

YUNUS ALI (DEAD) THROUGH HIS L.RS.

v

KHURSHEED AKRAM

(Civil Appeal No. 1901 of 2003)

MAY 28, 2008

[C.K. THAKKER AND LOKESHWAR SINGH PANTA,  
JJ.]

*Code of Civil Procedure, 1908 – s.115 – Jurisdiction under – Scope – Both Trial Court and the lower Appellate Court determined the provisional rent for the shop in question at the rate of Rs.400/- p.m.– Revision petition – High Court reversed the concurrent findings of the two courts below and directed the Trial Court to determine provisional rent at the rate of Rs.200/- p.m. on the premise that it was the rent last paid by the tenant – Challenge to – Justification – Held: Justified – Under s.115, the High Court cannot re-appreciate the evidence and cannot set aside the concurrent findings of the Courts below by taking a different view of the evidence – High Court is empowered only to interfere with the findings of fact if the findings are perverse or there has been a non-appreciation or non-consideration of material evidence on record by the courts below – On facts, the High Court acted with material irregularity to interfere with the well-merited concurrent findings and reasonings recorded by two courts below – It lost sight of the important fact that it was provisional determination of rent by the Trial Court and the eviction suit was still pending before it for final decision.*

**The High Court, while allowing a civil revision petition, re-appreciated the evidence and reversed the concurrent findings of the courts below i.e. the Trial Court and the lower Appellate Court, holding that they committed jurisdictional error in determining the provisional rent for the shop in question under s.13(3) of the Rajasthan**

A Premises (Control of Rent & Eviction) Act, 1950 at the rate of Rs. 400/- p.m. Further, the High Court directed the Trial Court to determine provisional rent of the very same shop at the rate of Rs.200/-p.m. on the premise that it was the rent last paid by the tenant-Respondent.

B Before this Court, the Appellants-landlords contended that the order of the High Court was perverse, erroneous and illegal as the High Court had exceeded its jurisdiction under s.115 CPC to replace concurrent findings of facts with its own findings as if it was exercising  
C the jurisdiction of the Appellate Court.

Allowing the appeal, the Court

HELD:1. Under s.115 CPC, the High Court cannot re-appreciate the evidence and cannot set aside the concurrent findings of the Courts below by taking a different  
D view of the evidence. The High Court is empowered only to interfere with the findings of fact if the findings are perverse or there has been a non-appreciation or non-consideration of the material evidence on record by the courts  
E below. Simply because another view of the evidence may be taken is no ground for the High Court to interfere in its revisional jurisdiction. [Para 15] [1076-G & H; 1077-A & B]

2. Considering all the facts and circumstances in the present case, the order of the High Court cannot be sustained and as such is being set aside. The High Court  
F acted in exercise of its jurisdiction with material irregularity to interfere with the well-merited concurrent findings and reasonings recorded by two courts below. The High Court lost sight of the important fact that it was provisional  
G determination of the amount of rent by the trial court and the eviction suit is still pending before it for final decision. [Para 16] [1077-B,C & D]

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 1901  
of 2003

From the final Judgment and Order dated 18.07.2001 of the High Court of Judicature for Rajasthan, Jaipur Bench at Jaipur in S.B. Civil Revision No. 669 of 2001

Ajay Choudhary for the Appellants.

Abhijeet Sinha and Ejaz Maqbool for the Respondents.

The Judgment of the Court was delivered by

**LOKESHWAR SINGH PANTA, J.** The subject-matter of the challenge in this appeal is a judgment of the High Court of Rajasthan passed in S.B. Civil Revision Petition No.669/2001 on 18<sup>th</sup> July 2001 setting aside the judgments of the Courts below where both the trial court as well as the lower Appellate Court determined the provisional rent under Section 13(3) of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 (herein after referred to as the 'Act of 1950') at the rate of Rs.400/-p.m. for the shop in question with effect from 01.06.1994 to 01.07.1999. The High Court in revision re-appreciated the evidences and reversed the concurrent findings of the Courts below and held as under: -

"Thus, the provisional determination of rent by both the courts below at the rate of 400/-p.m. appears on the very face to be illegal and both the courts below have committed jurisdictional error in determining the rent at such rate and they should have determined the rent at the rate of Rs.200/-p.m. as it was the rent last paid by the defendant-petitioner to the plaintiff-respondent.

For the reasons stated above, it is held that the orders dated 16.02.2001 passed by the learned Additional District Judge No.5, Jaipur City, Jaipur and 13.07.1999 passed by the learned Additional Civil Judge (J.D.) No.3, Jaipur City, Jaipur are contrary to the provisions of Section 13(3) of the Act of 1950 and interference becomes inevitable for ends of justice and they are liable to be set aside and this revision is liable to be allowed.

A Accordingly, this revision petition filed by the defendant-  
petitioner Khursheed Akram is allowed and the impugned  
orders dated 16.02.2001 passed by the learned Addl.  
District Judge No.5, Jaipur City, Jaipur and 13.07.1999  
B passed by the learned Addl.Civil Judge (J.D.) No.3, Jaipur  
City, Jaipur are set aside. The learned Addl.Civil Judge  
(J.D.) No.3, Jaipur City, Jaipur is directed to determine  
provisional rent at the rate of Rs.200/-p.m. It is made  
C clear that this provisional rent is not final, but is only *interim*  
till the final decision of the court and subject to adjustment  
as provided under Section 13(8) of the Act of 1950. No  
order as to costs."

2. Brief facts, leading to the filing of this appeal, are as  
under:-

D Yunus Ali, the appellant (now represented through his le-  
gal representatives as the appellants) was owner of shop No. 2  
situated at House No. 242 at Nahari Ka Naka behind Khetri  
House, Madina Masjid Road, Jaipur. By an oral agreement, he  
leased the shop on rent to Khursheed Akram, tenant-respon-  
E dent herein, on a monthly rent of Rs. 300/- excluding electricity  
and water charges. The respondent-tenant also paid an ad-  
vance amount of Rs. 5,000/- which was to be adjusted against  
the instalments of rent or to be returned when tenancy will ex-  
pire. On 22.01.1993, a rent deed was duly executed between  
F the parties on a stamp paper of Rs. 10/- giving effect to the  
agreed terms and conditions of the earlier oral agreement of  
monthly rental of Rs. 300/-. The agreement was executed in  
the presence of the witnesses and attested by a Notary.

G 3. In the month of March 1994, the original landlord at the  
request of the respondent-tenant, made addition of a platform  
in front of the shop with stone floor and erection of shutter over  
the shop. There was agreed marginal increase of the rent  
amount after the renovation was over. A fresh rent deed was  
H duly executed in favour of the original landlord on 01.04.1994  
whereunder rent was increased to Rs. 400/- per month payable

w.e.f. April 1994. It was also agreed that the advance amount of Rs. 5000/- shall be adjusted in 14 monthly instalments of the rent due upto 31.03.1994 @ Rs. 300/- per month and thereafter upto 31.5.1994 @ Rs. 400/- per month and other terms remained unchanged and unaltered. Though, in spite of repeated requests and demands of the original-landlord, the respondent-tenant failed to pay rent even after the execution of rent deed on 01.4.1994. Arrears of the rent started accumulating since 01.06.1994 after adjustment of the advance amount of Rs.5,000/-. The landlord left with no other remedy except to file a suit for eviction on 29.01.1997 before the Court of Additional Civil Judge (S.D.) No. 3, Jaipur City, Jaipur *inter alia* contending that apart from various other grounds mentioned in the plaint, the respondent-tenant has defaulted in payment of the arrears of rent since 01.06.1994.

4. The respondent-tenant in his written statement pleaded that the agreed rent of the shop was Rs.200/- per month and he had paid an advance amount of Rs. 10,000/- and later on the rent was never agreed to be increased to Rs.300/- per month and further to Rs. 400/-per month w.e.f. 01.04.1994 as claimed in the plaint. It was admitted by him that he had paid rent upto April, 1995 @ Rs.200/- per month and in support thereof, he placed rent receipts on the record.

5. On 13.07.1999, the learned Civil Judge, after considering the fact that the rent was being paid by the respondent-tenant @ Rs. 200/- in support of which he had produced cash receipts but since a fresh rent deed was executed between the parties, which *prima facie* would reveal that the rent was agreed to be charged @ Rs. 400/- per month and on the premise of the agreed rate of rent, the trial court determined the provisional rent under Section 13(3) of the Act of 1950 @ Rs. 400/- per month from 01.06.1994 to 01.07.1999.

6. Being aggrieved by the above-said order of the learned Civil Judge, the respondent-tenant preferred a Civil Miscellaneous Appeal before the learned District Judge, Jaipur City,

A Jaipur which was transferred to the learned Additional District Judge No. 5, Jaipur City, Jaipur, for trial. During the course of hearing of the appeal, the respondent-tenant produced a copy of compromise deed dated 30.03.1993 before the Appellate Court in support of his defence that the rent of the shop was Rs. 200/- per month and not Rs.400/- per month. The learned Additional District Judge, on careful perusal of the said document, arrived at the conclusion that the said deed pertained to shop No. 5 and not shop No. 2 which was the subject-matter of the suit. The learned Additional District Judge has found no error or illegality in the order of the learned Additional Civil Judge and, accordingly, rejected the appeal of the respondent-tenant.

7. Thereafter, the respondent-tenant filed S.B. Civil Revision Petition No. 669/2001 before the High Court of Rajasthan, Bench at Jaipur, under Section 115 of the Civil Procedure Code. The learned Single Judge of the High Court, as noticed earlier, allowed the revision.

8. Hence, the original landlord filed this appeal by way of special leave. During the pendency of this appeal, the landlord died and his legal representatives have been brought on record as appellants.

9. Mr. Ajay Choudhary, learned counsel appearing on behalf of the appellants, submitted that the impugned order is perverse, erroneous and illegal as the High Court has exceeded its jurisdiction under Section 115 CPC to replace concurrent findings of facts with its own findings as if it was exercising the jurisdiction of the Appellate Court. He contended that the High Court has exercised its jurisdiction contrary to the well-settled law laid down by this Court in a series of decisions that the High Court should not interfere in the findings of facts recorded by the courts below based upon proper and reasonable appreciation of evidence.

10. On the other hand, Mr. Abhijeet Sinha, learned counsel appearing on behalf of the respondent-tenant, in support of the order, has submitted that the High Court in exercise of its

revisional powers vested in it under Section 115 of CPC has A  
rightly interfered with the erroneous and unsustainable orders  
of both the courts below and this Court normally under Article  
136 of the Constitution should not interfere with the well-reasoned  
order of the High Court.

11. Having heard the learned counsel for the parties and B  
having examined the orders of the courts below, we are of the  
opinion that the High Court's order on the face of it does not  
stand legal scrutiny and deserves to be set aside.

12. We do not think it proper and necessary to embark C  
upon the facts of the present case in detail. Suffice it to notice  
that the predecessor-in-interest of the appellants had entered  
into oral agreement with the respondent-tenant to lease out shop  
No. 2 situated at House No. 242 at Nahari Ka Naka behind D  
Khetri House, Madina Masjid Road, Jaipur, to the respondent-  
tenant at the rate of Rs.300/- per month as rent. The expenses  
of electricity and water were also agreed to be paid separately  
as pleaded by the original landlord in the plaint. In pursuance of  
the oral agreement, a rent deed was executed on 22.01.1993  
incorporating all the agreed terms and conditions therein. The E  
respondent-tenant also paid an amount of Rs.5,000/- as ad-  
vance to the predecessor-in-interest of the appellants, which  
was agreed to be adjusted against the non-payment of rent by  
the respondent-tenant or shall be returned to him at the time of  
vacation of the shop. The predecessor-in-interest of the appel- F  
lants pleaded in the suit that the respondent-tenant failed to pay  
the rent at the agreed rate since 01.02.1993 onwards and it  
was desired by him that the rental amount should be adjusted  
from the advance amount of Rs.5,000/- deposited by the re-  
spondent-tenant as security with the predecessor-in-interest of  
the appellants. Accordingly, rent of 14 months from 01.02.1993 G  
to 31.03.1994 was stated to have been adjusted. Some addi-  
tion was made to the shop by the predecessor-in-interest of the  
appellants at the request of the respondent-tenant and thereaf-  
ter rent @ Rs.400/- per month was agreed to be paid by the  
respondent-tenant w.e.f. 01.04.1994, for which Rent Deed dated H

- A 10.04.1994 was executed in the presence of the witnesses and duly attested by a Notary. The amounts of two months' rent from 01.04.1994 to 31.05.1994 @ Rs.400/- per month were also adjusted out of the advance amount and the balance amount of rent was not paid by the respondent-tenant despite repeated requests and demands made by the predecessor-in-interest of the appellants.

13. The respondent-tenant pleaded before the trial court that the shop in question was given to him on rent by the predecessor-in-interest of the appellants @ Rs.200/- per month and he had paid Rs.5,000/- as advance against the amount of rent. On 30.03.1993, a rent deed was executed and he had paid the rent upto January 1997, but the predecessor-in-interest of the appellants did not give rent receipts after April 1995. The respondent-tenant denied the claim of the predecessor-in-interest of the appellants that the monthly rent of the shop was ever increased from Rs.300/- to Rs.400/- and he reiterated and re-asserted that the agreed rent was Rs.200/- per month.

14. The learned trial court, during the pendency of the eviction suit and on examination of the rent deeds produced before him, determined the provisional rent of the shop @ Rs.400/- per month under Section 13(3) of the Act of 1950 payable by the respondent-tenant for a period of 61 months, i.e. from 01.06.1994 to 01.07.1999, and the total amount of arrears of rent works out to be Rs.24,400/- on which an interest at the rate of 6% has been imposed. The trial court directed the respondent-tenant to deposit the arrears of rent together with interest in the bank account of the predecessor-in-interest of the appellants and also directed the respondent-tenant to pay the rent, as determined, regularly in the account of the predecessor-in-interest of the appellants. The order of the trial court has been upheld by the first Appellate Court.

15. It is well-settled position in law that under Section 115 of the Code of Civil Procedure the High Court cannot re-appreciate the evidence and cannot set aside the concurrent find-



ings of the Courts below by taking a different view of the evidence. The High Court is empowered only to interfere with the findings of fact if the findings are perverse or there has been a non-appreciation or non-consideration of the material evidence on record by the courts below. Simply because another view of the evidence may be taken is no ground by the High Court to interfere in its revisional jurisdiction. A B

16. Considering all the facts and circumstances as noticed above, we are constrained to hold that the order of the High Court cannot be sustained and as such we set aside the same. The High Court has acted in exercise of its jurisdiction with material irregularity to interfere with the well-merited concurrent findings and reasonings recorded by two courts below. The High Court, with respect to it, has lost sight of the important fact that it was provisional determination of the amount of rent by the trial court and the eviction suit is still pending before it for final decision. C D

17. For the foregoing reasons, the impugned judgment is set aside and the appeal is allowed, but in the facts and circumstances of the case, without any order as to costs.

B.B.B.

Appeal allowed.