others : 1958 CriLJ809 . There appears to be no provision in the Delhi Rent Control Act/or the rules providing for the exclusion of the time requisite for obtaining a certified copy from the time allowed for an appeal. But, we think, the difficulty can bs overcome by applying the proviso to section 38(2) of the Act. As the rules require that a memorandum of appeal be accompanied by a copy of the order appealed from,the time taken in obtaining a certified copy may well be regarded as a period during which the appellant was prevented by sufficient cause from filing the appeal in time. This assumes, of course, that the copy his appeal by venture allowed for appeal.

(38) In view of the conclusions at which we have arrived on the other questions, the third question referred does not survive. No purpose will be served by our dealing with it, and in the circumstances, we prefer to reserve our opinion.

(39) The questions referred are answered accordingly. These appeals will now be placed before a Single Judge for being heard. The costs of the hearing before us will follow the result.