

(2013) 04 MAD CK 0277

In the Madras High Court

Case No : C.R.P. (NPD) No. 1197 of 2013 against M.P. No. 53 of 2013 in R.C.A. No. 55 of 2011 and M.P. No. 1 of 2013

Arma Clinical Services and Hospitals (P) Ltd. and Another

APPELLANT

Vs

A. Palaniappan

RESPONDENT

Date of Decision : 10-04-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 5

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 23(2)

Citation : (2013) 5 MLJ 233

Hon'ble Judges : S. Mani Kumar, J

Bench : Single Bench

Advocate : R. Rajmohan, for the Appellant;

Final Decision : Dismissed

Judgement

S. Mani Kumar, J.—Material on record discloses that R.C.O.P. No. 2606 of 2008 has been filed to fix the fair rent, for the flat and building premises bearing No. A1, New Door No. 73, Old Door No. 33, 1st Main Road, Gandhi Nagar, Adyar, Chennai 600 020, situated in the ground floor of the building, known as "Ravi Kumar Flats" consisting of ground plus three floors facing Sardar Vallabhai Patel Road, Adyar, Chennai 600 020 admeasuring 950 square feet or thereabouts. After contest, the Rent Controller, vide judgment and decree dated 2.9.2010, has fixed the rent as Rs. 64,498/- (Rupees Sixty Four thousand four hundred and ninety eight only). Being aggrieved by the judgment and decree dated 2.9.2010 in R.C.O.P. No, 2606 of 2008, the tenant has filed R.C.A. No. 55 of 2011. In the above said appeal, vide order dated 2.9.2010 in M.P. No. 53 of 2013, interim stay has been granted. The landlord, has sought for arrears of rent of Rs. 28,02,810.p(Rupees Twenty eight lakhs two thousand eight hundred and ten only), for the period till August 2012. While adjudging as to whether the ex parte stay has to be extended without imposing any condition and after considering the decisions relied on by both the learned counsel, the Rent Control Appellate Authority taking note of a recent decision of this Court in Sri Vaishnava Sri

Padam Kainkaryam Association Vs. M.S. Rajagopalan, directed the tenant to deposit a sum of Rs. 10,15,300/- (Rupees ten lakhs fifteen thousand and three hundred only) (20,306 x 50) to the credit of R.C.A. No. 55 of 2011, on or before 26.2.2013, failing which the Rent Control Appellate Authority, has indicated that the interim stay granted on 24.1.2013, would not be extended further. In A. Krishnamurthy Vs. P. Arjunan this Court, at Paragraph Nos. 3 and 4, held as follows:

3. The simple question that needs to be answered here is whether the appellate Court, while entertaining an appeal, can dismiss the petition for stay of operation of the fair and decretal order passed by the Rent Controller, especially in the event that an appeal is being preferred by the tenant who is admittedly in possession of the premises. Needless to point out that it is a valuable tenancy right and possession in the capacity as tenant that is going to be decided by the appellate authority and the moment the tenant is exposed against the order of the lower authority for eviction, there is no point in the appellate authority entertaining the appeal and hearing it at a later point of time having indirectly allowed the execution of the order of the lower authority consequently evicting the tenant from out of the premises, the very purpose of the entertaining the appeal on file for disposal is defeated. Hence especially in cases of such nature, the stay order goes along with the appeal. If at all the matter is along pending one and the landlord, inspite of having succeeded before the lower forums, is struggling to get the relief just on account of the pendency of the appeal, it is open for the landlord to seek for an early disposal of the appeal itself and refusing to grant the stay in favour of the tenant is definitely not the answer in the expectations of law.

4. For all the above discussions held, it comes to be known that the appellate authority has failed to take a decision that he is expected to take in the circumstances of the case and in all probabilities. The appellate authority should have allowed the petition for stay, but instead, it is pathetic to state that for some reason or other, the appellate authority had dismissed the petition for stay, which can never be arrived at under such circumstances so far as the facts and circumstances of this case are concerned.

2. In Atma Ram Properties (P) Ltd. Vs. Federal Motors Pvt. Ltd., , the Supreme Court, at Paragraph Nos. 8, 9 and 19, held as follows:

5. It is well settled that mere preferring of an appeal does not operate as stay on the decree or order appealed against nor on the proceedings in the Court below. A prayer for the grant of stay of proceedings or on the execution of decree or order appealed against has to be specifically made to the appellate Court and the appellate Court has discretion to grant an order of stay or to refuse the same. The only guiding factor, indicated in the Rule 5 aforesaid, is the existence of sufficient cause in favour of the appellant on the availability of which the appellate Court would be inclined to pass an order of stay. Experience shows that the principal consideration which prevails with the appellate Court is that in spite

of the appeal having been entertained for hearing by the appellate Court, the appellant may not be deprived of the fruits of his success in the event of the appeal being allowed. This consideration is pitted and weighed against the other paramount consideration: why should a party having succeeded from the Court below be deprived of the fruits of the decree or order in his hands merely because the defeated party has chosen to invoke the jurisdiction of a superior forum. Still the question which the Court dealing with a prayer for the grant of stay asks to itself is: Why the status quo prevailing on the date of the decree and/or the date of making of the application for stay be not allowed to continue by granting stay, and not the question why the stay should be granted.

9. Dispossession, during the pendency of an appeal of a party in possession, is generally considered to be "substantial loss" to the party applying for stay of execution within the meaning of Clause (a) of sub-rule (3) of Rule 5 of Order 41 of the Code. Clause (c) of the same provision mandates security for the due performance of the decree or order as may ultimately be passed being furnished by the applicant for stay as a condition precedent to the grant of order of stay. However, this is not the only condition which the appellate Court can impose. The power to grant stay is discretionary and flows from the jurisdiction conferred on an appellate Court which is equitable in nature. To secure an order of stay merely by preferring an appeal is not the statutory right conferred on the appellant. So also, an appellate Court is not ordained to grant an order of stay merely because an appeal has been preferred and an application for an order of stay has been made. Therefore, an applicant for order of stay must do equity for seeking equity. Depending on the facts and circumstances of a given case an appellate Court, while passing an order of stay, may put the parties on such terms the enforcement whereof would satisfy the demand for justice of the party found successful at the end of the appeal. In *South Eastern Coalfields Ltd. Vs. State of M.P. and Others*,¹ this Court while dealing with interim orders granted in favour of any party to litigation for the purpose of extending protection to it, effective during the pendency of the proceedings, has held that such interim orders, passed at an interim stage, stand reversed in the event of the final decision going against the party successful in securing interim orders in its favour; and the successful party at the end would be justified in demanding compensation and being placed in the same situation in which it would have been if the interim order would not have been passed against it. The successful party can demand (a) the delivery to it of benefit earned by the opposite party under the interim order of the High Court, or (b) compensation for what it has lost, and to grant such relief is the inherent jurisdiction of the Court. In our opinion, while granting an order of stay under Order 41 Rule 5 of the CPC, the appellate Court does have jurisdiction to put the party seeking stay order on such terms as would reasonably compensate the party successful at the end of the appeal in so far as those proceedings are concerned. Thus, for example, though a decree for payment of money is not ordinarily stayed by the appellate Court, yet, if it exercises its jurisdiction to grant stay in an exceptional case it may direct the

appellant to make payment of the decretal amount with interest as a condition precedent to the grant of stay, though the decree under appeal does not make provision for payment of interest by the judgment-debtor to the decree-holder. Robust commonsense, common knowledge of human affairs and events gained by judicial experience and judicially noticeable facts, over and above the material available on record—all these provide useful inputs as relevant facts for exercise of discretion while passing an order and formulating the terms to put the parties on. After all, in the words of Chief Justice CHANDRACHUD, speaking for the Constitution Bench in *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, "commonsense which is a cluster of life's experiences, is often more dependable than the rival facts presented by warring litigants".

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19. To sum up, our conclusions are:

(1) while passing an order of stay under Rule 5 of Order 41 of the Code of Civil Procedure, 1908, the appellate Court does have jurisdiction to put the applicant on such reasonable terms as would in its opinion reasonably compensate the decree-holder for loss occasioned by delay in execution of decree by the grant of stay order, in the event of the appeal being dismissed and in so far as those proceedings are concerned. Such terms, needless to say, shall be reasonable;

(2) in case of premises governed by the provisions of the Delhi Rent Control Act, 1958, in view of the definition of tenant contained in Clause (1) of Section 2 of the Act, the tenancy does not stand terminated merely by its termination under the general law; it terminates with the passing of the decree for eviction. With effect from that date, the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have vacated the premises. The landlord is not bound by the contractual rate of rent effective for the period preceding the date of the decree;

(3) the doctrine of merger does not have the effect of postponing the date of termination of tenancy merely because the decree of eviction stands merged in the decree passed by the superior forum at a latter date.

3. In *Girdharilal Chandak and Bros (HUF) Vs. S. Mehdi Ispahani, Ali Ispahani and S. Mohamed Ispahani*, held as follows:

17. Therefore, the petitioner cannot even contend that the principles of Order 41, Rule 5 CPC, cannot be invoked to the proceedings under the Rent Control Act, in view of the above observations of the Supreme Court that Order 41, Rule 5, embodies only a general principle of law. In any case, in *Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.* (supra), which arose out of the provisions of Delhi Rent Control Act, 1958, the Supreme Court held in paragraph 8 that it is well settled that mere preferring of an appeal does not operate as stay on the decree or order appealed against nor on the proceedings in the Court below. The

Court pointed out that a prayer for the grant of stay of the proceedings or on the execution of the decree or order appealed against has to be specifically made to the Appellate Court. In paragraph 9 of the Report, the Supreme Court further reiterated that "to secure an order of stay merely by preferring an appeal is not a statutory right conferred on the appellant". To come to the above conclusions, the Supreme Court relied upon the provisions of Order 41, Rule 5 CPC, despite the fact that the proceedings in that case also arose only under the Rent Control Act. Therefore, if a person who seeks an order of stay and suffers a refusal, is himself obliged to pay the fair rent, the petitioner who did not even seek a stay of the orders of both the Courts below, cannot be placed better off.

4. At paragraph No. 11 in *Sri Vaishnava Sri Padam Kainkaryam Association, rep. by Secretary v. M.S. Rajagopalan* (supra) this Court held as follows:

11. Regarding the second contention, it is seen that the Appellate Authority certainly has powers to grant stay u/s 23(2). The power to grant an interim order is discretionary. However, the exercise of the discretion, must actually follow some rationale. In this case, the only reason stated by the Appellate Authority is that the fixation of fair rent had not attained finality on this simple ground, the Appellate Authority was not entitled to grant a blanket unconditional order of stay. A Court which is empowered to grant an interim relief, is always entitled as well as obliged to impose such conditions as it may deem fit, in the interest of justice, so that the party enjoying the benefit of stay is also put on terms. The Appellate Authority does not appear to have applied its mind on this aspect and has simply granted a stay order without referring to the facts on record. Therefore, the second contention that Section 23(2) gives a veto power for the Appellate Authority to grant a blanker stay, cannot be accepted.

5. At paragraph No. 5 of the impugned order, there is a reference to the admitted rent of Rs. 20,306/- (Rupees Twenty thousand three hundred and six only), which has been taken note of by the Rent Control Appellate Authority, for imposing the condition for extension of the interim order.

6. Though Mr. Rajmohan, learned counsel appearing for the revision petitioner assailed the impugned order on the ground that the Rent Control Appellate Authority, has erred by not considering the decision of this Court in *A. Krishnamurthy Vs. P. Arjunan* and also erred in coming to the conclusion that the petitioner has to deposit 50 months' rent into the Court, which is beyond the scope of Section 23(2) of the Tamil Nadu Building (Lease & Rent Control) Act, 1960, this Court is not inclined to accept the said submission for the reason that the Rent Control Appellate Authority has arrived at the above conclusion, only on consideration of the recent decision of this Court in *Sri Vaishnava Sri Padam Kainkaryam Association, rep. by Secretary v. M.S. Rajagopalan* (supra) It is trite law that the later judgment would prevail over the former. No manifest illegality noticed in the impugned order warranting interference. The civil revision petition is dismissed.

7. The Rent Control Appellate Authority is directed to dispose of the Rent Control appeal (R.C.A. No. 55 of 2011), as expeditiously as possible, however, not later 30.6.2013, 2013. No costs. The connected miscellaneous petition is also dismissed.