

GANDHE VIJAY KUMAR

A

v.

MULJI @ MULCHAND

(Civil Appeal No. 1384 of 2011)

JULY 27, 2017

B

[KURIAN JOSEPH AND R. BANUMATHI, JJ.]

*Jurisdiction : Revisional jurisdiction – Scope of – On facts, concurrent findings of facts with regard to the bonafide requirement of the landlord by Rent Controller as well as by Appellate Authority – Set aside by the High Court holding that the court can re-appreciate the evidence to test whether the findings of the Rent Controller are correct – On appeal, held: High Court misdirected itself and exceeded its jurisdiction – In revisional jurisdiction, the Court is expected to see only whether the findings are illegal or perverse – High Court should not have gone into the evidence as a first appeal and enter a different finding, though another finding might also be possible – Merely because another view was possible in exercise of the revisional jurisdiction, High Court could not upset the factual findings – Judgment of the High Court set aside and that of Rent Controller and Appellate Authority, restored – Rent Control and eviction.*

C

D

E

*Hindustan Petroleum Corporation Ltd. v. Dilbahar Singh*  
(2014) 9 SCC 78 – referred to.

**Case Law Reference**

(2014) 9 SCC 78      referred to      Para 1

F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1384 of 2011.

From the Judgment and Order dated 25.04.2007 of the High Court of Andhra Pradesh at Hyderabad in Civil Revision Petition No. 4820 of 2006.

G

H. S. Gururaja Rao, Sr. Adv. Y. Raja Gopala Rao, Adv. for the Appellant.

K. Maruti Rao, Adv.(for Ms. Anjani Aiyagari) for the Respondent.

H

A The Judgment of the Court was delivered by

B **KURIAN, J.** 1. The appellant before this Court is aggrieved by  
order passed by the High Court wherein concurrent findings on facts  
with regard to the bonafide requirements of the appellant have been  
upset holding that “the court can re-appreciate the evidence to test whether  
the findings of the Rent Controller are correct”. We are afraid, the High  
Court has misdirected itself and exceeded its jurisdiction. In revisional  
jurisdiction, the Court is expected to see only whether the findings are  
illegal or perverse in the sense that a reasonably informed person will  
not enter such a finding. For proper guidance, it would be appropriate to  
refer to a recent Constitution Bench judgment in Hindustan Petroleum  
C Corporation Ltd. v. Dilbahar Singh<sup>1</sup>, at paragraphs-30, 31 and 43:

D “30. We have already noted in the earlier part of the judgment  
that although there is some difference in the language employed  
by the three Rent Control Acts under consideration which provide  
for revisional jurisdiction but, in our view, the revisional power of  
the High Court under these Acts is substantially similar and broadly  
such power has the same scope save and except the power to  
invoke revisional jurisdiction suo motu unless so provided expressly.  
None of these statutes confer on revisional authority the power  
as wide as that of the appellate court or appellate authority despite  
such power being wider than that provided in Section 115 of the  
E Code of Civil Procedure. The provision under consideration does  
not permit the High Court to invoke the revisional jurisdiction as  
the cloak of an appeal in disguise. Revision does not lie under  
these provisions to bring the orders of the trial court/Rent Controller  
and the appellate court/appellate authority for rehearing of the  
F issues raised in the original proceedings.

G 31. We are in full agreement with the view expressed in *Sri Raja Lakshmi Dyeing Works* that where both expressions “appeal”  
and “revision” are employed in a statute, obviously, the expression  
“revision” is meant to convey the idea of a much narrower  
jurisdiction than that conveyed by the expression “appeal”. The  
use of two expressions “appeal” and “revision” when used in one  
statute conferring appellate power and revisional power, we think,  
is not without purpose and significance. Ordinarily, appellate  
jurisdiction involves a rehearing while it is not so in the case of  
revisional jurisdiction when the same statute provides the remedy

H <sup>1</sup>(2014) 9 SCC 78

by way of an “appeal” and so also of a “revision”. If that were so, the revisional power would become coextensive with that of the trial court or the subordinate tribunal which is never the case. The classic statement in *Dattonpan* that revisional power under the Rent Control Act may not be as narrow as the revisional power under Section 115 of the Code but, at the same time, it is not wide enough to make the High Court a second court of first appeal, commends to us and we approve the same. We are of the view that in the garb of revisional jurisdiction under the above three rent control statutes, the High Court is not conferred a status of second court of first appeal and the High Court should not enlarge the scope of revisional jurisdiction to that extent.”

xxx

xxx

xxx

xxx

43. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the first appellate court/first appellate authority because on reappraisal of the evidence, its view is different from the court/authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the court/authority below is according to law and does not suffer from any error of law. A finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappraise or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a

- A court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.”

These principles hold good generally for exercise of revisional power.

2. There is no dispute with respect to the landlord-tenant relationship. The bonafide requirement also has been concurrently found by the Rent Controller as well as by the Appellate Authority. The High Court should not have ventured to look into the evidence as if in a first appeal and entered a different finding, though another finding might also be possible. Merely because another view is possible in exercise of the revisional jurisdiction, the High Court cannot upset the factual findings.

3. The judgment of the High Court is set aside. The appeal is allowed. The order passed by the Rent Controller, as upheld by the Appellate Authority, is restored.

4. Learned Counsel appearing for the respondent seeks some time to surrender the vacant possession to the appellant. Learned Senior Counsel appearing for the appellant submits that since the last 70 years, the respondent has been enjoying the property and the appellant is in pressing and bonafide need. Be that as it may, having regard to the fact that the respondent is carrying on a hotel business, we permit him to continue upto 31<sup>st</sup> March, 2018. On or before 1<sup>st</sup> April, 2018, the respondent shall surrender vacant and peaceful possession of the premises to the appellant. During the interregnum, the respondent shall not create any third party rights and shall not cause any damage to the property. He shall also file a usual undertaking in the Registry within four weeks from today.

5. There shall be no order as to costs.