

तारीख हुक्म	हुक्म या कार्यवाही मय इनिशियल्स जज Revision No. 6118/2016/TA/Jhalawar Daud Khan Vs. Habib Khan	नम्बर व तारीख अहकाम जो इस हुक्म की तामील में जारी हुए
05.9.2016	<p style="text-align: center;"><u>S.B.</u></p> <p style="text-align: center;">Shri Satish Chand Kaushik, Member</p> <p><u>Present:</u></p> <p>Shri Yagya Dutt Sharma : counsel for the petitioner.</p> <p style="text-align: center;">- - -</p> <p>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 Settlement Officer-cum-Revenue Appellate Authority, Kota dated 17.8.2016.</p> <p>In this case, a suit was filed by Habib Khan etc. against Daud Khan etc. under section 183 of the Rajasthan Tenancy Act in respect of khata no. 76 khasra no. 214 Bahedi Ki Batki measuring 2.14 bigha for dispossession of defendant no. 1 Daud Khan. After hearing both the parties, learned S.D.O., Aklera District Jhalawar decreed the suit and thereby ordered for dispossession of defendant from the said land. Being aggrieved with that order, the defendant filed first appeal before the S.O.-cum-R.A.A., Kota and argued for ad interim injunction. The learned R.A.A. declined to pass ad interim ex-parte injunction order in favour of appellant vide his order dated 17.8.2016 and asked for record of the learned lower court. Being aggrieved with that order, this revision has been filed before this Board.</p> <p>Heard the learned counsel for the petitioner on admission.</p> <p>The learned counsel for the petitioner has argued that because the order of the learned lower court has</p>	

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	<p>been passed without application of mind and if that order continues and injunction is not being granted in favour of the petitioner-appellant, then the petitioner will suffer irreparable loss and in such a circumstance, the revision has to be admitted and record of the learned lower courts to be called for. The learned counsel for the petitioner submitted the copy of the order passed by the Single Bench of this Board in Revision/TA No.5074/2016 dated 02.8.2016 and thereby argued that in that matter, the Hon'ble Board has specifically held that “यद्यपि निगरानीधीन आदेश अंतरिम प्रकृति का है परन्तु विचारण न्यायालय द्वारा पारित आदेश दिनांक 30.6.2016 में अपनाई गई प्रक्रिया विधिसम्मत एवं लोक अदालत की भावना के अनुरूप नहीं कही जा सकती है। राजस्व अपील प्राधिकारी, पाली को न्यायिक विवेक का प्रयोग कर विवाद की विषयवस्तु को सुरक्षित रखने हेतु विचारण न्यायालय के आदेश की क्रियान्विति स्थगित करनी चाहिए थी। ऐसा प्रतीत होता है कि उन्हें वादकरण की बाहुल्यता व जटिलता पर अंकुश लगाने में कोई रुचि नहीं है।”</p> <p>In this case also, the judicial mind has not been applied by the first appellate court and as such, the revision is acceptable.</p> <p>I have gone through the arguments advanced by learned counsel for the petitioner and scanned the matter carefully.</p> <p>So far the copy of the judicial pronouncement submitted by the learned counsel is concerned, this citation is not applicable to the present case. In that case, a Rajinama was attested without notice and the presence of the petitioners and other parties. Rajinama was accepted in absence of parties and appealed order was passed. In such a circumstance, the Hon'ble Board found the order of the</p>	

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	<p>S.D.O. against the established principles of law and illegal on the face of it and as such, that revision was accepted. The present case is not of such category and as such this judgment is not applicable to the present case. So far the legal position in respect of the revision is concerned, it is as under :-</p> <p>The scope of revision is very limited. The revision under section 230 of the Rajasthan Tenancy Act can be filed only on these grounds :</p> <p>"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 ;</p> <p>(a) to have exercised jurisdiction not vested in it by law; or</p> <p>(b) to have failed to exercise jurisdiction so vested; or</p> <p>(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity.</p> <p>Board may pass such orders in the case as it thinks fit."</p> <p>Section 115 of the Code of Civil Procedure also provides that :</p> <p>"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 -</p> <p>(a) to have exercised a jurisdiction not vested in it by law, or</p> <p>(b) to have failed to exercise a jurisdiction so vested, or</p> <p>(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity.,</p> <p>the High Court may make such order in the case as it thinks fit."</p>	

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	<p>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.</p> <p>Thus, I am of the considered opinion that granting or refusing ex-parte injunction is not a revisable order. The Parliament has made relevant amendments also in this regard in Section 115 of the Code of Civil Procedure keeping in view the mounting of frivolous litigations through revision petitions. Though no such amendment has been made in Section 230 of the Rajasthan Tenancy Act, even the rule guiding revision is applicable to the Rajasthan Tenancy Act as well. The Hon'ble High Court of Rajasthan in a case reported in 2014(1) DNJ (Raj.) page 35 Khema Ram Vs. State of Rajasthan & ors. specifically held that</p>	

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	<p>granting or rejecting injunction is appealable and not revisable order. The Full Bench of this Board in 2014(1) RRT 409, Jagdish Prasad Vs. Bhopal Ram also endorsed the same view. It is the discretion of the learned lower court to see and pass the appropriate ad interim orders which are necessary for the administration of justice. Until and unless there is misuse of power, no interference should be made. As such, this revision petition is not maintainable and liable to be dismissed; hence dismissed at admission stage.</p> <p style="text-align: center;">Pronounced.</p> <p style="text-align: center;">(Satish Chand Kaushik) Member</p> <p style="text-align: center;">- - -</p>	