

also decide the question arising under the proviso if the same is invoked by any party before actually impleading any such legal representative. Inasmuch as the Court below has not done so, that part of the order of the trial Court which is contrary to the law laid down by me above has to be set aside. Mr. Aggarwal has contended that any order passed on the question of limitation behind the back of the parties sought to be added would not be binding on them, and, therefore, the question should be decided only after they are before the Court. There is no doubt that any decision which goes against the interest of the newly added parties arrived at before their addition would not be binding on them, and can be reopened at their instance if they are so advised. That does not, however, mean that the question should be left open to be decided with the main suit. If the trial Court had directed notice to the parties sought to be added and left over the question of limitation being decided after hearing them, I would not have interfered with its decision. In the instant case, however, the trial Court has left over the question of limitation to be decided with the main suit. That course is, in my opinion, not permitted by law. Even now if the trial Court feels necessary, it may give notice of the application of the plaintiff to the legal representatives named in paragraphs 9 and 10 of the application before deciding the question of limitation.

(10) For the foregoing reasons I allow this revision petition and while not disturbing the finding of fact covered by issue No. 1 framed by the trial Court in these proceedings, set aside the order on issue No. 2 and direct the trial Court to decide the same in the light of the observations made above. The parties may appear before the trial Court on **February 7, 1977.**

N.K.S.

REVISIONAL CIVIL

Before R. S. Narula, C.J.

DAVINDEE NATH,—*Petitioner*

versus

MADAN GOPAL, SON OF BALAK RAM,—*Respondent.*

Civil Revision No. 1009 of 1976

January 24, 1977.

Haryana Urban (Control of Rent and Eviction) Act (11 of 1973) as amended by Haryana Urban (Control of Rent and Eviction) Amendment Act (4 of 1974)—Sections 20-A(1)(a) and 24 Proviso—East

Davinder Nath v. Madan Gopal, son of Balak Ram
(R. S. Narula, C.J.)

Punjab Urban Rent Restriction Act (III of 1949)—Section 13—Ex-parte order of eviction passed by Rent Controller under the Punjab Act—Application for setting aside the order pending before such Rent Controller—Whether a “proceeding” under section 20-A 1(a)—Such application—Whether liable to transfer to executive authorities.

Held, that the object of enacting section 20-A of the Haryana Urban (Control of Rent and Eviction) Act 1973 was that orders passed by Civil Courts are not subjected to the scrutiny of executive authorities. The word “proceeding” used in clause (a) of section 20-A (1) of the Haryana Act stands for ‘proceedings under the Act’ which would mean proceedings under the Haryana Act. An application for setting aside an *ex-parte* order passed by the Senior Subordinate Judge in his capacity as Rent Controller under the East Punjab Urban Rent Restriction Act 1949 is not envisaged by any provision in the Haryana Act. That being so, such an application would not be covered by section 20-A (1) (a) of the Haryana Act and would not be liable to be transferred to the executive authorities under that provision. The expression “proceedings pending or order passed immediately before the commencement of this Act” in the proviso to section 24 of the Haryana Act, on the other hand, refers to proceedings under the Punjab Act. (Para 5).

Petition under Article 227 of the Constitution of India praying that this Hon’ble Court be pleased to accept this petition and be further pleased to pass the orders with regard to the court to whom the petitioner shall present this petition as the applications have been returned in original to the petitioner for presentation to the proper Court and both the courts—Senior Sub Judge, Rohtak as also the Special Collector-cum-Rent Controller (Sub Divisional Officer (C)) have decline to entertain the application for setting aside the ex parte order of ejectment dated September 6, 1973.

Ram Rang, Advocate, for the Petitioner.

G. R. Majithia, Advocate, for the Respondent.

JUDGMENT

R. S. Narula, C. J. (Oral).

(1) Madan Gopal (hereinafter called the landlord) filed a petition for eviction of Davinder Nath petitioner (to whom I will refer in this order as the tenant) under section 13 of the East Punjab Urban Rent Restriction Act, 1949, which was decreed *ex-parte* in favour of the landlord on September 6, 1963. During the pendency of the petition for eviction before the civil Court, the Haryana Urban

(Control of Rent and Eviction) Act (Haryana Act No. 11 of 1973) was passed and enforced with effect from April 27, 1973. The learned Senior Subordinate Judge was correct in continuing the proceedings which were pending before him as Rent Controller at the time of coming into force of the principal Haryana Act because of the requirements of the proviso to section 24 of that Act. The relevant portion of section 24 is quoted below:—

“The East Punjab Urban Rent Restriction Act, 1949 (East Punjab Act No. 3 of 1949) is hereby repealed:

Provided that such repeal shall not affect any proceedings pending or order passed immediately before the commencement of this Act, which shall be continued and disposed of or enforced as if the said Act had not been repealed.

* * * *

The tenant made an application on October 26, 1973, for setting aside the *ex-parte* order. While issuing notice of the same for November 2, 1973, execution of the order for eviction was stayed by the Senior Subordinate Judge acting as Rent Controller on October 27, 1973. During the pendency of the application for setting aside the *ex-parte* order, the Haryana Urban (Control of Rent and Eviction) Amendment Act No. 4 of 1974, was passed and enforced with effect from January 28, 1974. By section 2 of the Amendment Act, the following was inserted as section 20-A in the principal Haryana Act:—

“20-A. (1) Notwithstanding anything contained in any other provision of this Act :—

- (a) all proceedings pending before Subordinate Judges appointed to perform the functions of the Controllers shall, from the date of coming into force of the Haryana Urban (Control of Rent and Eviction) Amendment Act, 1974, stand transferred to the Sub-Divisional Officers (Civil), appointed under clause (b) of section 2 to perform the functions of the Controllers ;
- (b) an appeal from the order of the Subordinate Judge appointed to perform the functions of the Controller shall lie to the District Judge conferred with the

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powers of the appellate authority and a revision from the order of such appellate authority shall lie to the High Court ; and

(c) if any appeal from the order of the Subordinate Judge appointed to perform the functions of the Controller has been filed with the Deputy Commissioner conferred with the powers of appellate authority, or if any revision from the order of District Judge conferred with the powers of the appellate authority has been filed with the Financial Commissioner, the same shall stand transferred to the District Judge and the High Court respectively.

(2) The proceedings transferred under-sub-section (1) shall be disposed of by the District Judge and the High Court as if the same were originally presented before them."

(2) Treating the application for setting aside the *ex-parte* decree as a "proceeding" under the Haryana Act the learned Senior Subordinate Judge transferred the case to the Sub-Divisional Officer (Civil). By his order, dated May 27, 1976, the Special Collector, Rohtak, who was the Sub-Divisional Officer, returned the application in question to the tenant for presentation to the Court competent to hear it on the ground that he had no jurisdiction to deal with it and it had to be dealt with by the Senior Subordinate Judge, who had passed the order for eviction. When the case went back to the Senior Subordinate Judge, Rohtak, he, by his order, dated June 3, 1976 (Annexure P. 4) held that every Subordinate Judge in Haryana had become *functus officio* so far as his powers as a Rent Controller are concerned on the appointment of Rent Controllers under the principal Haryana Act. He did not agree with the view expressed by the Financial Commissioner in two earlier decisions that the application had to be dealt with by the Rent Controller under the Punjab Act. He, therefore, returned the application to the tenant for presentation to the officer concerned. It was in the above-mentioned situation that the tenant was forced to knock at the door of this Court to determine the correct legal forum in which his application for setting aside the *ex-parte* order had to be dealt with and adjudicated upon.

(3) Mr. Ram Rang, the learned counsel for the tenant, has referred to the two decisions of the Financial Commissioner on which the Sub-Divisional Officer (Civil) had relied for returning the case for presentation to the Court of the Senior Subordinate Judge. Both the decisions have been recorded by Shri V. P. Johar, Financial Commissioner, Haryana. In *Smt. Parbati and others v. Hari Chand*, an almost similar situation had arisen. An *ex-parte* order had been passed by the Rent Controller under the Punjab Act before the coming into force of the principal Haryana Act, but an application for setting aside the *ex-parte* order had been made in June, 1973, after the coming into force of the principal Haryana Act. The application had been returned by the civil Court acting as Rent Controller for being presented to the Sub-Divisional Officer, who dismissed the application on merits. The petition for revision of that order was allowed by the Financial Commissioner on the ground that the Sub-Divisional Officer (Civil) had no jurisdiction to deal with the application for setting aside the *ex-parte* order passed by the Civil Court as Rent Controller and that it was the Court which had passed the *ex-parte* decree which was to deal with and decide the application for setting it aside. The learned Financial Commissioner held that the effect of accepting the application for setting aside the decree passed by the Subordinate Judge acting as Rent Controller, would be to modify or set aside the order of the civil Court and since section 20-A provides for appeals and revisions against the orders passed by the civil Court being taken up in the hierarchy of those Courts, the hearing by a Sub-Divisional Officer of an application for setting aside the *ex-parte* decree passed by a civil Court would be contrary to the spirit underlying section 20-A. It was on the above basis that he held that the Sub-Divisional Officer (Civil) was not competent to entertain the application for setting aside the *ex-parte* order passed by the Rent Controller under the Punjab Act. To the same effect is the judgment of the Financial Commissioner in *Chhabil Dass v. Mange Ram* (2). It was again held that if the Sub-Divisional Officer (Civil) were to set aside the order of the civil Court the result would be that a judicial officer's... decision would be liable to be set aside by an executive officer,

(1) 1976 P.L.J. 569 (Corresponding to 1975 Revenue Law Reporter 391).

(2) 1976 P.L.J. 570 (Corresponding to 1975 Revenue Law Reporter 421).

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which was something apparently repugnant to the spirit of clauses (b) and (c) of sub-section (1) of section 20-A of the Haryana Act. Counsel has also referred to the judgment of Sharma, J. in *Dharam Pal v. Shri Bagicha Singh* (3). That does not, however, appear to help either of the sides directly on the point in issue before me.

(4) If the two orders of the Financial Commissioner are correct, the petition must, of course, succeed, but Mr. G. R. Majithia, the learned counsel for the landlord, has submitted that the Financial Commissioner was obviously in error in deciding the case according to what he thought the spirit of the provision instead of deciding it in accordance with the plain language of the section. He has submitted that if an application under Order 9, rule 13 of the Code of Civil Procedure, for setting aside an *ex-parte* order is a "proceeding" it has to be transferred by the civil Court to the executive authority under clause (a) of section 20-A(1), if the same was pending at the time of coming into force of the Haryana Act, as the said provision [section 20-A (1) (a)] starts with a non-obstante clause and overrides proviso to section 24. Looked at from a strictly technical point of view, there is some force in the submission of Mr. Majithia. He does not contest the proposition that if section 20-A had not been enacted, the application for setting aside the *ex-parte* decree which had been filed before the coming into force of the Amending Act had also to be adjudicated upon by the Senior Subordinate Judge and every appeal or revision against the same had also to go to the District Judge and the High Court. His emphasis, however, is on the fact that section 20-A(1) (a) was enacted as an exception to the rule contained in the proviso to section 24 and the same must be given effect to. What actually happened after the principal Haryana Act came into force was that whereas pending cases had to be decided by the civil Court, appeals or revisions against them had to go to the executive authorities. It was felt that in view of the separation of the judiciary from the executive, it may not be very salutary to allow orders and decisions of civil Courts being set aside by executive authorities. It was to avoid this kind of a situation that the Amending Act was passed. The official statement of objects and reasons for passing the Amending Act are contained in the Haryana Urban (Control of Rent and Eviction) Amendment Bill, 1974 (published in

the Haryana Government Gazette Extraordinary, dated January 2, 1974, at page 8) in the following words:—

“According to the provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973, the Sub-Divisional Officers (Civil) and Deputy Commissioners have been appointed as Rent Controllers and appellate authority. Certain difficulties are being experienced in the disposal of the proceedings pending before the date of enforcement of the said Act, i.e., 27th April, 1973. The Punjab and Haryana High Court has drawn pointed attention in this behalf observing that it does not seem desirable on account of the separation of the Judiciary from the Executive that the appeals and revisions against the decision of Judicial Officers in respect of pending cases should be filed before or decided by the Executive Authorities.

The bill seeks to tide over these difficulties and to provide for these objects.”

Once the objects and reasons for passing the Amending Act are kept in view, which is legally permissible, it is clear that the only object of enacting section 20-A was that orders passed by Civil Courts are not subjected to the scrutiny of executive authorities. The two decisions of the Financial Commissioner, Haryana, are consistent with the scheme of the Amending Act judged in the light of the statement of objects and reasons for introducing the Bill which became the Amending Act.

(5) From an over-all consideration of all the aspects of the matter, it appears to me that the word “proceeding” used in clause (a) of section 20-A(1) of the Amending Act stands for “proceedings under the Act” which would mean proceedings under the Haryana Act. An application for setting aside an order passed by the Senior Subordinate Judge in his capacity as Rent Controller is not envisaged by any provision in the Haryana Act. That being so, such an application would not be covered by section 20-A(1)(a) and would not be liable to transfer to the executive authorities under that provision. On the other hand, the expression “proceedings pending or order passed immediately before the commencement of this Act” in the proviso to section 24 of the Haryana Act, naturally

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refers to proceedings under the East Punjab Urban Rent Restriction Act. In this manner, it appears that while reconciling the proviso to section 24 with clause (a) of section 20-A(1) of the Act and judging in the light of aims and objects of the Amending Act, the view taken by the learned Financial Commissioner, Haryana, appears to me the only possible correct view in the circumstances of this case in so far as it relates to applications for setting aside *ex-parte* orders passed by civil Courts acting as Rent Controllers. That being so, I hold that the order of the Sub-Divisional Officer (Civil) (Special Collector, Rohtak), exercising powers of Rent Controller, dated May 27, 1976, was correct and the order of the learned Senior Subordinate Judge, Rohtak, dated June 3, 1976 (Annexure P. 4) is illegal and is liable to be set aside. The learned Senior Subordinate Judge has erroneously declined to exercise jurisdiction vested in him by law. It is his duty to re-entertain and decide the application of the tenant for setting aside the *ex-parte* order for eviction passed by his Court.

(6) Mr. Majithia, the learned counsel for the landlord, has lastly contended that one of the grounds on which the order for eviction was passed against the tenant was non-payment of rent and notwithstanding the fact that the execution of the order was stayed as long ago as in October, 1973, nothing has been paid by the tenant to the landlord on account of rent. This is a matter with which I am not concerned at this stage. I have, however, no doubt that if the landlord applies to the Senior Subordinate Judge, Rohtak (acting as Rent Controller) to vacate or modify the *ex parte* order staying execution of the eviction order, he would make the continuance of the stay order conditional on the tenant paying up to the landlord (without prejudice to the rights claimed on behalf of both sides) or depositing the same in his Court, all arrears of rent and to continue to pay subsequent rent month by month. This kind of an order, as already stated, will have to be obtained by the landlord from the Court of the Senior Subordinate Judge.

(7) For the reasons already assigned, I allow this petition and in exercise of the powers vested in this Court under Article 227 of the Constitution, set aside and reverse the order of the Senior Subordinate Judge, Rohtak, dated June 3, 1976 (Annexure P. 4) and direct him to receive back, entertain, adjudicate upon and decide the application of the tenant for setting aside the *ex-parte* order for eviction (which

had been passed by his Court on September 6, 1973) according to law. The matter has been hanging fire for an unduly long time. The learned Senior Subordinate Judge will, therefore, make every possible endeavour to dispose of the proceeding in question within three months. Parties have been directed to appear before the Senior Subordinate Judge, Rohtak, on February 14, 1977.

N. K. S.

INCOME TAX REFERENCE

Before M. R. Sharma and S. S. Sidhu, JJ.

SURESH SETH,—Applicant.

versus

THE COMMISSIONER OF WEALTH-TAX AMRITSAR,—Respondent.

Income-Tax Reference No. 29 of 1975.

January 28, 1977.

Wealth Tax Act (XXVII of 1957) as amended by Finance Act (XIV of 1969)—Sections 14(1) and 18(1) (a)—Omission to file a return by the due date—Rates of penalty enhanced subsequently by the amending Act—Such omission—Whether a continuing wrong so as to attract enhanced penalty.

Held, that the omission of an assessee to file a return on the due date completes his default on that date and does not render it a continuing default. Consequently, the penalty can be imposed on him only on the basis of the law which was prevalent on that date.

(Para 16).

Reference under Section 27(1) of the Wealth-Tax, Act, 1957 made by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar, referred the case to this Hon'ble Court for opinion on the following questions of law arising out its order dated 4th May, 1974 of I.T.A. 259 and 260 of 1972-73 for the Assessment years 1964-65 and 1965-66:—

1. *Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the offence relating to the omission to file the wealth-tax returns was a continuing offence ?*
2. *Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the penalties*