Before J. V. Gupta. J.

VED PARKASH —*Petitioner*

versus

Chela Ram,—*Respondent.*

Civil Revision No. 163 of 1985

May 7, 1985.

Haryana Urban (Control of Rent and Eviction) Act (XX of 1973)—Sections 13, 14 and 15(2)—Code of Civil Procedure (V of 1908)—Order 23 Rule 1—Landlord seeking eviction on the ground that the tenant had impaired the value and utility of the demised premises—Application moved by the landlord for withdrawal of the ejectment petition with permission to file a fresh one on the same cause of action—Rent Controller dismissed the ejectment application as withdrawn without granting permission—Subsequent petition for ejectment by the landlord on the same ground—Rent Controller dismissing the petition summarily as not maintainable in view of the order passed in the earlier petition—Such order—Whether valid—Subsequent order of dismissal—Whether could be said to have been passed under section 13 and therefore, appealable under section 15(2).

Held, that the landlord filed the ejectment application earlier on the ground that the tenant had impaired the value and utility of the premises. In the said application the landlord sought permission of the Rent Controller to withdraw the same with permission to file a fresh application on the same cause of action. However, the Rent Controller did not grant the permission for filing a fresh application on the same cause of action but dismissed the same as withdrawn. *Prima facie* the said order was invalid and of no consequence. At least, it did not debar the landlord from filing a fresh eviction application on the same cause of action. Under order 23 rule 1 of the Code of Civil Procedure 1908, the plaintiff has got an absolute right to withdraw the suit and the permission of the Court is not required and the plaintiff shall be precluded from instituting any fresh suit in respect of the same subject-matter in view of the provisions of rule 1(3). However, if the plaintiff applies under rule 1(2), it is not open to the Court to treat the application under rule 1(1) without any condition and to grant the prayer for withdrawal and refuse the prayer to bring a fresh suit. The prayer in the application under rule 1(2) must be treated as one and the Court may either reject the entire prayer or allow the entire prayer and it cannot split up the application and grant a part of it and reject the other part. If the plaintiff does not desire to withdraw from the suit, unless permission to bring

a fresh suit is granted and the Court considers that such permission should not be granted then the proper course is simply to dismiss the application and the suit cannot be dismissed. The order dismissing the suit as withdrawn and rejecting permission to file a fresh suit on the same cause of action is invalid and is not sustainable at law. Apart from the above, the provisions of Order XIII of the Code of Civil Procedure, as such, are not applicable to the proceedings under the Act though under section 14, the Controller shall summarily reject any application under sub-section (2) or (3) of section 13 which raises substantially the issues as have been finally decided in any former proceedings under the Act. Admittedly, in the earlier ejectment application, the plea taken by the landlord that the tenant had impaired the value and utility of the premises in question was not finally decided. As a matter of fact, the application was dismissed as withdrawn. In this view of the matter, section 14 of the Act, was not at all attracted. Apart from that, there is no provision in the Act where an ejectment application could be dismissed summarily as such. Under the circumstances, the application filed by the landlord against the tenant could not be dismissed summarily by the rent controller. (Para 4)

Held, that admittedly, the ejectment application was filed under section 13 of the Act. As provided under sub-section (2) to section 13 of the Act, a landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the said application is dismissed by the Rent Controller either on merits or on the ground that the same was not maintainable, then the order will be deemed to have been passed on an application filed under section 13 of the Act. In the present case, the Rent Controller has disposed of the application under section 13 of the Act, on the ground that the same was not maintainable. As such the said order was certainly appealable as it amounted to the dismissal of the application under section 13 of the Act. Even if it may be assumed that the application will be deemed to have been dismissed under the provisions of section 14 of the Act, even then, the order will be appealable as it was the application under section 13 of the Act which was dismissed by the Rent Controller finally. The reasons for dismissing the same may be any but since it was finally disposed of after hearing both the parties, such an order fell within the ambit of section 15(2) of the Act and was, therefore, appealable. (Para 5)

Petition u/s 15 (5) *of Haryana Rent Act for revision of the order of Shri K. C. Dana, Addiional District Judge ,Karnal, exercising the powers of Appellate Authority under the Haryana Urban (Control of Rent and Eviction Act*, 1973) *dated the* 5*th October*, 1984 *reversing that of Shri Shiv Sharma Rent Controller, Karnal, dated the* 23*rd March*, 1984, *and ordering that the learned Lower Court shall proceed with the trial of the case on merits as per the law and directing the parties to appear in the Court of Shri Shiv Sharma Rent Controller, Karnal, on* 15*th October*, 1984.

V. K. Bali, Advocate, *for the Petitioner.*

S. S. Rathour, Advocate, *for the Respondent.*

JUDGMENT

J. V. Gupta, J.—

1. The landlord Chela Ram filed in ejectment application under section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973, (hereinafter called the Act) against the tenant Ved Parkash *inter alia* on the ground that he had impaired the value and utility of the demised premises. In the reply filed on behalf of the tenant, a preliminary objection was raised that the eviction application was not maintainable in view of the order dated March 24, 1982, passed by the Rent Controller in the earlier eviction application filed by the landlord against the tenant on the same cause of action. Consequently a preliminary issue was framed as to whether the instant ejectment application was barred by the principles of *res judicata*. The learned Rent Controller found that the application was not maintainable in view of the earlier order passed by the Rent Controller dated March 24, 1982, in the earlier ejectment application filed by the landlord against the tenant. Consequently, the ejectment application was dismissed. Dissatisfied with the same, the landlord filed an appeal before the Appellate Authority. Therein, it was observed by the Appellate Authority,—

> "I am of the opinion that the present petition cannot be said to be barred merely because it has been filed on the same grounds and same cause of action on which earlier petition filed by him was dismissed as there has been no final adjudication of the point in controversy on merits and the earlier petition was summarily dismissed without there being a prayer made by the petitioner for the purpose."

In view of this finding, the order of the Rent Controller was set aside and the case was sent for trial on merits. Dissatisfied with the same, the tenant has filed this revision petition in this Court.

2. The learned counsel for the petitioner contended in the first instance that the order of the Rent Controller dated March 23, 1984, was not appealable as such as according to the learned counsel, the

said order could not be said to have been passed under section 13 of the Act as only the orders passed under section 13 are appealable as provided under section 15(2) of the Act. According to the learned counsel, since the order was not passed on the merits of the case, it could not be said that it was an order under section 13 of the Act. At the most, according to the learned counsel it would be an order passed under section 14 of the Act and, therefore, not appealable. In support of the contention, the learned counsel relied upon *Daya Nand* v. *Bir Chand* (1),. The learned counsel further contended that on this very ground, the earlier eviction application filed by the landlord against the tenant was dismissed as withdrawn by the Rent Controller,—*vide* order dated March 24, 1982, and, within 12 days thereof, the eviction application out of which the revision petition has arisen, was filed on the same cause of action. Thus, argued the learned counsel, the Rent Controller rightly found that the instant eviction application was barred in view of the earlier order dated March 24 1982. According to the learned counsel, the view taken by the Appellate Authority in this behalf was wholly wrong, illegal and misconceived. On the other hand, the learned counsel for the landlord submitted that the order passed by the Rent Controller dismissing the ejectment application was an order under section 13 of the Act, hence it was appealable as such according to the learned counsel, the ressons given for dismissing the application may be any, but the application made was an application for eviction of the tenant under section 13 of the Act, which has been dismissed by the Rent Controller on the ground that the same was not maintainable, in view of the earlier order dated March 24, 1982. Thus, according to the learned counsel, the dismissal of the ejectment application was under section 13 of the Act, and, therefore, the appeal was rightly filed before the Appellate Authority. The learned counsel further submitted that the order passed by the Rent Controller earlier dismissing the previous ejectment application of the landlord as withdrawn against the tenant was without jurisdiction. The landlord made the application seeking permission to withdraw the application in order to file a fresh one. That application could either be dismissed or accepted as a whole. If the permission was not granted to file a fresh one of the same cause of action the same could not be dismissed as withdrawn as it was never the prayer of the landlord. In support of this contention, the learned counsel relied upon *Krishan Kumar* v. *State of Punjab* (2),

(1) 1983 P.L.R. 775.
(2) 1976 R.L.R. 70.

3. I have heard the learned counsel for the parties at a great length and have also gone through the relevant orders.

4. It may be that the landlord filed the ejectment application earlier on the ground that the tenant had impaired the value and utility of the premises. In the said eviction application, the landlord sought the permission of the Rent Controller to withdraw the same with permission to file a fresh application on the same cause of action. However, the Rent Controller did not grant the permission for filing a fresh application on the same cause of action, but dismissed the same as withdrawn,—*vide* order dated March 24, 1982. *Prima facie* the said order was invalid and was of no consequence. At least, it did not debar the landlord from filing a fresh eviction application on the same cause of action. Reference in this behalf may be made to *Krishan Kumar's case* (supra), wherein it was held that under Order XXIII rule 1, Code of Civil Procedure, the plaintiff has got an absolute right to withdraw the suit and the permission of the Court is not required and the plaintiff shall be precluded from instituting any fresh suit in respect of the same subject-matter in view of the provisions of rule 1(3). However, if the plaintiff applies under rule 1(2), Order XXIII of the Civil Procedure Code, it is not open to the court to treat the application under rule 1(1) without any condition and to grant the prayer for withdrawal and refuse the prayer to bring a fresh suit. The prayer in the application under rule 1(2) must be treated as one and the Court may either reject the entire prayer or allow the entire prayer and it cannot split up the application and grant a part of it and reject the remaining of it. If the plaintiff does not desire to withdraw from the suit, unless permission to bring a fresh suit is granted and the Court considers that such permission should not be granted then the proper course is simply to dismiss the application and the suit cannot be dismissed. The order dismissing the suit as withdrawn and rejecting permission to file a fresh suit on the same cause of action is invalid and is not sustainable at law. Apart from the above, the provision of Order XXIII of the Code of Civil Procedure as such, are not applicable to the proceedings under the Act, though under section 14, the Controller shall summarily reject any application under sub-section (2) or (3) of section 13 which raises substantially the issues as have been finally decided in any former proceedings under the Act. Admittedly, in the earlier ejectment application, the plea taken by the landlord that the tenant had impaired the value and utility of the premises in question was not finally decided. As a matter of fact, the application was dismissed as withdrawn. In this view of the matter,

section 14 of the Act, was not at all attracted. Apart from that, there is no provision in the Act where an ejectment application could be dismissed summarily as such. In case a landlord files frivolous or vexatious applications for harassing the tenant, then the remedy is provided under section 13(7) of the Act, which contemplates that where the Controller is satisfied that any application made by a landlord for the eviction of a tenant is frivolous or vexatious, the Controller may direct that compensation not exceeding five hundred rupees be paid by such landlord to the tenant. Under the circumstances, the application filed by the landlord against the tenant could not be dismissed summarily by the Rent Controller,—*vide* order dated March 23, 1984 and the view taken by the Appellate Authority in the judgment under revision is maintained.

5. As regards the contention that the appeal against the order of the Rent Controller dated March 23, 1984 was not maintainable because the order of the Rent Controller could not be said to have been passed under section 13 of the Act, I do not find any merit therein. Admittedly, the ejectment application was filed under section 13 of the Act. As provided under sub-section (2) to section 13 of the Act, a landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the said application is dismissed by the Rent Controller either on merits or on the ground that the same was not maintainable, then the order will be deemed to have been passed on an application filed under section 13 of the Act. In the present case, the Rent Controller has disposed of the application under section 13 of the Act, on the ground that the same was not maintainable. As such, the said order was certainly appealable as it amounted to the dismissal of the application under section 13 of the Act. Even if it may be assumed that the application will be deemed to have been dismissed under the provisions of section 14 of the Act, even then the order will be appealable as it was the appliton under section 13 of the Act which was dismissed by the Rent Controller finally,—*vide* order March 23, 1984. The reasons for dismissing the same may be any, but since it was finally disposed of after hearing both the parties, such an order fell within the ambit of section 15(2) of the Act, and therefore, was appealable. It is an order passed under the Act by the Controller which has been made appealable by sub-section (2) of section 15 of the Act.

6. As a result of the above discussion, this revision petition fails and is dismissed **with** no order as to costs.

N.K.S.