(1986) 08 P&H CK 0011

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 1407 of 1979

Ram Kishan		APPELLANT
	Vs	
Santra Devi and Others		RESPONDENT

Date of Decision: Aug. 28, 1986

Acts Referred:

- East Punjab Urban Rent Restriction Act, 1949 - Section 16
- Evidence Act, 1872 - Section 1, 3
- Haryana Urban (Control of Rent and Eviction) Act, 1973 - Section 16, 23
- Haryana Urban (Control of Rent and Eviction) Rules, 1976 - Rule 7

Citation: (1987) 2 ILR (P&H) 55 : (1987) 2 RCR(Rent) 51

Hon'ble Judges: S.P. Goyal, J; Pritpal Singh, J

Bench: Division Bench

Advocate: Ashok Bhan, Rakesh Garg and A.K. Mittal, for the Appellant; M.L. Sarin, for the Respondent

Final Decision: Dismissed

Judgement

Pritpal Singh, J.
Whether the provisions of the Indian Evidence Act are applicable to the proceedings before the authorities under the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as the Act), is the important question to be answered in this case.

2. The Rent Controller, Narnaul, passed an eviction order against the tenant Ram Kishan from the tenancy premises on the grounds of non-payment of rent and subletting. The tenant''s appeal was dismissed by the Appellate Authority, Namaul. Against the order of the Appellate Authority the tenant filed a revision petition in this Court. One of the points urged by the Respondent-landlady Smt. Santra Devi at the final hearing was that the provisions of the Indian Evidence Act do not govern the proceedings before the authorities under the Act. In support of this contention reliance was placed on two Single Bench decisions of this Court in Dwarka Dass v. Smt. Ramlubhai 1969 P.L.R. 68, and

Ram Parkash and Anr. v. Labhu Ram 1981 P.L.R. 59, wherein it had been observed that the Evidence Act does not apply to the proceedings under the Rent Restriction Act. The Single Bench doubted the correctness of this observation in the said two judgments and opined that this view requires reconsideration. The case was, therefore, referred to a larger Bench for consideration.

3. In order to arrive at the right answer to the above question, it is necessary to notice the relevant provisions of the Indian Evidence Act. Section 1 of this Act reads as follows:

1. Short title, extent and commencement.--This Act may be called the Indian Evidence Act, 1872.

It extends to the whole of India except the State of Jammu and Kashmir and applies to all judicial proceedings in or before any Court, including Courts-martial, other than Courts-martial convened under the Army Act (44 and 45 Vict., c. 58) the Naval Discipline Act (29 and 30 Vict, c. 109) or the Indian Navy (Discipline) Act, 1934 (XXXIV of 1934) or the Air Force Act (17 Geo. 5, c. 51) but not to affidavits presented to any Court or Officers, nor to proceedings before an arbitrator;

And it shall come into force on the first day of September, 1872.

The definition of the term "Court" envisaged in Section 1 is given in Section 3 in the following terms:

''Court'' includes all Judges and Magistrates, and all persons, except arbitrators, legally authorised to take evidence.

A combined reading of Section 1 and the definition of the term "Court" makes it amply clear that the provisions of the Indian Evidence Act are applicable to all judicial proceedings before the authorities which are legally authorised to take evidence, barring arbitrators and the Courts-martial convened under the Acts mentioned in Section 1.

4. The Learned Counsel for the Respondent-landlady contended that the authorities under the Act are not legally authorised to take evidence and so they are not covered by the definition of the term "Court" as given in the Indian Evidence Act. There is no merit in this contention which is evidently misconceived. In this connection, Section 16 of the Act requires attention, which is as follows:

16. Power to summon and enforce attendance of witnesses.--An authority exercising powers under this Act shall have the same powers of summoning and enforcing the attendance of witnesses and compelling the production of evidence as are vested in a court under the Code of Civil Procedure, 1908.

It will also be useful to notice Rule 7 of the Haryana Urban (Control of Rent and Eviction) Rules, 1976, framed u/s 23 of the Act. This rule is reproduced below:

7. Procedure to be adopted by Controller (Section 23):

(1) When an application under the Act is presented to the Controller, he shall fix the date, time and place at which the enquiry in respect of the application will be held and send a notice along with the copy of the application to each Respondent in Form "A" appended to these rules.

(2) The Controller shall give to the parties a reasonable opportunity to state their case. He shall also record the evidence of the parties and witnesses examined on their side and in doing so and in, fixing dates for the hearing of parties and their witnesses, in adjourning proceedings and dismissing application for default or for other sufficient reasons the Controller shall be guided by the principles of the procedure as laid down in the Code of Civil Procedure.

These provisions of the Act as well as the rules make it amply clear that the Rent Controller is under obligation to record the evidence and examine witnesses produced by the parties.

5. Section 16 of the East Punjab Urban Rent Restriction Act 1949, is also to be the same effect and it reads as follows:

16. Power to summon and enforce attendance of witnesses.--

For the purposes of this Act, an Appellate Authority or a Controller appointed under the Act shall have the same powers of summoning and enforcing the attendance of witnesses and compelling the production of evidence as are vested in a Court under the Code of Civil Procedure. 1908.

There is no gainsaying that the Rent Controller and the Appellate Authority under the Rent Restriction Act, applicable to the States of Punjab and Haryana, act like civil Courts in several matters like the summoning and attendance of witnesses, enquiries and hearing of parties, etc. They are indeed obliged to decide cases in judicial manner and indubitably they are covered by the definition of the term "Court" as given in the Indian Evidence Act. It is no doubt true that the Rent Controller and the Appellate Authority being persona designate are entitled to devise their own procedure within the confines of the relevant Rent Restriction Act and they can chalk out their own procedure which in law can be considered to be reasonably conducive to promote justice and, in this respect, they are not bound to strictly follow the dictates of the Code of Civil Procedure, but they being authorities legally competent to take evidence are certainly governed by the provisions of the Indian Evidence Act.

6. It was next contended by the Learned Counsel that the proceedings which are taken under the Rent Restriction Acts are-essentially of the nature of summary proceedings and if the provisions of the Evidence Act are made applicable, the very purpose of the summary proceedings will be defeated. We are not impressed by this argument. For

certain classes of suits summary procedure is provided in Order XXXVII of the Code of Civil Procedure. Similarly, there is a provision of summary trials in Chapter XXI of the Code of Criminal Procedure. Yet, the cases which are to be tried by resorting to summary procedure are governed by the provisions of the Evidence Act. It is not possible to take the view that by the application of the provisions of the Evidence Act to the civil and criminal cases capable of being tried summarily failure of justice accrues or the purpose of summary proceedings is defeated. We therefore, find this argument entirely misconceived.

7. In the two judgments cited by the Learned Counsel for the Respondent-landlady, the question whether the provisions of the Evidence Act are applicable to the proceedings before the Rent Controllers and the Appellate authorities was not directly in issue and only passing references were made observing that the Evidence Act does not apply to the proceedings under the Rent Restriction Act. This question was not considered in depth and it can be fairly assumed that Section 1 of the Indian Evidence Act as well as the definition of the term "Court" in Section 3 of that Act were not pointedly brought to the notice of the learned Judges who expressed the view that the provisions of the Evidence Act do not apply to the proceedings under the Rent Restriction Act. No reasons were given in support of this view. In fact the matter was not discussed at all. We, therefore, with respect disagree with the view expressed in the aforesaid two judgments and over-rule the same so far as the view regarding the applicability of the Evidence Act to the proceedings under the Rent Restriction Acts is concerned.

8. For the foregoing reasons, we have no hesitation to answer the aforesaid question in the affirmative, holding that the provisions of the Evidence Act are indeed applicable to the proceedings before the authorities under the Act.

9. The revision petition be now placed before the learned Single Judge for decision on merits.