

(1982) 11 MAD CK 0049
In the Madras High Court
Case No : C.R.P. No. 1347 of 1977

A. Jabar Khan

APPELLANT

Vs

Mohamed Kasim

RESPONDENT

Date of Decision : 26-11-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Tamil Nadu Agriculturists Relief Act, 1938 — Section 19
Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 11(4)

Citation : AIR 1983 Mad 309 : (1983) 96 LW 307 : (1983) 1 MLJ 399

Hon'ble Judges : Balasubrahmanyam, J

Bench : Single Bench

Advocate : S.N. Abdul Wahab, for the Appellant; K. Sarvabhauman, for the Respondent

Judgement

1. Jabar, Khan, the petitioner in this civil revision petition, is the owner of a residential building in Tiruchirapalli. He subjected this building to two mortgages. One was a simple mortgage for Rs. 2,000/- at 18 per cent interest under a registered document dated 16-6-1970 in favour of the respondent, Mohamed Kasim. A little while earlier, on 23-4-1970, he created a usufructuary mortgage in favour of the same Mohamed Kasim over the same building for Rs. 4,000/- under a deed of usufructuary mortgage. However, on the very next day, namely, 24-4-1970, Mohamed Kasim, the usufructuary mortgagee, executed a lease back of the said building to the mortgagor Jabar Khan on a monthly rent of Rs. 70/-.

2. While so, right from the date of the lease back, namely, 24-4-1970, Jabar Khan did not pay any rent to the mortgage, Mohamed Kasim. In these events, Mohamed Kasim, after issuing a notice of termination of tenancy, filed an eviction petitions before the Rent Controller, Tiruchirapalli, for an order of eviction of Jabar Khan on the ground of wilful default under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. The Rent Controller ordered eviction of Jabar Khan before the Appellate Authority, namely, the subordinate Judge, Tiruchirapalli, against the order of eviction. Pending disposal of the appeal against the order of

eviction, the mortgagee, Mohammed Kasim, filed an application under S. 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, directing Jabar Khan to deposit the arrears of rent of Rs.5,460/- which had accrued due at Rupees 70/- per mensem from 24-4-1970 onwards. That petition was opposed vehemently by Jabar Khan on various grounds. But the Appellate Authority overruled all the objections and passed an order directing Jabar Khan to deposit Rs. 5230/- pending disposal of the appeal and since the amount was not deposited, he ultimately passed an order on 13-12-1976, under Sec 11(4) of the Rent Control Act directing delivery of possession of the property to the mortgagee Mohammed Kasim. It is against the order of the Appellate Authority that this civil revision petition has been brought.

3. The main contention by Jabar Khan's learned counsel, Mr. Abdul Wahab, is that the proceedings under S. 11(4) of the Rent Control Act did not lie at all in this case. It is necessary to examine this question from the particular angle from which it was advanced. Mr. Abdul Wahab does not contest the legal position that even a usufructuary mortgagee can be regarded as a landlord for purposes of the Rent Control Act, within the meaning of the expression "landlord" as defined in S. 2(b). For the expression "landlord" in that interpretation clause bears an inclusive definition, so as to include within the category of landlords "a person who is receiving or is entitled to receive the rent of a building." There is no denial by the learned counsel that under the terms of the agreement dated 24-4-1970, following closely upon the heels of the usufructuary mortgage on 23-4-1970, Mohammed Kasim being in the position of a mortgagee- lessor, must be regarded as landlord within the meaning of the Act since he was entitled to receive rent for the building. The real point which learned counsel urged in this revision was that although a landlord-tenant relationship might be held to have been established by the lease-back agreement dated 24-4-1970, and although in one sense, the non-payment of the monthly dues of Rs.70/- by Jabar Khan might be regarded as default in the payment of rent. Learned counsel contended that in the peculiar circumstances of the case, no authority functioning under the Rent Control Act, could entertain and dispose of proceedings u/s 11 of the act. According to learned counsel at some stage, at least if not always the relationship between the parties was recognized as that of landlord and tenant, and the so-called rent arrears were seen to be only arrears of interest.

4. For examining this part of the learned counsel's argument, it is necessary to refer to a few more facts, or rather to certain other legal proceedings, in which the parties were involved. Mohammed Chasm, in his character as landlord of the building, filed a suit against Jabar Khan for recovery of arrears of rent which stood at Rs. 5,450/- That suit was decreed on 31-1-1974. Subsequently, the decree was confirmed in appeal. Meanwhile, Jabar Khan filed a petition under Sec.19-A of the Tamil Nadu Agriculturists Relief Act, 1938 read with S. 9-A of that Act, for redemption of the mortgages. The Sub Court entertained the application and held that Jabar Khan was bound to pay only the principal amount under the two mortgages totaling in all Rs. 6,000/- and that he was not bound to

pay the entire sum of Rs. 5,450/- as arrears, but was entitled to have it scaled down to a nominal amount. This order was confirmed in appeal by the District Court, as I was informed at the Bar.

5. The point urged by Jabar Khan before the Appellate Authority in the proceedings under S. 11(4) of the Rent Control Act, was that the order passed by the sub court, holding that a negligible amount alone was due to Mohammed Kasim as interest apart from the principal amount of the usufructuary mortgage of Rs. 4,000/- and simple mortgage of Rs. 2,000/- was conclusive between the parties and further that the said order has also nullified the proceedings u/s 11(4) of the Rent Control Act. Learned counsel submitted that there was no rent, much less, arrears of rent, due by Jabar Khan to Mohammed Kasim within the meaning of Sec. 11 of the Act when the self-same parties had litigated the self-same amount in different proceedings on the footing that it represented interest on the mortgages and an adjudication was rendered by a competent Court which had also become final as between the parties. These contentions were rejected by the Appellate Authority and hence the petitioner Jabar Khan is before this Court in revision.

6. The question is what were originally arrears of rent can be regarded as having been wiped out by the order passed by the Sub Court in O. P. 165 of 1974 in proceedings under S. 19-A of the Agriculturists relief Act or whether, notwithstanding those proceeding, the mortgagee-landlord was entitled to obtain an order determining the arrears of rent under S. 11(1) of the Rent Control Act, and on failure to deposit the amount so determined, he was entitled to an order of eviction in his favour under S. 11(4) of the Rent Control Act.

7. A plethora of case law was cited on both sides all of which have been referred to in detail in a recent judgment of Sathiadev, J. in S.M.A. Abdul Rasheed Vs. A.M.A. Abdul Batcha and Others, . That was, however, not a case of rent control proceedings. That was a simple case where there was a usufructuary mortgage and a lease back by the mortgagee to the mortgagor, the rent under the lease back taking the place of interest. The question was, whether, in such a case, Act 4 of 1938, as amended subsequently, can be invoked so as to grant relief to the mortgagor. The learned Judge was there concerned with the question whether a suit would lie for redemption with a claim for the relief under Act 4 of 1938 by the mortgagor concerned. In that case it was found as a fact that there was a separate transaction of lease by which the hypothecated property was leased back by the mortgagee to the mortgagor. According to the learned judge, this converted the jural relationship between the mortgagor and the mortgagee into one of tenant and landlord and once this new relationship was created the rights and obligations flow only on that basis, and not as a mortgagor and mortgagee. The learned Judge proceeded to hold that that there was no scope under S. 9-A of the Agriculturists Relief Act for deeming the rent in arrears as interest since that is covered by and arrears out of an independent transaction of lease back. The learned Judge accordingly observed that when the mortgagor filed an

application u/s 19 of the Agriculturists Relief Act, it could not be gainsaid that his position was that of a tenant, pure and simple. the earlier mortgagor-mortgagee having undergone a metamorphosis. In these circumstances the learned Judge held that the proceedings under Sec.19 of the Agriculturists Relief Act did not lie.

8. This decision of Sathiadev, J. typifies the kind of decision a Court should render when an application is presented before u/s 19 of the Agriculturists Relief Act and it appears from the facts and cause of dealings between the parties that an applicant is only in the position of a person who is in arrears of rent although the transaction began as a usufructuary mortgage. In the present case, I am not in a position of having to administer the provisions of the Agriculturists Relief Act. The order under revision in the present case is not an order of a Court of competent jurisdiction which has entered upon an enquiry on an application under S. 19 of the Agriculturists Relief Act. If this revision were against any such order, I have no doubt that Sathiadev, J.'s decision, following a cater of earlier decisions of this Court, must be followed. This revision, however is not directed against the order scaling down the interest under the Agriculturists Relief Act. It is on the contrary an order passed by a Rent Controller, or to be exact, by an Appellate Authority sitting in appeal over the Rent Controller. This case of the mortgagee-landlord before the Appellate Authority was that the tenant-mortgagor was in arrears of rent and, therefore he had to be evicted from the premises. It was for that purpose and to obtain an order for deposit of the rent arrears that the landlord-mortgagee applied under S. 11(1) of the Act. This involved the Appellate Authority having to go into the question whether any rent was due from the tenant to the landlord, and if so, whether the arrears could be regarded as a consequence of willful default. At the hearing of those proceedings, the Appellate Authority was presented with a decision of the Sub Court which was binding on both parties in proceedings under Sec. 19 of the Agriculturists Relief Act. What is the position of the Rent Controller or the Appellate Authority in such a case? It seems to me that it is not open to the Rent Controller or the Appellate Authority to ignore the finding of a Court of competent jurisdiction which had adjudicated upon the claim of a debtor or a mortgagor under Sec. 19 of the Agriculturists Relief Act. But collaterally, no attack can be made on that order, especially when it had been arrived in a regular adversary proceeding in the presence of both the parties who had joined issue on the very question whether anything was due by the mortgagor and whether he should be deemed to have discharged any interest in arrears.

9. It is all very well to argue on the nomenclature used by the parties and enter into a debate as to whether it is rent due or interest due. But once the amount has been all but wiped out by a competent order of Court, it is not, I think open to the Rent Controller or the Appellate Authority, even though functioning under the Rent Control Act to ignore that order and proceed as though Rs. 5,450/- was still in arrears and that represented rent arrears. What is worse, when under the order of the Sub Court, the arrears had been scaled down to a nominal amount. It is not open to the Appellate Authority under the Rent Control Act to pass a

contradictory order directing the mortgagor-tenant to deposit the entire amount of Rs. 5,450/- under threat of passing a consequential eviction order.

10. To allow the application filed by the mortgage-landlord u/s 11 would be to permit the mortgagee-landlord to obtain by a side-wind what he had lost in the proceedings under the Agriculturists Relief Act. The law as laid down by this Court over the years with Sathiadev, J.'s judgment marking the summation of the case law does put us on an enquiry about the relationship between the usufructuary mortgagor and mortgagee who also bear the relationship of lessee and landlord. But that kind of enquiry is no longer available to a Court or Tribunal when the question had already been thrashed out and decided in another proceeding by a Court having jurisdiction to decide that question. This is the position of the present case. Mohammed Kasim, the mortgagee could not obtain any adjudication in this case, about the character of the arrears before the Rent Controller because that would amount to reopening a final order from a proper forum which is competent to render the adjudication. In the face of the law laid down by Sathiadev, J. and the earlier decisions it might be that the Sub Court's decision is palpably wrong. Even so right or wrong, the decision holds the field in this case, at any rate, so far as the parties to the proceedings are concerned.

11. Our legal system comprises within its complex structure a number of Courts, Tribunal or quasi-judicial authorities. The whole edifice of this system assiduously built over a century or two will go to pieces if a Tribunal or Court simply ignores the determination come to by an earlier Court or Tribunal of competent jurisdiction in relevant proceedings between the same parties. Our system can hold together only on the basis of the comity of Courts and Tribunals. All of them co-exist simultaneous exercise of their respective jurisdictions in their respective fields. Where, therefore a particular Tribunal had rendered a decision interparties on a matter within its competence. It would be subsequently be open to either party to ignore that determination or seek to obtain a different determination in a different forum where they confront each other in a legal controversy on the same issue.

12. In this case, it might be well asked whether the proceedings filed by Jabar Khan before the Sub Court u/s 19 of the Agriculturists Relief Act, was competent when he was all the while up against an eviction petition which was even then pending disposal before the Rent Controller. It might also be asked whether the Sub Court was competent to pass an order scaling down the amount claimed as arrears of interest when at that precise moment the Rent Controller had already passed an eviction order against Jabar Khan. If it were open to this Court to go into the validity or otherwise of the Sub Court's order, the possible answer would be that the Sub Court might have desisted from proceeding to exercise its jurisdiction for the simple reason that being a rent arrear it could not be regarded as a proper subject for scaling down under the Agriculturists' Relief Act. But, as I earlier observed, I am now sitting in judgment over the Sub Courts' order. The latest information is that the Sub Court's order has since

been confirmed in appeal by the District Court, Tiruchirapalli, and no further proceedings have been taken by Mohammed Kasim against the decree for redemption passed by the Sub Court on the basis of the scaling down of the interest. The question whether those proceedings between the parties under the Agriculturists Relief Act, are or are not competent is no longer an issue because the matter has become final as between the parties. As earlier mentioned the Sub Court had by then scaled down the interest at that time the Appellate Court took up for disposal the application filed by Mohammed Kasim under S. 11(4) of the Rent Control Act.

13. The Appellate Authority in its order characterised the relationship between the parties as a dual relationship mortgagor and mortgagee as well as landlord and tenant. This dual relationship was employed by the Appellate Authority as a justification for not paying heed to the order of the Sub Court scaling down the interest. It may be agreed that the relationship between the parties may not have been clearly defined or may be regarded as dual or relations according to the Appellate Authority. But that is no reason for the Appellate Authority's proceedings to render a decision quite contrary to the one which had been rendered earlier by the Sub Court. In any case, at this moment of time when this revision is being disposed of, Mohammed Kasim must be taken to have accepted the finality of the adjudication of scaling down under the Agriculturists Relief Act. That order is binding on him. According to that order, what Jabar Khan owes him is not rent in arrears, but only interest on borrowed money and it was the interest arrears which had been scaled down to a nominal figure. I must therefore, take it that Mohammed Kasim had accepted the adjudication to the effect that he remains a mortgagee throughout and is not the landlord of the mortgaged building and that Jabar Khan is not his tenant but only his mortgagor owing the principal amount and a very negligible amount of interest, as scaled down. In the face of this legal position it would not be proper to allow Mohammed Kasim to have the benefit of any order of eviction under S. 11(4) of the rent control Act, as though Jabar Khan can shall be subjugated as holding the position of a tenant who not only had defaulted to pay the rent, but had also defaulted to deposit it in the Rent Control Court. To assure that position now would involve this Court into ignoring the binding character of the scaling down proceedings under the Agriculturists Relief Act. It would go against the comity of Courts.

14. The uncertain attributes of the jural relationship between the parties have been responsible for the parallel proceedings between them, one under the Rent Control Act and the other under the Agriculturists Relief Act. But there must be a finality to paroled proceedings of this kind. and for the reasons I have earlier stated, the order of the Appellate Authority under S. 11(4) of the Rent Control Act must be regarded as without jurisdiction.

15. The civil revision petition is allowed and the order of the Appellate Authority is set aside. But having regard to the peculiar circumstances of the case, there

will be no order as to costs.

16. Petition allowed.