Supreme Court of India
Bant Singh Gill vs Shanti Devi & Ors on 1 March, 1967
Equivalent citations: 1967 AIR 1360, 1967 SCR (3) 59
Author: R Bachawat
Bench: Bachawat, R.S.

PETITIONER:
BANT SINGH GILL

Vs.

RESPONDENT:
SHANTI DEVI & ORS.

DATE OF JUDGMENT:
01/03/1967

BENCH:
BACHAWAT, R.S.
BENCH:
BACHAWAT, R.S.
WANCHOO, K.N.
BHARGAVA, VISHISHTHA

CITATION:
1967 AIR 1360 1967 SCR (3) 59

ACT:
Delhi & Ajmer Rent Control Act, 1952 (38 of 1952) and Delhi Rent Control Act (59 of 1958)-Suit for ejectment filed under 1952 Act--Tenant's application under s. 50(2) of the 1958 Act claiming that suit had abated-Application dismissed by trial court-Appeal filed under s. 34 of 1952 Act-Right of appeal whether governed by 1952 Act or 1958 Act-Effect of s. 57 of 1958 Act.

HEADNOTE:
A suit for ejectment on the ground of failing to pay arrears of rent was instituted against the appellant by the respondents under the provisions of the Delhi & Ajmer Rent Control Act, 1952 on February 27, 1958. On February 9, 1959 the Delhi Rent Control Act, 1958 came into force and became applicable to the premises in question. On March 13, 1961 the appellant, relying on the provisions of s. 50(2) of the Act of 1958, filed an application before the trial court requesting it to hold that the suit had abated on the ground that the suit -related to premises the construction of which had been completed after the 1st day of June 1951 but before the 9th day of June 1955. The trial court, not satisfied that the premises was constructed during the said period.,

rejected the application. An appeal purporting to be under s. 34 of the 1952 Act was filed before the District Judge who held that the order of the trial court was under the Act of 1958 so that no appeal lay. The High Court dismissed the appellant's revision application. Appeal to this Court was filed under Art. 136 of the Constitution.

HELD : (i) The saving clause of sub-s. (2) of s. 57 makes it clear that the present suit which was pending under the Act of 1952 was to be continued and disposed of in accordance with the provisions of that Act though tinder the first proviso the court deciding the suit was required to have regard to the provisions of the Act of 1958. [62 E]

Further the second proviso to s. 57(2) of the Act of 1952 laid down that the provisions for appeal under the Act of 1952 were to continue in force in respect of suits and proceedings disposed of thereunder. Consequently the right of appeal against the order continued to be governed by s. 34 of the Act of 1952. [62 G-H]

However the trial Judge had only decided a preliminary issue and the order not being a final order was not appealable under s. 34 of the Act of 1952. [63 H]

Central Bank of India v. Gokal Chand, [1967] 1 S.C.R. 310, relied on

Ram Charan Das v. Hira Nand, A.I.R. 1945 Lah. 298, referred to.

(ii) The appellant's application was not one under s. 33 of the Act of 1952 and the order disposing it of was not a final order on that ground either. [64 C-D]

It was open to the appellant to challenge the correctness of the decision of the trial -court in the appeal against the decree if passed against him. [64 E-F]

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JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2207 of 1966.

Appeal by special leave from the judgment and order dated July 21, 1966 of the Punjab High Court Circuit Bench at Delhi in Civil, Revision No. 319-D of 1965. Pritam Singh Safeer, for the appellant.

S. P. Mahajan and Lily Thomas, for the respondents. The Judgment of the Court was delivered by Bhargava, J. A suit for ejectment on the ground of failing to pay arrears of rent was instituted against the appellant, Bant Singh Gill, by the respondents under the provisions of the Delhi and Ajmer Rent Control Act, 1952 (No. 38 of 1952)--hereinafter referred to as "the Act of 1952", on the 27th February, 1958. On 9th February, 1959, the Delhi Rent Control Act, 1958 (No. 59 of 1958)-hereinafter referred to as "the Act of 1958", came into force and became applicable to the premises which were the subject-matter of the pending suit. On 13th March, 1961, the appellant, relying on the provisions of s. 50(2) of the Act of 1958, filed an application before the trial Court

requesting it to hold that the suit had abated on the ground that the suit related to premises the construction of which had been completed after the 1st day of June, 195 1, but before the 9th day of June, 1955. The trial Court, after taking into account the evidence, recorded a finding that the appellant had failed to prove that the premises had been completed during this period mentioned in s. 50(2) of the Act of 1958, and, consequently, rejected the application and held that the suit was to proceed on merits. Against that order, the appellant filed an appeal before the District Court which was heard by the Additional Senior Sub-Judge exercising enhanced appellate powers in Delhi. The appeal purported to be under s. 34 of the Act of 1952. The appellate Court held that the order passed by the trial Court was not an order under the Act of 1952, but an order under the Act of 1958, so that no appeal lay, and dismissed the appeal on the ground of non-maintainability. The revision filed by the appellant before the Circuit Bench of the High Court of Punjab at Delhi failed, and the appellant has now come up to this Court by special leave in this appeal. It appears to us that both the first appellate Court and the High Court committed an error in holding that no appeal lay, as a result of their failure to notice the provisions of S. 57 of the Act of 1958. The suit, as originally instituted, was clearly a case under s. 33 of the Act of 1952 which is as follows :

> "33. (1) Any civil Court in the State of Delhi or Ajmer which has jurisdiction to hear and decide a suit for recovery of possession of any premises shall have jurisdiction to hear and decide any case under this Act relating to such premises if it has pecuniary jurisdiction and is otherwise competent to hear and decide such a case under any law for the time being in force. (2) The value of any case under this Act, for the purposes of the pecuniary jurisdiction of the Court, shall be determined by the amount of rent which is or would be payable for a period of twelve months, calculated ac- cording to the highest amount claimed in the case:
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> Provided that in the case of any proceeding based on the certificate of the Controller under section 28, such value shall be determined by the amount of rent which is or would be payable for -a period of one month. (3) If any question arises whether any suit, application or other proceeding is a case under this Act, the question shall be determined by the Court.
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> (4) For the purposes of this Chapter, a case under this Act, includes any suit, application or other proceeding under this Act and also includes any claim or question arising out of this Act or any of its provisions, but does not include any proceeding which a Controller is empowered to decide under Chapter IV."

Section 34 of that Act, which confers the right of appeal to an aggrieved person against any decree or order of a Court under that Act, runs as follows "34. (1) Any person aggrieved by any decree or order of a court passed under this Act may, in such manner as may be prescribed, prefer an appeal--

(a) to the court of the senior subordinate judge, if any, where the value of the case does not exceed two thousand rupees :

Provided that where there is no senior subordinate judge, the appeal shall lie to the district judge;

(b) to the court of the district judge, where the value of the case exceeds two thousand rupees but does not exceed ten thousand rupees; and.

(c) to the High Court, where the value of the case exceeds ten thousand rupees.

(2) No second appeal shall lie from any decree or order passed in any case under this Act."

It is correct that the claim of the appellant was that the suit abated because of the applicability of section 50(2) of the Act of 1958;

but, in view of the provisions of s. 57 of that Act, it is clear that an order of abatement will be an order under the Act of 1952 and not under the Act of 1958. Section 57 of the Act of 1958 reads :-

> "57. (1) The Delhi and Ajmer Rent Control Act, 1952, in so far as it is applicable to the Union territory of Delhi, is hereby repealed. (2) Notwithstanding such repeal, all suits and other proceedings under the said Act pending, at the commencement of this Act, before any court or other authority shall be continued and disposed of in accordance with the provisions of the said Act, as if the said Act had continued in force and this Act had not been passed :
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> Provided that in any such suit or proceeding for the fixation of standard rent or for the eviction of a tenant from any premises to which section 54 does not apply, the court or other authority shall have regard to the pro- visions of this Act:
>
> Provided further that the provisions for appeal under the said Act shall continue in force in respect of suits and proceedings disposed of thereunder."

The saving clause in sub-s. (2) of s. 57 makes it clear that the present suit, which was pending under the Act of 1952, was to be continued and disposed of in accordance with the provisions of that Act, though, under the first proviso, the court deciding the suit was required to have regard to the provisions of the Act of 1958. Consequently, when deciding the question whether that pending suit had abated or not, the Court was still functioning as a court seized of jurisdiction under the Act of 1952 over the pending suit, though, in deciding that suit, the court had to have regard to the provision contained in s. 50(2) of the Act of 1958. In thus applying the provision of s. 50(2) of the Act of 1958 to the suit pending before it, the Court was still acting under the Act of 1952, and the order passed for abatement or refusing to abate the suit and to continue its trial was an order under the Act of 1952 under which the Court was still continuing to exercise its jurisdiction. Further, the second provide to s. 57(2) of the Act of 1958 laid down that the provisions for appeal under the Act of 1952 were to continue-in force in respect of suits and proceedings disposed of thereunder. Consequently, the right of appeal against the order continued to be governed by s. 34 of the Act of 1952, and the appeal was wrongly dismissed by the Additional Senior Sub-Judge on the ground that no appeal lay. The order of that Court as well as the revisional order of the High Court were, therefore, incorrect.

However, when this appeal came up for hearing before us, learned counsel for the respondents raised another point for challenging the competency of the appeal that was filed against the order of the trial Court. It was urged that the order, rejecting the application of the appellant to record the abatement of the suit and directing continuance of the suit, was not an order of such a nature against which an appeal could be filed under s. 34 of the Act of 1952. The word "order" is used in S. 34 without any limitations, with the exception that it must be an order of a court passed under the Act of 1952; but it is contended that this word cannot be interpreted so widely as to include all interlocutory orders or other similar orders passed in the course of the trial of a suit. This aspect came up for consideration before this Court when interpreting S. 38(1) of the Act of 1958 in which also a provision for appeals has been made, and the language used is very wide inasmuch as it is laid down that "an appeal shall lie from every order of the Controller made under this Act..... The extent of this right of appeal under S. 38(1) was considered by this Court in the Central Bank of India Ltd. v. Gokal Chand(1) and it was held that "the object of S. 38(1) is to give a right of appeal to a party aggrieved by some order which affects his right or liability. In the context of S. 38(1), the words "every order of the Controller made under this Act, though very wide, do not include interlocutory orders, which are merely procedural and do not affect the rights or liabilities of the parties." The principle was thus recognised that the word "order" used in such context is not wide enough to include every order, whatever be its nature, and particularly orders which only dispose of interlocutory matters. In the case before us also, all that was done by the application presented by the appellant on the 13th March, 1961, was to raise a preliminary issue about the maintainability of the suit on the ground that the suit had abated by virtue of s. 50(2) of the Act of 1958. The Court went into that issue and decided it against the appellant. If the decision had been in favour of the appellant and the suit had been dismissed, no doubt there would have been a final order in the suit having the effect of a decree (see the decision of the Full Bench of the Lahore High Court in Ram Charan Das v. Hira Nand(2). On the other hand, if, as in the present case, it is held that the suit has not abated and its trial is to continue, there is no final order deciding the rights or liabilities of the parties to the suit. The rights and liabilities have yet to be decided after full trial has been gone through. The decision by the court is only in the nature of a finding on a preliminary issue on which would depend the maintainability of the suit. Such a finding cannot be held to be an order for purposes of s. 34 of the Act of 1952, and, consequently, (1) (1967] 1 S.C.R. 310.

(2) A.I.R. 1945 Lah, 298.

no appeal against such an order would be maintainable. It was indicated by this Court in the case of the Central Bank of India Ltd. (1) that, in such a case, it is open to the appellant to canvass the error, defect, or irregularity, if any, in the order in an appeal from the final order passed in the proceedings for eviction. In the present case also, therefore, it is clearly open to the appellant to raise this plea of abatement of the suit, if and when he files an appeal against a decree for eviction passed by the trial Court.

Learned counsel for the appellant relied on the language of sub-s. (4) of s. 33 of the Act of 1952 to urge that the appellant's application, requesting the trial Court to record abatement of the suit, should be held to be a case under s. 3 3 (1) of that Act, and the order, rejecting that application, should be held to be, therefore, an order finally disposing of that case. This submission made by

learned counsel ignores the nature of the application and the effect of the order made on it by the trial Court. As we have indicated earlier, the application was in the nature of a request to the court to decide a preliminary issue whether the suit had abated or was still maintainable, and to dismiss the suit on recording the finding that it had abated. The application was, therefore, one raising a preliminary issue as to the maintainability of the suit; and, in fact, the request for raising the issue was allowed by the trial Court by going into that issue and recording a finding. On that finding, the suit was clearly maintainable. Such a finding on a preliminary issue, which relates to the maintainability of a suit, is not an order of a nature against which an appeal can lie. As we have indicated above, the only remedy available to the appellant was, and still is, to challenge the correctness of the decision of the trial Court in the appeal against the decree, if passed against him.

The appeal, consequently, fails and is dismissed with costs.

G.C Appeal dismissed

(1) [1967] 1 S.C.R. 310.