तारीख हुक्म	हुक्म या कार्यवाही मय इनिशियल्स जज **Revision No. 5200/2016/TA/Jaipur** **Badam Kanwar Vs. Durga Bai**	नम्बर व तारीख अहकाम जो इस हुक्म की तामील में जारी हुए
24.8.2016	**S.B.** **Shri Satish Chand Kaushik, Member** **Present**: Shri S.P. Ojha : counsel for the petitioner. - - - This revision petition has been moved by the petitioner under section 230 read with section 221 of the Rajasthan Tenancy Act, 1955 (hereinafter to be referred as "the Act") being aggrieved with the order of the learned Sub Divisional Officer, Phagi (Jaipur) dated 04.7.2016 by which order the learned S.D.O. declined to grant ex-parte ad interim injunction in favour of petitioner herein. The operative portion of the order is as under :- ''वकील प्रार्थी को एक तरफा सुना गया। पत्रावली का अवलोकन किया। एकपक्षीय अंतरिम अस्थाई निषेधाज्ञा जारी करना उचित नहीं समझते हैं। अतः अप्रार्थीगण की तलबी जारी की जावे। प्रकरण दर्ज रजिस्टर किया जावे। पत्रावली दिनांक 02.8.16 को पेश हो।'' Heard the learned counsel for the petitioner on maintainability as well as on admission and stay application. The learned counsel for the petitioner argued that the learned lower court without assigning any reason, refused for grant of ex-parte ad interim injunction order, as such, the only remedy lies is that to approach this Board under section 230 read with section 221 of the Tenancy Act for interference because this Board is having ample power to interfere with the proceedings of the lower court, if any unjustified order has been passed. Undoubtedly, the order passed by the learned lower court is an illegal order on the face of it.	

After hearing the arguments, the legal question before this court is, (i) "whether rejecting ex-parte interim injunction is a revisable order?", and (ii) "if on application under section 212 of the Tenancy Act, ex-parte injunction was not granted by the court, then whether it is within the scope of section 221 of the Tenancy Act for interference by the Board?"

So far the first question is concerned, the Hon'ble High Court of Rajasthan in a case reported in 2014(1) DNJ Rajasthan 35 held that granting or rejecting injunction is appealable order and not the revisable order.

The scope of revision is very limited. The revision under section 230 of the Rajasthan Tenancy Act can be filed only on these grounds :

> "**230. Power of the Board to call for cases -** The Board may call for the record of any case decided by any subordinate revenue court in which no appeal lies either to the Board or to a civil court under section 239 and if such court appears ;
> (a) to have exercised jurisdiction not vested in it by law; or
> (b) to have failed to exercise jurisdiction so vested; or
> (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity.
> Board may pass such orders in the case as it thinks fit."

Section 115 of the Code of Civil Procedure also provides that :

> "**115. Revision -** (1) The High Court may call for the record of any case which has been decided by any court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate court appears -

(a) to have exercised a jurisdiction not vested in it by law, or
(b) to have failed to exercise a jurisdiction so vested, or
(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity.,

the High Court may make such order in the case as it thinks fit."

As such, it is very much clear from the provision itself that revision can be filed only in a matter where the order is not appealable. The Hon'ble Supreme Court of India in the matter of (2007) 3 Supreme Court Cases 175 Khajan Singh (dead) by LRs Vs. Gurbhajan Singh and others, has held that, "if there is no illegality or material irregularity found to have been committed by the learned lower court, no interference has to be made." In the case of (2003) 6 SCC 675 Suryadev Rai Vs. Ramchander Rai, the Hon'ble Apex Court held that as per Order 39 Rule 1 and Section 115 (1) of the CPC, if there is any interlocutory order, that order is no longer revisable under section 115 due to the substitution of the proviso. An interlocutory order does not finally dispose of the suit or other proceedings and as such revision is not maintainable. Therefore, it is very much clear that in this matter as well the order passed by the learned S.D.O. is an interlocutory order by which order, application has not been disposed of finally but only ad interim ex-parte injunction was denied and as such, no revision is maintainable against that order.

As far as the second question is concerned, section 221 of the Tenancy Act is as under :-

"**221. Subordination of revenue courts -** The general superintendence and control over all revenue courts shall be vested in, and all such courts shall be subordinate to the Board; and subject to such superintendence, control and subordination -

(b) all Additional Collectors, Sub-Divisional Officers, Assistant Collectors and Tehsildars in a district shall be subordinate to the Collector thereof,

(c) all Assistant Collectors, Tehsildars and Naib-Tehsildars in a sub-division shall be subordinate to the Sub-Divisional Officer thereof, and

(d) all Additional Tehsildars and Naib-Tehsildars in a tehsil shall be subordinate to the Tehsildar thereof."

The power under section 221 of the Rajasthan Tenancy Act is an extra ordinary power of the Board of Revenue. This power cannot be used in such a case. The power of general superintendence of the Board under this section can be exercised only in the case if there is any gross illegality or irregularity has been committed by the learned lower court and no remedy is available against that order. Granting or refusing the ex-parte injunction is not an order which can be said to be interfered under this section. However, this is not a fit case for interference under this section because it is the discretion of the learned lower court to provide the person ex-parte injunction or not. This petition is only the abuse of process of law which is not maintainable at all and as such this revision is liable to be dismissed at the stage of admissibility as well. Hence, the revision is hereby dismissed.

Pronounced.

(**Satish Chand Kaushik**)
Member