Hari Singh vs Kanhaiya Lal on 7 September, 1999

Equivalent citations: AIR 1999 SUPREME COURT 3325, 1999 AIR SCW 3318, (1999) 3 KER LT 82, 1999 (4) LRI 1040, 1999 SCFBRC 344, 1999 (5) SCALE 381, 1999 (8) ADSC 142, 1999 (7) SCC 288, (1999) 6 JT 489 (SC), 1999 (6) JT 489, 1999 (9) SRJ 233, 1999 (2) UJ (SC) 1488, (1999) 2 RENCR 314, (1999) 3 RAJ LW 415, (1999) 4 CURCC 156, (2000) 1 MAD LJ 83, (1999) 2 RENTLR 613, (2000) 1 SCJ 622, (1999) 8 SUPREME 19, (1999) 4 RECCIVR 107, (1999) 5 SCALE 381, (2000) 1 CIVLJ 531

Bench: A.P.Misra, N.Santosh Hegde

PETITIONER:
HARI SINGH

Vs.

RESPONDENT:
KANHAIYA LAL

DATE OF JUDGMENT: 07/09/1999

BENCH:
A.P.Misra, N.Santosh Hegde

JUDGMENT:

J U D G E M E N T MISRA, J.

The issue raised in this appeal arises under the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (hereinafter referred to as the Act). The appellant is the landlord and respondent the tenant. The question raised by the appellant is, whether the High Court was right in setting aside the concurrent finding of facts in second appeal? In other words, whether there existed any substantial question of law and the High Court without framing any substantial question of law was justified in interfering with the concurrent finding of both the courts below? The appellant also challenges that part of the order of the High Court confirming the first appellates court order which holds no default in payment of rent by the respondent. In short, the suit of the landlord was for the eviction of the respondent on grounds of default in payment of rent, sub-letting of the premises in question and creating nuisance which was decreed. The appellate court confirmed the finding of sub-letting and nuisance but set aside the finding of default. In second appeal the High Court confirmed first appellate court finding that there is no default but set aside the concurrent findings that the respondent sub-letted the premises and created a nuisance.

In order to appreciate the controversy raised we deliver the following short facts.

The respondent took two shops and one godown along with Chabutra being a portion of House No.2131, Subji Mandi, Johri Bazar, Jaipur, at a monthly rent of Rs.45 per month with Rs 5 per month for water charges. The case of the appellant-landlord is that respondent sub-letted one of the shops to one Mohd. Ishaq and sub- letted the godown to one Hamid. This apart, he failed to pay the rent for a period of about 2 years and 11 months totalling Rs 1750/-. He also blocked the 11 feet wide entrance which is the only passage for the appellant for going to his residence by placing the bags of onion and other vegetables on both the side of the passage. In fact it blocks about 8 feet passage leaving hardly 3 feet which is causing serious nuisance to the appellant. On 15th February, 1977 a notice was served on the respondent followed by filing a suit on 12th January, 1978 for eviction from the said premises on the ground of default in payment of rent, sub-letting and nuisance. Within one week on 19th January, 1978 the appellant also filed another suit for fixation of standard rent under Section 6 of the aforesaid Act. On 3rd May, 1978 the trial court in the later suit fixed provisional standard rent at Rs. 100 per month under Section 7 of the said Act w.e.f. 12th January, 1978. The respondent as a consequence of the same deposited rent at the said rate for the period 12th January, 1978 to 16th September, 1978. However, the respondent defaulted in paying the rent at this rate for a period subsequent to 17th September, 1978. This fact was incorporated in the plaint through an amendment to his plaint which was allowed and the same was incorporated as para 5 (A) of the said plaint. This amendment pleads default of payment of rent for a period subsequent to the said provisional fixation of rent and consequential liability for eviction under Section 7 (4) of the Act.

According to the respondent, the trial court on 13th April, 1978 determined the provisional rent at Rs. 45 per month under Section 13(3) of the said Act hence determination of provisional standard rent under Section 7 on 3rd May, 1978 would only means fresh redetermination or modification of the amount payable under Section 13 (3) has to be made before consequence of eviction is to be implemented. On the other hand counsel for the appellant stressed that the trial court struck out the defence of the respondent under section 13(5) on account of his failure to deposit provisional rent as fixed under Section 7. The appeal against this was also dismissed by the appellate authority on 5th August, 1983. Even revision petition was also dismissed by the High Court on 18th February, 1987. Thus this order became final as it was not challenged before this Court. Repelling this submission of finality, learned counsel for the respondent submits that the revisional order itself left the matter open to be raised later, hence there was no need to challenge the revisional order. Reliance is placed on the following observations in the said revisional order:

> I am of the opinion that the various questions and issues raised before this court in revision under Section 115 C.P.C. deserves to be decided in an appeal finally if it becomes necessary to file the same by the tenant. .

Any adverse order is passed against him earlier which is appealable then these complication questions of facts and law, calculations promotions and combination of Hindi and English calendar months, can be decided there in appeal.

The trial court finally decreed the suit for eviction by holding that the respondent had committed default in payment of rent w.e.f. Vaisakh Bud Akum Sambat 2032 till date of filing of suit, he had also sub-letted the premises and created nuisance in the entry passage for the plaintiff-landlord. The appellate authority dismissed the appeal of the respondent by upholding his eviction on the ground of nuisance and sub-letting under Sections 13(1)(d) and 13(1)(e) respectively, but set aside finding of default under Section 13 (1)(a). The appellant challenges this setting aside part, which according to him is unsustainable, as earlier the defence of the respondent was struck off under Section 13 (5) of the Act on this very ground of default. The submission is, the appellate court misconstrued the provisions of Section 7(4) of the said Act. Finally, the High Court in second appeal set aside the concurrent findings recorded by both the courts below and directed the appellant to restore possession of the suit premises to the respondent. The grounds on which the High Court interfered is that specific details had not been incorporated in the pleading and the finding is against and contrary to the evidence on record. The finding of the appellate court, of no default by the respondent is not disturbed.

Learned counsel for the appellant has challenged this impugned order firstly on the ground that neither any substantial question of law has been framed nor it arises in the present case, hence, interference in the second appeal under Section 100 CPC was without jurisdiction and secondly the High Court should have set aside that part of the order of the appellate court which holds no default as admittedly the respondent committed default in not paying rent as provisionally fixed under Section 7. This default under Section 7 (4) is by itself sufficient for the eviction of the respondent.

On the other hand, learned counsel for the respondent submits with vehemence that admittedly the present suit for eviction is based on arrears of rent at the rate of Rs. 45 per month as per prayer in the plaint, and in spite of amendment by introducing para 5 (A), as aforesaid, no corresponding amendment is made to the prayer. Hence eviction for default could only be if there be default in not making payment at the rate of Rs.45 per month and not on account of fixation of provisional standard rent at the rate of Rs.100 per month. He also submits once order dated 13th April, 1978 was passed under Section 13(3) which fixes the amount payable by the tenant for the default, no other amount including the amount as enhanced by fixation of provisional rent under Section 7 could be constituted to be an amount, for which respondent could be evicted unless this order dated 13th April, 1978 is modified. So far setting aside the concurrent findings on sub-letting and causing nuisance it is submitted that the High Court has given good reasons for the same.

The question of interference by the High Court in second appeal, its principle stands settled by catena of decisions of this Court. The jurisdiction of courts in first appeals, second appeals or revisions are all, to the extent conferred by the legislature. No litigant possesses any natural or inherent right to appeal against any order, unless a statute confers and it is to the extent it is conferred. Thus area to challenge is also hedged by the legislature hence challenge to the impugned order has to be confined within such limitation. How legislature limits such right could be visualised from Section 96 and Section 100 CPC as it stood prior to the amendment by the Amendment Act 1976 (104 of 1976) and as it stands after this amendment.

Section 96 deals with appeal from original jurisdiction. Its language confers very wide right both on the appellant to challenge and jurisdiction of the appellate court to adjudicate, when it uses the words, An appeal shall lie from every decree passed by any court exercising original jurisdiction. Even this wide expanse is shrunk through sub-sections 3 and 4. In other words, no appeal shall lie by virtue of sub-section 3, where it is a consent decree and sub-section 4 forbids appeal from an order in a suit cognizable by courts of small causes, in which the value of the subject matter does not exceed an amount referred to therein and in other cases only on question of law.

Prior to the amendment of Section 100 CPC a second appeal could have been filed before the High Court on the grounds as set out in clauses (a) to (c) of Section 100(1), namely :

> (a) the decision being contrary to law or to some usage having the force of law;
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> (b) the decision having failed to determine some material issue of law or usage having the force of law; (c) a substantial error or defect in the procedure provided by this code or by any other law for the time being in force, which may passibly have produced error or defect in the decision of the case upon the merits.

So the purpose for amending Section 100 by the aforesaid Amending Act was to further limit the jurisdiction of the High Court. Prior to the amendment the interference could have been where an order is contrary to law or some usage having the force of law. But now it could only be if any substantial question of law arises. The words substantial question of law, brought in has significance not superfluous. So now interference cannot be only because order is contrary to law, but when the disputed issues raises substantial question of law. Creation of powers or limiting such powers in the appellate authorities is always a decision based on public policy expressed in the maxims interest reipublicae ut sit finis litium. This policy brings to finality some issues or a litigation at some point of time. If no appeal is provided, the original order become final. Thus it is open for the legislature to bring finality to the adjudication on question of facts upto the stage of first appeal and limit the second appeal to question of laws or to the substantial question of law to such other limitation which the legislature deems fit and proper. Section 100 CPC after the amendment is reproduced below: 100. Second Appeal.- (1) Save as otherwise expressly provided in the body of this Code by any other law for the time being in force, an appeal lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law. (2) An appeal may lie under this Section from an appellate decree passed ex parte. (3) In an appeal under this section the memorandum of appeal shall precisely state the substantial question of law involving in the appeal. (4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question. (5) The appeal shall be heard on the question so formulated and the respondent shall at the hearing of the appeal, be allowed to argue that the case does not involve such question:

> Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.

Sub-section (3) places an obligation on the appellant to precisely state the substantial question of law involving in the appeal. Sub-section 4 confers on the High Court an obligation to formulate the substantial question of law, if it is satisfied that it is involved. Then sub-section 5 confers right on the respondent to urge that no substantial question of law arises. The proviso supplements the discretion to the court to formulate if some other substantial question of law arises if not formulated. The aforesaid scheme of this Section clearly reveals the intents of legislature to limit the exercise of power of the High Court under Section 100. Thus existence of substantial question of law is sine qua non for the exercise of power by the High Court under this Section.

This Court records in Panchugopal Barua Vs. Umesh Chandra Goswami (1997 (4) SCC 713 at para 7) :

Para 7 - A bare look at Section 100 CPC shows that the jurisdiction of the High Court to entertain a second appeal after the 1976 amendment is confined only to such appeals as involve a substantial question of law, specifically set out in the memorandum of appeal and formulated by the High Court. Of course, the proviso to the section shows that nothing shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if the court is satisfied that the case involves such a question. The proviso presupposes that the court shall indicate in its order the substantial question of law which it proposes to decide even if such substantial question of law was not earlier formulated by it. The existence of a substantial question of law is thus, the sine qua non for the exercise of the jurisdiction under the amended provisions of Section 100 CPC.

In Kshitish Chandra Purkait Vs. Santosh Kumar Purkait and others, 1997 (5) SCC 438, this Court followed and approved the aforesaid decision in the case of Panchugopal (supra) and further held:

Para 10 - We would only add that (a) it is the duty cast upon the High Court to formulate the substantial question of law involved in the case even at the initial stage; and (b) that in (exceptional) cases, at a later point of time, when the Court exercises its jurisdiction under the proviso to sub-section (5) of Section 100 CPC in formulating the substantial question of law, the opposite party should be put on notice thereon and should be given a fair or proper opportunity to meet the point. Proceeding to hear the appeal without formulating the substantial question of law involved in the appeal is illegal and is an abnegation or abdication of the duty cast on the court; and even after the formulation of the substantial question of law, if a fair or proper opportunity is not afforded to the opposite side, it will amount to denial of natural justice. The above parameters within which the High Court has to exercise its jurisdiction under Section 100 CPC should always be borne in mind. We are sorry to state that the above aspects are seldom borne in mind in many cases and second

appeals are entertained and/or disposed of, without conforming to the above discipline.

This Court in this case expressed its concern that these aspects are seldom borne in mind while deciding and entertaining the second appeal as they are being disposed of without conforming to this discipline. The concerned expressed by this Court in the aforesaid decision, which we also unhesitatingly reiterate. Though amendment was in the year 1976 but still large number of second appeal are being disposed of without conforming to this requirement.

In Ram Prasad Rajak Vs. Nand Kumar & Bros and another, 1998 (6) SCC 748, this Court held :

Para 7 - .. Unless there was a substantial question of law, the High Court had no jurisdiction to entertain the second appeal and consider the merits. It has been held by this Court in Panchugopal Barua V. Umesh Chandra Goswami and Kshitish Chandra Purkait V. Santhosh Kumar Purkait that existence of a substantial question of law is sine qua non for the exercise of jurisdiction under Section 100 CPC. In both the aforesaid cases, one of us (Dr. Anand, J) was a party to the Bench and in the former, he spoke for the Bench.

In Kondiba Dagadu Kadam Vs. Savitribai Sopan Giujar and others, 1999 (3) SCC 722, this court held :

After the amendment a second appeal can be filed only if a substantial question of law is involved in the case. The memorandum of appeal must precisely state the substantial question of law involved and the High Court is obliged to satisfy itself regarding the existence of such a question. If satisfied, the High Court has to formulate the substantial question of law involved in the case. The appeal is required to be heard on the question so formulated. However, the respondent at the time of the hearing of the appeal has a right to argue that the case in the court did not involve any substantial question of law. The proviso to the section acknowledges the powers of the High Court to hear the appeal on a substantial point of law, though not formulated by it with the object of ensuring that no injustice is done to the litigant where such a question was not formulated at the time of admission either by mistake or by inadvertence.

Thus within the said periphery the question arises, whether the High Court in the present case has rightly exercised its jurisdiction in setting aside the findings recorded by both the courts below? So far the question of sub-letting the finding was based on the deposition of the witnesses to whom the disputed premises was sub-let. Their testimony was rejected by the High Court mainly on the basis that there is no detail pleading pertaining to the period of sub-tenancy and even the witnesses has not produced any receipt of payment of rent. It is not in dispute that there is pleading

that the disputed premises was sub-let. The detail, if any, can be supplemented through evidence. Mere lack of details in the pleading cannot be reason to set aside concurrent finding of facts. Similarly, the High Court interfered with the concurrent finding of facts that nuisance was created by the respondent by obstructing the passage leading to the appellant house by keeping onion bags leaving out of space of 11 feet to 3 feet only. The fact of this obstruction is also supported by the Commissioner report submitted in the present proceedings. The finding recorded on sub-letting and nuisance by both the courts below being based on evidence on record its setting aside by reappraisal of evidence, and in any case without framing any substantial question of law by the High Court cannot be sustained and further we also do not find any substantial question of law arising therein. Learned counsel for the respondent tried to submit with force by attempting to take us to the evidence of the witnesses to show their unworthiness for reliance. It is neither a case of no evidence nor perverse finding. All these submissions are within the realm of appreciation of evidence which should not have been interfered by the High Court for less for us to examine.

Returning to the question of default committed by the respondent, the submission is, as per prayer in the suit the arrear claimed is only at the rate of Rs. 45 per month, hence without its amendment, subsequent enhancement to Rs.100 per month under Section 7 cannot be construed to be a default for eviction. Further unless the order under Section 13(3) is modified as aforesaid the non- deposit of this payment, if at all, at this rate cannot be construed to be default. Thus this enhance amount, if any, cannot be construed as default for eviction. He further submits as per Hindi calendar months, which is referred in the plaint, even after the enhancement under Section 7, if computed under it there is no default. It has also been urged by learned counsel for the respondent that the order under Section 7 has not been brought on the record in this proceeding, hence, could not be relied. On the other hand learned counsel for the appellant submits Section 7 stands by itself and any default after fixation of the provisional rent under it and failure to pay this rent for any month by 15th day of the next following month of such determination renders a tenant liable for eviction. There is no need to modify any order under Section 13 (3) for this and after amendment of plaint even without amending prayer, by virtue of Section 7 (4) the respondent is liable for eviction. Further, there is no plea by the respondent that rent is payable as per Hindi Calendar month. Description in the plaint of the arrears by referring names of Hindi month does not make tenancy by Hindi calendar.

Though the submission on this question of default was stretched, both by learned counsels for the appellant and the respondent at great length but we do not propose to go into this question, when we have upheld the concurrent findings of both the courts below of sub-letting and creating nuisance, which by itself is sufficient for a decree for eviction. The submission, since it raises question of interpretation of various sub-sections of Section 13 and Section 7, it is not necessary to go into it for the said reason in the present proceedings. This apart, as we have held that the High

Court committed error in the exercise of its jurisdiction in setting aside the concurrent findings of fact on sub-letting and nuisance without formulating and there being any substantial question of law, the same also equally applies so far this third point, namely, the default of the tenant. Once the appellate court recorded the finding that there is no default that became final and if the High Court did not interfere with this finding, we do not find, it committed any such error which require our interference. We do not find any substantial question arising out of the decision on this point.

For the aforesaid reasons and the findings recorded by us, we find it to be a fit case to allow this appeal and set aside the judgment and order of the High Court dated 15th December, 1995 and uphold the decree passed in favour of the appellant by the two courts below. On the facts and circumstances of the case, costs on the parties.