

(2019) 08 RAJ CK 0085

Rajasthan High Court, Jaipur Bench**Case No:** Special Appeal Writ No. 853 Of 2019 In Civil Writ Petition No. 1953 Of 2010

Mahendra Kumar Jain

APPELLANT

Vs

Appellate Rent Tribunal, Ajmer
And OrsRESPONDENT

Date of Decision: Aug. 1, 2019**Acts Referred:**

- Rajasthan Rent Control Act, 2001 - Section 9, 9(a)
- Public Premises (Eviction Of Unauthorized Occupants) Act, 1971 - Section 9
- Rajasthan High Court Rules, 1952 - Rule 134, 134(1)
- Constitution Of India, 1950 - Article 226, 227

Hon'ble Judges: Mohammad Rafiq, J; Narendra Singh Dhaddha, J**Bench:** Division Bench**Advocate:** Ajeet Kumar Bhandari, Jitendra Mishra, Priti Malik, Narendra Malik**Final Decision:** Dismissed

Judgement

This appeal is directed against the judgement of the learned Single Judge dated 10.05.2019, who has thereby dismissed the writ petition filed by the

appellant and upheld the judgement of the Appellate Rent Tribunal, Ajmer dated 21.12.2009 and that of Rent Tribunal dated 21.04.2007.

While the appellant is a tenant in the two shops situated at A.M.C. No.7/2010, Sardar Patel Marg, Ajmer, the respondent nos.3 to 6 are his landlords.

The appellant had taken these shops on rent on 10.10.2001 and a rent note was executed thereabout. The respondents-landlord filed a petition under

Section 9 of the Rajasthan Rent Control Act, 2001 (hereinafter referred to as 'the Act of 2001'â€™) before the Rent Tribunal, Ajmer for eviction of

appellant on the ground of default in payment of rent from 1.7.2005 to 31.10.2005. The respondents-landlord sent a registered notice to the appellant-tenant on 3.11.2005, which he received on 5.11.2005, but he failed to deposit the rent in the bank account of the respondents-landlord, within 30 days from the date of notice. The appellant-tenant sent a notice to the respondents-landlord on 9.1.2006, which they received on 14.1.2006 mentioning therein that he has deposited a sum of Rs.44,390/- as the rent for the month of July to September, 2005 @ Rs.7245/- per month and a sum of Rs.7475 for the month of October and a sum of Rs.7590/- for the month of November and December, 2005 each on 12.12.2005 vide cheque. According to the respondents-landlord, however, there was a default in payment of rent for more than 4 months after the period of notice of 30 days in terms of Section 9 of the Act of 2001. The appellant-tenant contested the case of the respondent-landlord saying that bank account number of the respondent was not mentioned in the notice and therefore the mandatory provisions of the Act were not complied with and so soon the bank account number was sent to him, he deposited the rent in the account of the respondents-landlord on the very next date. He has thus not committed any default.

The Rent Tribunal vide order dated 21.04.2007 recorded a finding that the appellant-tenant has committed a default in terms of Section 9(a) of the Act of 2001 and therefore directed his eviction. The appellant challenged the aforesaid judgement before the Appellate Rent Tribunal by filing the appeal, which however dismissed the appeal vide order dated 21.12.2009. The appellant then filed the writ petition styled as petition under Article 226 and 227 of the Constitution of India. The learned Single Judge by the impugned order has dismissed the writ petition with costs of Rs.25,000 to be paid to the respondent.

We have heard Shri Ajeet Kumar Bhandari, learned counsel for the appellant and Ms. Priti Malik, the learned counsel for the respondents.

Ms. Priti Malik, learned counsel for the respondents while arguing the matter on merits, has also raised the preliminary objection with regard to maintainability of appeal before the division bench. We shall therefore first deal with the preliminary objection with regard to maintainability of the appeal.

Ms. Priti Malik, learned counsel for the respondents has referred to Rule 134 of the Rajasthan High Court Rules of 1952 and argued that sub-rule (1)

thereof clearly provides without any doubt or ambiguity that where the High Court renders judgement or final order in exercise of its power of

superintendence, an appeal to the division bench of High Court from the judgement of learned Single Judge will not be maintainable.

Learned counsel argued that since the impugned judgement has been passed by the learned Single Judge in exercise of the power conferred by Article

227 of the Constitution, which is evident from discussion made in its para 16, the appeal would not be maintainable. It would be clear from the

discussion made in its para 16 of the impugned judgement based on the law laid down in *Shalini Shyam Shetty vs. Rajendra Shankar Patil*-(2010) 8

SCC 329 that the writ petition should be considered to have been filed under Article 227 of the Constitution of India.

Learned counsel argued that the Supreme Court in *Shalini Shyam Shetty*, supra has held that the jurisdiction under Article 226 is normally exercised

where a party is affected, but power under Article 227 can be exercised by the High Court suo motu as a custodian of justice. In fact, the power

under Article 226 is exercised in favour of persons or citizens for vindication of their fundamental rights or other statutory rights. Jurisdiction under

Article 227 is exercised by the High Court for vindication of its position as the highest judicial authority in the State, which is entirely discretionary and

no person can claim it as a matter of right. While a Letters Patent Appeal or an intra Court Appeal from the order of learned Single Judge passed

under Article 226 is maintainable, but no such appeal is maintainable when the order has been passed under Article 227 of the Constitution of India.

Relying on the judgement of Supreme Court in *Jacky vs. Tiny @ Antony & Ors.*-(2014) 6 SCC 508, it is argued that the Supreme Court therein held

that a petition under Article 226 or 227 of Constitution of India can neither be entertained to decide the landlord-tenant dispute, nor it is maintainable

against a private individual to determine an intense dispute including the question whether one party harassing the other party.

Learned counsel for the respondents has relied on the judgement of this Court in *Hindustan Petroleum Corporation Ltd. vs. M/s. Shyam Narain Mehra*

Brothers reported in 2015 (3) RLW 2691 (Raj.) and submitted that aforesaid matter arose out of the dispute between the landlord and the tenant

decided by the Rent Tribunal and the Appellate Rent Tribunal under the Act of 2001 and the writ petition filed against those judgements under Article

227 of the Constitution of India was dismissed. When the appeal was taken up thereagainst before the division bench, a preliminary objection was

raised with regard to maintainability thereof and the division bench relying on the Full Bench decision in Ramesh Chand Tiwari vs. Board of Revenue

& Ors.-AIR 2005 (Raj.) 208 has held that such appeal would not be maintainable.

Learned counsel has relied on the division bench judgement of this Court in Harbans Kaur vs. Rent Appellate Tribunal, Jaipur & Ors., D.B. Special

Appeal (Writ) No.2075/2014 decided on 14.12.2015, wherein appeal arising out of the landlord-tenant dispute under the Act of 2001 against the

judgement of learned Single Judge was dismissed as not maintainable. Although the Supreme Court allowed the appeal filed against that judgement on

merits, but did not disturb the finding with regard to nonmaintainability of the said appeal before the division bench. Reliance is also placed on the

division bench judgements of this Court in, Umesh Jhamb vs. Appellate Rent Tribunal, Bikaner & Ors., D.B. Special Appeal (Writ) No.69/2017

decided on 1.2.2017, Gopal Singh vs. Ramlal Sharma, D.B. Civil Special (Writ) No.1001/2015 decided on 19.11.2015, R.K. Bansal vs. Alok Jain, D.B.

Civil Special (Writ) No.689/2015 decided on 25.8.2015, Anil Saboo vs. Smt. Kamla Devi, D.B. Civil Special (Writ) No.874/15 decided on 17.11.2015,

Gopal Sahni vs. B.P. Sharma, D.B. Civil Special (Writ) No.641/2015 decided on 18.11.2015 and Satish Kumar vs. Dhani Ram, D.B. Civil Special

(Writ) No.984/2015 decided on 19.11.2015. It is argued that appeal in all these matters arising out of judgement of the Single Bench on landlordtenant

dispute were dismissed as not maintainable.

Per contra, Shri Ajeet Kumar Bhandari, learned counsel for the appellant-tenant has relied on the division bench judgement of this Court in

Ramswaroop vs. Charanjeet Singh & Ors.-2008 (1) WLC (Raj.) 4,7 wherein the division bench held that where Article 226 as well as 227 are both

invoked in challenging the orders of the Rent Tribunal and the Appellate Rent Tribunal, the appeal would be maintainable. The learned Single Judge in

the judgement does not record anything that the writ petition was being dismissed in exercise of the powers under Article 227 of the Constitution of

India. Since Article 226 of the Constitution of India was also invoked, the special appeal would be maintainable.

Reliance is also placed on the judgement of Ram Prakash vs. Shashi Bala Bajitpuria & Ors.-2015 (4) DNJ (Raj.) 148 9to argue that the appeal in a

landlord-tenant dispute under the Act of 2001 against the judgement of the learned Single Judge invoking jurisdiction under Article 227 of the

Constitution of India was not only entertained but the judgement of learned Single Judge was set aside and the matter was remanded to learned Single

Judge for deciding it afresh.

Learned counsel also relied on the order passed by the division bench of this Court in M/s. Formica Traders vs. Tripti Kumar Kothari, D.B. Special

Appeal (Writ) No.1266/2017 dated 4.9.2017, in which the objection was raised by the Registry of this Court about the maintainability of the intra-court

appeal against the judgement of learned Single Judge in a landlord-tenant dispute on the basis of division bench judgement of this Court in Hindustan

Petroleum Corporation Ltd., supra. The objection was overruled by division bench of this Court.

Learned counsel relied on the judgement of the Supreme Court in Jogendrasinghji Vijaysinghji vs. State of Gujarat & Ors.- (2015) 9 SCC 1, wherein

the Supreme Court dealing with the question of maintainability of letters patent appeal/intra-court appeal noticed number of previous judgements of the

Supreme Court on the distinction between Article 226 and 227 of the Constitution of India, especially three-Judge Bench of the Supreme Court in

Radhey Shyam & Anr. vs. Chhabi Nath-(2015) 5 SCC 423 and held the appeal maintainable even if Article 226 of the Constitution of India is invoked.

Learned counsel argued that the division bench in Hindustan Petroleum Corporation Ltd., supra has failed to notice the previous division bench

judgement in Ram Swaroop, supra, which judgement, being of the Bench of equal strength and having been rendered earlier in point of time, would be

binding.

It is argued that the division bench judgement of this Court in Hindustan Petroleum Corporation Ltd., supra was delivered on 29.7.2015, but that

judgement has not noticed ratio of the previous binding precedents of the Bench of equal strength in Ram Swaroop, supra, which found affirmation in

the judgement of the Supreme Court in Jogendrasinghji Vijaysinghji, supra. It is also submitted that the division bench judgement of Hindustan

Petroleum Corporation Ltd. is also per incuriam having not noticed the earlier judgements of Supreme Court delivered in Jogendrasinghji Vijaysinghji.

We have given our thoughtful consideration to the rival submissions and studied the cited precedents.

The Supreme Court in Jogendrasinghji Vijaysinghji, supra held as under:-

“25. From the aforesaid pronouncements, it is graphically clear that maintainability of a letters patent appeal would depend upon the pleadings in the

writ petition, the nature and character of the order passed by the learned Single Judge, the type of directions issued regard being had to the

jurisdictional perspectives in the constitutional context. Barring the civil court, from which order as held by the three-Judge Bench in Radhey Shyam

(supra) that a writ petition can lie only under Article 227 of the Constitution, orders from tribunals cannot always be regarded for all purposes to be

under Article 227 of the Constitution. Whether the learned Single Judge has exercised the jurisdiction under Article 226 or under Article 227 or both,

needless to emphasise, would depend upon various aspects that have been emphasised in the aforestated authorities of this Court. There can be orders

passed by the learned Single Judge which can be construed as an order under both the articles in a composite manner, for they can co-exist, coincide

and imbricate. We reiterate it would depend upon the nature, contour and character of the order and it will be the obligation of the Division Bench

hearing the letters patent appeal to discern and decide whether the order has been passed by the learned Single Judge in exercise of jurisdiction under

Article 226 or 227 of the Constitution or both. The Division Bench would also be required to scrutinize whether the facts of the case justify the

assertions made in the petition to invoke the jurisdiction under both the articles and the relief prayed on that foundation. Be it stated, one of the

conclusions recorded by the High Court in the impugned judgment pertains to demand and payment of court fees. We do not intend to comment on the

same as that would depend upon the rules framed by the High Court.”

The Supreme Court in above case has held that maintainability of a letters patent appeal would depend upon the pleadings in the writ petition, the nature and character of the order passed by the learned Single Judge, the type of directions issued regard being had to the jurisdictional perspectives in the constitutional context.

The Supreme Court in a recent judgement in Life Insurance Corporation of India vs. Nandini J. Shah & Ors.-AIR 2018 SC 1197 held that challenge to

an order of a District Judge namely; City Court Judge as an Appellate Officer against the order of Estate Officer under Section 9 of the Public

Premises (Eviction of Unauthorised Occupants) Act, 1971 has to be made under Article 227 and not under Article 226 of the Constitution of India

before the Single Judge of the High Court and therefore the letters patent appeal against such order is not maintainable. The following observations

were made by the Supreme Court in para 49 and 50 of the report, which are worth quoting:

“49. In other words, the Appellate Officer while exercising power under Section 9 of the 1971 Act, does not act as a persona designata but in his

capacity as a pre-existing judicial authority in the district (being a District Judge or judicial officer possessing essential qualification designated by the

District Judge). Being part of the district judiciary, the judge acts as a Court and the order passed by him will be an order of the Subordinate Court

against which remedy under Article 227 of the Constitution of India can be availed on the matters delineated for exercise of such jurisdiction.

50. Reverting to the facts of the present case, the respondents had resorted to remedy of writ petition under Article 226 and 227 of the Constitution of

India. In view of our conclusion that the order passed by the District Judge (in this case, Judge, Bombay City Civil Court at Mumbai) as an Appellate

Officer is an order of the Subordinate Court, the challenge thereto must ordinarily proceed only under Article 227 of the Constitution of India and not

under Article 226. Moreover, on a close scrutiny of the decision of the learned Single Judge of the Bombay High Court dated 14.08.2012 we have no

hesitation in taking the view that the true nature and substance of the order of the learned Single Judge was to exercise power under Article 227 of

the Constitution of India; and there is no indication of Court having exercised powers under Article 226 of the Constitution of India as such. Indeed,

the learned Single Judge has opened the judgment by fairly noting the fact that the writ petition filed by the respondents was under Articles 226 and

227 of the Constitution of India. However, keeping in mind the exposition of this Court in the case of Ram Kishan Fauji (AIR 2017 SC 1535) (supra)

wherein it has been explicated that in determining whether an order of learned Single Judge is in exercise of powers under Article 226 or 227 the vital

factor is the nature of jurisdiction invoked by a party and the true nature and character of the order passed and the directions issued by the learned

Single Judge.â€

The division bench of this Court in Hindustan Petroleum Corporation Ltd., supra, which is based on the judgement of Supreme Court in Shalini Shyam

Shetty, supra and Jacky vs. Tiny @ Antony, supra, has held that the appeal against the judgement of learned Single Judge arising out of the dispute

between the landlord and the tenant under the Act of 2001 is not maintainable. The aforesaid judgement in Hindustan Petroleum Corporation has been

followed in several subsequent decisions by different division benches referred to above. However, the earlier division bench judgement of Ram

Swaroop, supra, of the Bench of equal strength, was not brought to the notice of division bench in Hindustan Petroleum Corporation, supra, ratio of

which has found affirmation in the judgement of the Supreme Court in Jogendrasinghji Vijaysinghji. Even this judgement of the Supreme Court, which

was delivered earlier than the division bench judgement in Hindustan Petroleum Corporation Ltd., supra, was not brought to the notice of the division

bench.

In fact, the subsequent division benches have doubted the correctness of Hindustan Petroleum Corporation Ltd., supra on this very premise by

overruling the objection raised by the Registry of this Court as to the maintainability of the appeal before the division bench, observing that confusion is

persisting as in many cases, appeals are being filed and entertained and at the same time, the appeals were entertained after the aforesaid order

passed by the division bench.

A division bench of this Court in M/s. Formica Traders, supra overruled the objection of the Registry as to maintainability of appeal in such matter

observing thus:

“Counsel for appellant has brought to our notice that the very preposition as to whether intra-court appeal/letter patent appeal arising from order of

the Tribunal, writ petitions are being filed u/Art.226 & 227 of the Constitution are maintainable & placed reliance on the judgment of the Apex Court

reported in Jogendrasinghji Vijaysinghji Vs. State of Gujarat & Others, (2015) 9 SCC 1.

Indisputably judgment of the Apex Court relied upon by appellants’ counsel was not brought to the notice of the Division Bench of this Court while

passing the judgment of which we have made a reference, in addition counsel has further brought to our notice that another Coordinate Bench in its

order dt.31-5-2017 has further observed that the order passed by the Civil Court certainly falls within the supervisory jurisdiction of this Court

u/Art.227 of the Constitution and intra-court appeals are not maintainable but as regards writ petition arising from order of the Tribunal is concerned,

in the light of what is being observed by the Apex Court in the judgment reported in (2015) 9 SCC 1, intra court appeal is maintainable.

Taking note of the view expressed by the Apex Court in the judgment reported in (2015) 9 SCC 1 & also the order passed by the Coordinate Bench

of this Court in SAW-349/2017 dt.31-5-2017 the office objection stands overruled and it is directed that the intra-court appeal may be treated to be

prima facie maintainable subject to objection being raised by the respondents.”

Another division bench of this Court in M/s. Karwa Trading Company & Anr. vs. Bank of Baroda, D.B. Special Appeal (Writ) No.349/2017 decided

on 31.05.2017 overruled the objection raised by the registry as to the maintainability of such writappeals challenging the judgement of the Single

Bench, wherein the order passed by the Tribunal was questioned and observed thus:

“On the issue of maintainability of writ-appeals there appears to be some confusion in the Registry. Against decisions passed by the learned Single

Judges in writ petitions where orders passed by Tribunals are challenged, an appeal shall lie to the Division Bench. Where challenge before the

learned Single Judge is to an order or a decision passed by a learned Civil Judge exercising powers of Civil Court, no appeal to the Division Bench

would lie against such decisions of the learned Single Judge.

Defect pointed out by the Registry in the instant case is overruled.

Copy of this order be brought to the notice of the Registry for the reason we find that without keeping in view this distinction, objections to the

maintainability of the writ-appeals challenging decisions by the learned Single Judges wherein orders passed by the Tribunals were questioned, are being raised.

It is urged by learned counsel for the appellants that apart from residential house, an industrial building was also the security with the bank and is noted

by the learned Debt Recovery Tribunal. On equitable grounds, balancing the rights and interests of the parties, learned Debt Recovery Tribunal had

passed the order which was upheld by learned Debt Recovery Appellate Tribunal. Grievance of the appellant is that learned Single Judge has not

considered this equitable aspect of the matter.â€

Yet another division bench of this Court in Ramesh Kumar Malpani vs. Ummed Singh Sushila Devi Memorial Trust, Jaipur 2013 (3) DNJ (Raj.) 1133

in a landlord-tenant dispute has entertained the appeal before the division bench. Another division bench of this Court in Ashok Kumar Sindhi vs. Smt.

Kailashi Devi, D.B. Civil Special Appeal (Writ) No.672/2016 decided on 17.05.2016 dismissed the appeal against the judgement of learned Single

Judge as not maintainable and upheld the order passed by the Appellate Rent Tribunal and Rent Tribunal.

In view of the conflicting opinion expressed by the different division benches of this Court, it has become necessary to obtain an authoritative

pronouncement from the Larger Bench on the question whether appeal against the judgement of the Single Bench, upholding or reversing, the

judgement of the Appellate Rent Tribunal and/or the Rent Tribunal, would be maintainable. We, therefore, deem it appropriate to refer the following

questions for determination by a Larger Bench of this Court:

I) Whether the appeal against the judgement of the Single Bench, reversing/upholding the judgement of the Appellate Rent Tribunal and/or the Rent

Tribunal, would be maintainable before the Division Bench of this court under Rule 134 of the Rajasthan High Court Rules of 1952?

II) Whether the writ petition filed against the judgement of the Appellate Rent Tribunal and the Rent Tribunal by very nature of the dispute, would be considered to have been filed under Article 227 of the Constitution of India, irrespective of invocation of Article 226 of the Constitution of India in the pleadings?

Pending answer to the reference and disposal of the appeal, execution of the impugned orders of the Rent Tribunal and Appellate Rent Tribunal shall remain stayed.

Let this matter be now placed before the Honâ€™ble the Chief Justice for the needful.