

(2009) 04 P&H CK 0156

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Gurdial Singh and Another

APPELLANT

Vs

S. Avtar Singh and Others

RESPONDENT

Date of Decision: April 27, 2009**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 115

Citation: AIR 2009 P&H 164**Hon'ble Judges:** K. Kannan, J**Bench:** Single Bench**Final Decision:** Allowed

Judgement

@JUDGMENTTAG-ORDER

K. Kannan, J.

The revision is against the order dismissing the application for appointment of a Commissioner filed at the instance of the landlord. The landlord is the revision petitioner complaining that one of the issues for adjudication is the aged condition of the building which the landlord has stated to be unfit and unsafe for human habitation. Having said so, the landlord gave his own evidence, and during the course of cross-examination of RW3 the application had been filed. The Court found that there was no justification for the landlord not to have approached this Court earlier and dismissed the petition.

2. Learned Counsel for the petitioner submits that even RW3 had admitted that he had no objection to the appointment of a Commissioner and after all, the landlord could not be expected to be interested in delaying his own proceedings. It was the contention on behalf of the learned Counsel for the petitioner that no serious prejudice would be caused to the tenant by ascertainment of aged condition of the building. The counsel for the respondent joins issues by reference to the judgment of this Court in *Pritam Singh and Anr. v. Sunder Lal and Ors.* 1990 (2) PLR 191, where

the Division Bench held that decision refusing to appoint a Local Commissioner does not decide any issue nor adjudicate the rights of the parties for the purpose of suit and hence such an order is not revisable u/s 115 of the Code of Civil Procedure. This judgment in my respectful view, has no bearing to a revision filed u/s 15 of the Punjab Rent Restriction Act for the powers of the High Court in revision u/s 15 are wider than the powers of the Civil Court exercising powers u/s 115 of the Code of Civil Procedure. The aged condition of the building and the ascertainment of habitability are definitely matters of evidence where the report of the Local Commissioner will play significant role in obtaining scientific tones to render a just decision. If there had been, a delay by the landlord in moving the application, there should have been a ground to visit the party guilty of laches with costs payable to the opposite party and not deny the evidence that could be collected by such a report.

3. Learned Counsel for the respondent has another objection still that the power of the Court shall not be abdicated to a Commissioner by an appointment to find what is essentially a judicial exercise. The Commissioner shall be appointed in this case only to draw details in relation to the alleged aged condition of the building that could be verified by an ocular exercise and what could be ascertained by sensory observation. He shall make no adjudication of his own. It will be ultimately for the Court to appraise the report based on objections if any, from any party that may feel prejudiced by any of the observations that may be made by the Commissioner in his report.

4. Under the circumstances, the order of the Rent Controller is set aside and the Civil revision petition is allowed on condition that the revision petitioner pays Rs. 2500/- as costs to respondent Nos. 2 and 3 which shall be payable on or before 15-5-2009. If the costs are not paid the order of the Court below shall stand confirmed.