It appears that to cover his delay, he wrote to the Mpncipal Committee, Kaithal, for information about the death of the plaintiff so that he could be armed with a written information and rely on the same to represent that the delay was not wilful. There is inherent evidence in his affidavit which belies his statement and I am not prepared to believe that he was not aware of the death of Mutu Ram. The appeal must therefore be held to have abated.

(8) For the foregoing reasons the appeal stands dismissed with no order as to costs.

R.N.M.

REVISIONAL CIVIL

Before Mehar Singh, C.J.

NAND KISHORE,—*Petitioner.*

Versus

DES RAJ CHOPRA AND ANOTHER,—*Respondents.*

Civil Revision No. 887 of 1969

September 23, 1969

East Punjab Urban Rent Restriction Act (III of 1949)—Sections 4, 15(3), 15(4) and 15(5)—Fair rent—Fixation of—Whether can be based on the compromise between the parties—Fair rent fixed by the Rent Controller—Landlord appealing for its increase—Appellate Authority—Whether has the jurisdiction to decrease the rent while deciding the appeal.

Held, that once the Rent Controller has been moved for fixation of fair rent, the ambit of the inquiry is entirely within his control, because an order fixing fair rent is an order *in rem* and not merely an order *inter partes.* Once fair rent of the premises is fixed, it attaches to the premises and is not merely a decision between the parties. Hence a duty is cast on the Rent Controller to make as just an inquiry as he should think fit to fix fair rent of the premises, provided an application is moved by one of the two parties, either the tenant or the landlord. Thus the Rent Controller is not in any way restricted, by the pleadings or compromise between the parties in fixing the fair rent. He must fix the fair rent after arriving at the basic rent on the criteria provided in sub-section (2) of section 4 and after holding as complete an inquiry as he thinks fit. Hence no fair rent can be fixed on the compromise or statement of parties. (Para 4)

Held, that the words "decide the appeal" in sub-section (3) of section 15 of the East Punjab Urban Rent Restriction Act do not merely mean either to grant or not to grant the prayer of the appellant in the appeal and apart from that choice, no matter what the merits of the case may be, nothing can be done in appeal which will go beyond the prayer of the appellant. The Appellate authority is entitled to make further inquiry and when it makes the further inquiry, this cannot be limited to the point whether the figure can be increased from the figure against which the landlord appeals. Even if the whole of the power and jurisdiction of the appellate authority is confined within the meaning of the words "decide the appeal", then that power and jurisdiction has to be taken to be conterminus and contemporaneous with the power and jurisdiction of the Rent Controller to fix the fair rent within the meaning and scope of section 4 of the Act. The Appellate authority's power in regard to fixation of fair rent under that section is not narrower than that of the Rent Controller. Thus the power and jurisdiction of the appellate authority to fix fair rent, which would be an order *in rem*, is not dependant upon whether one or the other party does or does not appeal, once the matter has come before it in appeal by one of the parties, the appellate authority has the jurisdiction to decrease the fair rent fixed by the Rent Controller even in appeal filed by the landlord only for its increase. (Para 7)

Petition under Section 15(5) *of Act* 3 *of* 1949, *for revision of the order of Shri Sewa Singh, Appellate Authority, Under the East Punjab Urban Rent Restriction Act,* 1949, *Amritsar, dated* 1*st May,* 1968, *reversing that of Shri Om Parkash Saini, Rent Controller, Amritsar, dated* 26*th May,* 1967, *and fixing Rs.* 6.87 *as fair rent of the shop in dispute.*

RAM LAL AGGARWAL, ADVOCATE, for the petitioner.

G. S. VIRK, ADVOCATE, for the respondents.

JUDGMENT

MEHAR SINGH, C.J.—The demised shop was taken on rent by the tenant, who is respondent from the Custodian at Rs. 8 per mensem in 1949. Subsequently the landlord, who is petitioner purchased this property from the Rehabilitation Department.

(2) An application was moved by the landlord under section 4 of the East Punjab Urban Rent Restriction Act, 1949 (East Punjab Act 3 of 1949), hereinafter referred to as the Act, for fixation of fair rent of the demised shop at Rs. 27.50 paise per mensem on the allegation that its basic rent in the year before January 1, 1939, was Rs. 20 per mensem. The tenant having contested the increase in the rent of the demised shop, the parties appear to have made statement before the Rent Controller that the basic rent of the demised shop a year

before January 1, 1939, was Rs. 7.25 paise per mensem and so, after allowing statutory increase, the fair rent fixed was Rs. 10 per mensem. The learned counsel for the landlord says that no statement was made by the parties before the Rent Controller, but the Rent Controller in his order says that "It was admitted before me by the petitioner as well as the respondent that such a shop could fetch rent at the rate of Rs. 7.25 paise per mensem during 1938-39." The Rent Controller did not discuss the evidence on the record at all and all that he said was that he had gone through the evidence and felt satisfied that the basic rent of the demised shop should be Rs. 7.25 paise per mensem, and then he proceeded to refer to the admission of the parties in that behalf before him.

(3) It was the landlord who went in appeal from the order of the Rent Controller to the appellate authority. The learned Judge of the appellate authority very rightly pointed out that no fair rent could be fixed on the compromise or statement of the parties, in which approach he is supported by the decisions in *Ladha Ram* v. *Khushi Ram* (1) and *Lekh Ram* v. *Firm Chander Bhan-Rajinder Parkash* (2). So the appellate authority found that it could not possibly sustain the order of the Rent Controller as it was in substance based on nothing else but the admission of the parties before him. The learned Rent Controller had made reference to the evidence without discussing the same, which amounted to his not having considered the evidence. In the circumstances the appellate authority perused the evidence of the parties and found that tenant's two witnesses, Charan Dar R.W. 1 and Ram Shah, R.W. 2, had clearly stated, that the rent of the demised shop a year before January 1, 1939, was Rs. 5 per mensem, and their testimony was supported by the landlord's witness Devi Chand A.W. 2. There was no evidence to the contrary. On this evidence, if the Rent Controller had applied himself to the merits of the controversy in the wake of his duty under section 4 of the Act, he had no option but to come to the conclusion that the basic rent of the demised shop a year before January 1, 1939, was Rs. 5 per mensem and making an allowance of 37½ per cent statutory increase the fair rent could only come to Rs. 6.87 paise per mensem. This is exactly the conclusion which the appellate authority reached.

(4) The appellate authority having reached the conclusion as above, it had to decide the appeal of the landlord, the tenant not having come before it against the order of the Rent Controller. It

(1) 1955 P.L.R. 133

(2) I.L.R. (1962)1 Punjab 641=1962 P.L.R. 197.

has to be remembered that the appellate authority was considering, even in appeal, the application of the landlord under section 4 of the Act for fixation of fair rent. Sub-section (2) of that section provides the criteria for arriving at basic rent and sub-section (1) reads in this manner "The Controller shall on application by the tenant or landlord of a building or rented land fix the fair rent for such building or rented land after holding such inquiry as the Controller thinks fit." Now, it is obvious that once the Rent Controller has been moved for fixation of fair rent, the ambit of the inquiry is entirely within his control. There is an object for this wide power having been left with the Rent Controller and that is pointed out by the learned Judge in *Lekh Ram's case* (2), the reason being that an order fixing fair rent is an order *in rem* and not merely an order *inter partes*. Once fair rent of the premises is fixed, it attaches to the premises and is not merely a decision between the parties. Hence a duty is cast on the Rent Controller to make as just an inquiry as he should think fit to fix fair rent of the premises, provided an application is moved by one of the two parties, either the tenant or the landlord. Thus the Rent Controller is not in any way restricted, by the pleadings of the parties, to any manner of fixing the fair rent. He must fix the fair rent after arriving at the basic rent on the criteria provided in sub-section (2) of section 4 and after holding as complete an inquiry as he thinks fit.

(5) The order of the Rent Controller is made final by sub-section (4) of section 15 of the Act, subject only to the decision of the appellate authority, and in sub-section (3) it is provided that "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." It is under clause (b) of sub-section (1) of section 15 of the Act that a right of appeal against an order of the Controller is given to any person aggrieved from any such order. In the instant case the appellate authority was hearing the appeal of the landlord under those provisions. It interfered with the order of the Rent Controller and having arrived at the conclusion that the basic rent of the demised shop a year before January 1, 1939, was Rs. 5 per mensem, after allowing the statutory increase, fixed Rs. 6.87 paise per mensem as fair rent, thereby reducing the figure of the fair rent as fixed by the Rent Controller at Rs. 10 per mensem, whereas the landlord had in his appeal apparently not sought reduction of the fair rent fixed by the Rent Controller, but its enhancement. It is the landlord who has come in revision against the order of the appellate authority.

(6) The argument urged on the side of the landlord is that the appellate authority had no power and jurisdiction to thus reduce the figure of the fair rent as against the figure fixed by the Rent Controller, the tenant having filed no appeal against the order of the Rent Controller, and that in view of sub-section (3) of section 15 of the Act all that it could do was one of the two things, (a) to dismiss the appeal, or (b) to enhance the fair rent figure arrived at by the Rent Controller as in its opinion the evidence on the record justified. It is emphasised that under sub-section (3) of section 15 of the Act its power and jurisdiction is merely to decide the appeal and no more and the decision of the appeal can only be in one of the two ways already indicated. The learned counsel says that even if rule 33 of Order 41 of the Code of Civil Procedure was available to the appellate authority, it could not possibly, with the aid of such a rule, have made the type of an order that it has made in this case by reducing the fair rent in the appeal of the landlord, who sought enhancement of the fair rent in his appeal, and even in the absence of any appeal against the order of the Rent Controller by the tenant. The learned counsel, however, points out that it is quite another matter when this Court exercises its power of revision under sub-section (5) of section 15 of the Act. This sub-section reads—"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." The learned counsel points out that this power of whatever order that justice requires may be made has only been given to the High Court. The question really does not arise in this case, but if it did arise, it would have been necessary to advert to the words in this sub-section 'legality or propriety, and if it was found that the order of the appellate authority is legal and nothing could be said against its propriety, the High Court would certainly have, so far as my opinion is concerned, no jurisdiction under sub-section (5) to interfere with such order. So that the power of the High Court in substance cannot be greater under sub-section (5) than that of the appellate authority under sub-section (3) of section 15. Now, worded as it is, sub-section (5) of section 15 would obviously give power to the High Court in a case like the present, where an order *in rem* fixing fair rent is the matter to be decided, to consider whether on the material on the record an order made could or could not be sustained and, if it could not be sustained, what would be the order according to law and facts of the case. If in the present case there was a revision under sub-section (5) of section 15 of the Act direct to the High Court, there is no manner of

doubt that the order of the Rent Controller would not be sustained and that on the evidence on the record the only possible conclusion was the one that the appellate authority reached in this case. So that where the question of propriety is concerned, there is no room for interference with the order of the appellate authority so far as the present case is concerned. It can only be interfered with if the argument of the learned counsel is accepted that in law the appellate authority had no jurisdiction to make an order of the type that it did make.

(7) The whole argument of the learned counsel for the landlord revolves round the words "decide the appeal" in sub-section (3) of section 15 of the Act and the learned counsel seems to consider that those words mean either to grant or not to grant the prayer of the appellant in the appeal and apart from that choice, no matter what the merits of the case may be, nothing can be done in appeal which will go beyond the prayer of the appellant. This approach cannot be taken to be consistent with the power of the appellate authority in sub-section (3) of section 15 of the Act, for in deciding the appeal before it is not dependent upon the inquiry already made by the Rent Controller, but it has been given further power to either make inquiry itself or direct the Rent Controller to go into the matter again. Now, where the appellate authority makes the further inquiry itself, if the argument of the learned counsel for the landlord is sound, this inquiry must only be limited to, in the case of the matter of fixation of fair rent, whether the figure can be increased from the figure against which the landlord appeals, but this would be, in the matter of fixation of fair rent, to lay limitation on the power of the appellate authority, which is not justified by anything contained in sub-section (3) of section 15. In this approach even if the whole of the power and jurisdiction of the appellate authority is confined within the meaning of the words "decide the appeal" then that power and jurisdiction has to be taken to be coterminus and contemporaneous with the power and jurisdiction of the Rent Controller to fix the fair rent within the meaning and scope of section 4 of the Act. It is not that the appellate authority's power in regard to fixation of fair rent under that section is in some respect narrower than that of the Rent Controller, and if the argument of the learned counsel for the landlord is accepted that would be the result. So the appellate authority was within its power and jurisdiction to make the order as it did in the appeal of the landlord in this case. No doubt, if the tenant had also appealed, an argument like this would not have arisen at all, but the power and jurisdiction of the appellate authority to fix fair rent, which would be an order *in rem,* is not

dependent upon whether one or the other party does or does not appeal, once the matter has come before it in appeal by one of the parties. So this argument cannot be accepted. It has already been pointed out that in so far as the material on the record is concerned, the conclusion reached by the appellate authority is amply supported by it and the evidence of the witnesses mentioned gives support to it. So this revision application is dismissed, but in the circumstances of the case there is no order in regard to costs.

N.K.S.

REVISIONAL CIVIL

Before R. S. Narula, J.

AMAR SINGH,—*Petitioner.*

Versus

JAGDISH AND OTHERS,—*Respondents.*

Civil Revision No. 245 of 1969

September 23, 1969

Code of Civil Procedure (V of 1909)—Order 1 rule 3—Scope and object of—Suit for pre-emption—Suit property leased prior to sale—Validity of lease deed—Whether can be challenged in such pre-emption suit—Lessee of the property—Whether a proper party.

Held, that the object of rule 3 of Order 1 of the Code of Civil Procedure is to avoid multiplicity of suits and needless expense to the parties if it can be avoided without embarrassment to the litigants concerned and the Court. In order to justify the joining of more than one person as defendants, it is not necessary to show that all the defendants are interested in all the reliefs and transactions comprised in the suit. If a pre-emptor is able to prove that the sale and the lease of the property though executed on two different dates, really form part of one single transaction, and it is further found that the per-emptor is entitled to be substituted as a vendee, it is open to the pre-emptor to avoid the lease if he can prove that the same is either invalid or is in reality non-existent and is a mere farce. To direct the pre-emptor to strike out the name of the lessee when he is made a party in the suit for pre-emption and to drive the former to a second round of litigation against the latter in case of the latter's success in the suit for pre-emption, would be to encourage the very thing which is sought to be discouraged by rule 3 of Order 1 of the Code. It is but fair that he should remain a party to the suit if the plaintiff wants a finding as to the genuineness or validity of the