

## APPELLATE CIVIL

*Before Falshaw, J.*PADAM PARSHAD,—*Petitioner**versus*DIP CHAND AND OTHERS,—*Respondents***Execution Second Appeal No. 161 of 1956.**

1956  
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 September, 4th

*East Punjab Urban Rent Restriction Act (III of 1949)—Section 17, Orders passed under the Act, how to be executed—Effect of section 17 thereon—Orders for purposes of execution—Whether to be treated as ordinary execution proceedings—Appeal therefrom, rule as to.*

*Held*, that the effect of section 17 of the East Punjab Urban Rent Restriction Act is that the execution of orders passed under sections mentioned therein are to be treated as ordinary execution proceedings as if they were ordinary decrees of civil courts and that, accordingly, both the ordinary procedure and the ordinary rules as to the appeals would apply to them.

*Hans Raj-Salig Ram v. Niranjan Lal (1)*, relied on.

*Execution Second Appeal from the decree of Shri I. M. Lall, Sessions Judge, Ambala, dated the 9th February, 1956, modifying that of Shri Bahal Singh, Sub-Judge, 1st Class, Ambala Cantt., dated the 27th October, 1955, returning the appeal for filing in the High Court.*

*Application for ejectment.*

SHAMAIR CHAND, for Appellants.

A. C. HOSHIARPURI, for Respondents.

## JUDGMENT

Falshaw, J.

FALSHAW, J.—This appeal has been filed as an execution second appeal in this Court in consequence of an order of the learned District Judge at Ambala to the effect that the first appeal which was filed in his Court did not lie there but lay in the High Court.

The appeal arose out of an order of a Sub-Judge dealing with objections filed by a tenant under sections 47 and 151, Civil Procedure Code, against the execution of a decree for ejectment passed in favour of the landlord under section 13 of the East Punjab Urban Rent Restriction Act, III of 1949. The rent of the premises in dispute appears to be only Rs. 17 per mensem and therefore, the jurisdictional value of the case based on one year's rent of the premises is nowhere near Rs. 5,000 and in fact is only about Rs. 200. Section 15 of the Act empowered the Government by special order or notification to constitute any officer as the Appellate Authority under the Act, and under the provisions of this section District Judges generally have been made the Appellate Authorities in their Divisions. Section 17 deals with the execution of orders passed under the Act and provides every order made under section 10 (which deals with interference by landlords with amenities enjoyed by tenants) section 13 (which deals with ejectment) and every order passed on appeal under section 15 shall be executed by a Civil Court having jurisdiction in the area as if it were a decree of a Court.

In the present case the learned Sub-Judge who was dealing with the execution of the order under section 13 as if it was an ordinary decree of a civil Court as provided by section 17, accepted the objections of the tenant and held that he could not be

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evicted as there had been a subsequent agreement between him and the landlord under which he was allowed to remain in occupation of the premises in dispute. Following the ordinary course the landlord filed a first appeal against this order in the Court of the District Judge, who appears to have taken a somewhat curious view. As far as I have been able to follow his reasoning he is of the opinion that the appeal is covered by section 39(1)(b) of the Punjab Courts Act, 1918, and not section 39(1)(a) because section 39(1)(a) does not apply to an order which is merely deemed or considered to be a decree. The provisions of section 39(1) read—

“Save as aforesaid, an appeal from a decree or order of a Subordinate Judge shall lie—

(a) to the District Judge where the value of the original suit in which the decree or order was made did not exceed five thousand rupees; and

(b) to the High Court in any other case.”

*Prima facie* the effect of section 17 of the Rent Restriction Act is that the execution of orders passed under the sections mentioned therein are to be treated as ordinary execution proceedings as if they were ordinary decrees of civil Courts, and that accordingly both the ordinary procedure and the ordinary rules as to appeals would apply to them. Apart from disregarding this obvious interpretation of the provisions of section 17, it would appear that the learned District Judge, whether wilfully or otherwise has ignored the decision of Weston, C. J., and myself in the case *Hans Raj*

*Salig Ram v. Niranjan Lal* (1), in which in connection with a second appeal filed in this Court against an order under the Rent Restriction Act the following two questions were referred by Harnam Singh, J., to a Division Bench—

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- (1) Whether an order deciding a question between the parties to the original proceedings or their representatives and relating to the execution discharge or satisfaction of the order made under section 10, section 13, or section 15 of the Act is appealable under section 96 of the Code of Civil Procedure?
- (2) If the answer to the first question be in the affirmative, whether from an order passed in appeal under section 96 of the Code a second appeal lies under section 100 of the Code on grounds mentioned in clauses (a), (b) or (c) of section 100 of the Code of Civil Procedure?

and both these questions were answered in the affirmative. I accordingly accept the present appeal and order that the first appeal be decided by the District Judge of Ambala in whose Court the parties have been directed to appear on the 15th of October 1956. There would be no order as to costs in this appeal which was not opposed on behalf of the respondent.