Inder Pal Dua and Another Vs Yash Garg and Co.

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: March 22, 2002

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 19 Rule 3
Companies Act, 1956 â€" Section 290
East Punjab Urban Rent Restriction Act, 1949 â€" Section 13(3), 15(5)

Citation: (2002) 3 CivCC 437 : (2002) 1 RCR(Rent) 442

Hon'ble Judges: S.S. Nijjar, J

Bench: Single Bench

Advocate: R.K. Chhibbar and Anand Chibbar, for the Appellant; R.S. Mittal and Sudhir Mittal, for the Respondent

Final Decision: Allowed

Judgement

S.S. Nijjar, J.
This Revision Petition has been directed against the order dated 22.11.2000 passed by the Court of H.S., Bhalla, Appellate

Authority, Chandigarh in R.A. No. 3 of 9.3.1991 whereby the orders of the learned Rent Controller dated 28.2.1990 and 22.7.1997 have been

set aside. After accepting the appeal, the parties have been directed to appear before the learned Rent Controller and the Eviction petition has

been directed to be decided afresh on merits, in accordance with law.

2. Inder Pal Dua (hereinafter referred as ""the landlord"") who is the owner of H. No. 3053, Sector 28TD, gave the premises on rent to M/s Yash

Paul Garg and Company Private Ltd. (hereinafter referred to as ""the tenant"") and executed a rent note/lease on 28.4.1978. The name of this

Company has subsequently been changed to M/s Shubh Timber Steels Pvt. Ltd. One Shubh Karah Bansal is the Managing Director of this

company. The tenant used the aforesaid premises as the residence of its Executive Director, Mr. R.K. Garg. The landlord filed a petition u/s 13 of

the Rent Restriction Act for the ejectment of the tenant from the demised premises. It is averred that the tenant took on rent the ground floor of the

house at the rate of Rs. 1,600/- per month w.e.f. 1.5.1978 and the same was enhanced to Rs. 1,800/- per month w.e.f. 1.5.1981 excluding

electricity and water charges. The landlord has been residing at different places as he was an employee of Cement Corporation of India. It is

further pleaded that he informed the tenant to vacate the demised premises as he intended to settle in Chandigarh after leaving his job. The landlord

does not own any other house exclusively in his name. The tenant through its Executive director Shri R.K.Garg accepted the request of the

landlord and undertook to vacate the premises by the end of November, 1989. It is further pleaded that the landlord needs the premises bona fide

the residence of himself and his family. In spite of promising to vacate the premises in November, 1989, the respondents had failed to vacate the

house. Hence, the Eviction Petition was filed on 4.1.1990. It may be noticed at this stage that the Eviction Petition has been filed against Yash Paul

Garg and Company Private Limited. R.K.Garg, the Executive Director was not impleaded as a party. Notice was issued to the tenant for

28.2.1990. On this date, counsel for the parties appeared before the learned Rent Controller. Two interim orders were passed. The first order is

to the effect that parties want to make statement. Let the same be recorded. Thereafter, in the second order, it is ordered as follows:-

""Present: Counsel for the parties.

In view of the statements made by the counsel for the parties and the compromise deed Ex.C1, the present petition stands dismissed as withdrawn.

The respondent is directed to vacate the premises in dispute on or before 31.3.1991, failing which the petitioner shall be at liberty to get the

possession through the process of this Court. Memo of costs be prepared and file be consigned to the record room. However, in the peculiar

circumstances of the case, the parties are left to bear their own costs.

Sd/- Rent Controller. Chandigarh.

Announced 28.2.90

3. Lateron an application was moved for review of the order dated 28.2.90. On 27.7.1997, the learned Rent Controller, Chandigarh passed the

fallowing order:-

""Present: Counsel for the parties.

Heard. I have carefully gone through the original file. On the basis of the statement made by the parties on 28.2.1990, the eviction order was to be

passed by the court but instead of passing the eviction order, the Court dismissed the petition in terms of the compromise Ex.C1. as it was clearly

mentioned by both the counsel for the parties that the eviction order may be passed and it thus seems that there is a clerical mistake and therefore,

after reviewing the order dated 28.2.1990, the eviction of the respondent in the respect of the premises as maintained in the petition is passed in

terms of the compromise Ex. C1 on the ground of personal necessity. File be consigned to the record room.

Sd/- Rent Controller, Chandigarh.

Announced 27.7.1997.

4. Aggrieved against the aforesaid order, dated 28.2.1990 the tenant filed an appeal before the Appellate Authority, Chandigarh. This appeal was,

however, dismissed as not maintainable on 1.11.1994. The appeal had been filed by Shubh Karan Bansal, Managing Director of M/s Shubh Timb

Steels Pvt. Ltd., on behalf of the aforesaid company. The appeal was dismissed as there was no proper authority in favour of Shubh Karan Bansal

to file the appeal. Aggrieved against the aforesaid order, the tenant filed CR No. 4348 of 1994. On 29.9.1999, the Revision Petition was allowed.

The matter was remanded back to the Appellate Authority to decide the matter on merits, if it is found that there was resolution in favour of the

Shubh Karan Bansal. When the appeal was heard before the Appellate Authority on remand of the matter, it was pointed out that there was a

resolution dated 19.1.1992 passed by the Board of the Company authorising the Managing Director to institute the appeal with regard to the

premises in question. Therefore, the action of the Managing Director stood ratified. The Appellate Authority accepted the plea of the tenant and

held that S.K. Bansal was duly authorised to file the appeal. After hearing the parties on merits, the Appellate Authority passed the order dated

22.11.2000 accepting the appeal and directing the parties to appear before the learned Rent Controller who was directed to proceed with the

petition in accordance with law. Hence, the present Revision Petition.

5. Mr. Chhibbar appearing on behalf of the revision-petitioner argued that the findings recorded by the Appellate Authority are against the record.

According to the learned Sr. Counsel, the tenant has miserably failed to prove that the consent decree dated 28.2.1990 is the result of fraud,

misrepresentation or collusion. According to the learned Sr. Counsel, the appellate authority has wrongly held that R.K. Garg was not a Director

on 28.2.1990, It is further argued that the appellate authority has wrongly presumed that form No. 32 cannot be forged. In any event, argues Mr.

Chhibbar, the Appellate Authority has wrongly relied on the averments made in the application for amendment on the Grounds of Appeal, since the

affidavit in support thereof is no affidavit in the eyes of law. For the same reason, documents Annexures P-1 to P-4 attached with the application

under Order 41 Rule 27 would have no evidentiary value, as they could not have been received in evidence. Learned Sr. Counsel has made

detailed reference to the evidence and record to substantiate the aforesaid submissions.

6. On the other hand, Mr. R.S. Mittal has submitted that there was no need to produce any evidence of fraud with regard to the consent decree

dated 28.2.1990 as the case put forward by the tenant was only to the effect that R,K. Garg was not a Director on 28.2.1990. Learned Sr.

Counsel further submitted that even if R.K. Garg was a Director on the relevant date, still the compromise decree dated 28.2.1990 has been

rightly set aside by the appellate authority as thee was no resolution of the Company authorising R.K. Garg to enter into any such compromise with

the landlord. Mr. Chhibbar had pointed out to a number of admissions made in the pleadings. According to Mr. Mittal, the aforesaid admissions

have been sufficiently explained and have been rightly ignored by the appellate authority.

7. I have considered the submissions made by the learned Sr. Counsel for the parties.

8. There seems to be much substance in the submissions made by Mr. Chhibbar. The judgment of the Appellant Authority seems to proceed on

the basis that Form No. 32 which was placed on record as additional evidence, had been duly certified to be a true copy of the Registrar of

Companies. However, a perusal of form No. 32 which is on the record, would clearly show that it was been attested to be a true copy by the

Company itself. If this form had been genuinely available with the Company at the time of filing of the appeal, the same would have been attached

with the memorandum of appeal. It took eight years for the company to make the necessary application for placing An-nexures P-1 to P-4 on the

record. The appellate authority again erred in law by taking judicial notice of the fact that a document like Form No. 32 cannot be forged. The

Appellate Authority not only misread the evidence but also ignored some victual pieces of evidence in arriving at the conclusion that Mr. R.K. Garg

ceased to be a Director w.e.f. 26.8.1983. Surprisingly, the tenant has placed on record, the certificate of registration of the firm issued sometime

after July, 1990. In this Certificate, it is mentioned that ""PRIVATE"" word deleted u/s 43-A of the Companies Act, 1956 vide order on

24.7.1990"". This document is duly attested by the Registrar of Companies. Yet Form No. 32 has not been attested by the Registrar of

Companies. This omission is sought to be explained by the tenant on the ground that the relevant record had been burnt. A perusal of the finding

recorded by the appellate authority in paragraph 10 of the judgment would show that the same are not supported by any evidence. The findings

are wholly conjectural. The appellate authority even holds that ""It is further admitted case of the parties that Mr. R.K. Garg was one of the

Directors of this Company and a compromise Ex.C1 entered into between the landlord and Shri R.K. Garg was produced before the Rent

Controller in & petition filed u/s 13 of the East Punjab Urban Rent Restriction Act for the ejectment of the appellant company from the house

bearing No. 3053, Sector 28-D, Chandigarh. Inspite of giving the aforesaid finding, a latter in the judgment, the Appellate Authority holds that Mr.

R.K. Garg ceased to be director of the company w.e.f. 26.8.1993. In my opinion, there is no evidence on the record to show that Mr. Garg was

not a Director on the relevant date. The only evidence produced by the tenant in Form No.32 which is said to have been sent to the Registrar of

Companies through that Mr. Garg ceased to be a Director of the Company w.e.f. 26.8.1983. I am of the considered opinion that no evidentiary

value could have been attached to form No. 32 due to its dubious origin. I find force in the submission of Mr. Chhibar that evidence has been

procured for the purpose of the appeal only. The letter dated 30.8.1983/9.9.1983, relied upon by the tenant although said to be a registered letter,

does not even bear a despatch number. The tenant has not produced the original resignation letter of Mr. Garg which would surely have been

available in the record of the Company. In such circumstances, it was wholly inappropriate for the Appellate Authority to hold that Mr. Garg was

not a Director on 28.2.1990. The other fact which seems to have influenced the Appellate Authority is that same lawyers seems to have signed for

the petitioner as well as the respondent before the Rent Controller. This finding of the Appellate Authority has been given without taking even a

cursory look at the actual deed of compromise. A bare look at the deed for compromise would have shown that the line ""through counsel R.K.

Mittal, Mukesh Mittal..."" has been crossed out in ink and has been signed by the counsel for the respondent. The findings recorded by the

Appellate Authority are clearly only conjectural and cannot be sustained. This conclusion of mine can even be fortified from the pleadings of the

tenant/appellant. In the original grounds of appeal it was not stated that Mr. Garg was not a Director of the Company on the relevant date i.e.,

28.2.1990. This plea has been introduced by amendment of the memorandum of Appeal. The appli cation for amendment has been filed on

18.10.2000. In fact in paragraph 5 of the memorandum of appeal, it is categorically stated that ""the then Executive Director of the Company has

obtained an order of Rent Controller dated 28.2.1990 to get possession of the demised premises behind the back of the Company and without

proper and lawful representation by the appellant Company"". Thereafter, in paragraph 7 it is stated that ""the whole show of collusion and

conspiracy between the respondents No. 1 and 2 is on account of some negotiations for the purchase of the demised premises"". In paragraph 8, it

is stated that ""respondent No. 2 (Mr. Garg) has been won over by the respondent-landlord"". Thereafter, it is stated that ""the appellant-Company

has been authorised Mr. R.K. Garg to make a statement as to fulfil the scheme of the respondent-landlord"". This paragraph further sets out that

there is no resolution or any meeting of the Directors of the Company for passing a note of authority to respondent No. 2 (Mr. Garg) to make such

a drastic statement. Thereafter, in the application u/s 5 of the Limitation Act, 1901 again in paragraph 2, it is stated that ""the appeal is within

limitation because the date of knowledge is 26.2.1991"". Thereafter, it is stated that ""the company has managed to know the exact contents of the

conspiracy of the landlord with one of its officers for delivery of possession of the demised premises in colour of the exercise of the order dated

28.2.1990"". In paragraph 3, again it is. mentioned that ""the order has been managed by conspiracy of the landlord with one of its officers"". All

these admissions are now sought to be explained away by Mr. Mittal by way of amendment of the memorandum of appeal. In support of the

submission, the learned Sr. Counsel has relied on the judgment of this Court in the case of Jagit Singh v. Mohinder Pal (1994-2) 107 P.L.R. 619

and the judgment of the Supreme Court in the case of Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak Gosavi and Ors. AIR 1980 SC

100. In the case of Jagit Singh (supra) it has been held as follows:-

There is no provision of law which debars a party from either withdrawing or explaining away a statement of fact. Even if a particular fact has

been admitted in the pleadings, the party has a right to amend the pleadings and to prove its case. It cannot be said that an admission of fact made

by a party which may be on account of an inadvertent mistake or otherwise, can never be withdrawn. If such a course is adopted, it may result in

substantial miscarriage of justice. The normal rule is that a prayer for amendment should be allowed and the other party should be compensated by

payment of costs"".

9. In the case of Jarayan Bhagwantrao Gosavi Balajiwale (supra), again it has been held as follows:-

An admission is the best evidence that an opposing party can rely upon, and though not conclusive, is decisive of the matter, unless successfully

withdrawn or proved erroneous"".

10. Aforesaid statement of law is of no assistance to the tenant in the facts of the present case. I am of the considered opinion that these were not

mere innocuous or inadvertent admissions. The tenant knew perfectly well that Mr. Garg continued to be a Director till the compromise was

arrived at before the Rent Controller. This view of mine will find support from the conduct of the parties also. It was very emphatically reiterated

by Mr. R.S. Mittal that Mr. Garg was no longer as Director w.e.f, 26.8.1993. There is no merit in the submission made by Mr. R.S. Mittal. If this

plea was genuine, the document relied upon by a additional evidence would have been attached with the appeal There are documents which are on

the record of the Appellate Authority which clearly shows that Mr. R.K. Garg has been sending rent to the landlord by way of Bank drafts. In

letter dated 26.5.1988, Mr.R.K. Garg has stated that he has been residing in the demised premises since 1978 as a tenant. He further states that

as per discussions we had, I promise to vacate the house within one and a half years from today i.e. by the end of November, 1989"". Thereafter,

rent has been regularly paid by Bank Draft made by Mr. P.K. Garg upto April, 1991. It is inconceivable that Mr. Garg would have continued to

pay the rent, had his family not been residing in the demised premises. All the actions of Mr. Garg are consistent with his status as a Director of the

Company.

11. I am of the opinion that the application for the amendment of the grounds of appeal and for permission to lead additional evidence were filed to

fill in the gaps in the pleaded case of the respondents.

12. It may be noticed that the compromise decree was passed on 28.2.1990. The respondents were directed to vacate the premises in dispute on

or before 31.3.1991. The Original Appeal was filed on 5.3.1991 as it is evident from the record produced in this Court. Thereafter, application

was moved under Order 6 Rule 17 for amendment of the grounds of appeal on 18.10.2000. The application was accompanied by an affidavit

made by Swapan Bansal so of Shri S.K. Bansal. The verification in this affidavit is as follows:-

Verification:

Verified that the contents of my above affidavit from paras 1 to 8 are true and correct to my knowledge. No. part of it is false and nothing has

been concealed therein.

Sd/- Deponent

Chandigarh

Dated: 8.10.2000

13. The aforesaid application was allowed on 20.11.2000.

14. The application for additional evidence was filed 18.11.1999. In this application, permission was sought to place on record a certified copy of

Certificate of Incorporation consequent to change of name issued by the Registrar of Companies on July 12, 1985. the certified copy of the

certificate filed with the application as Annexure P-1. In paragraph 2 of the application, it is stated that it is also necessary to place on record

certified copy of from No. 32 submitted to the Registrar of Companies on 9.9.1983 regarding resignation of Shri R.K. Garg as Director of the

Company. A certified copy of the form was attached as Annexure P-2 alongwith the covering letter dated 30.8.1983/9.9.1983. Permission was

also sought to place on record resolution of the Company dated 19.11.1992 and 8.11.1994 passed by Shubh Timb Steels Limited a Annexures

P-3 (certified copy) and P-4 (certified copy). This application was accompanied by an affidavit made by S.K. Bansal. The verification of which

was as follows:-

Verification:

Verified that the contents of my above affidavit from paras 1 to 3 are true and correct to the best of my knowledge and information. No part of its

is false and nothing has been concealed therefrom.

Sd/- Deponent

Chandigarh

Dated 26.11.1999.

15. A perusal of the verification reproduced above would clearly show that the aforesaid affidavits could not have been relied upon. Mr. Chhibbar

rightly pointed out that the affidavit dated 18.10.2000 does not contain any verification of paragraph 8-A which was sought to be added to the

grounds of appeal. Further more, the verification does not give any details of the ""inadvertent omission mentioned in paragraph 5, on the basis of

which in the grounds of appeal it was mentioned that R.K. Garg was not a Director on the date, he suffered order of ejectment. Therefore, it

cannot now be said that the admission contained in the original grounds of appeal have been explained in the application for amendment. Even

otherwise, I am of the view that this affidavit ought to have been ignored as it has not been made by the appellant. The original appeal was filed by

M/s Yash Paul Garg and Company Private Ltd., through Subh Karan Bansal, Managing Director. The affidavit which accompanies the application

for amendment, has been made by one Swapan Bansal son of S.K. Bansal. Therefore, the appellate authority wrongly relied on the aforesaid

affidavit. That being so, the admissions made in the original grounds of appeal could not have been held to have been explained. Similarly the

affidavit which accompanies the application for leading additional evidence could not have been relied upon. The affidavit, is not verified in

accordance with the provisions of Order 19 Rule 3(1) of the Civil Procedure Code. The contents and the verification of the affidavit have to be in

consonance with the aforesaid provision of CPC. In this view of mine, I am fortified by a judgment of this Court in the case of Bhupinder Singh v.

State of Haryana and Ors. AIR 1968 P&H 407. In paragraphs 16 and 17 of the aforesaid judgment, it is observed as foijows:-

(16) Order 19, Rule 3(1) of the CPC requires:

Affidavits shall be confined to such facts as the deponent is able on his own knowledge to prove except on interlocutory applications, on which

statements on his belief may be admitted; provided that the grounds thereof are stated"".

In no affidavit, has the petitioner said which part was based on information and which on behalf. Nowhere he has divulged the source of his

information of the grounds of his belief. Where the matter deposed to is not based on personal knowledge but on information the sources of

information ought to be clearly disclosed. The petitioner''s several affidavits infringe the provisions of Order 19, Rule 3, when they should have

been strictly observed. Such affidavits being violative of the requirements of the mandatory provisions of law, deserve to be ignored. The words

that the contents of the affidavit"" are true and correct to the best of my knowledge and belief carry no sanctity, and such a verification cannot be

accepted. It has been held over and over again that the affidavits must be either affirmed as true to knowledge or from information received

provided the source of information is disclosed, or as to what the grounds for such belief were stated. Such affidavits where the verification lacks

the essential requirements, are valueless.

(17) In Padmabati Dasi v. Rasik Lal Dhar ILR (1910) Cal. 259 Jenkins C.J. and Wood Roffe J. observed :-

We desire to impress on those who propose to rely on affidavits that, in future, the provisions of Order 19, Rule 3 must be strictly observed, and

every affidavit should clearly express how much is a statement of the deponent''s knowledge and how much is a statement of his belief, and the

ground of belief must be stated with sufficient particularly to enable the court to Judge whether it would be sure to act on the deponent''s belief.

This enunciation of the principle was endorsed by the Supreme Court in The State of Bombay Vs. Purushottam Jog Naik, . There is a catena of

decided cases supporting this proposition and among others, reference may be made to Durga Das Das Vs. Nalin Chandra Nandan and Others, ,

Bisakha Rani Ghose Vs. Satish Chandra Roy Singha and Others, and Dipendra Nath Sarkar Vs. State of Bihar and Others, .

16. Similar view has been expressed by a Division Bench of this Court in the case of Workmen of Oswal Weaving Factory Vs. State of Punjab, .

In paragraph 6 of the aforesaid judgment, it is observed as follows:-

(6) On behalf of the State a written statement dated nil duly verified by the Deputy Labour Commissioner, Punjab has been filed in this Court on

or about 7.12.1962. It is noticed with regret that the State has not complied with the requirements of Rule 6 of Chapter 4-F(b) of the Punjab High

Court Rules and orders. Vol.V which requires a written statement to a writ petition under Article 226 of the Constitution to be in the form of an

affidavit. A affidavits have to be drawn, verified and sworn properly and have to conform to the requirement of Rule 3(1) of Order 19 of the Code

of Civil Procedure. The return made to the rule in this case is in the form of a written statement prescribed by the CPC and purports to be verified

in the same manner though not even as required by Order 6 Rule 15 of the Code. This does not satisfy the requirements of law. Strictly speaking,

there is no proper return to the rule issued by the court in this case. But in the interest of justice the written statement is being looked into and has

been taken into consideration to avoid further delay. I would, however, like to make it clear that this may not be taken as a precedent for such

lapse being condoned in future.

17. The Supreme Court in the case of Sukhwinder Pal Bipan Kumar and Others Vs. State of Punjab and Others, observed as follows:-

...In the case of M/s Sukhwinder Pal Bipan Kumar in support of the petition, there is an affidavit of one Raj Kumar, claiming to be a partner, who

asserts that the allegations in paras 9 and 12 are correct to the best of my knowledge. To say the least, this is no affidavit at all. Under Order XIX,

Rule 3, of the Code of Civil Procedure, 1908, it was incumbent upon the deponent to disclose the nature and source of his knowledge with

sufficient particularly, the allegations in the petition are, therefore, not supported by an affidavit as required by law.

18. Inspite of these infirmities, the Appellate Authority passed the impugned order settling aside the orders of learned Rent Controller dated

28.2.1990 and 22.7.1997.

19. I am of the view that, the appellate authority has wrongly held that there is nothing on the record which could spell out that R.K. Garg, Director

of the appellant-company, was authorised to enter into compromise by the Company at any stage. Even if one presumes that there was no

resolution in favour of R.K. Garg, it would not be sufficient to nullify the compromise decree. In my opinion, Mr. Chhibbar is correct in his

submission that in the facts and circumstances of this case, the actions of Mr, Garg would be protected u/s 290 of the Companies Act, 1956. In

Section 290, it is provided as under:-

Section 290. Validity of acts of directors:-

Acts done by a person as a director shall be valid, notwithstanding that it may afterwards be discovered that his appointment was invalid by reason

of any defect of disqualification or had terminated by virtue of any provision contained in this Act or in the articles:

Provided that nothing in this section shall be deemed to give validity to acts done by a director after his appointment has been shown to the

Company to be invalid or to have terminated.

20. The object of this section is to protect persons dealing with the Company. A perusal of the aforesaid Section clearly shows that the acts of a

person acting as a director, will be treated as valid, even though, subsequently, it may be discovered that his appointment was invalid or that he had

ceased to be a director under the provisions of the Act or the Articles of Association. In such circumstances, the landlord was justified in

presuming that R.K. Garg was competent/authorised, to enter into a compromise. In support of this proposition, Mr. Chhibbar has rightly relied on

a judgment given in the case of Royal British Bank v. Turqund (1843) All.E.R. 435. In that case, considering the aforesaid proposition, Jervis, C.J.

and five other judges of the Court of Exchequer Chamber of England, held that the deed of settlement of company registered under the Joint Stock

Companies Act 1844, allowed the directors to borrow, by a bond under the seal of the company and signed by two directors, the company

acknowledged themselves to be bound to the plaintiffs for 2000 pounds. In an action on the bond, the company pleaded that there had been no

resolution authorising the making of the bond"". It has been further held that ""persons dealing with the company were bound to make themselves

acquainted with the statute and the deed of settlement of the company, but they were not bound to do more; a person, on reading the deed of

settlement, would find, not a prohibition against borrowing, but a permission to borrow on certain conditions, and, learning that the authority might

to be made complete by a resolution, he would have a right to infer the fact of a resolution authorising that which on the face of the document

appeared to be legitimately done; and therefore, the company was liable whether or not a resolution had been passed.

21. Interpreting Section 290, this Court in the case of Cl. Kuldip Singh Dhillon and Ors. v. Paragaon Utility Financiers P. Ltd and Ors., 1988

Companies Case Page 19, has held that ""benefit of this Section would normally be taken by third party and not by the Director or their close

relations"". In the case of Raja Bahadur Shivla Motilal v. The Tricumda Mills Company Limited, 1911 Bombay Law Reporter (Vol.XIV); page 45,

it has been held that ""in law, neither the want of a resolution nor the defect in the board of directors of a Company can affect adversely the rights of

thirds parties, who have no knowledge of the existence of such infirmities, when dealing with the Company."" I am of the considered opinion that the

aforesaid judgments are squarely in favour of the submissions made by Mr. Chhibbar.

22. This proposition of law has in fact been noticed by the appellate authority in paragraph 7 or the judgment therein while discussing the authority

of Mr. Bansa! to file the appeal, it has been held that the case of the Company is not to be thrown out on a mere technicality and on procedural

defects which do not go to the root of the matter and injustice is not to be done to any party. The Appellate Authority goes on to hold that ""defect

certainly to be curable and the company can ratify the action of its officers in signing pleadings etc..."" The Appellate Authority further holds that ""the

Article of Association of the Company further spells out that the powers have been given to the Managing Director to institute an action pr legal

proceedings on behalf of the Company and moreover, no resolution was required to be passed when specific powers have been given in the

Article of Association of the Company to the Managing Director..."""But this very proposition of law is not adhered to whilst holding that Mr. Garg

had no authority letter was placed on the record by Mr. Garg before the learned Rent Controller showing that he was authorised by the Company

to engage a counsel on his behalf or to sign the compromise deed on behalf of the Company, This very question was answered in the affirmative, in

similar circumstances, while considering the authority of Mr. Bansal to file the appeal, it seems to me that Mr. Garg had full authority to enter into

the compromise. The fact that he was residing in the premises at the time when the compromise decree was passed is not even denied by the

tenant. Had he ceased to be a Director on 24.8.1993, then he could not have been in occupation of the premises on behalf of the tenant.

23. There is no dispute with the proposition of law advanced by the learned Sr. Counsel for the respondents with regard to the constraints under

which this Court would exercise revisional jurisdiction. It is settled law that this Court will not interfere with findings of fact recorded by the Courts

below, provided the findings have been arrived at after due appreciation of evidence. This Court, whilst exercising revisional jurisdiction, will not

re-appreciate evidence to record a finding contrary to the findings recorded by the courts below. But if the findings recorded by the courts below

are based on mis-appreciation of evidence or erroneous application of law, this Court will have the jurisdiction to correct the erroneous findings of

fact also. In this view of mine, I am fortified by a judgment of the Supreme Court in the case of Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta, .

In paragraph 11 of the aforesaid judgment, it is observed as follows:-

.... the revisional jurisdiction exercisable by the High Court u/s 25-B(8) is not so limited as is u/s 115 CPC nor so wide as that of an appellate

court. The High Court cannot enter into appreciation or re-appreciation of evidence merely because it is inclined to take a different view of the

facts as it were a court of facts. However, the High Court is obliged to test the order of the Rent Controller on the touchstone or ""whether it is

according to law"". For that limited purpose it may enter into reappraisal of evidence, that is, for the purpose of ascertaining whether the conclusion

arrived at by the Rent Controller is wholly reasonable or is one that no reasonable person acting with objectivity could have reached on the

material available Ignoring the weight of evidence, proceeding on a wrong premise of law or deriving such conclusion from the established facts as

betray a lack of reason and or objectivity would rendered the finding of the Controller ""not according to law"", calling for an interference under the

proviso to sub-section (8) of Section 25-B of the Act. A judgment leading to a miscarriage of justice is not a judgment according to law. (See:

Sarla Ahuja v. United India insurance Co. Ltd, and Ram Narain Arora v. Asha Ram).

24. In my opinion, the appellate Authority has wrongly held that R.K. Garg was not competent to enter into the compromise dated 28.2.1990.

Throughout the pleadings, the tenant has stated that the compromise deed was result of collusion with the landlords. It is also pleaded that

R.K.Garg has been won over by the landlord. In such circumstances, the appellate authority ought to have insisted on very clear proof of collusion.

The allegations made are such, which if proved, would amount to commission of criminal offences. It is settled proposition of law that allegations of

fraud, conspiracy and the like have to be established by the party alleging fraud, conspiracy or collusion beyond reasonable doubt. I am of the

considered opinion that their was no evidence before the appellate authority to hold that their was any collusion between the landlord and R.K.

Garg. The motive of filing the appeal is apparent from ground No. 7 in which a vague allusion is made to an agreement for sale entered into

between the landlord and some person. The appellant had not given any details of the so called agreement for sale. At the time of argument also,

Mr. Mittal could not give any details, but it became apparent that the tenant was anxious to retain the possession of the house so that the same

could be purchased at a price favorable to the tenant. Therefore, it becomes apparent that rather than the landlord, it was alleged tenant that had

not come to court with clean hands. Initially, R.K.Garg had given an undertaking to the landlord to vacate the premises by the end of November,

1989. After 13 long years, the possession still continues with the respondents. On the one hand, we have the agony of an old retired person

seeking the comfort of a roof over his head in the evening of his life. On the other hand, we have a group of Company Directors who wish to keep

the possession of the house so that it can ultimately be purchased at a price (to put in mildly) favourable to them. I am of the considered opinion

that it would be a travesty pf justice, if the Court did not come to the rescue of the appellant.

25. In view of the above, the Revision Petition is allowed with costs. The order dated 9.3.191 passed by the Appellate Authority in R.A.O.3 is

hereby set aside and the order of the Rent Controller dated 28.2.1990 and 22.7.1997 are restored. The respondents are directed to hand over the

vacant and peaceful possession of H.No. 3053, Sector 28-D, Chandigarh to the appellant within one month from today. Costs Rs. 5000/-.

26. Office is directed to return the records of the case forthwith.