

PETITIONER:
CENTRAL BANK OF INDIA

Vs.

RESPONDENT:
SHRI GOKAL CHAND

DATE OF JUDGMENT:
12/09/1966

BENCH:
BACHAWAT, R.S.
BENCH:
BACHAWAT, R.S.
WANCHOO, K.N.
SHAH, J.C.

CITATION:
1967 AIR 799 1967 SCR (1) 310
CITATOR INFO :
R 1967 SC1360 (3)
D 1977 SC 403 (9)
RF 1977 SC2185 (7)
R 1980 SC 962 (95)

ACT:
Delhi Rent Control Act (Act 59 of 1958) s. 38(1)-Appeal from
interlocutory order of Controller whether lies to Tribunal.

HEADNOTE:

The respondent who owned a building in which the appellant was tent filed an application under the Delhi Rent Control Act (59 of 1958) to the Controller for the eviction of the appellant from the premises on the ground of his own need. The appellant contended that the respondent did not bona fide need the premises for his own use and prayed for a commission to be issued for the purpose of inspecting the house in which the respondent was residing. The Controller rejected the appellant's prayer. The appellant thereupon appealed to the Rent Control Tribunal. The Tribunal held that no appeal lay from the aforesaid order under s. 38(1) of the Delhi Rent Control Act 1958 and on that finding dismissed the appeal. The High Court agreed into this decision of the Tribunal. The appellant came to this Court by special leave.

HELD : The object of s. 38(1) is to give a 'right of appeal to a party aggrieved by some order which affects his right or liability. In the context of s. 38(1), the words "every order of the Controller made under this Act", though very wide, do not include interlocutory orders, which are merely procedural and do not affect the rights or liabilities of the parties. [312 E]

Interlocutory orders are steps taken towards the final adjudication and for assisting the parties in the prosecution of their case in the pending proceeding; they regulate the procedure only and do not affect any right or liability of the parties. The legislature could not have intended that the parties would be harassed with endless expenses and delay by appeals from such procedural orders. [312 F-G]

However, even an interlocutory order passed under s. 37(2)

is an order passed under the Act and is subject to appeal under s. 38(1) provided it affects some right or liability of any party. Thus an order of the Rent Controller refusing to set aside an ex parte order is subject to appeal to the Rent Control Tribunal. [312 H] Shankarlal Aggarwal v. Shankarlal Poddar. [1964] 1 S.C.R. 717, relied on.

In the present case, the interlocutory order of the Controller refusing to issue a commission was only a procedural one and therefore no appeal lay to the Tribunal under s. 38(1). [313 C-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1339 of 1966.

Appeal by special leave from the judgment and order dated February 8, 1966 of the Punjab High Court (Circuit Bench) at Delhi in S.A.O. No. 182-D of 1965.

311

S. V. Gupte, Solicitor-General, C. L. Chopra, J. B. Dadachanji for the appellant.

Bishan Narain, S. S. Chadha and Sardar Bahadur, for the respondent.

The Judgment of the Court was delivered by Bachawat, J. This appeal raises a question of construction of s. 38(1) of the Delhi Rent Control Act, 1958 (Act 59 of 1958). The appellant is a tenant of premises No. 7, Sriram Road, Delhi, under the respondent. The respondent made an application to the Controller for eviction of the appellant on the ground that he bona fide required the premises for his occupation. The respondent resides at No. 17, Alipur Road, Delhi. The appellant filed an application before the Controller alleging that the accommodation in premises No. 17, Alipur Road consisted of more than three rooms and consequently, the respondent did not bona fide require the premises in dispute for his own occupation and praying for the issue of a commission to go to No. 17, Alipur Road and to prepare a plan of the premises. By his order dated May 29, 1965 the Controller rejected the application. He said

"The petitioner came into the witness box and the respondent had full opportunity to cross-examine him regarding the extent of accommodation in his possession. He has stated that the other portions of 17, Alipur Road, Delhi are in possession of other persons. Previously also, such an application was made by the tenant which was disallowed by me, vide my order dated 7-3-1964. I see no further reason to review my previous order and allow this application."

From this order, the appellant filed an appeal to the Rent Control Tribunal. The Tribunal held that no appeal lay, from the aforesaid order of the Controller under s. 38 (1) of the Delhi Rent Control Act, 1958, and on this finding dismissed the appeal. The High Court agreed with this decision of the Tribunal. The appellant now appeals to this Court by special leave. The question in this appeal is whether an appeal lay to the Tribunal under-s. 38(1) from the aforesaid order of the Controller.

The Delhi Rent Control Act, 1958 empowers the Controller to pass orders for fixing the standard rent or lawful increase thereof, eviction of tenants and various other orders on the applications filed before him by the landlord or the tenant.

Under ss. 36 and 37(2), the Controller may pass interlocutory orders in a pending proceeding. Under s. 36, he may pass orders for the summoning of witnesses, the issue of commissions for examination of witnesses discovery, production and inspection of documents and inspection of premises. By s. 37(2), he is required to follow as far as may be the practice and procedure of a Court of small causes, and following such practice and procedure, he may pass other interlocutory orders. Section 38 gives a right of appeal to the Rent Control Tribunal from every order of the Controller made under the Act. The Tribunal has all the powers vested in a Court under the Code of Civil Procedure, 1908 when hearing an appeal. Under s. 39 an appeal lies to the High Court from an order of the Tribunal if the appeal involves some substantial questions of law. By s. 43, save as expressly provided in the Act, every order made by the Controller or an order passed on appeal under the Act is final and cannot be called in question in any original suit, application or execution proceeding. Section 38(1) reads:

"An appeal shall lie from every order of the Controller made under this Act to the Rent Control Tribunal (hereinafter referred to as the Tribunal) consisting of one person only to be appointed by the Central Government by notification in the Official Gazette."

The object of s. 38(1) is to give a right of appeal to a party aggrieved by some order which affects his right or liability. In the context of s. 38(1), the words "every order of the Controller made under this Act", though very wide, do not include interlocutory orders, which are merely procedural and do not affect the rights or liabilities of the parties. In a pending proceeding, the Controller may pass many interlocutory orders under ss. 36 and 37, such as orders regarding the summoning of witnesses, discovery, production and inspection of documents, issue of a commission for examination of witnesses, inspection of premises, fixing a date of hearing and the admissibility of a document or the relevancy of a question. All these interlocutory orders are steps taken towards the final adjudication and for assisting the parties in the prosecution of their case in the pending proceeding; they regulate the procedure only and do not affect any right or liability of the parties. The legislature could not have intended that the parties would be harassed with endless expenses and delay by appeals from such procedural orders. It is open to any party to set forth the error, defect or irregularity, if any, in such an order as a ground of objection in his appeal from the final order in the main proceeding. Subject to the aforesaid limitation, an appeal lies to the Rent Control Tribunal from every order passed by the Controller under the Act. Even an interlocutory order passed under s. 37(2) is an order passed under the Act and is subject to appeal under s. 38(1) provided it affects some right or liability of any party. Thus, an order of the Rent Controller refusing to set aside

312

an ex parte order is subject to appeal to the Rent Control Tribunal.

Similar considerations have induced the Courts to give a limited construction on the apparently wide words of other statutes conferring rights of appeal. Section 202 of the Indian Companies Act, 1913 confers a right of appeal "from any order or decision made or given in the matter of the

313

winding up of a company by the Court." In Shankarlal Aggarwal v. Shankarlal Podda, (1), this Court decided that these words, though wide, would exclude merely procedural orders or those which did not affect the rights or liabilities of parties.

The order of the Controller dated May 29, 1965 refusing to issue a commission for inspection and preparation of a plan of premises No. 17, Alipur Road was a mere procedural order not affecting any right or liability of the appellant. The issue of a commission is only a step for assisting the parties in the prosecution of their case. It is open to the appellant to canvass the error, defect or irregularity, if any, in the order in an appeal from the final order passed in the proceeding for eviction. But no appeal from the order lay to the Rent Control Tribunal under s. 38(1) The appeal is dismissed with costs.

G.C.

Appeal dismissed.

(1) [1964] 1 S. C.R.717,736.

314