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- (ii) When a person is arrested by the police, the police will give intimation of the fact of such arrest to Legal Aid Cell of District concerned.
- (iii) Whenever any illegal detention is brought to the notice of Sessions Judge by any person, the Sessions Judge of the District shall make a surprise visit of police lock-up to find out whether any person is detained in the police lock-up without being produced before the concerned Magistrate in contravention of Section 57 of the Code of Criminal Procedure and the Constitutional Provisions as contained in Article 22.

(6) The Registry is directed to communicate the above directions to the Director General of Police, Punjab and Haryana, all the Session Judges in the State of Punjab, Haryana and Union Territory, Chandigarh and all the Sr. Superintendents of Police in both the States and U.T., Chandigarh, who in turn will communicate the same to the authorities subordinate to them.

(7) This petition is accordingly disposed of.

R.N.R.

Before S.S. Sudhalkar, J.

ANIL KUMAR AND ANOTHER,—*Petitioners*

versus

MAKHAN SINGH GREWAL,—*Respondent*

C.R. No. 1712 of 2000

The 2nd May, 2000

East Punjab Urban Rent Restriction Act, 1949—S. 15(2)—Code of Civil Procedure, 1908—0.41 RI. 3A(3)—Stay of proceedings during pendency of appeal—Delay in filing appeal—Application for condonation of delay filed alongwith stay application—Stay declined relying on provisions of 0.41 RI. 3-A(3) of the Code—Challenge thereto—Appellate Authority erred in doing so—There are specific provisions in Rent Act for the procedure of appeal/stay—C.P.C. not applicable.

Held that, there are two separate provisions regarding stay in the C.P.C. and under the Rent Act. Order 41 Rule 3-A(3) was inserted in the C.P.C. by amending Act 1976 w.e.f. 1st February, 1977. The Rent Act has made special provision regarding appeal and stay also. Had the provision regarding appeal and stay not been made in the Rent

Act, the question could have been different. Therefore, in this case, the specific provisions in the Rent Act have to be applied. When there are no specific provisions the provisions in the C.P.C. can be taken as guidelines.

(Para 13)

Further held, that the provisions of C.P.C. are not strictly applicable, but they can be taken as guidelines when there is no specific provision in the Rent Act. When this so, the appellate authority has certainly erred in dismissing the application for stay on technical ground relying on the provisions under 0.41 Rule 3-A(3) of the Code. The fact is that the application for condonation of delay is pending and the evidence is being led in the matter and it is, therefore, necessary to see that the application for condonation of delay does not become infructuous because of the technicalities, which in reality do not exist.

(Para 14)

Amit Rawal, Advocate, *for the petitioner.*

JUDGMENT

(1) Notice of motion. Notice regarding stay also. Mr. Y.K. Bhagirath, Advocate, who is present in court accepts notice and states that he wants to contest the revision petition and the stay application.

(2) By the consent of both the parties the matter is heard today.

(3) This revision is directed against the order of the learned appellate authority, Ludhiana, in rent appeal No. 1 dated 3rd January, 2000 passed on 27th April, 2000. The rent appeal was filed by the tenant with an application for condonation of delay. During the pendency of the hearing of the application for condonation of delay, application, copy of which is Annexure P-1, was given by the tenant for stay. The stay application was dismissed by the impugned order and hence the revision petition has been filed.

(4) The learned appellate authority has dismissed the application for stay relying on Order 41 Rule 3(A) (3) of the Code of Civil Procedure (hereinafter referred to as the 'Code'), which reads as under :

“(3) Where an application has been made under sub-rule (1), the Court shall not make an order for the stay of execution of the decree against which the appeal is proposed to be filed so long as the Court does not, after hearing under rule 11, decide to hear the appeal.”

(5) Learned counsel for the appellants has argued that under the East Punjab Urban Rent Restriction Act, 1949, (hereinafter referred to as the Rent Act) there is a special provision regarding appeal and stay also. Section 15 of the Act is as under :

“Vesting of appellate authority on officers by State Government :

- (1)(a) The State Government may, by a general or special order, by notification confer on such officers and authorities as they think fit, the powers of appellate authorities for the purpose of this Act, in such area or in such classes of cases as may be specified in the order.
- (b) Any person aggrieved by an order passed by the Controller may, within fifteen days from the date of such order or such longer period as the appellate authority may allow for reasons to be recorded in writing prefer an appeal in writing to the appellate authority having jurisdiction. In computing the period of fifteen days the time taken to obtain certified copy of the order appealed against shall be excluded.
- (2) On such appeal being preferred, the appellate authority may order stay of further proceedings in the matter pending decision on the appeal.
- (3) xxx xxx xxx
- (4) xxx xxx xxx
- (5) xxx xxx xxx”

(6) Learned counsel for the appellants has argued that when there is a special provision in the rent Act regarding granting of stay and when there is no bar as contained in Order 41 Rule 34(3), the learned appellate authority has erred in dismissing the application for stay on technical grounds. Learned counsel for the appellants has relied on the case of *Pala Ram v. Bal Raj Kapur* (1). It was a case where tenant's appeal was dismissed in default and the tenant had filed an application for restoration of the appeal alongwith the application for stay of dispossession. It has been held that the appellate authority has jurisdiction to grant stay order during the pendency of restoration of the stay application.

(7) He has also relied on the case of *Jagdish Parshad v. Mehar Chand* (2). It has been held therein that the Rent Controller and the Appellate Authority are not Courts, therefore, the power to review exercised by the Civil Court under the Code of Civil Procedure cannot be exercised by them. Relying on this authority, he has argued that the bar of granting stay in the C.P.C. will not be applicable to the rent cases.

(8) He has also cited the case of *Lalit Bahri v. United Commercial Bank and others* (3). It has been held therein that the Rent Controller as also the Appellate Authority are guided only by the procedure contained in the Code of Civil Procedure and the provision are not strictly applicable.

(9) Learned counsel for the respondent has vehemently opposed this revision petition. He has also argued that the petitioner has no cause for the delay and the cause shown is not sufficient. However, I will not go into this question because it has to be decided by the appellate authority, where the application for condonation of delay is pending and as per the say of the learned counsel for the petitioners, evidence is being recorded in the said case.

(10) Learned counsel for the respondent has cited the case of *Peera Singh v. Mehar Singh etc.* (4). It is a judgment under Order 41 Rule 3-A(3) of the Code. The appeal was barred by limitation and notice of the application for condonation of delay was issued, and it was not decided till that time as to whether appeal was to be heard on merits or not. The stay order was vacated.

(11) He has also relied on the case of *Kuljit Singh Sehgal v. M/s Gupta Agencies and another* (5). This case is regarding Section 15(3) of the Code and Order 41 Rule 27 of the Code. It has been held therein that in case of eviction proceedings under the Rent Act, when additional evidence is sought to be produced by the landlord at the appellate stage, the application for additional evidence has to be considered by the appellate authority in accordance with the principles under Order 41 Rule 27 of the Code and the principles of C.P.C. are applicable under the Rent Act.

(2) 1993 (1) PLR 66

(3) 1991 (2) PLR 71

(4) 1988 (2) PLR 445

(5) 1992 (1) RCR 331

(12) Relying on these two authorities, learned counsel for the respondent has argued that the provision of the Code of Civil Procedure being applicable, Order 41 Rule 3-A(3) of the Code is applicable and, therefore till application for condonation of delay is not allowed, the application for stay could not be considered and that the lower appellate court was correct in passing the impugned order.

(13) There is no dispute regarding the principles laid down in the authorities cited by the counsel for the respondent. Principles of C.P.C. may be applicable to the proceedings under the Rent Act though it is not specifically provided in the Rent Act. However, the question will be when there are two separate provisions in the Rent Act and the C.P.C., which provision will prevail? As mentioned earlier there are two separate provisions regarding stay in the C.P.C. and under the Rent Act. Order 41 Rule 3-A(3) was inserted in the C.P.C. by amending Act 1976 w.e.f. 1st February, 1977. The Rent Act as mentioned earlier has made special provision regarding appeal and stay also. Had the provision regarding appeal/stay not been made in the Rent Act, the question could have been different. Therefore, in this case the specific provisions in the Rent Act have to be applied. When there are no specific provisions the provisions in the C.P.C. can be taken as guidelines.

(14) As mentioned in *Lalit Bahri's case (supra)*, the provisions of C.P.C. are not strictly applicable, but they can be taken as guidelines when there is no specific provision in the Rent Act. When this so, the appellate authority has certainly erred in dismissing the application for stay on technical ground relying on the provisions under Order 41 Rule 3-A(3) of the Code. The fact is that the application for condonation of delay is pending and the evidence is being led in the matter and it is, therefore, necessary to see that the application for condonation of delay does not become infructuous because of the technicalities, which in reality, do not exist.

(15) In view of the above, the order of the appellate authority deserves to be set aside. The revision is, therefore, allowed, order dated 27th April, 2000 is set aside and the execution of the ejection order is stayed till the decision of the application for condonation of delay and if, it is allowed then till the decision of the appeal.

(16) A copy of the order be given dasti to the counsel for the parties on payment.

J.S.T.