CASE NO.:
Appeal (civil) 1057-1058 of 2001

PETITIONER:
LEKH RAJ

Vs.

RESPONDENT:
MUNI LAL & ORS.

DATE OF JUDGMENT: 06/02/2001

BENCH:
A.P. Misra & D.P. Mohapatra.

JUDGMENT:

L...I...T.....T.....T.....T.....T.....T.....T..J

MISRA. J.

Leave granted.

The present appeals are by the defendant-tenant as against the order dated 24th March, 2000 passed by the High Court in its revisional jurisdiction by which it reversed the finding of the appellate court that the disputed shop in question is not unsafe for human habitation. The questions raised in these appeals are:

(1) Whether the High Court under its Revisional Jurisdiction which limits to examine the legality and propriety of the appellate court order was justified in reversing its findings based on evidence on record.

(2) Whether the High Court could have appointed a local Commissioner while exercising its revisional jurisdiction and to reverse the finding of the appellate court based on the report of such Commissioner.

In order to appreciate the controversies we are herewith giving some of the essential facts. The appellant took the disputed shop on rent from one Aya Ram who sold the said shop to one Prakash Rani. The respondents nos. 1 to 8 are Lrs. of this Prakash Rani, who filed petition for eviction against the appellant under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the 'Act) from the disputed shop. The eviction petition was based on three grounds: (a) The appellant has not paid the rent from 2nd July, 1968, (b) He has sub-let the shop without taking the permission of the landlord and (c) the building is in dilapidated condition with cracks hence not fit for human habitation requiring demolition and reconstruction. The appellant denied all these and other allegations made in the petition. The trial court decreed

the eviction petition. It held that the appellant tendered the rent on 24.10.1975 about which no grievance was made by the respondent-landlord at the time of arguments, the shop was sub-let by the appellant, and the disputed shop is unfit for human habitation. The appellant filed appeal and the Appellate Court set aside the trial court findings. It held that sub- letting has not been proved. It further, on the basis of evidence on record, held that it cannot be said that the cracks in the building have made it unfit or unsafe for human habitation. Aggrieved by this the respondent filed revision in the High Court. During the pendency of the said revision an application was moved by respondents for appointment of a local Commissioner which was objected

through written objection by the appellant. The said local Commissioner submitted his report to the court, the relevant portion of his report is quoted hereunder:

there was a hole in the roof measuring 13 x 12 which had been temporarily shut from the interior side with the help of wooden planks by giving the support of sticks and from the upper side this hole was found and 4 Ballies near the hole were in a decayed condition and wooden planks near the hole were in a bad condition due to seepage of water from the hole of the roof..The outerside of the right side wall of the shop, there was a big crack on the beginning of the wall extending from top to more than middle of the wall. This crack measuring 2x 7.5 (depth) from the upper side and 1.5 x 6.5 from the lower side and in the end of the same wall, there was also a big crack measuring 2x 8 from the upperside 2x7 from the lower side and the roof of the passage was in a totally damaged condition which did not cover the shop but covers the passage.

The appellant filed objection to this report pointing certain anomalies with a prayer to ignore this report and appoint another local Commissioner. The High Court confirmed as against respondent-landlord, the finding of the Appellate Court on the question of sub-letting. However, it reversed its finding based on the said local Commissioner report by holding that the disputed shop is unfit for human habitation. The appellant being aggrieved by this order has filed the present appeal.

The submission is, power of revision cannot be construed to empower court to reappraise the evidence and disturb the findings of fact recorded by the Appellate Court. Having limited revisional jurisdiction the High Court was not justified in interfering with the finding recorded by the Appellate Court.

To appreciate this submission the revisional power of the High Court under sub-section 5 of Section 15 of the aforesaid Act is quoted hereunder:

15(5): The High Court may, at any time, on the application of any aggrieved party or on its own motion, call 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/proceedings and may pass an order in relation thereto

as it may deem fit.

The law on the subject is well settled. The language of this sub- section clearly spells out, High Court jurisdiction is neither restricted to what is under Section 115 of the Civil Procedure Code nor it is as large as power of the Appellate Authority. The High Court under its supervisory revisional jurisdiction could examine the legality or propriety of any order. This legality or propriety widens the scope of the High Court which is larger than the power of revision under Civil Procedure Code. But in no case it confers power to set aside findings of fact by reappraisal of evidence. In doing so it would be trespassing its jurisdiction. However, good reason for drawing a different conclusion it cannot be construed to be within jurisdiction. Thus courts have to carve out a field for the exercise of revisional jurisdiction under sub-section (5) of Section 15, emanating from the words legality and propriety which should be between limited revisional jurisdictional under Section 115 CPC and wider appellate jurisdiction.

Strong reliance has been placed for the appellant in Lachmand Dass vs. Santokh Singh, (1995) 4v SCC 202. This Court was considering, the revisional jurisdiction of the High Court under sub- section (6) of Section 15 under the Haryana Rent Control Act which is para materia with the revisional power under the aforesaid Act under which we are considering. This Court held:

In the present case sub-section (6) of Section 15 of the Act confers revisional power on the High Court for the purpose of satisfying itself with regard to the legality or propriety of an order or proceeding taken under the Act and empowers the High Court to pass such order in relation thereto as it may deem fit. The High Court will be justified in interfering with the order in revision if it finds that the order of the appellate authority suffers from a material impropriety or illegality. From the use of the expression Legality or propriety of such order or proceedings occurring in sub-section (6) of Section 15 of the Act, it appears that no doubt the revisional power of the High Court under the Act is wider than the power under Section 115 of the Code of Civil Procedure which is confined to jurisdiction, but is also not so wide as to embrace within its fold all the attributes and characteristics of an appeal and disturb a concurrent finding of fact properly arrived at without recording a finding that such conclusions are perverse or based on no evidence or based on a superficial and perfunctory approach.

For the appellant, reliance is also placed on Shiv Lal vs. Sat Parkash and Anr., 1993 Supp. (2) SCC 345. It was held:

While exercising jurisdiction under Section 15(5) of the Act the Court does not act as a regular third appellate court and can interfere only within the scope of the sub-section. In the present case, the High Court, on being misled by its view that the cession of tenancy is a necessary element of Section 13(2)(iv), the High Court proceeded to re- examine the evidence on the records, and reversed the finding of facts concurrently arrived at by the

trial Court and the first appellate court. An examination of the facts and circumstances of this case indicates that the reconsideration of the evidence by the High Court was not justified.

On the other hand learned counsel for the appellant has relied on Mrs. Mohini Suraj Bhan vs. Vinod Kumar Mital, (1986) 1 SCC 687. This Court observed:

It cannot be disputed that the powers of the High Court under Section 15(5) of the Act are wide and not confined merely to examining the legality of the appellate authoritys order nor are those powers akin to the revisional powers of the High Court under Section 115 of the CPC.

The pith and substance of these authorities, to which appellant relies is that Court under its revisional jurisdiction cannot disturb finding of facts nor could it reappraise evidence on record, it can only interfere if there is impropriety and illegality in the impugned order. One of the submissions for the appellant is that the High Court in its revisional jurisdiction should not have permitted the inspection of the disputed shop by the local Commissioner while exercising its revisional jurisdiction. The submission is, the revisional court could only take into consideration the fact existing on the date of filing of the eviction petition supported by evidence on record, thus by bringing on record the aforesaid report of the local Commissioner which was called after 18 years of the pendency of the revision in the High Court cannot be said to be within the jurisdiction of the Revisional courts.

The law on the subject is also settled. In case subsequent event or fact having bearing on the issues or relief in a suit or proceeding, to which any party seek to bring on record, the Court should not shut its door. All laws and procedures including functioning of courts are all in aid to confer justice to all who knocks its door. Courts should interpret the law not in derogation of justice but in its aid. Thus bringing on record subsequent event, which is relevant, should be permitted to be brought on record to render justice to a party. But the court in doing so should be cautious not to permit it in a routine. It should refuse where a party is doing so to delay the proceedings, harass other party or doing so for any other ulterior motive. The courts even before admitting should examine, whether the alleged subsequent event has any material bearing on issues involved and which would materially effect the result. In Pasupuleti Venkateswarlu vs. The Motor & General Traders, (1975) 1 SCC 770, this Court has very clearly held to the same effect:

It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink as it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice

subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed.

This Court in Ramesh Kumar vs. Kesho Ram, 1992 Supp. (2) SCC 623 held:

The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the court is not precluded from taking a cautious cognizance of the subsequent changes of fact and law to mould the relief. In Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri Chief Justice Sir Maurice Gwyer observed: (AIR p.6)

But with regard to the question whether the court is entitled to take into account legislative changes since the decision under appeal was give, I desire to point out that the rule adopted by the Supreme Court of the United States is the same as that which I think commends itself to all three members of this Court. In Patterson v. State of Alabama, Hughes C.J. said:

We have frequently held that in the exercise of our appellate jurisdiction we have power not only to correct error in the judgment under review but to make such disposition of the case as justice requires. And in determining what justice does require, the court is bound to consider any change, either in fact or law, which has supervened since the judgment was entered.

This decision also relied in the case of Pasupuleti Venkateswarlu vs. The Motor & General Traders, (1975) 1 SCC 770 (supra).

In the background of the aforesaid well settled legal principle we perused the application of the respondent dated 31st March, 1999, before the High Court, for the appointment of a local Commissioner. It is unfortunate, but the fact is that civil revision remained pending in the High Court for more than 18 years when the said application was made. The relevant portion of the application is quoted hereunder:- That during the pendency of the present revision petition, the roof of the shop in dispute has also fallen down and the condition of the shop in dispute has further deteriorated as would be clear from a perusal of the photographers attached

as ANNEXURE P-1. It is well settled that subsequent events which have taken place during the pendency of the revision petition can and should be taken into consideration and the relief moulded accordingly.

The respondent through this application states that the roof of the shop has since also fallen down and its condition further deteriorated, during the pendency of this revision, hence sought for the appointment of a local Commissioner which was allowed. On these facts, in view of the issue, whether the accommodation in question is fit for human habitation, with the long passage of eighteen years, if fresh assessment was sought through a local Commissioner, it cannot be said, in allowing such Commission the High Court exceeded in its revisional jurisdiction.

Now, we proceed to examine the submissions for the appellant, which is primarily based on the objections recorded in his reply affidavit to the respondents application for the appointment of a local Commissioner and the objections dated 10th January, 2000 to the said Commissioner report dated 7th July, 1999. The objection as recorded therein are; (a) when the application for ejactment was filed, there was no crack in the wall of the disputed shop (b) the cracks are from the Dehori side which are in possession of the landlord, (c) Similarly when the application for ejactment was made the roof of the shop was in absolute perfect condition, (d) the landlord has deliberately damaged the roof for which the appellant filed a complaint to the police. Each of these objections has no force. The objection with respect to the cracks on the wall and the condition of the roof is, when the application for eviction was filed there were no cracks in the wall. This objection has no merit, as per own evidence of the appellant, he testified existence of such cracks but said, for this reason it cannot be said it to be unfit for human condition. The submission that court could only take into consideration on the facts existing on the date of suit only has also no merit.

In view of the legal principle we have stated herein before, a Court could take into consideration subsequent facts, event or happening which are relevant, and in the present case after expiry of about two decades if fresh local Commissioner was appointed to find out the condition of shop, and it found two big cracks on two walls of the disputed shop, it cannot be said consideration of such evidence to be illegal. On the merits it is submitted, one of the cracks is on the Dehori side which is in possession of the landlord. Even if this to be, this would make no difference for drawing any inference about the condition of the wall. There are always two sides of any wall, cracks on any side of the wall, if it weakens the wall, may not be on the side of such an occupant, it would make no difference. Even if the cracks on the wall are on the other side which is a passage, still as it constitutes the same wall as that of the shop would have the same result. If the cracks have weakened the wall, it would crumble not withstanding it is not on the side of the shop. This coupled with the condition of the roof which deteriorated as found by the local Commissioner would be a valid consideration to find whether the shop is unfit for human consumption. So far the submission that the appellant has filed a complaint against the landlord for causing damage to the roof, we have perused

the FIR. Though FIR records allegations directly against the landlord but records no allegation of landlord damaging the roof.

Next submission is based on the objection filed to the local Commissioner report. The objection is, the tenant was not allowed to go on the roof to which landlord has an access. If he was permitted he could have pointed out to the Commissioner that hole has been dug purposely and deliberately by the landlord. Further, the Commissioner remained closet in the room with the landlord for about half an hour. He sought this local Commissioner report be ignored and another local Commissioner be appointed. We do not find any error in the High Court judgment in not issuing another local Commissioner. The appellant merely sought to show that roof of the disputed shop was damaged by the landlord, to proof this how Commissioner would have been able to find this.

The question whether the roof was damaged by the landlord or was damaged because of the building being old and dilapidated is a question of fact, proof of it could only be, if at all, through leading evidence and not through a local Commissioner. A local Commissioner could only report the fact of existing condition of the building and not who did it. It was open for him, if appellant so desired for praying to the Court to grant time to lead evidence in this regard. Since court permitted, a local Commissioner to report, so it would have granted the prayers for leading evidence. Hence we do not find any of the objections raised by the appellant, have any merit. The High Court considered the said report, and there exists a hole on the roof which is not disputed. It further records, even if the same is ignored, there are big cracks found by the Commissioner on the beginning of the wall extending from top to more than middle, and another big crack on another wall. The report records the depth of the crack, not merely the length of the crack showing the bad condition of the two walls of the disputed shop. Mere length of crack by itself may not have foundation to hold its condition of structure of the shop to be bad but it would be, where the crack measures 2 x 7.5 depth in one wall on the upper side and 1.5 (illegible) on the lower side and another crack measuring 2 x 8 from the upper side and 2 x 7 from the lower side. This along with condition of roof, if was considered by the High Court to draw the inference of the condition of the shop, it cannot be said such finding is perverse or illegal which calls for interference by this Court. Once the said local Commissioners report was brought on the record, as part of evidence to show the subsequent event or condition of building, it was incumbent on the High Court to have considered it, which it rightly did and if in doing so an inference is drawn, that the disputed accommodation is not fit for human habitation it is not such which calls for interference. Normally, as revisional court, it could not have embarked upon recording finding of facts but where any subsequent fact was legally brought on record, it could enter into and decide the question, which could inevitably include recording find of fact.

Lastly, the submission was that the case may be remitted back to the court for permitting the appellants to lead evidence to contradict, what is brought through the Commissioner report. We have examined this aspect also.

Normally if parties so desire, in a case where fresh facts are brought on the record as a relevant subsequent event, the court grants such prayer. In the present case, we find that before the High Court, at no stage, the appellant made any such request. Even in this appeal before us, the appellant could not point any such ground been raised. It is not even pleaded nor raised any ground that the High Court refused such a request for leading any such evidence. In view of these facts in the present case we do not find any merit even of this last submission. In view of the finding recorded by us we record our conclusions to the aforesaid two questions raised in the appeals to the following effect:

(1) On the facts and circumstances of this case, where fresh evidence was permitted to be brought on the record, reversing of the finding of fact by the High Court, while exercising Revisional jurisdiction, cannot be said to be such that it acted beyond its jurisdiction vested to it under the law. (2) Once, court could bring on the record, subsequent fact, event or happening, which has direct bearing on the issues or relief claimed, on the facts and circumstances of this case, then the High Court committed no error of jurisdiction to permit the Commissioner report to be placed on the record and then on which to rely while exercising its revisional power under sub- section 5 of Section 15 of the aforesaid Act.

In view of the aforesaid findings recorded by us we do not find any merit in these appeals, which are accordingly dismissed with costs on the parties.

Lastly, learned counsel made request to grant substantial time to the appellant to vacate the premises in question as he has been in possession of this shop for a very long time, otherwise it would affect his business adversely. Looking to the facts and circumstances of this case we grant time to the appellant to vacate the premises in question by or before 31st December, 2001 subject to the usual undertaking to be filed within four weeks from today.