REVISIONAL CIVIL

Before R. S. Narula, J

BOOTA SINGH AND OTHERS,—*Petitioners*

versus.

ROSHAN LAL AND OTHERS,—*Respondents*

Civil Revision No. 416 of 1969

August 7, 1970

East Punjab Urban Rent Restriction Act (III of 1949)—Sections 15 (3) and 15(5)—Code of Civil Procedure (V of 1908)—Section 115 order 6 rule 17—Order passed by appellate authority allowing amendment of pleading—Whether part of "proceedings" under section 15(3)—Revision petition against such order—Whether lies—Power of revision of High Court under section 15(5) of the Act—Scope of—Whether wider than under section 115 of the Code—Appellate authority—Whether has jurisdiction to allow amendment of pleadings—Tenant not taking the plea of want of notice in the written statement—Whether deemed to have waived the same—Allowing the amendment of written statement at the appellate stage—When justified.

Held, that the phraseology of section 15(5) of the East Punjab Urban Rent Restriction Act 1949, leaves no doubt that it is the legality and propriety of not only an order passed under the Act but of every proceeding taken thereunder in respect of which the High Court is entitled to satisfy itself (about its legality or propriety) in exercise of its revisional powers. "Proceedings" under the Act would include a part of any such proceedings. An appeal preferred against the order of a Rent Controller and all orders passed by the Appellate authority during the course of the hearing and adjudication of that appeal would be "proceedings taken under the Act" within the meaning of section 15(5) thereof. Pleadings of the parties are an important part of the proceedings under the Act and an order of the Appellate authority, allowing amendment of the same on the principles underlying the provisions of order 6, rule 17 of the Code of Civil Procedure, would be a part of the proceedings of the appeal before the Appellate authority under section 15(3) and thus amendable to revisional jurisdiction of the High Court under section 15(5) of the Act. The High Court can revise an order of a Rent Controller or of an Appellant authority allowing or refusing to allow the amendment of a pleading in proceedings under the Act if the High Court is satisfied that the order under revision is either not legal or not proper. (Paras 2 and 3)

Held, that the very fact that the Legislature has specificallly authorised the Appellate authority to decide the appeal not only on the record before it but, if necessary after making such further inquiry as it thinks fit, clearly shows that the Appellate authority is not barred from getting further inquiry made either on a point previously raised or even on a new question which might be raised before it for the first time in appeal, if the appellate authority

otherwise thinks it fit, legal and proper, to get such a matter inquired into. The jurisdiction of the Appellate authority under section 15(3) of the Act is of the widest amplitude and does not place any fetters on the power of that authority in the matter of passing procedural orders which may become necessary on the facts and in the circumstances of a particular case. Hence the Appellate authority has the jurisdiction to allow amendment of the pleadings. (Para 7)

Held, that if a tenant has not taken the plea of want of notice in his written statement before the Rent Controller, he is deemed to have waived the same. (Para 8)

Held, that following an amendment of a written statement at the appellate stage will normally be justified only if the party seeking amendment has come forward with the utmost *bona fides* and can show that it could not possibly have taken up the plea in question at the initial stage or can put forward some other strong justification for leave to amend its pleading. (Para 8)

Petition under Section 15(v) of the East Punjab Rent Restriction Act, 1949 for revision of the order of Shri Ved Parkash Sharma, Additional District Judge, (Appellate Authority), Faridkot, dated 3rd March, 1969 reversing that of Shri K. C. Dewan, Rent Controller, Faridkot dated 20th October, 1967 (granting an order of eviction in favour of the applicants and against the respondents-tenants) and remanding the case to the Rent Controller for redecision after allowing the amendment of the written statement within the four corners of the application made for the amendment of the written statement, in this Court and recording evidence.

K. C. PURI, ADVOCATE, for the petitioners.

BHAGAT SINGH CHAWLA, ADVOCATE, for the respondents.

JUDGMENT

R. S. NARULA, J.—(1) This is a petition under sub-section (5) of section 15 of the East Punjab Urban Rent Restriction Act (3 of 1949) (hereinafter called the Act) against the order of Shri Ved Parkash Sharma, Appellate Authority, Faridkot, dated March 3, 1969 setting aside the order of the Rent Controller after allowing the present respondents leave to amend their original written statement so as to take up a new plea to the effect that no notice terminating their tenancy having been served on them under section 106 of the Transfer of Property Act, the application of the petitioners was liable to be dismissed.

(2) Mr. Bhagat Singh Chawla, the learned counsel for the respondents, has raised a preliminary objection to the effect that no

petition for revision of an order of the rent control authorities allowing an amendment of a pleading under Order 6 Rule 17 of the Code of Civil Procedure lies to this Court as such an order is not "an order passed under this Act" within the meaning of that expression used in section 15(5) of the Act. Sub-section (5) of section 15 is in the following terms:—

> "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."

Mr. Chawla has not been able to cite any authority in support of the proposition canvassed by him. The phraseology of section 15(5) leaves no doubt in my mind that it is the legality or propriety of only such an order as might have been passed under the Act that can be questioned in a petition under that provision. But the real question to be answered, in order to decide this preliminary objection, is whether an order passed under any particular provision of the Code of Civil Procedure which applies to the rent control proceedings, in the course of such proceedings, can or cannot be said to be an order or proceeding under the Act. It is not only an order passed under the Act, but every proceeding taken under the Act in respect of which the High Court is entitled to satisfy itself (about its legality or propriety) in exercise of its revisional powers. ("Proceedings" under the Act would, in my opinion, include a part of any proceedings under the Act. An appeal preferred against the order of a Rent Controller and all orders passed by the Appellate Authority during the course of the hearing, and adjudication of that appeal would be "proceedings taken under the Act" within the meaning of section 15(5) of the Act.) The order sought to be revised in this case was passed in the course of proceedings of the appeal before the Appellate Authority and related directly to the proceedings under the Act. Pleadings of the parties are an important part of the proceedings under the Act, and an order of the Appellate Authority allowing amendment of the same would, in my opinion, be a part of the proceedings under section 15(3) of the Act. Even otherwise, this Court is entitled in exercise of its jurisdiction under Article 227 of the

Constitution to set aside any order passed by a Subordinate Court or Tribunal within its jurisdiction if the order is found to be wholly unsustainable. The first preliminary objection of Mr. Chawla is, therefore, repelled.

(3) The second objection of a preliminary nature raised by Mr. Chawla is to the effect that no revision should be entertained or allowed against an order allowing an amendment on the analogy of the law laid down in this respect in *Bal Kishan Dass* v. *Om Parkash and others* (1), *Baldev Singh and others* v. *Kapoori Lal and others* (2), *Ajit Singh* v. *Uttam Singh and others* (3), and *Krishan Lal* v. *Shrimati Tara Wanti* (4). It is claimed that all these decisions were based on certain observations of their Lordships of the Supreme Court in *Radhey Shyam and others* v. *Ram Autar and others* (5). It is significant that in all the abovementioned cases petitions for revision against orders refusing to amend a pleading were held to be not competent. Not one case has been cited where an order granting an application under Order 6 Rule 17 of the Code might have been held to be not revisable in any circumstances. Mr. Chawla further contends that the question whether an order accepting or refusing an application for amendment of pleadings under Order 6 Rule 17 of the Code of Civil Procedure, is or is not revisable by this Court in exercise of its powers under section 115 of the Code has been referred by P. C. Pandit, J. on October 22, 1969, to a Division Bench in *Hari Ram* v. *Niranjan Lal, etc.* (6). Mr. Puri, who appears for the petitioner objects to the hearing of this petition being adjourned to await the decision of the Division Bench in *Hari Ram's case* (6), on the ground that this would unnecessarily prolong the proceedings and that the scope of a petition for revision under section 15(5) of the Act is much wider than that of a revision petition under section 115 of the Code of Civil Procedure. There appears to be great force in the submission of Mr. Puri. Whereas the High Court is permitted to interfere with the order of any lower Court in exercise of its revisional jurisdiction under section 115 of the Code of Civil Procedure only if there is a jurisdictional error in the decision of the

(1) C. R. No. 1091 of 1966 decided on 23rd October, 1968.

(2) C. R. No. 308 of 1969 decided on 28th August, 1969.

(3) C. R. No. 677 of 1968 decided on 1st September, 1969.

(4) C. R. No. 942 of 1968 decided on 1st September, 1969.

(5) C. A. No. 506 of 1965 decided by Supreme Court on 7th February, 1967.

(6) C. R. No. 417 of 1969.

Court below which falls within the scope of clauses (a) to (c) of section 115, the scope of interference in a petition for revision filed under sub-section (5) of section 15 of the Act is much wider. This provision empowers the High Court to call and examine the records relating to any order passed under the Act for the purpose of satisfying itself "as to the legality or propriety of such an order," and to pass such order in relation thereto as the High Court may deem fit. In *Moti Ram* v. *Suraj Bhan and others* (7), and in *Maharaj Jagat Bahadur Singh* v. *Badri Parshad Seth* (8), their Lordships of the Supreme Court have authoritatively held that the scope of section 15(5) of the Act is not the same as the scope of section 115 of the Code, and that the scope of section 15(5) is wider and is not confined to questions of jurisdiction only. Section 35 of the Delhi and Ajmer Rent Control Act authorises the High Court to call for the record of any case under that Act for the purpose of satisfying itself that a decision made therein "is according to law." While construing the scope of that provision it was observed by the Supreme Court in *Pooran Chand* v. *Motilal and others* (9), after referring to their earlier judgment in *Hari Shankar and others* v. *Rao Girdhari Lal Chowdhury* (10), that the phrase "according to law" refers to the overall decision which must be according to law, which it would not be if there is a miscarriage of justice due to a mistake of law. There Lordships further held that the revisional power conferred by the Delhi and Ajmer Rent Control Act, is larger than the power to correct the errors of jurisdiction under section 115 of the Code. It was held:—

> "The power of the High Court under section 35 of the Delhi and Ajmer Rent Control Act (38 of 1952), is wider than that under section 115 of the Code of Civil Procedure, though it cannot be equated to that of its jurisdiction in an appeal. It is neither possible nor advisable to define with precision the scope and ambit of section 35 of the Act, but it should be left to the High Court to consider in each case whether the impugned judgment is according to law or not, as explained by the Supreme Court in *Hari Shankar* v. *Rao Girdhari Lal* (10)."

(7) A.I.R. 1960 S.C. 655.
(8) 1963 P.L.R. 452.
(9) A.I.R. 1964 S.C. 461.
(10) A. I. R. 1963 S. C. 698.

In this state of law it appears to be wholly futile to wait for the decision of the larger Bench on the question of scope of the jurisdiction of the High Court under section 115 of the Code in the matter of interference with an order of a lower Court allowing or refusing to allow an amendment of the pleadings. In my opinion (this Court can revise an order of a Rent Controller or of an Appellate Authority under the Act allowing or refusing to allow the amendment of a pleading in proceedings under the Act if the High Court is satisfied that the order under revision is either not legal or not proper.)

(4) Coming to the facts of the case, it may be noticed that the application for eviction was was filed by the petitioners on October 6, 1966, against the respondents on the allegation that respondents Nos. 1 and 2, who were the tenants had without the consent of the petitioners sublet a portion of the tenancy premises to respondents Nos. 3 and 4 and another portion to respondent No. 5. Written statement contesting the ejectment proceedings was filed by the respondents on November 4, 1966. No plea of non-maintainability of the application for eviction on account of non-service of notice under section 106 of the Transfer of Property Act was taken in the written statement. By his order, dated October 20, 1967, the Rent Controller held that unauthorised subletting in favour of respondents 3 and 4 had been proved, but subletting in favour of respondent No. 5 had not been established. Ejectment from the entire premises was, therefore, ordered against all the respondents. Respondents Nos. 1 and 2, i.e., the tenants preferred an appeal against the order of the Rent Controller on November 15, 1967. On July 20, 1968, they made an application under Order 6 Rule 17 and section 151 of the Code of Civil Procedure to the Additional District Judge, Faridkot, who was acting as Appellate Authority, for leave to amend their written statement so as to raise the following preliminary objection therein on the ground that they had never waived this point and had no intention to waive it "but did not consider it worthwile to reagitate it in view of the settled law for the province of Punjab":—

> "that no notice having been served under section 106 of the Transfer of Property Act terminating the tenancy by the applicants, the application is liable to be dismissed."

(5) In paragraph 4 of the application it was stated that the tenants had not raised the abovementioned objection considering the

previous decision of the Punjab High Court according to which it was not necessary to serve any notice under section 106 of the Transfer of Property Act for filing an application for eviction under the Rent Restriction Act. The application was contested by the petitioners who stated in their written reply, dated July 31, 1968, that the tenants had intentionally failed to raise the objection as to non-service of notice and had waived the objection intentionally. They also objected to the point in question being taken at such a late stage which was likely to altogether change the defence, and was likely to result in a *de novo* trial of the whole case. They further submitted that on the facts of this case, no notice was necessary.

(6) By its order, dated March 3, 1969. the Appellate Authority held that waiver is a deliberate and conscious act as distinguished from estoppel which may be created by law. and whether the objection as to non-service of notice had in fact been waived or not, is a question of fact which has to be decided like any other question on the direct and circumstantial evidence available in a given case. Without adverting any further to the question of waiver, the Appellate Authority has held that since prior to 1968, no notice under section 106 of the Transfer of Property Act was required to be served and the law had been recently changed. it would allow the application for amendment.

(7) Mr. K. C. Puri, who appears for the landlord petitioners has firstly submitted that the Appellant Authority had no jurisdiction to allow an amendment of the written statement as all that the said authority could do was to decide the appeal within the circumscribed limits of the authority vested in it by sub-section (3) of section 15 of the Act. Section 15(1)(a) of the Act authorises the State Government to confer on such officers and authorities as it thinks fit the powers of appellate authorities under the Act for any particular area. Clause (b) of sub-section (1) of section 15 confers on every person aggrieved by an order passed by the Rent Controller right to prefer an appeal against the same to an Appellate Authority having jurisdiction. sub-section (3) then states:—

> "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."

The very fact that the Legislature has specifically authorised the Appellate Authority to decide the appeal not only on the record before it, but, if necessary after making such further inquiry as it thinks fit, clearly shows that the Appellate Authority is not barred from getting further inquiry made either on a point previously raised or even on a new question which might be raised before it for the first time in appeal, if the appellate authority othrwise thinks it fit legal and proper to get such a matter inquired into. At the same time it is clear from the language of section 16 of the Act that only cartain specified provisions of the Code of Civil Procedure have been applied to proceedings under the Act. In all other matters, procedure to be followed by the rent control authorities unless otherwise specifically provided for in the Act is left to the authority concerned. Mr. Puri's argument was that inasmuch as Order 6 Rule 17 of the Code has not been made applicable to proceedings under the Act, the Appellate Authority had no jurisdiction to allow the respondents to make an amendment of their written statement. A perusal of the provisions of the Act shows that no power is vested in the Rent Controller even to set aside an *ex-parte* order. If Mr. Puri's contention were correct, the Rent Controller would not be able to set aside such an order. It has, however, been held in *Manohar Lal* v. *Mohan Lal* (11), that the Rent Controller has inherent power to set aside an *ex-parte* order passed by himself. Similarly in *Mathra Dass* v. *Om Parkash and others* (12), it was held that in the absence of a restraining provision, a Rent Controller or a District Judge acting under the provisions of the Act is at liberty to follow any procedure that he may choose to evolve for himself so long as the said procedure is orderly and consistent with the rules of natural justice and so long as it does not contravene the positive provisions of the law. It was observed that the elementary and fundamental principles of judicial inquiry should be observed, but the more technical forms discarded. Mehar Singh, C.J., held in this respect in an unreported judgment of this Court, in *Shanti Parshad* v. *Bawa Niranjan Singh* (13), as follows:—

> "The Code does not as such apply to the proceedings before the Rent Controller. The Rent Controller, of course, controls his own procedure, but broadly it has to be a procedure

(11) 1957 P. L. R. 38.

(12) 1957 P.L.R. 45.

(13) C. R. 936 of 1967 decided on 16th April, 1968.

which is reasonable and which is on general principles known to law.

No doubt it was in the discretion of the Rent Controller to implead or not to implead Shanti Parshad applicant as a party-respondent to the eviction application, but it is settled that such a discretion has to be exercised in a judicial manner and while the provisions of the Code of Civil Procedure may not apply strictly, but the principle underlying the rule as sub-rule (2) of rule 10 of Order 1 is a proper guide to be taken into consideration by a Tribunal like the Rent Controller while exercising discretion on an application as that of Shanti Parshad applicant. The discretion has not in this case been property exercised because the Rent Controller has not gone into the question whether Shanti Parshad, applicant is a necessary or a proper party at all to the eviction application of the landlord and whether his presence as a party-respondent would effectually and completely settle the dispute about the tenancy of the demised premises."

The jurisdiction of the Appellate Authority under section 15(3) of the Act is of the widest amplitude and does not place any fetters on the power of that authority in the matter of passing procedural orders which may become necessary to pass on the facts and in the circumstances of a particular case. In this view of the matter, no force is found in the first contention of Mr. Puri, and I have no hesitation in holding that the order of the Appellate Authority was within its jurisdiction.

(8) Mr. Puri has then contended that on the facts of this case, the Appellate Authority should have held that the tenant-respondents had waived the objection as to non-service of notice under section 106 of the Transfer of Property Act. He has referred in this connection to the observations of P. C. Pandit. J., in *Raj Kumar* v. *Major Gurmitinder Singh* (14). The learned Judge held that where in ejectment proceedings a plea of failure to terminate the tenancy by a notice under section 106 of the Transfer of Property Act was not raised before the Rent Controller, the plea could not be raised subsequently. It was observed that if such a plea was not taken up by the tenant in the written statement in answer to the application

(14) 1968 P.L.R. 672.

for ejecment filed by the landlord, he is deemed to have waived the objection, and if subsequently the decision of the Rent Controller has gone against him, he cannot be heard to say that the whole case should be tried afresh, and he be permitted to take up that plea from the start. Mr. Puri submits that these observations of Pandit, J., have subsequently been approved by a Full Bench of this Court in the following passage in *Bhaiya Ram* v. *Mahavir Parshad* (15):—

> "Counsel then referred to the judgment of P. C. Pandit, J., in *Raj Kumar* v. *Major Gurmitinder Singh* (14), (supra). The learned Judge has held in that case that where the tenant did not take up the plea in his written statement that an order of ejectment would be without jurisdiction on account of want of notice terminating the tenancy, he is deemed to have waived the objection, and that he cannot be allowed to raise the objection when the decision on merits had gone against him. In the instant case, the objection as to the non-service of the requisite notice had admittedly been taken in the written statement of the tenant, and, therefore, the second part of the dictum of the learned Judge referred to above cannot be directly relevant. But we have no hesitation at all in approving of the ratio of the judgment of the learned Judge on the point that a tenant can waive an objection as to non-service of a notice required under or on the principles of section 106 of the Transfer of Property Act."

There appears to be a little misapprehension in the mind of Mr. Puri in this behalf. The Full Bench appears to have approved of the law laid down by Pandit, J., in *Raj Kumar's case* (14), to the effect that a plea of failure to terminate the tenancy by service of a notice can be waived. The second part of the dictum of the learned Judge was, however, neither dissented from nor expressly approved as objection as to non-service of requisite notice had admittedly been taken in the written statement of the tenant in *Bhaiya Ram's case* (15), (supra). and, therefore, consideration of the second part of the law laid down in Raj Kumar's case was considered by the Full Bench to be not relevant. Sitting in Single Bench I am bound even by the second part of the dictum of Pandit, J., and following the same I have to hold "that the tenants not having taken up the plea in question in their written statement, they are deemed to have waived the same. In

(15) 1968 P.L.R. 1011.

this view of the matter, it is unnecessary to refer to certain other observations in the Full Bench judgment to which reference has been made in order to enable the counsel to place reliance on the judgment of the Calcutta High Court in *Charu Chandra* v. *Snigdhendu Prosad and others* (16). Moreover, on the facts of this case, it is clear from the averments made in the application of the tenants under Order 6 Rule 17 itself that the tenants were fully alive to the objection which could be taken in this regard, but had intentionally not taken up the plea to that effect in the written statement, as they did not "consider it worthwhile" to do so. The learned Appellate Authority has justified the leave granted by it to amend the written statement on the ground that no such notice was necessary according to the law in force since 1968, and the necessity of serving such a notice arose, only after the pronouncement of the Full Bench in 1968. This view is wholly erroeneous. Such a consideration could be relevant if the law had been amended or changed. Interpretation of legal provisions by the High Court does not change the law, but merely aims at stating what the law has been at all relevant times. No other ground has been given by the Appellate Authority for allowing the amendment. "There is no doubt that allowing amendment would reopen the case on various factual aspects and the plea of non-service of notice would succeed only if it is proved that there was no agreement to the contrary, that the tenancy had not expired by the efflux of time and possibly on giving proof of various other matters relevant to the question of notice. Allowing an amendment of a written statement at the appellate stage after the expiry of more than 2½ years would normally be justified only if the party seeking amendment has come forward with the utmost *bona fides* and can show that it could not possibly have taken up the plea in question at the initial stage or could put forward some other strong justification for leave to amend its pleading. No such circumstances exist in the instant case.

(9) For the forgoing reasons, this petition is allowed the orders of the Appellate Authority allowing the amendment of the written statement and remanding the case are set aside and the Appellate Authority is directed to dispose of the appeal of the tenant-respondents on merits in accordance with law without unnecessary delay. Parties have been directed to appear before the Appellate Authority on October 5, 1970. Costs of this petition shall abide the result of the appeal before the Appellant Authority.

(16) A.I.R. 1948 Cal. 150.

B. S. G.