(1999) 04 KL CK 0001

In the High Court Of Kerala

Case No : C.R.P. No. 751 of 1999

Carona Ltd. APPELLANT

Vs

Sujathakumari RESPONDENT

Date of Decision : 07-04-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Companies Act, 1956 — Section 433(e), 434
Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11(2), 12, 12(1), 12(2), 12(3)
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 12(3), 15(1), 21, 21(1)(f), 22

Citation : (1999) 2 KLJ 163

Hon'ble Judges : S. Krishnan Unni, J;AR. Lakshmanan, J

Bench : Division Bench

Advocate : P.B. Suresh Kumar, for the Appellant; V. Giri, for the Respondent

Final Decision : Dismissed

Judgement

AR. Lakshmanan, Ag. C.J.

1. Heard Mr. P.B. Suresh Kumar for the petitioner and Mr. V. Giri for the respondent. This Revision Petition is directed against the order in I.A. 2393 of 1999 in RCA No. 109 of 1998 on the file of the Rent Control Appellate Authority (District Court), Thiruvananthapuram, dated 18-2-1999 vacating the order of stay already granted by the appellant authority on the ground that the petitioner/ tenant had not deposited the arrears of rent as ordered by the appellate authority.

2. The respondent filed a petition for eviction u/s 11 (2) & (3) of the Kerala Buildings (Lease and Rent Control) Act, 1965. Objections were filed by the tenant conceding non-payment of arrears of rent to the tune of Rs.58,317/-. Thereupon the landlord filed I.A. No.4040 of 1998 u/s 12(1) of the Act calling upon the tenant/petitioner herein to deposit the admitted arrears of rent. The Court

ordered the tenant to remit or deposit the admitted arrears of rent within 30 days. However, the tenant, without remitting or depositing the arrears of rent as directed, filed a petition seeking to enlarge the time fixed for deposit of arrears of rent. The Rent Controller dismissed the said application and, thereafter, allowed the petition filed by the landlord ordering eviction of the tenant/ petitioner herein, u/s 12(3) of the Act, by order dated 13th August, 1998. An appeal was preferred by the tenant/petitioner herein against the said order of the Rent Controller, as RCA No. 109 of 1998 before the 2nd Additional District Judge (Rent Control Appellate Authority) Trivandrum. I.A. No.2393 of 1998 was also filed by the tenant seeking stay of all further proceedings for eviction, and the Appellate Authority granted stay as sought for, on condition that the petitioner should deposit the arrears of rent within ten days. On 18-2-1999 when the petition came up for orders, taking note of the fact that the admitted rent, vacated the stay granted initially and dismissed I.A. No.2393 of 1998 by order dated 18-2-1999. Thereafter the landlord initiated proceedings for execution of the order of eviction and the same is posted to 30-3-1999 for delivery. It is now represented by learned counsel for the landlord and also by learned counsel for the tenant that delivery was effected through Court on 30-3-1999 and that fact has also been recorded.

3. At the time of hearing it was submitted by counsel for the landlord that the arrears of rent at the rate of Rs.2,777/- for 36 months from April, 1996 to March, 1999 has not been deposited by the tenant as on date. Learned counsel for the tenant submitted that because of the acute financial constraints during the last few years, the tenant could not pay the rent and that the unit has been declared by the Board for Industrial and Financial Reconstruction as per the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985. It is further submitted that a scheme contemplated u/s 17 of the said Act is under implementation in respect of the petitioner Company. It is also submitted that due to the financial constraints the Company could not deposit the arrears of rent as ordered by the Rent Controller within the stipulated time and, hence, the petitioner filed I.A. No.64261 of 1998 for enlargement of the time fixed for deposit of arrears of rent, which was dismissed and eviction was ordered u/s 12(3) of the Act by the Rent Controller. Counsel for the petitioner contended that u/s 12(3) of the Act, if any tenant fails to deposit the rent as ordered u/s 12, the tenant has to be given an opportunity to show cause why the penal consequences contemplated u/s 12(3) of the Act, viz., eviction without going to the merits of the case should not be imposed on him. According to counsel for the petitioner, immediately on the disposal of I.A.No. 6426 of 1998, eviction was ordered u/s 12(3) of the Act, without affording an opportunity to the petitioner/ tenant to show cause why eviction under the said provision should not be imposed on him and that there was also justification for the dismissal of I.A. No.6426 of 1998 filed by the tenant for enlargement of the time prescribed for deposit of arrears of rent. It is further submitted that it is obligatoy on the part of the Rent Controller to give yet another opportunity to the tenant to show

cause why the penal consequences contemplated u/s 12(3) of the Act should not be imposed on him. In support of the above contention learned counsel for the petitioner/tenant cited the decision of this Court reported in Sidartha v. Hassankutty Haji (1994 (2) KLT 419). Portion of the judgment on which specific reliance was placed by counsel for the petitioner reads as follows:

.............It is further held that a tenant who does not fulfil the obligations imposed on him by sub-section (1) of Sec. 2 cannot be visited with the penal consequences contemplated by sub-section (3) unless all the conditions specified by sub-section (2) are satisfactorily fulfilled. It is observed that the tenant has to be given one more opportunity by showing cause as to why penal consequence contemplated by sub-section (3) should not be imposed on him even after the court acts in accordance with sub-section (2) of S.12 and the tenant still commits default. It is only when the court is not satisfied with the cause shown that it can pass an order stopping all further proceedings and directing the tenant to put the landlord in possession of the building.

Relying on the above observation counsel for the petitioner submitted that the order of eviction passed by the Rent Controller without fulfilling all the conditions specified by Section 12(2) of the Act is illegal and liable to be interfered with by the appellate authority. The further submission is that since the petitioner is a sick industrial company in relation to which a scheme under the Sick Industrial Companies (Special Provisions) Act, 1985 is under implementation, and the tenancy rights of the petitioner over the shop room in question is a right to property available to the petitioner, the proceedings for eviction of the petitioner from the shop room in question is hit by Section 22 of the above Act, since Section 22 provides that no proceedings against any of the properties of the company shall lie or be proceeded with except with the consent of the Board or, as the case may be, the Appellate Authority constituted under the Act and in the instant case, permission contemplated under the said Act has not been obtained. At the time of hearing it was submitted that the petitioner is prepared to deposit the entire arrears of rent forthwith and, therefore, the order of the Appellate Authority vacating the stay granted by it is liable to be interfered with.

4. We are unable to countenance both the above submissions. We shall now deal with the claim for the benefit u/s 22 of the Sick Industrial Companies (Special Provisions) Act, 1985. With regard to the above claim, our attention was drawn by counsel for the respondent to the decision of the Supreme Court reported in Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras, . In that case an argument was advanced before the Supreme Court raising questions involving interpretation of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985. The appellant in that case was a public limited company, which had taken on rent the premises belonging to the Church of South India Trust Association. Since the company defaulted payment of rent, the respondents in that case issued a legal notice calling upon the tenant company to pay the arrears of rent. The company, while

admitting the liability, stated that it was expecting certain sums of money from the Government of Karnataka towards developmental loan and as soon as the same was received, it would clear the outstanding payable by it to the respondents. Since the amounts was not paid, the landlord issued, a notice u/s 434 of the Companies Act and, thereafter, a petition was filed in the High Court of Karnataka u/s 433(e) of the Companies Act for winding up of the company. While the said petition was pending, the company, claiming that it had become a sick industrial company, filed a reference u/s 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 before the Board of Industrial and Financial Reconstruction. After hearing the concerned parties, the Board formed a prima facie opinion that it would be just and equitable as also in public interest that the company, which had become a sick industrial company, should be wound up in view of the large accumulated losses, poor market prospects for the products of the company and the inability of the promoters to bring in additional interest free funds required. The Board thereupon after hearing the objections/ suggestions of the concerned parties, passed an order directing to submit an acceptable rehabilitation proposal which is technically, economically and commercially viable for the revival of the company to the ICICI. If no acceptable rehabilitation scheme was received by the BIFR within one month, it was held that the opinion to wind up the company would be forwarded to the High Court of Karnataka for further necessary action under the law. An appeal filed before the Appellate Authority for Industrial and Financial Reconstruction was dismissed by the authority. The company filed a writ petition before the High Court of Delhi challenging the order of the Appellate Authority. The High Court, after issuing notice on the writ petition as also on the stay petition, stayed the operation of the order of the Appellate Authority. After the dismissal of the appeal by the Appellate Authority, the winding up petition was taken up and was allowed by a learned single Judge of the Karnataka High Court, taking a view that pendency of the writ petition in the High Court of Delhi and the stay of operation of the order of the Appellate Authority did not stand in the way of the Court to proceed with the matter. The appellant company filed an appeal before the Division Bench of the Karnataka High Court, which was also dismissed. Thereupon, the landlord filed a petition seeking eviction of the company from the demised premises under S. 21(1) of the Karnataka Rent Control Act, 1961 alleging that the company was a chronic defaulter in payment of rent. There were other allegations as well. The company moved an application u/s 151 of the CPC read with Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 for stay of the said proceedings on the ground that the appellant company had been declared a sick industrial company under the Act by the Board and a scheme was under preparation under the said Act. The said application was dismissed by the court on the view that Section 22 of the Act had no application inasmuch as proceedings instituted by the landlord for recovery of possession of the premises of which a sick industrial company is a tenant is not included among the proceedings which are required to be suspended u/s 22(1) of the Act. Thereafter the court allowed the eviction petition holding that the landlord was entitled to get possession of the premises and that the company was liable to vacate and give possession to the landlord. The company thereupon filed a writ petition against the said order of eviction, which was subsequently converted into a revision petition under S. 50 of the Karnataka Rent Control Act. The said revision was dismissed in view of S.29(1) of the Karnataka Rent Control Act, which provides that no tenant against whom an application for eviction has been made by a landlord u/s 21 shall be entitled to prefer or prosecute a revision petition u/s 50 against an order made by the Court on such application unless he has paid or pays to the landlord or deposits with the District Judge or the High Court, as the case may be, all arrears of rent due in respect of the premises upto the date of payment. The court found that neither the tenancy nor the amount of arrears of rent was disputed. The learned single Judge rejected the prayer for exemption from the applicability of Section 29(1) of the Karnataka Rent Control Act claimed on the basis of Section 22 of the Sick Industrial Companies (Special Provisions), 1985 and the revision petition was dismissed. Against that order the company filed a Civil Appeal before the Supreme Court, raising two questions. In this case we are concerned with the 2nd question, which reads as follows:

2) Are the proceedings instituted by a landlord for eviction of a tenant who is a sick company from the premises let out to it, required to be suspended u/s 22(1) of the Act?

While considering the 2nd question, the Supreme Court held that Section 22 does not cover proceedings instituted by a landlord of a sick industrial company for eviction of the company from the premises let out to it for the reasons set out in paragraph 12 of the judgment which reads thus:

12. Eviction proceedings initiated by a landlord against a tenant company would not fall in categories (1) and (3) referred to above. The question is whether they fall in category (2). It has been urged by the learned counsel for the appellant company that such proceedings fall in category (2) since they are proceedings against the property of the sick industrial company. The submission is that the leasehold right of the appellant company in the premises leased out to it is property and since the eviction proceedings would result in the appellant-company being deprived of the said property, the said proceedings would be covered by category (2). We are unable to agree. The second category contemplates proceedings for execution, distress or the like against any other properties of the company. Proceedings for eviction instituted by a landlord against a tenant who happens to be a sick industrial company, cannot in our opinion, be regarded as falling in this category. We may, in this context, point out that, as indicated in the preamble, the Act has been enacted to make special provisions with a view to securing the timely detection of sick and potentially sick companies owning industrial undertakings, the speedy determination by a Board of experts of the preventive, ameliorative, remedial and other measures which need to be taken with respect to such companies and the expeditious enforcement of the measures so determined. The provision regarding suspension

of legal proceeding contained in Sec.22(1) seeks to advance the object of the Act by ensuring that a proceeding having an effect on the working or the finances of a sick industrial company shall not be instituted or continued during the period the matter is under consideration before the Board or the Appellate Authority or a sanctioned scheme is under implementation without the consent of the Board or the Appellate Authority. It could not be the intention of Parliament in enacting the said provision to aggrevate the financial difficulties of a sick industrial company while the said matters were pending before the Board or the Appellate Authority by enabling a sick industrial company to continue to incur further liabilities during this period. This would be the consequence if sub-section (1) of Sec.22 is construed to bring about suspension of proceedings for eviction instituted by landlord against a sick industrial company which has ceased to enjoy the protection of the relevant rent law on account of default in payment of rent. It would also mean that the landlord of such a company must continue to suffer a loss by permitting the tenant (sick industrial company) to occupy the premises even though it is not in a position to pay the rent. Such an intention cannot be imputed to Parliament. We are, therefore, of the view that Sec.22(1) does not cover a proceeding instituted by a landlord of a sick industrial company for the eviction of the company premises let out to it.

The Supreme Court further observed in paragraph 15 of the judgment as follows:

15. From these provisions, it would appear that except in cases covered by the two provisos to sub-section (1) of Sec.23, there is a prohibition for a tenant to sub-let whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein. This prohibition is, however, subject to a contract to the contrary. A tenant who subjects or assigns or transfers the premises in contravention of this prohibition loses the protection of law and can be evicted by the landlord under Sec.21(1)(f). In the case of a statutory tenant, the relationship is not governed by contract. The prohibition against assessment and transfer is, therefore, absolute and the interest of statutory tenant can neither be assigned nor transferred. This means that the interest of the statutory tenant in the premises in his occupation, as governed by the Karnataka Rent Control Act is a limited interest which enables the surviving spouse or any son or daughter or father or mother of a deceased tenant in the premises as a member of the tenant''s family upto the death of the tenant and a person continuing in possession after termination of tenancy in his favour, to inherit the interest of the tenant on his death. The said interest of the tenant is, however, not assignable or tranferable and, therefore, the interest, of a company which is continuing in occupation of the premises as a statutory tenant by virtue of the protection conferred by the Karnataka Rent Control Act, cannot be regarded as property of the company for the purpose of sub-section (1) of Sec.22 of the Act and for that reason also the provisions of Sec.22(1) were not attracted to the eviction proceedings instituted by the respondents against the appellant company. The provisions of Sec.22(1) did not, therefore, bar the prosecution of the said proceedings by the respondents and the order dated September 30, 1989 passed

by the XII Additional Small Cause Judge, Bangalore allowing the eviction petition cannot be held to have been passed in contravention of the provisions of Sec.22(1) of the Act.

In the result, the Supreme Court rejected a similar contention as raised in the instant case by counsel for the appellant claiming the benefit under Sec.22 of the Sick Industrial Companies (Special Provisions) Act, 1985. In view of the above ruling of the Supreme Court, the said contention of the petitioner herein fails.

5. We shall now consider the submission made by counsel for the petitioner that the dismissal of I.A. No.2493 of 1998 and ordering eviction under Sec. 12(3) of the Act without affording an opportunity to show cause why eviction under the said provision should not be imposed is illegal. We are of the opinion that the said contention must also fail. A perusal of the order passed by the Rent Controller would clearly reveal that an opportunity was given to the petitioner to explain as to why he could not remit the arrears of rent within the stipulated period. The Rent Controller was of the opinion that the explanation submitted by the tenant was not genuine and that the tenant had intentionally defaulted payment of arrears of rent of the building to the landlord. Even though the tenant had sufficient time to pay the arrears, he did not pay the same. Therefore, the landlord is entitled for an order under Sec. 12(3)of the Kerala Buildings (Lease & Rent Control) Act. It is seen from the records and also from the order of the Rent Controller that the court had earlier ordered I.A.4040 of 1998 for remitting arrears of rent within 30 days. But the tenant defaulted payment of the admitted arrears. Thereafter a second opportunity was given to explain as to why the tenant could not pay the admitted arrears of rent as ordered. It is thus seen that the petitioner was given sufficient opportunity to deposit the arrears and that the petitioner miserably failed to remit the arrears within time. It is also a matter on record now that delivery was effected through court on 30th March, 1999 and the landlord is now in possession of the building in question.

In view of the above, there are no merits in this Civil Revision Petition, and the same is hereby dismissed. There will be no order as to costs.

