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Court : Himachal Pradesh

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Judge : Deepak Gupta, J.

Appellant : Sat Pal

Respondent : Sunaina Devi

Judgement :

Deepak Gupta, J.

1. This matter has been placed before me on account of divergence of opinion between My Lord the Chief Justice and Surjit Singh, J. with respect to the interpretation to be put upon Clauses (a) and (b) of Sub-section (1) of Section 24 of the H.P. Urban Rent Control Act, 1987 (hereinafter referred to as the Act).

2. I have had the privilege of going through both the aforesaid opinions and have also heard the learned Counsel assisting the Court in detail. Since only a short question of law has been referred to me, it is not necessary to give the factual matrix of the case.

3. To appreciate the amplitude and scope of Section 24, and the various contentions, it would be necessary to refer to Section 24 of the Act which reads as

under:

24. 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 it thinks 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.

(b) Save as otherwise provided in this Act, any person aggrieved by an order passed by the Controller, except the orders for the recovery of possession made by the Controller in accordance with the procedure prescribed under Section 16, 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 appellate authority having jurisdiction. (In computing the period of fifteen days the time taken to obtain a certified copy of the order appealed against shall be excluded).

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

(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.

(4) The decision of the appellate authority 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 Sub-section (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.

4. Surjit Singh, J. in his order has clearly stated that he disagrees with the order of the Chief Justice only with regard to the view taken by the Chief Justice that unless the State Government specifies in the Notification, the orders which are appealable, every order passed by the Rent Controller shall be appealable in view of the provisions of Clause (b) of Sub-section (1) of Section 24 of the Act. Whereas the Chief Justice has held that every order passed by the Rent Controller is appealable, Surjit Singh, J. is of the view that the phrase 'an order appearing in Section 24 (1)(b)' encompasses only those orders that are passed by the Rent Controller under the Act, i.e. the orders passed for eviction, fixation of fair rent, revision of fair rent, deposit of rent, restoration of amenities, restitution of premises to the tenant. He has held that only the final orders are appealable and the interlocutory orders passed by the Rent Controller are not appealable.

5. A plain reading of Section 24(1)(a) of the Act clearly shows that it is obligatory on the State Government to appoint appellate authorities and to specify the areas in which such appellate authorities shall exercise their jurisdiction. Power has also been given to the State Government to specify the classes of cases which may be heard by the appellate authority.

6. In case the State Government does not specify the classes of cases which the appellate authorities shall hear or which can be filed before the appellate authorities then, in my opinion, under Clause (b) of Sub-section (1) of Section 24 all orders passed by the Rent Controller except those passed under Section 16 of the Act would be appealable.

7. Clause (b) clearly lays down that save as otherwise provided in the Act any person aggrieved by an order passed by the Rent Controller except orders passed under Section 16 may file an appeal before the appellate authority within the period of limitation. This is a right given under the statute. It is well settled law that right to file an appeal is a statutory right and can neither be abridged nor enlarged by judicial pronouncement. Clause (b) does not restrict the right of appeal to any specific type of order except that it excludes orders passed under Section 16. The view taken by Surjit Singh, J. is that the phrase 'classes of cases' in Clause (a) of Sub-section (1) refers only to final orders that can be passed under the Rent

Control Act. He is further of the view that the word 'orders' in Clause (a) of Section 24(1) has to be read to refer to those classes of cases mentioned in Clause (a) i.e. the various classes of rent cases such as petition for eviction, fixation of fair rent, deposit of rent, restoration of amenities etc. According to him it is only in such classes of cases that appellate authorities can exercise the appellate powers under Clause (b). Therefore, he is of the view that every order passed by the Rent Controller is not appealable and it is only the final orders, referred to above, passed which are appealable.

8. With due deference I am unable to agree with the reasoning given by Surjit Singh, J. As observed above, the right to file an appeal is the creation of a statute. Once the right to file an appeal is given, an aggrieved party has a vested right to file an appeal. This right cannot be taken away by giving the interpretation as is sought to be given. In my view, from a bare reading of Sub-section (2), it is clear that the legislature intended that interim or interlocutory order could also be challenged in an appeal before the appellate authority. Sub-section (2) empowers the appellate authority, on an appeal being preferred before it, to stay further proceedings in the matter pending decision of the appeal. Sub-section (2) of the Act would become otiose and nugatory if it is held that only the final orders can be challenged in the appeal. Section 24(1)(b) clearly lays down that any person aggrieved by an order' passed by the Controller can file an appeal except an order under Section 16 of the Act. The word 'order' has to be read in its generic sense. Therefore, prima facie whether the order is interlocutory or final, the appeal would lie against the said order. While taking this view I am supported by a judgment of C.K. Thakker, C.J. (as he then was) dated 31st August, 2001 in Civil Revision No. 320 of 2000, wherein he held that all orders unless expressly saved under the Act would be appealable. The relevant portion of his judgment reads as follows:

In my opinion, therefore, the expression 'order', which has not been defined in the Code, should not be read as final but even interim order.

9. It would be pertinent to mention that while dealing with a petition filed under the H.P. Urban Rent Control Act, the Rent Controller may have to pass orders which may not squarely fall within the ambit of the Act. He may have to pass orders on

applications filed under the provisions of the Civil Procedure Code, the Evidence Act or various other laws. These orders may effect the rights of the parties in the main rent petition. These orders may in fact virtually decide the fate of the parties in some cases. Would these orders not fall within the meaning of the phrase 'an order' under Section 24(1)(b)? In my opinion, there can be only one answer and that is that such orders would fall within the ambit of Section 24(1)(b) of the Act and would be appealable under the Act. To give an example, supposing a tenant does not appear on a date fixed and is proceeded ex parte and thereafter files an application for setting aside the ex parte proceeding. The Rent Controller rejects his application. This would be an order not strictly under the Rent Control Act, but in my opinion, would fall within the ambit of Section 24(1)(b). Examples like this can be multiplied.

10. An argument has been raised before me that if every order is made appealable then there will be never ending litigation and this interpretation can be used as ruse or subterfuge by the tenants to delay the matters by challenging every order in appeal.

11. There can be no manner of doubt that every order passed by a Rent Controller can not be an appealable order. The Section provides that a person aggrieved by an order can file an appeal. Obviously the order must be one which decides certain matters which effect the rights of the parties. Only then can one party be said to be aggrieved and will have a right to challenge the order in appeal.

12. Some High Courts in the country such as Presidency High Courts of Bombay, Calcutta and Madras as well as High Court of Delhi, the High Court of Jammu and Kashmir and this Court have original jurisdiction. Civil suits are tried on the original side of these Courts. Under the Letters Patent of the various Courts as well as the Delhi High Court Act an appeal to a Division Bench lies against the 'Judgment' of a learned Single Judge passed on the original side. The question as to what is the interpretation to be given to the word 'Judgment' had been a matter of debate before the various High Courts for almost 100 years and this matter was finally decided by the Apex Court in *Shah Babulal Khimji v. Jayaben D. Kama and Anr.* : [1982]1SCR187 . The apex Court after considering all the previous authorities and

entire law on the subject held as follows:

113. Thus, under the Code of Civil Procedure, a judgment consists of the reasons and grounds for a decree passed by a Court. As a judgment constitutes the reasons for the decree it follows as a matter of course that the judgment must be a formal adjudication which conclusively determines the rights of the parties with regard to all or any of the matters in controversy. The concept of a judgment as defined by the Code of Civil Procedure seems to be rather narrow and the limitations engrafted by Sub-section (2) of Section 2 cannot be physically imported into the definition of the word 'judgment' as used in Clause 15 of the Letters Patent because the Letters Patent has advisedly not used the terms 'order' or 'decree' anywhere. The intention, therefore, of the givers of the Letters Patent was that the word 'judgment' should receive a much wider and more liberal interpretation than the word 'judgment' used in the Code of Civil Procedure. At the same time, it cannot be said that any order passed by a Trial Judge would amount to a judgment; otherwise there will be no end to the number of orders which would be appealable under the Letters Patent. It seems to us that the word 'judgment' has undoubtedly a concept of finality in a broader and not a narrower sense. In other words, a judgment can be of three kinds:

(1) A final judgment'.-A judgment which decides all the questions or issues in controversy so far as the Trial Judge is concerned and leaves nothing else to be decided. This would mean that by virtue of the judgment, the suit or action brought by the plaintiff is dismissed or decreed in part or in full. Such an order passed by the Trial Judge indisputably and unquestionably is a judgment within the meaning of the Letters Patent and even amounts to a decree so that an appeal would lie from such a judgment to a Division Bench.

(2) A preliminary judgment.-This kind of a judgment may take two forms-(a) where the Trial Judge by an order dismisses the suit without going into the merits of the suit but only on a preliminary objection raised by the defendant or the party opposing on the ground that the suit is not maintainable. Here also, as the suit is finally decided one way or the other, the order passed by the Trial Judge would be a judgment finally deciding the cause so far as the Trial Judge is concerned and,

therefore, appealable to the larger Bench. (b) Another shape which a preliminary judgment may take is that where the Trial Judge passes an order after hearing the preliminary objections raised by the defendant relating to maintainability of the suit, e.g., bar of jurisdiction, res judicata, a manifest defect in the suit, absence of notice under Section 80 and the like, and these objections are decided by the Trial Judge against the defendant, the suit is not terminated but continues and has to be tried on merits but the order of the Trial Judge rejecting the objections doubtless adversely affects a valuable right of the defendant who, if his objections are valid, is entitled to get the suit dismissed on preliminary grounds. Thus, such an order even though it keeps the suit alive, undoubtedly decides an important aspect of the trial which affects a vital right of the defendant and must, therefore, be construed to be a judgment so as to be appealable to a larger Bench.

(3) Intermediary or interlocutory judgment.-Most of the interlocutory orders which contain the quality of finality are clearly specified in Clauses (a) to (w) of Order 43 Rule 1 and have already been held by us to be judgments within the meaning of the Letters Patent and, therefore, appealable. There may also be interlocutory orders which are not covered by Order 43 Rule 1 but which also possess the characteristics and trappings of finality in that, the orders may adversely affect a valuable right of the party or decide an important aspect of the trial in an ancillary proceeding. Before such an order can be a judgment the adverse effect on the party concerned must be direct and immediate rather than indirect or remote. For instance, where the Trial Judge in a suit under Order 37 of the Code of Civil Procedure refuses the defendant leave to defend the suit, the order directly affects the defendant because he loses a valuable right to defend the suit and his remedy is confined only to contest the plaintiff's case on his own evidence without being given a chance to rebut that evidence. As such an order vitally affects a valuable right of the defendant it will undoubtedly be treated as a judgment within the meaning of the Letters Patent so as to be appealable to a larger Bench. Take the converse case in a similar suit where the Trial Judge allows the defendant to defend the suit in which case although the plaintiff is adversely affected but the damage or prejudice caused to him is not direct or immediate but of a minimal nature and rather too remote because the plaintiff still possesses his full right to show that the defence is false and succeed in the suit. Thus, such an order

passed by the Trial Judge would not amount to a judgment within the meaning of Clause 15 of the Letters Patent but will be purely an interlocutory order. Similarly, suppose the Trial Judge passes an order setting aside an ex parte decree against the defendant, which is not appealable under any of the clauses of Order 43 Rule 1 though an order rejecting an application to set aside the decree passed ex parte falls within Order 43 Rule 1 Clause (d) and is appealable, the serious question that arises is whether or not the order first mentioned is a judgment within the meaning of Letters Patent. The fact, however, remains that the order setting aside the ex parte decree puts the defendant to a great advantage and works serious injustice to the plaintiff because as a consequence of the order, the plaintiff has now to contest the suit and is deprived of the fruits of the decree passed in his favour. In these circumstances, therefore, the order passed by the Trial Judge setting aside the ex parte decree vitally affects the valuable rights of the plaintiff and hence amounts to an interlocutory judgment and is, therefore, appealable to a larger Bench.

114. In the course of the trial, the Trial Judge may pass a number of orders whereby some of the various steps to be taken by the parties in prosecution of the suit may be of a routine nature while other orders may cause some inconvenience to one party or the other, e.g., an order refusing an adjournment, an order refusing to summon an additional witness or documents, an order refusing to condone delay in filing documents, after the first date of hearing an order of costs to one of the parties for its default or an order exercising discretion in respect of a procedural matter against one party or the other. Such orders are purely interlocutory and cannot constitute judgments because it will always be open to the aggrieved party to make a grievance of the order passed against the party concerned in the appeal against the final judgment passed by the Trial Judge.

115. Thus, in other words every interlocutory order cannot be regarded as a judgment but only those orders would be judgments which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned.

13. The apex Court thereafter gave various illustrations of interlocutory orders which could be treated as judgments. However, the Court laid down in para 122 that these examples are only illustrative in nature and are not totally exhaustive and that the law with its dynamism, pragmatism and vastness is such a large ocean that it is well-nigh impossible for the Court to envisage or provide for every possible contingency or situation so as to evolve a device or frame an exhaustive formula or strategy to confine and incarcerate the same in a strait-jacket.

14. It has been argued before me that the word used in the Letters Patent and dealt with by the Apex Court in the aforesaid judgment was 'Judgment' whereas in the Act in question the word used is 'order'. In my opinion, the word 'order' is in fact of wider amplitude than 'judgment'. Every judgment is necessarily an order, but every order is not a judgment. Even an order adjourning a case is an order. This does not, however, mean that an appeal shall lie against an order even adjourning a case. Such an order does not decide the rights of the parties. In fact this question has also been dealt with by the Apex Court in *Subal Paul v. Malina Paul and Anr.* : [2003]1SCR1092 , wherein the Court was considering the scope of the word 'order' in Section 299 of the Indian Succession Act which reads as follows:

299. Appeals from orders of District Judge.-Every order made by a District Judge by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court in accordance with the provisions of the Code of Civil Procedure, 1908, applicable to appeals.

The apex Court in paras 11 and 12 held as follows:

11. A right of appeal of a party in a contentious proceeding is, therefore, to be found in the provisions of Section 299 of the Act itself and not in Section 104 of the Code of Civil Procedure.

12. Section 299 of the Act states that all orders passed by the District Judge are appealable. Although *ex facie*, all orders are appealable ones, however, the decisions rendered in various jurisdictions point out the inherent limitations contained therein.

The apex Court went on to hold in para 21 held as under:

21. If a right of appeal is provided for under the Act, the limitation thereof must also be provided therein. A right of appeal which is provided under the Letters Patent cannot be said to be restricted. Limitation of a right of appeal, in the absence of any provision in a statute cannot be readily inferred. It is now well settled that the appellate jurisdiction of a superior Court is not taken as excluded simply because the subordinate Court exercises its special jurisdiction.

15. It is, therefore, clear that merely because the right of appeal has been given under the Rent Control Act, does not mean that the right of appeal is limited only to challenge orders passed under the said Act.

In *Mithailal Dalsangar Singh and Ors. v. Annabai Devram Kini and Ors.* : AIR 2003 SC4244 , the apex Court following the judgment in *Khimji's case supra* held as follows:

12. We are also of the opinion that the letters patent appeal against the order setting aside the abatement of the suit was not maintainable. What is a 'judgment' within the meaning of Letters Patent came up for the consideration of this Court in *Shah Babulal Khimji v. Jayaben D. Kania*. It was held that a decision by a trial Judge on a controversy which affects valuable rights of one of the parties is a 'judgment'. However, an interlocutory order cannot be regarded as a judgment but only those orders would be judgments which decide matters of moment or affect vital and valuable rights of the parties, and which work serious injustice to the party concerned. This Court further held that there is no inconsistency between Section 104 read with Order 43 Rule 1 CPC and the appeals under the Letters Patent. The Letters Patent do not exclude or override the application of Section 104 read with Order 43 Rule 1 CPC to internal appeals within the High Court. Even if it is assumed that Order 43 Rule 1 does not apply to letters patent appeals yet the principles governing those provisions would apply by a process of analogy. A perusal of Section 104 read with Rule 1 of Order 43 CPC shows that while an appeal is provided against an order refusing to set aside the abatement or dismissal of a suit; there is no appeal provided against an order whereby the abatement or dismissal of a suit has been set aside. Whether the trial Judge

passed an order setting aside an abatement or allowed substitution of the legal representatives, no valuable right of the parties was decided. The constitution of the suit was rendered good and the suit proceeded ahead for being tried on merits. Such an order does not amount to 'judgment' within the meaning of Letters Patent.

16. The latest judgment on this subject is *Midnapore Peoples' Co-op. Bank Ltd. v. Chunilal Nanda and Ors.* : 2006 CriLJ2903 , wherein the apex Court has considered the entire law. The apex Court was concerned with the question as to whether an appeal lay under the Letters Patent of the Patna High Court against a judgment of learned Single Judge passed in Contempt Proceedings under the Contempt of Courts Act, 1971. The apex Court after discussing the entire law held that interim orders/ interlocutory orders passed during the pendency of a case, fall under one or the other of the following categories:

- (i) Orders which finally decide a question or issue in controversy in the main case.
- (ii) Orders which finally decide an issue which materially and directly affects the final decision in the main case.
- (iii) Orders which finally decide a collateral issue or question which is not the subject-matter of the main case.
- (iv) Routine orders which are passed to facilitate the progress of the case till its culmination in the final judgment.
- (v) Orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties.

17. The apex Court held that the interlocutory order which fall under categories (i), (ii) and (iii) are 'judgments' and, therefore, an appeal lies against them and that orders falling under categories (iv) and (v) are not judgments and no appeal can be filed against them.

18. I am of the view that the interpretation given to the word 'judgment' by the apex Court can also be applied to the word 'Order' in Clause 24(1) (b) of the Act. It is

obvious that when the legislature gave the right to appeal, it was of the view that only a person aggrieved by an order can file an appeal. The grievance must be based on certain legitimate grounds and as held by the apex Court orders which merely cause some inconvenience or prejudice to the parties but do not finally determine the rights and obligations of the parties can never be held to be appealable orders. Similarly, routine orders passed during the progress of the case which do not effect rights of the parties cannot be appealed against.

19. After considering the entire law I am of the view that the word 'Order' in Section 24(1) (b) not only includes final orders passed under the Rent Control Act, but shall also include other orders including interlocutory orders which finally decide a question in issue or issue in controversy relatable to the main case; similarly, interim orders which finally decide issue(s) which have material bearing and may directly effect the final decision of the case can also be appealed against and lastly, orders which though only decide a collateral issue, but which will effect the vital rights and obligations of the parties can be appealed against. In case the various judgments of the apex Court are gone through carefully, it would be clear as to which orders are appealable and which are not. It is neither possible nor is it prudent to set out all the appealable orders in detail. It shall be for the appellate authority in the facts and circumstances of each, case to decide, whether the order appealed before it falls within the ambit and scope of appealable orders, in the light of the law discussed above.

20. I, therefore, disagree with the opinion of Surjit Singh, J. and agree with the opinion of My Lord the Chief Justice that all orders, including interlocutory orders, passed by the Rent Controller can be challenged in an appeal before the appellate authority, subject to the caveat that the order should either finally decide a question or issue in controversy in the main case; or it should be an order which materially and directly affects the final decision in the main case or which finally decides a collateral issue or question which is not the subject-matter of the main case, but which vitally affects the rights and obligations of the parties and shall have material bearing on the final decision of the case.