

**Kallappa Jotteppa Ajur Vs. Murigeppa Rudrappa Gugwad**

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**Court :** Mumbai

**Decided On :** Sep-08-1954

**Reported in :** (1955)57BOMLR178

**Judge :** M.C. Chagla, C.J. and; Dixit, J.

**Appeal No. :** Special Civil Application No. 1772 of 1954

**Appellant :** Kallappa Jotteppa Ajur

**Respondent :** Murigeppa Rudrappa Gugwad

**Judgement :**

M.C. Chagla, C.J.

1. The Mamlatdar, on an application of the landlords, who are opponents Nos. 1 and 2, ordered the tenant, the petitioner, to hand over possession of the lands leased to him on the ground that he had failed to pay rent for more than three years from 1947 to 1951. The tenant appealed to the transfer. The Prant Officer dismissed that appeal. The tenant went in revision to the Revenue Tribunal and the Revenue Tribunal also dismissed the revision application.

2. Now, the only point urged by Mr. Reddy before us is that the Prant Officer did not exercise the jurisdiction vested in him of hearing the appeal preferred to him on merits. It appears that the tenant made an application for adjournment. That application was refused and the order made by the District Deputy Collector is to the following effect:

The appellant is absent although served with notice. The appeal is therefore dismissed. The appellant should be informed by post. The respondents have been informed in Court.

Now, notwithstanding the tenacious argument of Mr. Datar, we refuse to read this order to mean that the appeal was dismissed summarily by the Prant Officer. Nothing can be clearer than the language used by the Prant Officer that this appeal was dismissed for default for the absence of the appellant in answer to the notice and the failure of the appellant to argue his appeal. What is urged by Mr. Reddy is that there is no power conferred upon the Prant officer to dismiss an appeal for default. Even if the appellant is absent, he must decide the appeal on merits. In our opinion that contention is sound and must prevail.

3. Turning to Section 74 of the Tenancy Act, which provides for appeals against the orders of the Mamlatdar, it says that an appeal may be filed to the Collector, and then

the cases in which the appeal lies are set out. Turning to Sub-section (2) it provides:

Save as otherwise provided in this Act, the provisions of Chapter XIII of the Bombay Land Revenue Code, 1879, shall apply to appeals to the Collector under this Act, as if the Collector were the immediate superior of the Mamlatdar or the Tribunal. The Collector in appeal shall have power to award costs.

Turning to Chap. XIII of the Land Revenue Code, Section 209 is the material section, and that section sets out what the powers of the appellate authority are, and those powers are either to annul, reverse, modify or confirm the decision or order of the subordinate officer appealed against. In our opinion, this language makes it clear that the decision of the appellate authority, whatever form or shape it may take, whether it annuls or reverses or modifies or confirms the decision of the lower authority must be a decision on merits. The language used by the Legislature does not 'confer upon the appellate authority the power to dismiss an appeal for default. Then there is a proviso to Section 209 and that is in the following words:

Provided that it shall not be necessary for the appellate authority to record reasons in writing-

- (a) When an appeal is dismissed summarily, or
- (b) When the decision or order appealed from is itself a decision or order recorded in appeal or
- (c) When on appeal is made to the State Government under Section 204.

Now, Clause (a) is the material clause and this also clearly assumes that when the appeal is dismissed summarily, it must be dismissed on merits, and the only indulgence, as it were, granted to the appellate authority is that it need not record its reasons in writing.

4. When we turn to the rules framed under the Land Revenue Code with regard to appeals, the position is made clearer. Rule 130 deals with the form and contents of the appeal, Rule 131 deals with presentation and it provides that appeals may either be presented to the authority to whom an appeal lies in person or be forwarded to him by post. Rule 132 is headed 'Rejection of appeals without inquiry into their merits,' and it provides:

Inattention in any material respect to the requirements of Rule 130 or 131 will render an appeal liable to be rejected without inquiry into its merits.

Therefore, it is only a non-compliance with either Rule 130 or 131 that may result in the appellant having his appeal dismissed without the merits being gone into. Therefore Rule 132 itself suggests that if there is a compliance with Rule 130, that means that the appeal is in proper form, and if there is compliance with Rule 131 which provides for how the appeal should be presented, there is an obligation cast upon the appellate authority to dispose of the appeal on merits. There is a further indication in the rules which also makes it clear that an appeal cannot be dismissed for default. No provision is made in these rules for the giving of notice to the appellant as to when his appeal should be heard. Therefore there is no obligation cast upon the appellant to appear and argue his appeal. In this particular case the Prant

Officer chose to give notice to the appellant, but he was not bound to do so. It is clear that an appellate authority can only exercise its power of dismissing an appeal for default provided a notice is given to the appellant and there is an obligation upon the appellant to appear in answer to that notice. It is sometimes forgotten that powers to dismiss appeals for default are not powers which are inherent in a tribunal. It is precisely because they are not inherent that the Civil Procedure Code has made special provision for dismissal of appeals for default. Now, we have often been told that Revenue Tribunals are not bound to hear advocates in support of their clients ; we have even been told that Revenue Tribunals are not bound to hear parties and they can dispose of appeals by perusing the papers at home or even by circulating them. But today for the first time an argument is advanced that Revenue Tribunals are entitled to dismiss appeals even without applying their minds to them. At least we are on strong ground when we reject the last arguments Therefore, in our opinion, the Prant officer was clearly in error in disposing of this appeal for default without going into the merits.

5. We would, therefore, set aside the order of the Revenue Tribunal, remand the matter to the Prant Officer, and direct him to dispose of the appeal on merits, whether the petitioner appears before him or not. Rule absolute. Costs of this application costs in the appeal before the Prant Officer.

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