PETITIONER:
LACHHMAN DASS

Vs.

RESPONDENT:
SANTOKH SINGH

DATE OF JUDGMENT12/05/1995

BENCH:
FAIZAN UDDIN (J)
BENCH:
FAIZAN UDDIN (J)
ANAND, A.S. (J)

CITATION:
1995 SCC (4) 201 JT 1995 (7) 437
1995 SCALE (3)704

ACT:

HEADNOTE:

JUDGMENT:

THE 12TH DAY OF MAY,1995

Present:

Hon'ble Dr.Justice A.S.Anand
Hon'ble Mr.Justice Faizan Uddin

Mr.Sarwa Mitter, (Mr.Sujit Bhattacharya,) Adv. for M/s. Mitter & Mitter Co., for the appellant
Mr.K.G.Bhagat, Mr.Kamal Baid, Ms.Kusum Choudhary, Advs. for the Respondent

J U D G M E N T

The following Judgment of the Court was delivered:

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 5752 OF 1995
(Arising out of SLP (C) No.20025 of 1991)

Lachhman Dass .....Appellant
versus
Santokh Singh .....Respondent

J U D G M E N T

Faizan Uddin, J.

1. Leave granted.

2. This appeal under Article 136 of the Constitution of India has been directed against the judgment dated 19th February, 1991, passed by a learned Single Judge of the High Court of Punjab and Haryana at Chandigarh in Civil Revision No.1076 of 1987 reversing the judgment and order of eviction passed against the tenant-respondent herein by the Rent Controlling Authority, Karnal in Rent Case Nos.41/2 of 1984 (21/2 of 1982) and affirmed by the Appellate Authority, Karnal in Rent Appeal No.1 of 1986 decided on 11th March, 1987.

3. The present appellant brought the suit seeking the eviction of his tenant, the respondent herein, from the House No.372, situated in Ward No.7, Sadar Bazar, Karnal consisting of two rooms, one varandah and kitchen and an open courtyard on the grounds set out hereunder :-

I THAT the respondent was a defaulter in respect of payment of arrears of rent from 1-8-1979 to 31-7-1982 at the rate of Rs.20/- per month amounting to Rs.720/- and House Tax to Rs.90/-:

II THAT the respondent had started tethering cattle and putting dung cakes on walls of demised premises diminishing its value and utility;

III THAT the respondent had ceased to occupy the tenanted premises for more than a year without reasonable cause and;

IV THAT the respondent-tenant has shifted his residence to his own residential House No.351/7, Sadar Bazar, Karnal having purchased in the name of his wife which is reasonably sufficient for himself and his family members.

It may be pointed out here that the afore-mentioned grounds of eviction fall under Sections 13(2) (1), 13(2) (iii), 13(2)(v) and 13(3)(a) (iv) respectively of the Haryana Urban (Control of Rent and Eviction) Act, 1973 [hereinafter referred to as the 'Act'].

4. The respondent-tenant contested the said eviction proceedings by controverting the material averments made by the appellant-landlord. The respondent, inter-alia, pleaded that the appellant was not the only owner and landlord of the suit premises and, therefore, he was not competent to file the suit for his eviction. He pleaded that the arrears of rent were duly tendered by him. He also pleaded that the house purchased by his wife consists of two small rooms and that since he has strained relations with his wife, she was living separate from him. He further pleaded that he and his married son and his children and the wife of his son are living in the house in dispute and on these pleadings he made a prayer for the dismissal of the eviction suit.

5. The Rent Controller after framing the necessary issues and recording the parties evidence came to the conclusion that the appellant alone was competent to initiate eviction proceedings and since the tenant-respondent had paid the arrears of rent, house tax and interest on 18-1-1983, therefore, the ground is eviction under Section 13(2)(1) of the Act became non-existent. As regards the second ground, the Rent Controller found that there was no cogent and reliable evidence to prove that the respondent had committed any act diminishing the value or the utility of the suit premises. As regard the third and fourth grounds mentioned above, the Rent Controller on a minute and detailed discussion of the parties evidence on record, took the view that the respondent-tenant had ceased to occupy the demised premises for a continuous period of more than four months without any reasonable cause and had in fact shifted his residence with his wife and children in September, 1981 in House No.351, Ward No.7, Sadar Bazar, Karnal which he had purchased in the name of his wife and the same is reasonably sufficient for his requirements. The Rent Controller, therefore, passed an order of eviction of the respondent from the suit premises on the ground contained in Section 13(2)(v) and 13(3)(a)(iv) of the Act. The respondent-tenant challenged the said finding in appeal under Section 15(2) of the Act before the Appellate Authority. The Appellate Authority re-examined the entire evidence and the material on record and after such reassessment of evidence affirmed the conclusions recorded by the Rent Controller and, therefore, dismissed the appeal filed by the respondent, maintaining the order of eviction. The respondent-tenant then prefarred Civil Revision under sub-section (6) of Section 15 of the Act before the High

Court of Punjab and Haryana and the learned Single Judge by the impugned judgment set aside the concurrent findings of the two courts below by holding that it was not established that the respondent-tenant has acquired or is in possession of reasonably sufficient accommodation which renders him liable to be evicted from the demised premises.

6. Learned counsel appearing for the landlord-appellant strenuously urged that the learned Single Judge of the High Court committed a grave and serious error in interferring with the well reasoned judgment and findings of fact recorded by the two courts below after proper appreciation of evidence on record and took contrary view on extraneous facts and circumstances by ignoring the relevant evidence and material on record which has resulted into miscarriage of justice. The learned counsel for the appellant submitted that there is cogent and convincing evidence indicating that the respondent had shifted to new residential house which he had acquired in the name of his wife and had absolutely ceased to occupy the tenanted premises in question. It was urged that the learned Single Judge totally ignored the fact that respondent-tenant had come forward with a false defence that he had strained relations with his wife and, therefore, he was living separate in the demised premises with his son and his family while his wife was living separate from him in House No.351, which defence has been found to be entirely false by the two courts below on a thorough marshalling of evidence on record. It was also urged that the learned Single Judge made out a case for respondent-tenant that his family consisted of about 14 persons and, therefore, the house acquired by him was not reasonably sufficient for the whole family which is against the evidence on record. After hearing the learned counsel for the parties and on perusal of the judgment of the High Court as well as the judgments of the two subordinate courts and other material on record we find that there is much substance in the store-mentioned submissions made by the learned counsel for the appellant.

7. The first question that arises for our consideration is whether the learned Single Judge of the High Court was justified in re-assessing the value of the evidence and substitute his own conclusions in respect of the concurrent findings of fact recorded by the two courts below, in exercise of his revisional powers vested in the High Court under Section 15(6) of the Act. In the present case as discussed earlier the Rent Controller passed the order of eviction against the respondent on the ground mentioned under Section 13 of the Act against which the respondent preferred an appeal under sub-section (2) of Section 15 of the Act and the Appellate Authority affirmed the order of eviction passed by the Rent Controller. Here it may be noted that the Act does not provide a second appeal against the order passed in appeal by the Appellate Authority under sub-section (2) of Section 15. The Act, however, under sub-section (6) of Section 15 makes a provision for revision to the High Court against any order passed or proceedings taken under the Act. Thus, the Legislature has provided for a single appeal against the order passed by the Rent Controlling Authority and no further appeal has been provided under the Act. The Legislature has, however, made a provision for discretionary remedy of revision which is indicative of the fact that the Legislature has created two jurisdictions different from each other in scope and content in the form of an appeal and revision. That being so the two jurisdictions - one under an appeal and the other under revision cannot be said to be one

and the same but distinct and different in the ambit and scope. Precisely stated, an appeal is a continuation of a suit or proceedings wherein the entire proceedings are again left open for consideration by the appellate authorities which has the power to review the entire evidence subject, of course, to the prescribed statutory limitations. But in the case of revision whatever powers the revisional authority may have, it has no power to reassess and reaporeciate the evidence unless the statute expressly confers on it that power. That limitation is implicit in the concept of revision. In this view of the matter we are supported by a decision of this Court in State of Kerala vs. K.M. Charia Abdullah and Co. [1965 (1) SCR 601 at 604].

8. This Court in the case of Hari Shankar vs. Rao Girdhari Lal Chowdhury [1962 Suppl (1) SCR 933 = AIR 1963 SC 698] had an occasion to consider the question of distinction between an appeal and a revision and Hidayatullah, J. (as he then was) speaking for the Court observed at page 939 of the report as follows :-

> "The distinction between an appeal and revision is a real one. A right to appeal carries with it right of re-hearing on law as well as fact, unless the statute conferring the right to appeal limits the re-hearing in some way as we find has been done in second appeal arising under the Code of Civil Procedure. The power to hear a revision is generally given to a superior court so that it may satisfy, itself that a particular case has been decided according to law."

9. In the case of State of Kerala vs. K.M. Charia Abdulla & Co. [1965 (1) SCR 601] this Court expressed the view that when the Legislature confers a right to appeal in one case and a discretionary remedy of revision in another, it may be deemed to have created two jurisdictions different in scope and content. Again in the case of Neta Ram and others vs. Jivan Lal and another [AIR 1963 SC 499] Hidayatullah, J. (as he then was) speaking for the Court observed that the revisional jurisdiction of the High Court do not include the power to reverse concurrent findings, without showing how those findings are erroneous.

10. In the present case sub-section (6) of Section 15 of the Act confers revisional power on the High Court for the purpose of satisfying itself with regard to the legality or propriety of an order or proceeding taken under the Act and empowers the High Court to pass such order in relation thereto as it may deem fit. The High Court will be justified in interfering with the order in revision if it finds that the order of the appellate authority suffers from a material impropriety or illegality. From the use of the expression "Legality or propriety of such order or proceedings" occurring in sub-section (6) of Section 15 of the Act, it appears that no doubt the revisional power of the High Court under the Act is wider than the power under Section 115 of the Code of Civil Procedure which is confined to jurisdiction, but it is also not so wide as to embrace within its fold all the attributes and characteristics of an appeal and disturb a concurrent finding of fact properly arrived at without recording a finding that such conclusions are perverse or based on no evidence or based on a superficial and perfunctory approach. If the High Court proceeds to interfere with such concurrent findings of fact ignoring the aforementioned well recognised principles, it would amount to equating the revisional powers of the High Court as powers of a regular appeal frustrating the fine distinction between an appeal and a revision. That being so unless the High Court comes to the conclusion that the

concurrent findings recorded by the two courts below are wholly perverse and erroneous which manifestly appear to be unjust there should be no interference. In the present case the two courts below have thoroughly examined and appreciated the parties evidence and have recorded a definite finding, entirely based on the evidence on record that the respondent-tenant has ceased to occupy the demised premises since after September 1981 and had, in fact, alongwith his wife and family started living in the House No.351, Ward No.7, Karnal, having been acquired by him in the name of his wife.

11. It may be noticed that the learned Single Judge has himself stated in the impugned judgment that it is not a matter of dispute that both the accommodations i.e. the demised premises and the house acquired by the tenant-respondent, in the name of his wife, both have almost the same capacity, yet the learned Single Judge took the view that the house acquired by the respondent was not reasonably sufficient for his requirements. If both the houses are almost of the same capacity it is difficult to accept the finding that the house acquired by the respondent is a reasonably not sufficient for his requirements. The observation of the learned Single Judge that the respondent's family consists of about 14 persons is neither here nor there, as admittedly, all those 14 persons are not living at Karnal with the respondent and, particularly, in the demised premises or in the house acquired by the respondent. The learned Single Judge has himself further observed in the impugned judgment that "though it is also in evidence that some of the sons are either posted or working outside Karnal yet it is patent that they keep on visiting the petitioner." Thus, the learned Single Judge included the occasional visitors of the respondent also to be the members of the family which by no stretch of imagination could be accepted to be a sound reasoning, to set aside the concurrent findings of fact. It is also not the case of respondent-tenant that 14 persons of his family are living with him in the house. On the contrary from the evidence it is clear that at the most the respondent's family consist of six members including his wife who have been living in the demised premises and all of them have shifted in the house acquired by the respondent in the name of his wife. This fact is sufficiently established from the oral and documentary evidence on record. But surprisingly enough the learned Single Judge ignored this part of the evidence and disturbed concurrent findings for no good reasons, resulting into miscarriage of justice.

12. In the facts and circumstances discussed above we are satisfied that there were no reasons muchless cogent reasons for the learned Single Judge to interfere with the findings of fact recorded by the two courts below. Consequently we set aside the impugned judgment and order of the High Court and restore the orders of the two courts below with costs of Rs.1000/-.