Settlement of landlord-tenant disputes under Rent Acts: need for judicial reforms

D. N. JAURAR*

Any legislation relating to landlord-tenant relationship is primarily a social welfare measure to protect the relatively weaker section of society; namely the tenants, against arbitrary eviction and rent-hikes by the landlords. The Rent Acts, good or bad, operative in different States of the Indian Union affect millions of people. The need of reviewing and suitably amending the process of judicial settlement of rental disputes becomes evident from the long drawn litigations which immensely damages the landlord-tenant relationship. 'Justice delayed is justice denied' is clearly reflected by the reported decisions of the Apex Court and the High Courts in rent cases whereby the Appellants and/or Respondents are mentioned as 'deceased through L.Rs' in the title of the case.

The present paper aims at a detailed consideration of the working of the dispute settlement machinery under the Rent Acts with a view to suggest ways and means which may help mitigate the hardships faced by the litigating landlords and tenants. The position under the Punjab Rent Act, as applicable to Chandigarh, has been taken as an illustrative case. What holds good under the Punjab Rent Act, as applicable to Chandigarh, will be equally relevant under the various Rent Acts in force in different parts of the country since all these Acts share the common legacy of the British era and fall under the powers vested in the High Courts and the Supreme Court under Articles 227 and 136 of the Constitution.

*B.A. (Hons.), LL.M., Ph.D., Reader, Department of Laws, Punjab University, Chandigarh.

1. The author conducted an extensive field survey to identify the factors responsible for the failure of the Rent Act in Chandigarh as a part of his doctoral research work. An analysis of the findings of the field survey and the available case law have been used in this paper at appropriate places.

2. For text of Articles 227 and 136, see infra, nn 30 and 60 respectively.
The Rent Act in Punjab, first enacted in 1941\textsuperscript{3}, was initially envisaged as a short-term war measure for five years and seems to be enacted in a hurry. No serious thinking had been done with regard to the set-up of Courts under the Act except for providing under section 4\textsuperscript{4} of the Act that the Civil Courts would have the power to decide the landlord-tenant disputes in their respective territorial limits.

When the Rent Act of 1941 was to be replaced by the Punjab Rent Restrictions Act, 1947\textsuperscript{5}, the question regarding the dispute settlement machinery was, however, examined at length. The latter Act made provisions for the designated Courts under the Act. The State Government was empowered to designate or appoint officers as Controllers and the Appellate Authority. All matters under the Act were to be decided by the Rent Controller\textsuperscript{6}. In some cases an appeal was made permissible before the Appellate Authority. It was categorically provided that the decision of the Rent Controller, or of the Appellate Authority (but only in those cases where appeal could lie) was to be final. No further appeal or revision could lie against the order of the Rent Controller or the Appellate Authority. Thus, the clear thrust under the Act of 1947 was to keep the disputes arising under the Rent Act away from the usual run of the civil courts. This is also corroborated by the fact that the Civil Procedure Code was to be applicable only for summoning of the witnesses and execution of the orders under the Act. The landlord-tenant disputes were to be decided expeditiously. What was attempted to be ensured, by the 1947 Act and subsequently adopted in the 1949\textsuperscript{7} Act that cases under the Act shall be disposed off quickly.

\begin{footnotesize}
\begin{enumerate}
\item The Punjab Rent Act, 1941, Punjab Act No. X of 1941.
\item Section 4 of the 1941 Act reads: "When under the provisions of this Act any question arises for determination of a Court or any order is to be made by a Court, such question shall be determined or such order made by the Court having cognizance of the suit or proceedings, if any, in relation to which such question arises or is to be made."
\item Act No. VI of 1947.
\item The term defined in section 2(b) of the Act is 'Controller'. Since another officer in the department of printing and stationery is also designated as Controller by the State Government, the Courts have referred to the 'Controller' under the Act as 'Rent Controller' and the same has been followed in this work.
\item The East Punjab Urban Rent Restriction Act, 1949; East Punjab Act No. III of 1949, henceforth referred to as the Act.
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Chandigarh: a glaring illustration of justice delayed in rent cases

What was envisaged as summary disposal of cases under the parent Act of 1947 (subsequently adopted in 1949 as a result of the partition of Punjab) has turned out to be a prolonged affair in the present context. A major reason for the delay in the final settlement of disputes under the Act is rooted in the proclivity of the High Court and the Supreme Court to entertain rent cases by virtue of their powers under Articles 227 and 136 of the Constitution. With the availability of these two new forums to the aggrieved parties, the final settlement of disputes, under the Act, has virtually become a never ending affair.

Our field survey in the city of Chandigarh has revealed that a small matter like non-payment of rent takes one and a half year to two years for its disposal by the Rent Controller. A final decision on serious matters like eviction of the tenant, on any one of the grounds available under section 13 of the Act, takes between 10 to 25 years. It has been noticed that in a large number of rent cases, by the time the matter is finally decided by the Supreme Court, either the landlord or the tenant, or even both have died. Thus, the relief sought by an aggrieved party under the Act loses its significance by the time it becomes available.

A concerted effort was made, during the course of the field survey, to identify the causes of such unusual delay in the final disposal of the cases under the Act and the role of the Courts therein. It was found that invariably one of the litigants (mostly the tenant) was interested in as much delay as possible in the final decision of the case. The existing legal system, with its long hierarchy of Courts and associated legal process, and the lawyers representing both the parties actively helps in achieving this goal.

Although it is nowhere categorically stated under the Act that the designated Courts will follow the procedure laid down in the Civil Procedure Code; but in practice, it is this procedure which has been applied to all the rent cases. Our survey clearly pointed to the fact that
the sub-judges, well-conversant with the provisions of Civil Procedure Code, as they are, continued to follow the same while acting as Rent Controllers. This results in undue delay.

Our survey further revealed that the judicial officers were overworked. A sub-judge routinely had a case list of 60 to 80 cases every day. These included all sorts of cases in which the sub-judge had the jurisdiction. Against the permissible limit of 500 case files with a sub-judge, some of the sub-judges had 1500 case files to decide. No wonder it is virtually impossible for a sub-judge to decide rent cases speedily.

In the Courts of Rent Controllers at Chandigarh, as many as 2275 cases out of the total 10906 civil cases were pending on 31st January, 1993. We also found that between 1980-1992, the average filing of rent cases in Chandigarh ranged between 1400 to 1700 per year. The annual disposal by the Rent Controllers ranged between 1000 to 1200 cases per year. Thus every year another 400 to 500 case files were pending to the incoming new rent cases ranging between 1400 to 1700. In view of the accumulating arrears of rent cases, it would be desirable to consider the appointment of judicial officers, sufficient in number, to exclusively act as Rent Controllers. In the course of our survey, the lawyers frankly admitted that they made full use of the system of adjournment, long dates, appeal against every interim order, pretext of falling sick, etc. to delay the decision of the case. But they invariably claimed that they did all this at the insistence of their clients. Frequent strikes by the lawyers also added to the delay.8

The role of the dispute settlement machinery, under a social welfare legislation like the Rent Act, is to mitigate the hardships faced by the tenants while being consistent with the legitimate interests of the landlords. Therefore, there is a need for the appointment of judicial officers who would act exclusively as Rent Controllers and Appellate

8. From October, 1992 to February, 1993 the lawyers’ strike in District Courts, Chandigarh continued for almost four months ultimately leading to a split in the Bar.
Authority. In our view, it could serve a two-fold purpose; firstly, the judicial officers devoting themselves exclusively to rent matters would soon gain experience and become specialists in that field without resorting to the processes of C.P.C.; and secondly, the disposal of rent cases would become quicker by reason of their expertise. It is indeed heartening to note that the Punjab and Haryana High Court has been pleased to appoint two sub-judges to work exclusively as Rent Controllers, and one Additional District Judge as Appellate Authority for all rent cases in Chandigarh with effect from July 16, 1993. As a result of this the number of pending rent cases which was 3352 on July 16, 1993 has come down to 1242 on April 30, 1995.

In an interview conducted on August 18, 1993, the Additional District Judge, who had been designated as the Appellate Authority, disclosed that he had decided 35 rent appeals against the required quota of 15 in a month. Furthermore it was told that of these 35 appeals, 11 had been decided by compromise. It was also emphasised by the Additional District Judge that those compromises were possible only because he was exclusively deciding rent appeals, and could afford time to talk to the parties in his chamber. By persuading them to go in for a compromise, the distinguished judge was finding his assignment far more satisfying. Some of the litigants, when contacted after the compromise by the present author, were found to be relieved and relaxed.

The Act in practice

The landlord-tenant disputes, under the Act, are to be settled by the officers appointed by the State Government for this purpose. The Act has provided a two tier set-up of Courts to decide cases. The first Court is the Court of the Controller before whom all the cases under the Act lie. After the decision of the case by the Controller, an appeal lies to the Appellate Authority. The decision of the Appellate Authority, except in

9. This information was shared by the inspecting judge for Chandigarh with the author in the course of an interview.
cases of a specified landlord, is generally final under the Act. However, a revision can be filed before the High Court against the order of the Appellate Authority. The Supreme Court of India can entertain a special leave petition under Article 136 of the Constitution against the decision of the High Court.

Under the parent Act of 1947, the decision of the Controller or that of the Appellate Authority was to be final but the Constitution enabled the aggrieved party to seek intervention of the High Court under Article 227 and that of the Supreme Court under Article 136.

The status of the Controller and the Appellate Authority under the Act is that these are designated Courts. Section 2(b)\(^{10}\) and 15(1) (a)\(^{11}\) relating to appointment of Controller and Appellate Authority respectively clearly lay down that any officer or authority can be designated to function as Controller or Appellate Authority. It lies exclusively in the domain of the State Government to name the Controller and Appellate Authority under the Act. Since the State Government had conferred these powers on judicial officers working as sub-judges and District Judges, a confusion prevailed as to whether the authorities under the Act were Civil Courts or not. As early as in 1949, a Full Bench of the East Punjab High Court in the case of *Pitman's Shorthand Academy v. B. Lila Ram and Sons*\(^{12}\) had held that the authorities under the Act were *persona-designata* and not Civil Courts. The Apex Court considered the question of *persona-designata* at length in *Central Talkies Ltd.*,}

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10. Section 2(b) of the Act reads:
   "In this Act, unless there is anything repugnant in the subject or context:
   (a) xxx xxx xxx
   (b) "Controller" means any person who is appointed by the (State) Government to perform the functions of a Controller under this Act."

11. Section 15 (1) (a) of the Act reads:
   "15. 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 purposes of this Act in such area or in such classes of cases as may be specified in the order."

Kanpur v. Dwarka Prasad\textsuperscript{13} and held that \textit{persona-designata} is a person who is pointed out or designated as an individual, as opposed to a person ascertained as a member or a class or as filling a particular character. In the words of Schwabe, C.J., \textit{persona-designata} are “persons selected to act in their private capacity and not in their capacity as judges”\textsuperscript{14}.

Since the functions of the Controller and the Appellate Authority, under the Act, have been entrusted to the sub-judges and District Judges; it was observed during the course of field survey that they keep on following the Civil Procedure Code for deciding matters under the Act. These officers are used to following the Civil Procedure Code in performing their normal judicial functions, and are, thus, well conversant with its provisions. They find it convenient to follow the Civil Procedure Code. When it was suggested to some judicial officers to devise a separate and more appropriate procedure to deal with rent matters, their response was that, in view of the total cases which come up before them, it was not feasible. The way out they have found, to their convenience and advantage, is that without quoting any order or Rule of the Civil Procedure Code, they keep on following it.

It is submitted that it was the intention of the legislature to avoid the technicalities of the Civil Procedure Code but the same is being followed through a circuitous route. The need of the time is that the summary procedure to be followed in rent matters should be specifically provided in the Act itself as it has been done under Section 18-A in relation to specified landlords. It should also be ensured that, at the implementation stage, it does not meet the fate of Section 18-A of the Act. For achieving this end, it will be essential to appoint judicial offices exclusively working as Controllers and Appellate Authority. The High Court, under its supervisory powers, must ensure that the summary procedure to be prescribed under the Act is strictly followed by the

\textsuperscript{13} 1961 3 S.C.R. 495
\textsuperscript{14} Parthasardhi Naidu v. Koteswara Rao (1923) I.L.R. 47 Mad. 369 at p.373 (F.B.).
Controllers and the Appellate Authority. The introduction of summary procedure, coupled with the appointment of judicial offices exclusively functioning as Controllers and Appellate Authority, will go a long way in clearing the back log of rent cases and also put a check on the further accumulation of arrears of cases. It is heartening to note that this suggestion regarding the appointment of judicial officers exclusively functioning as Controller and Appellate Authority has been partially implemented by the High Court in the case of Chandigarh by appointing two sub-judges as Rent Controller to exclusively look after rent matters, with effect from 16.7.1993.

Appeal

Section 15(1) (b) of the Act entitles the party, who is aggrieved by an order passed by the Controller, to prefer an appeal to the Appellate Authority. The right to appeal made available to the litigant is a creation of the statute. The purpose of providing the right to appeal is primarily to make available a forum which can reassess the correctness of the decision of the Rent Controller. It is for this reason that under section 15 of the Act, the Appellate Authority can review the entire facts, evidence and the law applied thereto. The appeal to the Appellate Authority is a cross check on questions of fact as well as questions of law.

The Governor of Punjab, in 1947, while ordering the appointment of District and Session Judges as Appellate Authorities under the Act had specified that these authorities will have appellate jurisdiction against the orders of the Rent Controllers under sections 4, 10, 12 and 13

15. Vide Notification No. 1562-Cr-47/9228 dated 14th April, 1947 which reads as “In exercise of the powers conferred by such clause (a) of clause (1) of section 15 of the Punjab Urban Rent Restrictions Act, 1947, the Governor of Punjab is pleased to confer on all District and Session Judges in the Punjab in respect of the urban areas in their respective existing jurisdiction, the powers of Appellate Authorities for the purpose of the said Act, with regard to orders made by the Rent Controllers, under Sections 4, 10, 12 and 13 of the said Act”. As quoted in H.L. Sarin, Rent Restrictions in Punjab, Haryana, Himachal Pradesh and Chandigarh, Vol. II, appendix C (1985), p.658.
of the Act. This notification of 1947 has not been superseded by any other notification in this regard. As a result the notification continues to be valid till date. As per the notification of 1947, the orders of the Rent Controller against which an appeal lies to the Appellate Authority are the ones under sections 4, 10, 12 and 13 only. Any other order of the Rent Controller like the one under sections 6 to 11 or under section 19 was not appealable. Before the amendment of 1956, through which revisional power of the High Court was introduced for the first time, the order of the Rent Controller, under sections 6 to 11 and 19 of the Act, used to be final. In other words, there was no further scrutiny of the correctness of the Rent Controller's order under sections 6 to 11 and 19 of the Act.

In Chandigarh, where the application of the Punjab Act has been extended, the position is different. The Chandigarh Administration vested the District Judge, Chandigarh with the powers of the Appellate Authority under the Punjab Act.17

This notification for Union Territory of Chandigarh dated 25th November, 1972, is materially different from the Punjab Notification of 1947. Unlike the Punjab Notification, there is no reference to the orders passed by the Rent Controller under some specific provision of the Act. Thus, in Chandigarh, any order passed by the Rent Controller is appealable before the Appellate Authority.

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17. Vide Notification No. 4612-LD-72/6843 dated 25.11.1972 which reads as under:

"In exercise of the powers conferred by clause (a) of sub-section (1) of section 15 of the East Punjab Urban Rent Restrictions Act, 1949 (East Punjab Act No. 3 of 1949), the Chief Commissioner, Chandigarh, is pleased to confer on the District Judge, Chandigarh, the powers of Appellate Authority for the purposes of the said Act in respect of the Urban area comprised in Chandigarh, as defined in Clause (d) of the Capital of Punjab (Development Regulations) Act, 1952".

The same power of Appellate Authority was conferred on Additional District and Session Judge, Chandigarh, vide Notification No. 2/1/90-3H)s)-76/13296 dated 28 June, 1976.
Period of limitation for appeal

An appeal against an order of the Rent Controller can be filed before the Appellate Authority within fifteen days from the date of the passing of that order. In 1956, it was added to section 15 (1) (b) that “in computing the period of fifteen days, the time taken to obtain a certified copy of the order appealed against shall be excluded”. Thus, the limitation period for filing an appeal against an order of the Rent Controller under section 15 (1) (b) shall normally be fifteen days plus the time taken for obtaining the certified copy of that order. Since the limitation period of filing an appeal before the Appellate Authority is prescribed under section 15 of the Act, the provisions of Indian Limitation Act, 1963 shall not be applicable. The non-applicability of the Limitation Act is borne by the fact that under section 5 of that Act, there is no provision for condoning the delay in filing an appeal, the way it is there under section 15 (1) (b) of the Act.

Under section 15 (1) (b) of the Act, the Appellate Authority has been vested with the power of condoning the delay in filing an appeal before it. While exercising this power, the Appellate Authority must record the reasons for condoning the delay. Thus, this power to condone the delay in filing an appeal is not to be exercised arbitrarily but judiciously.

In the case of Mansha Singh v. Municipal Committee, Jalalabad, the delay in filing the appeal was only of one day. The Appellate Authority refused to condone it. The High Court intervened in revision to point out that since the point involved in the case is of substantial importance, such a delay of only one day must be condoned.

Thus it is within the power of the Appellate Authority to entertain an appeal, against the order of the Rent Controller, even after the expiry of the limitation period prescribed under section 15 (1) (b) While condoning the delay in filing the appeal by the aggrieved person, the Appellate Authority is under an obligation to record those cogent reasons on the basis of which the delay is condoned.

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20. 1986 (2) R.C.J. 284 P&H.
The very object of giving such a wide power to the Appellate Authority, under section 15(3) of the Act, is to make doubly sure that no injustice is done to a party. In case there is no lacuna in the record received from the Rent Controller, the same should be duly cleared at the appellate stage. The Appellate Authority, under the Act, is also the second fact finding Court. The orders of the Appellate Authority are, for all practical purposes, final in so far as conclusions of facts are concerned. The High Court in revision will not upset them lightly. Since there is no further appeal provided under the Act and the decision of the Appellate Authority is virtually final (atleast on questions of fact), it becomes incumbent on it to deal with every case with full sense of responsibility attached to a final Court of fact. It has been held that it is natural to expect from the Appellate Authority to apply its judicial mind while determining important questions affecting valuable rights. The orders of the Appellate Authority should be proper speaking orders and avoid creating an impression of arbitrariness.

It is submitted that the Appellate Authority, being the final Authority in cases under the Act, has purposely been vested with wide powers of virtually re-determining the whole case in appeal. In view of the fact that there is no further appeal against the order of the Appellate Authority (only revision lies before the High Court) it must scrutinise the whole case as received from the Rent Controller and must make such further enquiry which will be necessary to meet the ends of justice.

Remand of a case by the Appellate Authority

Section 15(3) of the Act provides that the Appellate Authority shall decide an appeal preferred by the aggrieved person against an order of the Rent Controller. In the process of deciding an appeal under the Act, the Appellate Authority is empowered to make such further enquiry as it deems fit either personally or through the Controller. Nowhere in

section 15(3), it is possibly contemplated that the Appellate Authority can remand a case to the Rent Controller for a fresh trial. To the contrary, it is the bounden duty of the Appellate Authority to decide the appeal as indicated by the expression that the Authority "shall" decide the appeal. Moreover the power of the Appellate Authority to make further enquiry, either personally or through the Controller, further affirms that under no circumstances the case is to be remanded for a fresh trial. The provision for fresh enquiry by the Appellate Authority is with the obvious object of cutting the usual procedure under the Code of Civil Procedure where Appellate Court is empowered to remand the case of the Trial Court.

The question as to whether the Appellate Authority has the power to remand the case to the Controller or not, was considered in Moti Ram v. Ram Sahai.23 Grover, J., (as he then was) observed:

"That the Appellate Authority could make such enquiry as it thought fit itself or it could ask the Controller to make that enquiry but the appeal had to be disposed off by the Appellate Authority itself and since the decision as the Appellate Authority makes on the merits and it can have no reference to such an order of remand as has been made in the present case. It is quite clear that the statute makes no provision for an order of remand for retrial or fresh decision and the obvious intention of the Legislature seems to be that the Appellate Authority should itself decide the points, and if for the purpose of doing so, it becomes necessary to make some further enquiry, that can be done by the Appellate Authority itself or though the Controller."

23. C.R. No. 641 of 1957 decided on 29.4.58 Punjab High Court; a case under section 16(3) of the Patiala and East Punjab States Union Urban Rent Restrictions Ordinance 2006 R.K. which is pari materia with section 15(3) of the Act. Emphasis supplied.
A Division Bench of the Punjab High Court in *Krishan Lal Seth v. Pritam Kumari*, held:

"When the Appellate Authority is somehow or the other dissatisfied with the trial of an application for eviction of the tenant, it can make a further enquiry as it thinks fit either personally or through the Rent Controller, but it has no power to set aside an order of the Rent Controller and remand such an application to him for retrial and redecision."

Doubts about the correctness of the decision in *Krishan Lal Seth v. Pritam Kumari* were raised in some subsequent decisions of the Punjab High Court. These doubts were finally laid to rest in the case of *Raghu Nath Jalota v. Ramesh Duggal* whereby the Division Bench comprising S.S. Sandhawalia, C.J., (as he then was) and I.S. Tiwana, J., affirmed the law laid down in *Krishan Lal Seth’s case*. Commenting upon the fears expressed in some earlier cases, it was observed:

"Therefore, the fear repeatedly expressed that the absence of the power of remand would inevitably and as a matter of law convert the Appellate Authority into a trial Court, in peculiar cases, appear to be not well founded."

Thus the settled position is that the Appellate Authority has no power to remand a case to the Rent Controller for a fresh trial or a redecision under section 15(3) of the Act. It is submitted that this view is not only

technically correct and sound but can also help in expeditiously deciding the cases under the Act. The very purpose of providing the summary procedure under the Act shall be defeated if procedural wrangling such as the remand of a case are allowed to be operative. The Law Commission of India had also made a similar recommendation to this effect when it said:29

“A second category of cases which call for early disposal are eviction cases specially those on the ground of bonafide personal necessity of the landlord. Such cases obviously call for an early disposal.”

It is submitted that a consistent implementation of the settled position that the Appellate Authority will not be authorised to remand a case to the Rent Controller for retrial or redecision under section 15(3) of the Act will go a long way in implementing the above recommendation of the Law Commission of India.

Revisional Jurisdiction of the High Court

Section 15(4) of the Act of 1949 (carried from the 1947 Act) had categorically provided that the orders of the Rent Controller and / or the Appellate Authority were to be final and no further appeal or revision would lie against the same.

It was in exercise of the power of superintendence vested in the High Court under Article 22730 of the Constitution that the High Court started entertaining revision petitions under the Rent Act.

30. Article 227 of the Constitution of India reads:
   “227.(1) Every High Court shall have superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may - (a) call for returns from such Courts; (b) make and issue general rules and prescribe forms of regulating the practice and
In *Devi Dass v. Harbans Lal*, it was observed:

"The Superintendence of the High Court under Article 227 is not continued merely to administrative superintendence. The superintendence of the High Court is extended not only over Courts but also over all tribunals. The order of a Rent Controller or an Appellate Authority is open to revision under this Article. The power should be used in exceptional cases."

The Supreme Court in the case of *Warayam Singh v. Amar Nath*, finally put its seal on the above observations by holding that the Rent Controller and the District Judge exercising jurisdiction under the Rent Restrictions Act, are tribunals under the power of superintendence of the High Court under Article 227 of the Constitution.

In view of these Court decisions, while amending the Act in 1956, in section 15(4) the expression "whether in a suit or other proceedings by way of appeal or revision" was replaced by the expression "except as proceedings of such Courts; and (c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such Courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such Courts and to attorneys, advocates and pleaders practising therein;

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor, (4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any Court or tribunal constituted by or under any law relating to the Armed Forces."


33. Punjab Act No. 29 of 1956.
provided in sub-section (5) of this section”. A new sub-section (5) was added to section 15 of the Act which reads:

“The High Court may, at any time, on the application of any aggrieved party or on its own motion, call and examine the records relating to any order passed or proceedings taken under this Act for the purpose of satisfying itself as to the legality or propriety of such order or proceedings and may pass such an order in relation thereto as it may deem fit.”

Under section 15(5) of the Act, the High Court has been vested with the power of calling and examining the records of any case under the Act and pass such order thereto as it may deem fit. This can be done either at the behest of the aggrieved party or on its own motion by the High Court. The High Court can satisfy itself not only about the legality but also propriety of any order made or proceedings undertaken by the Rent Controller or the Appellate Authority under the Act.

Scope of Interference by the High Court

A plain reading of sub-section (5) of section 15 of the Act amply makes out that the High Court has been vested with wide powers under the Act. Revisional jurisdiction of the High Court is also there in all suits governed by the Civil Procedure Code. Section 115 of the Civil

34. The amended Section 15 (4) reads:

“(4) The decision of the appellate authority and subject only to such decisions, an order of the Controller shall be final and shall not be liable to be called in question in any Court of law except as provided in sub-section (5) of this section.”

35. Section 115 of the Code of Civil Procedure reads:

“115. Revision. - (1) The High Court may call for the record of any case, which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if Subordinate Court appears -

(a) to have exercised a jurisdiction not vested in it by law, or
(b) to have failed to exercise a jurisdiction so vested. or

(f.n. contd. on next page)
Procedure Code empowers the High Court to entertain a revision against an order against which no appeal lies or on the ground that the Subordinate Court has erred in the matter of its jurisdiction. The proviso to section 115(1), sub-section (2) and the explanation appended thereto were incorporated by the amending Act of 1976\(^{36}\). Through this amendment an overall restriction on the scope and application for revision against interlocutory orders was imposed.

In fact, it was suggested by the Law Commission of India at one stage that in view of Article 227 of the Constitution, section 115 of the Code was no longer necessary. However, while making the amendment, it was felt that the remedy under Article 227 is likely to cause more delay and involve more expenditure. The remedy under section 115, on the other hand, is economical and convenient. Concluding that section 115 serves very useful purpose, it was not omitted altogether but its scope was restricted by adding the proviso to sub-section (1), a new sub-section (2) and the explanation appended thereto.

A comparison of section 115 of the Civil Procedure Code and section 15(5) of the Act shows that the power of the High Court under the latter provision is far wider than under the earlier provision. Even before the amendment of section 115, the Supreme Court in 1960 (within four years of section 15(5) of the Act coming into force) in the case of *Moti Ram v. Suraj Bhan*\(^{37}\) had held:

\((c)\) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit; Provided that the High Court shall not, under this section, vary or reverse any other made, or any order deciding an issue, in the course of a suit or other proceedings, except where -

\((a)\) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings, or

\((b)\) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made."

\(^{36}\) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

Explanation - In this section, the expression “any case which has been decided” includes any order made, or any order deciding an issue, in the course of a suit or other proceeding.

"The revisional power conferred upon the High court under section 15(5) is wider than that conferred by section 115 of the Code of Civil Procedure. Under section 15(5) the High Court has jurisdiction to examine the legality or propriety of the order under revision and that would clearly justify the examination of the propriety or legality of the finding made by the authorities in the present case about the requirement of the landlord under section 13(3) (a) (iii) of the Act."

A warning signal was given by the Supreme Court in *Neta Ram v. Jiwan Lal*³⁸ where it was held that the powers of the High Court under section 15(5) of the Act do not include the power to reverse concurrent findings of the authorities below without showing that those findings are erroneous. It was further held that if the Rent Controller and the Appellate Authority had examined the facts after instructing themselves correctly about the law, a Court of Revision should be slow to interfere with the decision thus reached, unless it demonstrates by its own decision, the impropriety of the order.

Retracing a step backward from *Neta Ram's*³⁹ case, it was held by the Supreme Court in *Pooran Chand v. Moti Lal*⁴⁰ that it is neither possible nor advisable to define with precision the scope and ambit of section 15(5) of the Act but it should be left to the High Court to consider in each case whether the impugned judgment is in accordance with law or not.

Reiterating the original position, taken in *Moti Ram v. Suraj Bhan*⁴¹, in the case of *Nanak Chand v. Inderjit*⁴², the Supreme Court held that

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39. Ibid.
41. Supra, n.37.
42. 1969 R.C.J. 881 S.C.
the revisional jurisdiction conferred on the High Court under section 15(5) of the Act is wider than that under section 115 of C.P.C. Under section 15(5) the High Court can examine the finding of fact regarding the personal necessity of the landlord as it has the power to examine not only the legality but also the propriety of the order made by the Rent Controller or the Appellate Authority. But in Helper Girdhar Bhai v. Saiyed Mohmad Mirasahab Kadri, it was held that the power of revision of the High Court does not include the power to substitute its own view in preference to the view taken by the authorities below unless it is clearly established that such a view was perverse.

In Vinod Kumar Arora v. Smt. Surjit Kaur, the High Court had upset the concurrent findings of the Rent Controller and Appellate Authority that the bonafide requirement of the landlady was not established. Approving the act of the High Court in doing so, the Supreme Court observed:

“In our view, the High Court was fully justified in rejecting the finding of the Rent Controller and the Appellate Authority, even though it is a finding of fact, because both the authorities have based their findings on conjectures and surmises and secondly because they have lost sight of relevant pieces of evidence which have not been controverted.”

In Ram Dass v. Ishwar Chander, the Bench consisting of R.S. Pathak, C.J., S. Natrajan and M.N. Venkatchelliah, JJ., (as they then were) held that under section 15(5) of the Act, although the High Court is not the second Court of first appeal but it has wide powers to interfere in findings of the fact also.

44a. Id., at p.2182.
M.N. Venkatchelliah, J., (as he then was) observed thus:\(^{46}\)

"S.15(5) of the Act enables the High Court to satisfy itself as to the "legality and propriety" of the order under revision which is, quite obviously, a much wider jurisdiction. That jurisdiction enables the Court of revision, in appropriate cases, to examine the correctness of the findings of facts also, though the revisional Court is not "a second Court of first appeal".

Justice Venkatchellaiah went on to add: \(^{46a}\)

"The criticism ... that it was impermissible for the High Court in its revisional jurisdiction to interfere with the findings of fact recorded by the appellate authority, however, erroneous they be, is not, having regard to the language in which the revisional power is couched, tenable. In an appropriate case, the High Court can reappraise the evidence if the findings of the Appellate Court are found to be infirm in law."

Within short span of three months, the case of Rajbir Kaur v. M/s. Chokosiri and Co.\(^{47}\) came up before the Bench again consisting of R.S. Pathak, C.J., (as he then was) and M.N. Venkatchellaiah, J., (as he then was). The concurrent finding of the Rent Controller and the Appellate Authority was that the tenant had sublet a part of the showroom to another person for selling icecream. Upsetting these findings, the High Court came to the conclusion that subletting by the tenant has not been

\(^{46}\) Id. at pp. 1424-25.

\(^{46a}\) Ibid.

proved by the landlady. The High Court, while doing so, re-examined the entire evidence on record. Reversing the judgement of the High Court, the Supreme Court held that the High Court in revision must refrain from supplanting a conclusion of its own. Venkatchellaiah, J., (as he then was) held:

"The scope of the revisional jurisdiction depends on the language of the statute conferring the revisional jurisdiction. Revisional jurisdiction is only a part of the appellate jurisdiction and cannot be equated with that of a full-fledged appeal. Though the revisional power - depending upon the language of the provision - might be wider than revisional power under section 151 (or 115?) of the Code of Civil Procedure, yet, a revisional Court is not a second or first appeal ... With respect to the High Court, we are afraid, the exercise made by it in its revisional jurisdiction incurs the criticism that the concurrent finding of fact of the Courts below could not be dealt and supplanted by a different finding arrived at on an independent re-assessment of evidence as was done in this case."

Justice Venkatchellaiah went on to reprimand the High Court when he observed:

"With respect to the High Court, we think, that, what the High Court did was perhaps even an appellate Court, with full-fledged appellate jurisdiction would, in the circumstances of the present case, have felt compelled to abstain from and reluctant to do."

48. Id. at 1854. Emphasis added.
49. Id. at p. 1856. Emphasis added.
These two decisions of the Apex Court, coming from the same judges within a short span of three months regarding the scope of section 15(5) of the Act present a gloomy picture. In both the cases the judgement of the Court was delivered by Justice Venkatchelliah, (as he then was). Whereas in Ram Dass's case, and earlier in Vinod Kumar Arora's case, the upsetting of the concurrent findings of fact, by the Controller and Appellate Authority, by the High Court was not only approved but also appreciated by the Supreme Court, but it went on to pass virtual strictures against the High Court when it did the same thing in Rajbir Kaur's case. It is interesting to note that in Rajbir Kaur's case neither the case of Vinod Kumar Arora nor of Ram Das were even referred to.

The climax to this series came in the case of Rai Chand Jain v. Miss Chander Kanta Khosla. In this case the landlady sought eviction of the tenant on the grounds of change of user and personal necessity. The Rent Controller ordered eviction of the tenant holding that there was change of user and also the personal necessity of the landlord was established. The Appellate Authority reversed these findings of the Rent Controller holding that there was no change of user and also the bonafide requirement of the landlady was not established. The High Court in revision reversed the finding of the Appellate Authority after making reappraisal of the entire evidence and restored the order of the Rent Controller. The Supreme Court while dismissing the petition of the tenant held that the High Court was justified in doing the reappraisal of the entire evidence on record and upsetting the findings of the Appellate Authority. The Court observed:

"On a plain reading of this provision it is clear and transparent that the revisional jurisdiction conferred on the High Court is much wider than

51. Supra, n.44.
52. Supra, n. 47.
the jurisdiction provided u/s 115 of the Code of Civil Procedure. The High Court while exercising this jurisdiction is competent not only to see the irregular or illegal exercise of jurisdiction but also to see to the legality or propriety of the order in question."

It may be noticed here that, as per the reported judgement, there is full reference to Ram Dass's and Vinod Kumar Arora's case but Rajbir Kaur's case has not found any mention in the decision.

From a perusal of the above cases, the following three propositions emerge:

1. Under section 15(5) of the Act, the High Court is empowered to do reappraisal of the entire evidence. The High Court can look into questions of fact, questions of law and the mixed questions of law and fact.

2. The High Court cannot interfere with the findings of fact done by the Courts below. It must tread cautiously while deciding a mixed question of law and fact.

3. The High Court, while reappraising the evidence cannot set up a new case by substituting its own findings for those of the lower Courts.

This has virtually given a free hand to the High Court to look at each case as it likes. If the High Court intends to interfere, there are decisions from the Supreme Court available for doing so. Strangely enough while taking a particular view, the judgement by the Apex Court nowhere refers to those cases where a contrary view has been taken. As submitted earlier, in Rajbir Kaur, there is no mention of Vinod Kumar Arora or Ram Dass case. In Raichand Jain case, there is mention of Vinod Arora and Ram Dass (which are on the same lines) but there is no reference to Rajbir Kaur which lays down the contrary position.
The decisions of the Punjab and Haryana High Court clearly indicate that precedents are available both for approving or disapproving any point under the Act. If there are decisions of one hand laying down that the High Court should not interfere in the concurrent findings of fact by the authorities below, there are decisions on the other hand saying that the High Court's power under section 15(5) is wide enough to upset the concurrent findings of the Rent Controller and the Appellate Authority.\textsuperscript{55} There are decisions which laid down that the High Court shall refrain from reappreciating the entire evidence, but contrary decisions are also available where it is clearly held that under section 15(5) of the Act the High Court can reappraise the entire evidence of the case.\textsuperscript{56} Similarly many contrary decisions have been taken by the High Court regarding review of questions of fact, cognizance of subsequent events and condonation of delay in filing the revision.\textsuperscript{57}

\textit{Accumulation of arrears : guidelines for revisional jurisdiction}

In the absence of clear guidelines governing the revisional jurisdiction of the High Court, such a situation is nothing but inescapable. It is submitted that either the legislature may undertake the exercise of specifying the cases in which a revision petition can be filed before the High Court under the Act or the Apex Court may lay down the requisite guidelines for the same purpose or the High Court may itself lay down the parameters of its revisional jurisdiction. As of present, the rent revisions are being filed and entertained as Regular First Appeals (R.F.A.). This has enormously increased the burden of the High Court leading to accumulation of arrears which is evident from the fact that the revisions


which are almost a decade old are being presently taken up for decision. Of course, in some of the reported cases, the revisions were decided within an year's time. But this happened either on the instructions of the Hon'ble Chief Justice that the case as of personal necessity be fixed and decided on priority or while admitting the revision an Hon'ble Judge might have ordered that this be put for final hearing within a specified period or on a specified date. Only in such cases, the revisions happen to be decided early.

Of the three options available to clearly prescribe the scope of the revisional jurisdiction, it is submitted that the High Court must devise for itself some definite criteria as to the cases where it will interfere as differentiated from the cases where it will not intervene. To achieve this, it is submitted that the High Court must not re-open questions of fact in revision. However, an inference drawn by the subordinate authorities under the Act from a fact may be looked into by the High Court. Thus, a mixed question of law and fact may be checked by the High Court to ascertain if the same has been correctly decided by the authorities under the Act. The High Court must use utmost restrain in upsetting the concurrent findings of the Courts below. For the High Court, the rule should be not to interfere in such finding and only in exceptional cases, it may interfere. Revision should be admitted by the High Court only when a case of illegality committed by the lower Courts is made out or gross impropriety can be found in the order of the lower Court.

The concept of self imposed restraint by the High Court was advocated by Justice Dua, (as he then was) way back in 1959 in the case of Mahabir Parshad v. Mohinder Kumar\(^\text{58}\) wherein it was observed:

"Although not only the legality but even the propriety of the orders passed or proceedings taken under the Act can be examined but it must always be borne in mind that this power from its very nature is discretionary and can by no means be

construed so as to confer on the High Court the power of an appellate Court... The power of revision under this sub-section must be used sparingly and only where obvious manifest and gross injustice has resulted.”

The voice of Justice Dua echoed once again in *Lajwanti v. Jawahar Lal*\(^5^9\), where it was observed:

“It does not follow therefrom that the High Court should reappraise the evidence in all cases when exercising revisional powers under section 15(5) of the Act.”

It is submitted that the above observations have not been noticed much by the High Court while commenting upon the scope of interference by the High Court under section 15(5) of the Act. A substantial part of the delay in the final disposal of rent cases can be reduced if the parameters laid down in the above observations are adhered to by the High Court.

*Special leave petition to the Supreme Court.*

The last resort of an aggrieved person, in a case under the Act, is to knock the door of the Supreme Court. The power of the Highest Court of the land to entertain petition of the aggrieved party is provided not under the Act but by the Constitution of India. Article 136\(^6^0\) of the Constitution vests the Supreme Court with the blanket power to intervene in any case under any law so as to see the justice has been done.

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60. Article 136 of the Constitution reads:

“136(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgement, decree, determination, sentence or order in any cause or matter, passed or made by any Court or tribunal in the territory of India.

(2) Nothing in clause (1) shall apply to any judgement, determination, sentence or order passed or made by any Court or tribunal constituted by or under any law relating to Armed Forces.”
It vests the Supreme Court with very wide power of granting special leave in any case from any Court or tribunal within the territorial limits of the country except the cases decided by a Court or tribunal under the law relating to Armed Forces.

Article 141 of the Constitution, which lays down the binding force of the Supreme Court decisions on all Courts or tribunals of the country, reads:

"The law declared by the Supreme Court shall be binding on all Courts within the territory of India."

Thus, the law declared by the Supreme Court is the law of the land. The status of the Supreme Court, under the Constitution, is not only as the third organ of the State but also that of custodian of the nation's justice dispensing machinery. In any matter, under any law, if the Apex Court finds that justice has not been done, it can grant special leave to intervene therein. It is under this power vested in it by virtue of Article 136 of the Constitution that cases under various Rent Acts operative in the country are entertained and decided by the Apex Court.

It is only through the mechanism of special leave petitions under Article 136 of the Constitution that the Apex Court comes into picture in rent matters. Because Rent Acts are State legislations and are at variance with one another, the task of the Apex Court, in clarifying certain concepts and laying down the law authentically and clearly, has become quite cumbersome. Equally significant is the fact that most of the Rent Acts have outlived their utility and few legislatures like that of Tamil Nadu have tried to keep pace with the changing socio-economic scenario in the society. The net result of this situation is that the landlord-tenant litigation has increased manifold and in the same proportion the special leave petitions of rent cases have increased in the Apex Court.
It is because of the excessive work load of the Apex Court that in rent matters, one comes across decisions which are not exactly in line with the earlier pronouncements by the Apex Court. Decisions laying down different yardsticks on the same point are available. As a consequence of this, the object of the Apex Court of clearly laying down the law in rent matters has not been accomplished in the manner one would expect it to be. A critical appraisal of some of the decisions indicates that when an earlier decision of the Court was not even cited at the bar, a different view was taken by the Apex Court without taking cognizance of its earlier decision. Such a scenario is inescapable in view of the daily work load of a Supreme Court judge. To substantiate this claim, some such decisions of the Apex Court are mentioned below.

Regarding scope of Article 136 in rent disputes

In Chander Kali Bai v. Additional District Judge it was held that an issue, not framed by the Courts below and no evidence recorded for the same, cannot be raised for the first time before the Supreme Court. Similarly, in the case of Bhagwati Prasad Gupta v. Prakash Bhalotia, the tenant had already shifted to another building and had kept the tenanted premises locked and in disuse; it was held that it would be an abuse of the process of the Court to examine the appeal on merits under Article 136 of the Constitution.

But in P.V. Shetty v. B.S. Girdhar, it was held that, in the interest of justice, the Supreme Court will intervene even at the stage of an interim order passed by an authority under the Rent Act. In the present case, the Apex Court stayed the eviction petition of the landlord till the disposal of an earlier application of the tenant for fixation of fair rent. In Dr. S.M. Nehra v. D.D. Malik, the specified landlord sought eviction of the tenant from first floor of his house under section 13-A of Punjab Act.

63. A.I.R. 1982 S.C. 82
The Rent Controller declined the leave to contest to the tenant. The revision before the High Court was also dismissed. The Apex Court intervened under Article 136 of the Constitution to hold that when a specified landlord is seeking eviction of the tenant so as to have additional accommodation, leave to contest should have been granted. Granting the leave to contest to the tenant, the case was remanded to the Rent Controller for trial.

In *Narinkar Nath Wahi v. Fifth Additional District Judge*\(^65\), the tenant being a leading and influential Advocate, no counsel was ready to appear on behalf of the landlord. The landlord sought adjournment of the case which was declined by the Appellate Authority and the High Court. Here too, the Apex Court intervened under Article 136 of the Constitution to hold that the refusal to grant adjournment in such a case amounted to denial of being heard, and was unjust and unfair.

In the case of *Malavi Devi v. Dina Nath*\(^66\), the Apex Court intervened to condone the delay in filing the appeal before the Rent Tribunal which was declined by the Tribunal and the High Court.

But in *Sachindra Nath Shah v. Santosh Kumar Bhattacharya*\(^67\), where the plea of change of user was raised for the first time in the High Court, and the High Court refused to consider it, the Apex Court too declined to intervene under Article 136 of the Constitution. In *Radhey Shyam v. Nazar Singh*\(^68\), concurrent finding of the Controller and Appellate Authority that the building was residential was not assailed before the High Court. It was held that such a finding cannot be reopened in the Supreme Court.

*Regarding concurrent findings of fact*

With regard to the concurrent findings by two of the three Courts or all the three Courts, the Apex Court in some cases have intervened in a big way whereas in other cases it simply declined to intervene.

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In the case of *H.V. Mathai v. Subordinate Judge*\(^{69}\), the Apex Court declined to intervene with the concurrent findings of the District Judge and the High Court regarding sub-letting done by the tenant. In *Raichand Jain v. Miss Chander Kanta Khosla*\(^{70}\), the Apex Court approved of the concurrent findings of the Rent Controller and the High Court regarding change of user and bonafide requirement of the landlady.

But in *Dipak Banerjee v. Lalabati Chakraborty*\(^{71}\), the concurrent findings of the Rent Controller, Appellate Authority and the High Court regarding sub-letting of the premises by the tenant were upset by the Apex Court. It was held in this case that normally the concurrent findings of the Courts below are not to be interfered by the Supreme Court. The burden is on the appellant to establish that the concurrent findings are wrong. But once that burden is discharged by the appellant, the Supreme Court must intervene to upset such concurrent findings which are erroneous.

*Mixed questions of law and fact*

In the case of *Vinod Kumar Arora v. Smt. Surjit Kaur*\(^{75}\), and some other cases\(^{76}\), it was held by the Apex Court that a new ground can be raised for the first time in the Supreme Court only on a question of law. If it is a mixed question of law and fact, then it cannot be raised for the first time before the Supreme Court. This would mean that a mixed question of law and fact, if agitated before the Courts below, can


\(^{71}\) (1987) 4 S.C.C. 161.


\(^{73}\) A.I.R. 1963 S.C. 698.


\(^{75}\) A.I.R. 1987 S.C. 2179.

certainly be argued at length before the Apex Court. It is this aspect of mixed questions of law and fact in rent matters being allowed to be argued at length by the Apex Court which is responsible for divergent views of the Court on the same point and also contributes in a big way for accumulating the arrears of cases.

For example in 1991, in the case of *Raichand Jain v. Miss Chander Kanta Khosla*\(^{77}\), it was held that since there is no estoppel against the statute, the acquiescence of the landlady to the change of user by the tenant for six years was of no consequence. But in 1992, in the case of *D.C. Oswal v. V.K. Subbiah*\(^{78}\), the tenant had changed the user of the building from residential to non-residential. The Apex Court held that when there was no objection by the landlord for seven years, he had accepted the user other than the residential. It is interesting to note that the case of Chander Kanta Khosla was neither cited at the bar nor does it find any mention in the judgement making it per-incuriam.

As submitted earlier too, similar omissions can be traced in *Ram Dass v. Ishwar Chander*\(^{79}\), in comparison to *Rajbir Kaur v. M/s. Chokosiri and Co.*\(^{80}\). Same is the position in *Chander Kanta Khosla’s*\(^{81}\) case in comparison to *Rajbir Kaur’s case*\(^{82}\).

A critical appraisal

The divergent views coming from the Apex Court, as discussed above, pose a serious problem for the Courts below. By intervening in questions of fact or mixed questions of law and fact, the Supreme Court has practically become the Court of second or third appeal in rent cases. The state of the arrears of rent cases in the Supreme Court was reflected

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77. Supra, n.53.
79. Supra, n.45.
80. Supra, n.47.
81. Supra, n.53.
82. Supra, n.47.
in the statement of E.S. Venkatramaih, the Chief Justice of India that "every fourth case pending in the Supreme Court and the High Court is a case under the Rent Acts".  

The need of the day is that the powers of the Supreme Court in rent matters must be confined only to questions of law. One available course is to suitably amend the Constitution and prescribe the parameters of the Apex Court's powers and Article 136. The other course is that the Apex Court lay down uniform broad guidelines for itself to intervene in rent matters. It is submitted that the latter course would be better of the two. Amending Article 136 will be more problematic and a sad day for the Indian Judiciary. It will not only amount to sort of a censure of the Apex Court but would also be open to challenge on the ground that it alters the 'basic structure' of the Constitution. Rather, a self imposed restraint by the Apex Court, in entertaining special rent petitions, will go a long way in mitigating the agony of the litigants under the Rent Act. The Apex Court should not only frame the guidelines for itself, to be applied in rent cases, but also lay down the limits of intervention by the High Courts in exercise of their revisional jurisdiction. Every rent case must get its finality at the level of the High Court. The Apex Court should grant special leave in rent matters in the rarest of the rare cases.

The step in this direction was taken when, in R.N. Gosain v. Yashpal Dhir, the Apex Court held that once a tenant had availed of the time granted by the High Court to vacate the premises by giving an undertaking to hand over the vacant possession after the expiry of the granted period, the Supreme Court will not intervene under Article 136 irrespective of the merits of the case. It was explained in this case that as per the rule of 'election' in property law, a person cannot approbate and reprobate. A tenant who has taken advantage of the time granted by the High Court on the undertaking to give vacant possession cannot be entertained in the special leave before the Supreme Court so as to give him chance to reprobate.


Some of the people in the legal profession, whom the present author met during the course of his survey, were not agreeable to the view that the rent cases get their finality at the High Court level. Their argument was that the High Court judgement having been reversed by the Supreme Court in the past, the faith of the litigant in the judiciary may not remain in tact with the withdrawal of the Special Leave Petition. It is submitted that the faith of the litigant in any matter is always linked with the finality of the decision. Had there been a Court over and above the Supreme Court, many of the judgements of the Supreme Court may have been reversed by such a Court. Going by this argument, the litigant will lose faith in the Supreme Court too. It is submitted that the faith of the litigant is neither enhanced nor eroded by altering the level or stage of the finality of the decision. In response to a question in a questionnaire as to upto what level the case shall be pursued in the event of its being decided against him, 100 percentage of the landlords and more than 90 percentage of the tenants responded that they will go upto the Supreme Court. In other words, under the existing Act, the litigants will look upto that level where the decision will become final. If the finality comes at the High Court level, the litigant will automatically accept and reconcile to the outcome of the case.

The intervention by the Apex Court in rarest of the rare cases by itself will not be sufficient to reduce the arrears of cases unless it is coupled with other urgently needed steps. These steps include the drafting of a Uniform Rent Act for the whole country which may be adopted by the States by making minor changes so as to suit their local and regional needs. A pruning of the wide powers available to the High Court in its revisional jurisdiction, either by a legislative act or by the Apex Court in the form of prescribing the parameters of revisional jurisdiction, will be equally required.

**Setting up of Rent Tribunals**

A suggestion was made by Sabyasachi Mukharji, J. (as he then was) for the setting up of a National Rent Tribunal so as to take away all the
rent matters from the jurisdiction of the Supreme Court. Justice Sabyasachi Mukharji observed:\textsuperscript{85}

"The idea of a National Rent Tribunal on an All India basis with quicker procedure should be examined. This has become an urgent imperative of the day's revolution. A fast changing society cannot operate with unchanging law and preconceived judicial attitude."

Some consolation can be drawn from the fact that the above suggestion of Justice Mukharji has been partially accepted after six years. In 1993, the Constitution Seventy-seventh Amendment Bill has been passed.\textsuperscript{86} This amended Article 323-B in part XIV A of the Constitution so as to include the setting up of Rent Tribunals at the State level.

This act on the part of the legislature, though belated, partially implements the suggestion of setting up the Rent Tribunals at the State and National level.

The setting up of the State Rent Tribunal is expected to result in a speedy relief to the rent litigants. But, care however, needs to be taken to prevent the Tribunal going the same way as the High Court.

The concept of various Tribunals has turned out to be a device for the bureaucracy to grab the powers of the judiciary. In the grab of providing speedy remedy, the executive has successfully encroached upon the field exclusively meant for the judiciary under the Constitution. To illustrate the point, I will take only two examples. Administrative Tribunals were set up to decide service law cases in the States by taking away the power from the High Court. These Tribunals


\textsuperscript{86} The Hindustan Times dated 26.8.1993.
were launched with great fanfare. The manifest object of the Administrative Tribunal was to decide service matters quickly. Wherever these Administrative Tribunals were set up, one can see the arrears of cases accumulating within a short period of five years. In Chandigarh, the Central Administrative Tribunal (CAT for short) has service matters pending before it for the last three to four years. This has happened despite the fact that CAT entertains service matters of the Central Government employees only. Thus, CAT has served no useful purpose in ensuring speedy disposal of cases.

But what has innocuously been done in this process is that along with a judicial officer of the rank of District Judge about to retire (or already retired) sits on the bench a man from the executive services. A retired bureaucrat sits in judgement on the action of a serving bureaucrat. By being a member of the CAT, the bureaucrat acquires the status equivalent to that of a High Court Judge which otherwise he is neither qualified nor entitled to. In effect the bureaucracy has successfully encroached upon the field of the judiciary. The point to note is that the position of arrears of service law cases is in no way better in the CAT as compared to the position in the Punjab and Haryana High Court. Noticing the present state of affairs in the other Administrative Tribunals, the Punjab Government which had announced the decision to set up an Administrative Tribunal and had even designated its senior-most bureaucrat as its member has retraced that step and there are signs that it might decide to do without a CAT.

Besides the Administrative Tribunals, there is the similar examples of Consumer Forums set up under the Consumer Protection Act and the Railway Tribunals.

What emerges from the above is that the idea of setting up State level Tribunals is not bad *per se* but the manner of implementation leaves much to be improved. Consequent upon the amendment of Article 323-B of the Constitution, as and when the State Rent Tribunals are set up, it must be ensured that these Tribunals are not taken over by the bureaucracy. The bureaucracy must be checked from spreading its tentacles. The State Rent Tribunals should be manned only by
specialists in rent law from the academics and the profession. These specialists in rent law should be able to decide rent cases speedily. The State Rent Tribunal must not be asked to follow the tardy procedure, rather it should be directed to decide matters at the motion stage only. The State Rent Tribunal must refrain from re-opening the questions of fact as determined at the earlier lower levels.

The setting up of the State Rent Tribunals may not by itself remedy all the ills of rent litigation. This will have to be supplemented by the following measures so as to provide speedy justice to the litigants under the Rent Act.

Suggestions

In all parts of the country, judicial officers should be exclusively appointed or designated as Rent Controllers. The number of the Controllers in any area should be dependent upon the number of rent cases usually filed there. On the same pattern, District Judges or Additional District Judges, should exclusively work as Appellate Authority under the Act. The appointment of judicial officers as Rent Controller or Appellate Authority will serve a two-fold purpose; one that after some time, the officer will become more competent in dealing with various aspects of rent law. An exclusive attention to rental matters will minimise the possibility of a legal error being committed. The other that the arrears of rent cases will not accumulate at the present rate for the future.

Along with the above, the procedure to be followed in all rent cases must be categorically prescribed as the summary procedure. It should be specifically mentioned that the Rent Controller and the Appellate Authority shall follow a clear time-schedule to be prescribed under the Act. The way it is done by the Courts of small causes to have the proceedings primarily contested on affidavits, which has been made applicable in case of specified landlord, should be applicable to all cases under the Rent Act. It should be categorically stated that the Civil Procedure Code shall not apply under the Act except for the purpose of summoning the parties and witnesses and execution of the final orders

87. Happily, this has been done in Chandigarh, w.e.f. 16.7.1993.
under the Rent Act. The High Court/State Rent Tribunal as a Court of superintendence, must ensure that all persons designated under the Act strictly follow the summary procedure of a specified landlord in all cases under the Rent Act. The cut in the procedural delays will help in ensuring a time in future when there will be no rent matters pending in the Courts for years and decades together. The pendency period will come down to few months or at the maximum one to two years.

The approach of the entire Dispute Settlement machinery and the Rent Act should be to find ways and means for an amicable settlement between the agitated landlord and the tenant. More than 80% of the landlords and the tenants responded positively to the question as to whether they would be interested in an out of Court settlement, in the questionnaire. Only in those cases where the conciliatory effort fails that a case may be decided as per the law. The thrust of the officers manning these Courts/Tribunals should be to harmonize the relations between the landlords and tenants.

The replacement of the present outdated Rent Act with a new one prepared in the light of the changing socio-economic scenario of the society, coupled with the above suggested measures, it is hoped, will solve the existing problems of the landlord-tenant relationship to a large extent.

The hierarchy of the dispute settlement machinery under the Act, it is submitted, should be as follows:
Supreme Court of India/National Rent Tribunal

Decision at motion state

Special Leave Petition under Article 136 of the Constitution
(in rarest of the rare case)

High Court/State Rent Tribunal

Decision at motion state

Revisional jurisdiction or under Article 227 of the Constitution (No interference in concurrent findings unless illegal or erroneous)

Revision within 30 days

Within 30 days

Orders which are not appealable as in cases of specified landlord

decision within six months

Appeal within 15 days

Within six months normally by day to day hearing maximum one year.

Rent Controller Sub-Judge
First Class or equivalent exclusively working as Controller