

## **Shaik Jaffar Shaik Mahmood & Ors vs Mohd. Pasha Hakkani Sahab & Ors on 3 December, 1974**

**Equivalent citations: 1975 AIR 794, 1975 SCR (2) 890, AIR 1975 SUPREME COURT 794, 1975 (1) SCC 25, 1976 (1) SCJ 22, 1975 2 SCR 890, 1975 RENC 332**

**Author: P.K. Goswami**

**Bench: P.K. Goswami, V.R. Krishnaiyer, A.C. Gupta**

PETITIONER:

SHAIK JAFFAR SHAIK MAHMOOD & ORS.

Vs.

RESPONDENT:

MOHD. PASHA HAKKANI SAHAB & ORS.

DATE OF JUDGMENT 03/12/1974

BENCH:

GOSWAMI, P.K.

BENCH:

GOSWAMI, P.K.

KRISHNAIYER, V.R.

GUPTA, A.C.

CITATION:

1975 AIR 794                      1975 SCR (2) 890  
1975 SCC (1) 25

ACT:

Nature of revisional power-Narrower than appellate power-Whether evidence can be re-appreciated-section 115 of Civil Procedure Code-Section 26(c) of Hyderabad Houses (Rent Eviction and Lease) Control Act. 1954.

HEADNOTE:

The respondent Landlords made an application to the Rent Controller for eviction of the appellant-tenants on the ground of non-payment of rent and personal requirement under Hyderabad Houses (Rent. Eviction and Lease) Control Act, 1954. The Rent Controller negatived the landlords' contention and dismissed the eviction application. An appeal filed by the landlords before the Assistant Judge was

also dismissed. In a Revision Petition filed by the landlords before the High Court under section 26 of the Act the High Court examined the reasons given by the Rent Controller and the Assistant Judge and held that there was no cogent reason to reject the testimony of the first petitioner on the question of bona fide requirement.--

On appeal to this Court by Special Leave it was contended on behalf of the appellant-tenants that the High Court was wrong in reappreciating the evidence to come to a contrary conclusion to the one arrived at by both the courts below in Revision under section 26 of the Act. The scope of the section 26 of the Act is narrower than section 115 of the Civil Procedure Code.

Allowing the appeal,

HELD : There is a 3 tier machinery provided in the Act. The first court is that of Rent Controller which is to make a summary enquiry. The second stage is of an appeal before the District Judge which is a complete re-hearing with additional power to make further enquiry if necessary. The third stage is the revision to the High Court. It is well known that the appellate power is different from revisional power. Usually in the absence of any clear provision in the law power of revision is narrower than that of appeal. There is no substantial difference between the powers conferred by section 26 of the Act and section 115 of the Civil Procedure Code. In a series of decision-, starting from Privy Council days it is firmly well established that section 115 of the Civil Procedure Code applies to jurisdiction alone, the irregular exercise or the non-exercise of it or the illegal assumption of it. The section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved. [892E-893C]

Rajah Amir Hassen Khan v. Sheo Baksh Singh, 11 Indian Appeals 237, Balakrishna Udayar v. Vasudeva Aiyar " 44 Indian Appeals 261, Keshardeo Chamria v. Radha Kissen Chamriya and Others, [1953] S.C.R. 136 and D.L.F. Housing & Construction Company Private Ltd., New Delhi v. Sarup Singh and Others, [1970] 2 S.C.R. 368.

Under section 26, the High Court has to see whether there is any error of jurisdiction or whether there is any such manifest error of procedure committed by the courts as may affect the ultimate decision resulting in gross injustice. The High Court in reappreciating the evidence in order to differ from the conclusions of the two authorities below has clearly made an error of jurisdiction and acted in excess of the power conferred on it under section 26 of the Act. The High Court cannot sit in appeal over the orders of the original and the appellate authority. [893C-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1586 of 1974.

Appeal by Special Leave from the Judgment & Order dated the 12th February, 1974 of the Bombay High Court in Revision Application No. 136 of 1968.

M. N. Phadke and A. G. Ratnaparkhi for the Appellants. S. Balakrishnan and N. M. Ghatate for the Respondents. The Judgment of the Court was delivered by GOSWAMI, J. The short question that arises for consideration in this appeal is as to the, scope of section 26(c) of the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954 (No. XX of 1954) (briefly the Act). The facts may briefly be stated :

The landlords (respondents herein) made an application to the Rent Controller for an order of eviction of the tenants (appellants herein) on two grounds, namely, default in payment of rent and secondly requirement of the premises for their personal occupation to open a hardware shop at Latur where the premises are situated. It is admitted that the landlords have a hardware shop at Udgir where they have their own residence as well. The Rent Controller as well as the Assistant Judge, who heard the appeal, found that the tenants were not in default in payment of rent. Both the courts also concurrently held that the landlords failed to establish the bona fide requirement for their own use and occupation. Being aggrieved by the decision of the courts below, the landlords preferred a Revision Application under section 26 of the Act to the High Court of Bombay. The High Court examined the reasons given by the Rent Controller as well those of the Assistant Judge and came to the conclusion that both the courts below have acted illegally inasmuch as "there was no cogent reason to reject the testimony of the 1st petitioner in this respect". In its view, "therefore, it has been sufficiently proved by the landlord that they really want to start hardware business at Latur as well". The High Court, therefore, ordered the appellants to deliver possession of the suit premises to the respondents. Hence this appeal by special leave.

Section 25 provides for filing of appeals and runs as follows "25. Appeal-(1) Notwithstanding anything contained in any law for the time being in force, an appeal from an order made by the Controller shall lie within 30 days from the date of such order to the District Judge ....

(2) x x x x (3) The appellate authority shall send for the records of the case from the Controller and after giving the parties an opportunity of being heard, and if necessary after making such further inquiry as it thinks fit either personally or through the Controller, shall decide the appeal.

(4) Save as provided in section 26 the decision of the appellate authority and subject to only such decision, an order of the Controller shall be final and shall not be liable to be called in question in any Court of Law whether in a suit or other proceedings or by way of appeal.

Section 26 which provides for revision reads as under

"26. Notwithstanding anything contained in this Act or any other law for the time being in force, an application for revision shall lie to the High Court from any final order passed on appeal by an appellate authority on the following grounds :-

(a) that the original or appellate authority exercised a jurisdiction not vested in it by law, or

(b) that the original or appellate authority failed to exercise a jurisdiction so vested, or

(c) in following the procedure or passing the order, the original or appellate authority acted illegally or with material irregularity".

Mr. Phadke, learned counsel for the appellants, made only one submission before us. He submitted that the High Court was clearly wrong in re-appreciating the evidence to come to a contrary conclusion by interfering in revision under section 26(c) of the Act with the concurrent findings of fact with regard to bona fide requirement of the landlords. He further submitted that the scope of section 26(c) of the Act is necessarily narrower than that of an appeal and is similar to section 115 of the Civil Procedure Code. The High Court, therefore, erred in jurisdiction in interfering with the concurrent findings of fact of the courts below and in passing the decree for eviction.

There is a three tier machinery provided in the Act for dealing with a landlord's application for eviction. The first Court is that of the Rent Controller which is to make a summary inquiry in the manner usually done by a Magistrate exercising summary powers in trying a criminal case. The Controller is not required to record evidence exhaustively and has only to record brief reasons for his finding (section 24). The second stage is of an appeal before the District Judge. The District Judge in deciding the appeal has power even to make further inquiry if he thinks necessary [section 25(3)]. This being the first appeal before him it is a complete rehearing with additional power to make further inquiry if necessary. The order which he ultimately, passes is final and there is no further second appeal against his order. In the third place, section 26 provides for an application for revision against the final appellate order of the District Judge to the High Court on the grounds which we have already set out. The High Court can examine under section 26-

(a) whether the original or appellate authority exercised jurisdiction not vested in it by law, or

(b) whether the original or appellate authority failed to exercise a jurisdiction so vested, or

(c) whether in following the procedure or passing the order, the original or appellate authority acted illegally or with material irregularity.

It is well-known that appellate power is different from revisional power usually, in the absence of any clear provision in the law, power of revision is narrower than that of appeal. Having compared section 26 with section 115 of the Code of Civil Procedure, it is difficult to hold that there is any substantial difference in the contents of the two provisions. If there is some verbal difference

between the above two sections, it is without any distinction. In a series of decisions from the Privy Council days starting from year 1894, Rajah Amir Hassan Khan's case(1), 1917, Balakrishna Udayar's case(2) till recent times, as for example, in Keshardeo Chamria's case(3) and D.L.F. Housing & Construction Company's case, (4 ) it is firmly well-established that section 115, Civil Procedure Code, "applies to jurisdiction alone, the irregular exercise, or the non-exercise of it, or the illegal assumption of it". The section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved". The High Court under section 26(c) has to see whether there is any error of jurisdiction committed by the Controller or by the appellate authority in passing the order or whether there is any such manifest error of procedure committed by the courts as may effect the ultimate decision resulting in gross injustice. It is only in that context that under section 26(c) the words "acted illegally" or "with material irregularity" have been used. In view of the scheme of the Act that the inquiry contemplated before the original authority is of a summary nature (section 24), to be disposed of in an expeditious manner section 21) and the order of the appellate authority, which is vested with the power to make further inquiry, is made final subject to revision (section 25), it cannot be the intention of the legislature in making the power of revision under section 26 wider than it is under section 115 of the Civil Procedure Code. The revisional power under section 26 is limited in terms of the section itself and is necessarily narrow. The High Court is, therefore, not correct in its view that the power of revision under section 26 is of wider amplitude. Inasmuch as the High Court sought to reappreciate the evidence in order to differ from the conclusions of the two authorities, it has clearly made an error of jurisdiction and acted in excess of the power conferred on it under section 26(c) of the Act. We are, therefore, clearly of opinion that the High Court cannot sit in appeal, as it has done in this case, over the orders of the original and the appellate authority in order to reappreciate the evidence in exercising its power of revision under section 26 of the Act. We, therefore, accept the submission of Mr. Phadke. We may observe that although the appeal lies to the District Judge under section 25 of the Act, it appears that the Assistant Judge heard the appeal. Since this point was not canvassed at the Bar, we express no opinion on this aspect. In the result the appeal is allowed and the judgment of the High Court is set aside. The parties will bear their own costs.

P.H.P. Appeal allowed.

(1) 11 I.A.237. (2) 44 I.A. 261.

(3) [1953] S.C.R. 136. (4) [1970] 2 S.C.R. 368.