(6) After hearing the learned counsel for the patries, we do not find any merit in this appeal.

(7) According to the plaint itself, the cause of action had arisen to the plaintiff in the year 1978, when he came to know incorrectness of the date of birth entered in his service record. Now, it has been concurrently found by both the courts below that the plaintiff came to know about the incorrectness of his date of birth somewhere in the year 1950. That being a finding of fact could not be challenged in second appeal. Once it is so found that the cause of action had arisen in the year 1950, the suit filed in the year 1980 was clearly barred by time in view of the provisions of article 58. Otherwise also even if article 58 does not apply the provisions of article 113 of the Limitation Act, (hereinafter called the Act), which provides that in a suit for which no period of limitation is provided elsewhere in the schedule, the period of limitation is three years when the right to sue accrues. In view of the said provision, it could not be successfully argued that there was no limitation provided for such a declaratory suit. The said article 113 is a residuary article which applies to all suits for which no period of limitation is provided elsewhere in the Schedule to the Act. In these circumstances, the suit was clearly barred by time. Though the view taken by both the Courts below in this behalf was wrong, yet the said finding is otherwise maintained on the above said reasoning. In view of this finding, the other question does not arise.

(8) Consequently, this appeal fails and is dismissed with costs.

P.C.G.

Before : *G. R. Majithia, J.*

SMT. SEWATI DEVI,—*Petitioner.*

versus

TULSI RAM,—*Respondent.*

Civil Revision No. 3136 of 1989.

8th December, 1989

Haryana Urban (Control of Rent and Eviction) Act, 1973—*Ss.* 7, 15(4)(6)—*Ejectment application on the ground of non-payment of rent—Dispute regarding rate of rent—Tenant tendering rent claimed by landlord—Application dismissed in default—Appeal against such order—Power of Appellate Authority to remand—Refund of excess rent—Case remanded back to Rent Controller.*

Held, that the Appellate Authority is in error in holding that it had power to set aside an order of Rent Contorller and remanding the case to him for retrial and re-decision. Section 15 of the Act does not confer any right on the Appellate Authority to remand the matter for fresh disposal. Sub-section (4) of Section 15 of the Act empowers the Appellate Authority to decide the appeal after making such further enquiry as it thinks fit either personally or through the Rent Controller. It is specifically provided that the Appellate Authority shall decide the appeal. The only power that is left with the Appellate Authority is that it may either make further enquiry personally or it may call upon the Rent Controller to make such further enquiry, but the decision can only be given by the Appellate Authority. This means that the appeal could remain pending with the Appellate Authority till the enquiry is completed and the report is sent by the Rent Controller to the Appellate Authority. The order of remand directing further enquiry and then decision by the Rent Controller on merits is not warranted by the statute. The order of the Appellate Authority cannot be sustained on the ground that appeal was not competent and it had no right to remand the case to the Rent Controller for making further enquiry and re-decision.

(Para 4)

Held, that under Section 7 of the Act, tenant is entitled to claim the excess rent paid by him to the landlord within six months from the date of payment. The summary procedure prescribed for recovery of excess rent paid under the provisions of the Act can only be availed of within six months from the date of payment. If the Rent Controller had decided the issue framed in the case and the decision had gone in favour of the tenant, the tenant would have been entitled to refund of the excess rent paid by him. The Rent Controller adopted a short cut method by dismissing the eviction application for non-prosecution. He did not appreciate that the plea of the tenant that the rate of rent was Rs. 40 and not Rs. 90 per month as alleged by the landlady was taken in the written statement and the written statement should have been treated as an application under section 7 of the Act and the same should have been disposed of in accordance with the procedure prescribed in the Act

(Para 6)

Petition under Section 15(6) *of the Haryana Urban (Control of Rent & Eviction) Act*, 1973 *for the revision of the order of the Court of Shri R. P. Bajaj Appellate Authority Rohtak dated* 5*th August*, 1989, *remanding the case back to the Court of Shri Gurdial Singh Kotla HCS Sub Judge Ist Class Jhajjar dated* 17*th December*, 1983 *and allowing the parties to lead their evidence on the issues already framed in the case and to decide the same in accordance with law and ordering that the parties are directed to appear before the Rent Controller on* 16*th August*, 1989.

CLAIM :— *Application for ejectment.*

CLAIM IN REVISION:—*For the reversal of the order of the lower Court.*

CIVIL MISC. NO. 6931-CII of 1989.

Application under Section 151 C.P.C. praying that further proceedings ending before the Rent Controller Jhajjar may be stayed during the pendency of the above-noted Revision petition in this Hon'ble Court.

H. L. Sarin, Sr. Advocate with Miss Jaishree Thakur, Advocate, *for the Petitioners.*

C. B. Goyal, Advocate with Mr. R. C. Chauhan & Madan Jaisal, Advocate, *for the Respondents.*

JUDGMENT

G. R. Majithia, J.—

(1) This revision petition is directed against the order of the Appellate Authority which, on appeal, set aside the order of the Rent Controller dated December 17, 1988 dismissing the eviction application in default and remanded the case to him to decide it on merits after recording evidence.

(2) The facts :—

The petitioner-landlady sought ejectment of her tenant on the ground of non-payment of rent for the period August 1, 1984 to September 30, 1987. She claimed arrears of rent at the rate of Rs. 90 per mensem. The tenant, after service, put in appearance and filed written statement pleading that the rate of rent was Rs. 40 per mensem and not Rs. 90 per mensem as alleged by the landlady. As a matter of abundant caution he tendered the arrears of rent at the rate of Rs. 90 per mensem on the first date of hearing. The petitioner accepted the arrears of rent and stated that she did not want to prosecute the eviction petition and the same be dismissed. However, the Rent Controller disallowed the request of the petitioner and framed the following issues :—

1. What is the rate of rent ? OPP

2. Relief.

The petitioner again made a statement that she did not want to pursue the eviction application. The tenant's request to adjudicate upon the rate of rent was not acceded to by the Rent Controller and the eviction application was dismissed in default.

(3) The tenant successfully challenged the order of the Rent Controller before the Appellate Authority, which accepted the appeal and remanded the case to the Rent Controller as indicated earlier.

(4) This Court in *Daya Chand Hardayal* v. *Bir Chand*, 1987 (1) R.C.R. 306 had held that each and every order of the Rent Controller under the Haryana Urban (Control of Rent and Eviction) Act, 1973 (for short, the Act) is not appealable and appeal lies against orders of the Rent Controller passed under Sections 4, 10, 12 and 13 of the East Punjab Urban Rent Restriction Act, 1949 and that Notification No. 1562-CR-47/9228, dated April 14, 1947 issued by the Punjab Government specifying classes of cases where appeal would lie is still applicable in Haryana and Notification No. S.O. 71/HA-11/73/S-15/78, dated May 8, 1978 issued by the Haryana Government is confined only to the forum for the appeal and in no way affects the classes of cases which alone had been earlier made appealable by notification of the Punjab Government dated April 14, 1947. In the light of this authoritative pronouncement by a Full Bench of this Court, it is difficult to hold that an appeal was competent against the order of the Rent Controller dismissing the eviction application for non-prosecution. The appellate Authority is in error in holding that it had power to set aside an order of Rent Controller and remanding the case to him for retrial and redecision. Section 15 of the Act does not confer any right on the Appellate Authority to remand the matter for fresh disposal. Sub-section (4) of Section 15 of the Act empowers the Appellate Authority to decide the appeal after making such further enquiry as it thinks fit either personally or through the Rent Controller. It is specifically provided that the Appellate Authority shall decide the appeal. The only power that is left with the Appellate Authority is that it may either make further enquiry personally or it may call upon the Rent Controller to make such further enquiry, but the decision can only be given by the Appellate Authority. This means that the appeal could remain pending with the Appellate Authority till the enquiry is completed and the report is sent by the Rent Controller to the Appellate Authority. The order of remand directing further enquiry and then decision by the Rent Controller on merits is not warranted by the statute. The order of the Appellate Authority cannot be

sustained on the ground that appeal was not competent and it had no right to remand the case to the Rent Controller for making further enquiry and redecision.

(5) A peculiar situation has arisen in the instant case. The petitioner sought eviction of the tenant on the ground of non-payment of arrears of rent. The tenant in order to escape his eviction from the demised premises tendered the arrears of rent at the rate claimed by the petitioner on the first date of hearing although he joined issue with her on the rate of rent. The petitioner being satisfied with the tender did not prosecute the eviction application and the same was ultimately dismissed by the Rent Controller for non-prosecution. The tenant's plea regarding the rate of rent was not adjudicated upon by the Rent Controller.

(6) Under Section 7 of the Act, tenant is entitled to claim the excess rent paid by him to the landlord within six months from the date of payment. The summary procedure prescribed for recovery of excess rent paid under the provisions of the Act can only be availed of within six months from the date of payment. Other remedies available to the tenant to claim refund of the excess rent remain unaffected. He is entitled to deduct the excess rent paid by him out of the future rent payable to the landlord within six months from the date of payment of excess rent. In the instant case, the tenant did avail of the remedy provided under Section 7 of the Act by taking a positive averment in the written statement that the rate of rent was Rs. 40 and not Rs. 90 per mensem as alleged by the landlady and that the rent was tendered at the rate claimed by the landlady only to avoid his eviction on the ground of non-payment of rent. Since the eviction application was filed by the landlady, she chose not to prosecute it and thereby prevent the remedy available to the tenant to get a decision on the rate of rent per month. If the Rent Controller had decided the issue framed in the case and the decision had gone in favour of the tenant, the tenant would have been entitled to refund of the excess rent paid by him. The Rent Controller adopted a short cut method by dismissing the eviction application for non-prosecution. He did not appreciate that the plea of the tenant that the rate of rent was Rs. 40 and not Rs. 90 per month as alleged by the landlady was taken in the written statement and the written statement should have been treated as an application under Section 7 of the Act and the same should have been disposed of in accordance with the procedure prescribed in the Act. The Rent

Controller did not understand the legal position in correct perspective. If he had invited his attention to the provisions of Section 7 of the Act, he would not have acted in the manner as adopted by him in the instant case.

(7) Resultantly, I allowed the revision petition, set aside the order of the Appellate Authority dated August 5, 1989 and that of the Rent Controller dated December 17, 1988 and remit the case to the Rent Controller for re-decision in accordance with law. He will treat the written statement filed by the tenant as an application under Section 7 of the Act and frame proper issue with regard to rate of rent and after so doing, permit the parties to lead evidence and thereafter render judgment. If he finds that the rate of rent is Rs. 40 and not Rs. 90 per month as pleaded by the tenant, he will order the landlady to restitute the excess rent with interest at the rate of 9 per cent per annum from the date of payment of excess rent by the tenant. The parties through their counsel are directed to appear before the Rent Controller on January 10, 1990. They shall bear their own costs

---

P.C.G.

Before : M. M. Punchhi and A. L. Bahri, JJ.

GRAM PANCHAYAT BIRDHANA, TEHSIL JHAJJAR, DISTRICT ROHTAK AND ANOTHER,—*Petitioners.*

versus

STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 11471 *of* 1989.

8th September, 1989.

Constitution of India, 1950—*Art.* 226—*Punjab Gram Panchayat Act (IV of* 1953)—S. 102—*Complainant has no right to file appeal against order revoking suspension of Sarpanch—Appellate authority should decline to entertain appeal—Complainant has no right to invoke writ jurisdiction.*

Held, that if the complainant is not to be given an opportunity of being heard as held by the Full Bench in the case of *Saktu Ram* v. *State of Haryana and others*, 1988(2) I.L.R. P&H 149 and the revocation order can be passed in his absence, it logically follows that an