

## APPELLATE CIVIL

Before Daya Krishan Mahajan, J.  
POKAR MAL,—Appellant

versus

PREM NATH AND OTHERS,—Respondents  
S.A.O. 50-D of 1963.

Delhi Rent Control Act (LIX of 1958)—S. 37—Order refusing to set aside *ex parte* ordered—Whether appealable.

Held, that under section 37 of the Delhi Rent Control Act, 1958, the procedure which the Rent Controller has to follow is the procedure prescribed for the Courts of Small Causes. Since a Judge of the Small Cause Court has the power to set aside an *ex parte* order, the Rent Controller, by virtue of section 37 of the Act, has also that power and that being so, the order refusing to set aside an *ex parte* order must be held to be an order under section 37 of the Act and is appealable.

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Second Appeal from the order of Shri Pritam Singh, Rent Controller Tribunal, Delhi, dated the 22nd January, 1963, affirming that of Shri Asa Singh Gill, Controller; Delhi, dated the 3rd October, 1962, dismissing the appeal.

D. D. SHARMA, ADVOCATE, for the Petitioner.

D. C. KAPOOR, ADVOCATE, for the Respondent.

## ORDER

MAHAJAN, J.—This is an appeal under section 9 of the Delhi Rent Act, 1958, and has arisen in the following circumstances:—

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An application was made by the landlord for the eviction of the tenant. Notice of the application was served on the tenant. He did not appear and an *ex parte* order of eviction was passed. After the passing of the *ex parte* order, the tenant applied for setting aside the same on the ground that no service had been effected on him of the

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application for eviction. This matter was enquired into and the Rent Controller came to the conclusion that the contention of the tenant, that he was not served in the application for eviction or that he was prevented from appearing in Court on sufficient cause, was incorrect. He, therefore, refused to set aside the *ex parte* order. Against the decision, an appeal was taken to the Rent Control Tribunal. The Tribunal refused to decide the appeal on the short ground that no appeal was competent as to order appealed against was not an order under the Act, and for this reliance was placed on a decision of this Court in *South Asia Industries Private Limited v. S. B. Sarup Singh* (1). It is against this decision that the present second appeal from order has been preferred.

The short question that requires determination is whether the order of the Rent Controller refusing to set aside *ex parte* order is an order under the Act, no appeal would be competent. That is axiomatic. In this connection, reference may be made to section 37 of the Act. Under this section, the procedure which the Rent Controller has to follow is the procedure prescribed for the Courts of Small Causes. I put it to the learned counsel for the respondent whether a Judge Small Cause Court had the power to set aside or refuse to set aside an *ex parte* order or decree. Learned counsel frankly conceded that he had the power. Therefore, if the Judge Small Cause Court

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(1) 1962 P.L.R. 85.

had the power, by virtue of section 37 of the Act, the Rent Controller had also that power and that being so the order refusing to set aside an *ex parte* order must be held to be an order under section 37. That being so, the order is clearly appealable and the Court below was in error in holding that it was not so appealable. The decision of this Court in *South Asia Industries Private, Limited's case* (1) has no applicability to the facts of the present case. In that case it was held as a fact that the order appealed against was not an order under the provisions of the Act. That being so, this appeal is allowed, the decision of the Rent Control Tribunal is set aside and the Tribunal is directed to hear and decide the appeal on merits.

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In the circumstances of the case, there will be no order as to costs.

The parties are directed to appear in the Tribunal on the 3rd September, 1963.

**B.R.T.**

CRIMINAL MISCELLANEOUS

*Before Mehar Singh and Jindra Lal, JJ.*

JOGINDER SINGH,—*Petitioner.*

*versus*

AMAR SINGH,—*Respondent.*

**Criminal Miscellaneous No. 910 of 1962.**

*Punjab Gram Panchayat Act, 1952 (IV of 1953)—S. 51—Powers of District Magistrate under—Extent of—Order of acquittal passed by Gram Panchayat—Whether can be converted into an order of conviction by District Magistrate,*

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