

(1998) 04 KL CK 0033
In the High Court Of Kerala
Case No : O.P. No. 13466 of 1997

Devaki and Others

APPELLANT

Vs

Natarajan and Others

RESPONDENT

Date of Decision : 06-04-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11(2)(b), 11(3), 11(4)(iv), 14

Citation : (1998) 2 KLJ 20

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : E. Subramani, for the Appellant; K.P. Dandapani, for the Respondent

Final Decision : Allowed

Judgement

K.A. Abdul Gafoor, J.—The tenants in a rent control petition are the petitioners in this Original Petition. Challenge is against Exts.P1 and P2. The order of eviction passed against them was sought to be executed by the 3rd respondent. Petitioners raised objection before the execution court that the execution petition was barred by limitation. That objection was overruled in Ext.P1. Matter was taken up in revision by the petitioners. The revision was dismissed by Ext.P2 confirming Ext.P1 and holding that the execution petition was not hit by the provisions of the limitations. It is in the above circumstances, petitioners have approached this court challenging Exts.P1 and P2. As the only issue is with regard to the limitation, it is necessary to advert to bear minimum facts. The landlord applied for eviction of the predecessor in interest of the petitioners under Sec.11(2)(b), 11(3) and 11(4)(iv) of the Kerala Buildings (Lease & Rent Control) Act. That was allowed as per order dated 23-2-1977 on all the three grounds. The tenants took up the matter in appeal. As per the appellate judgment dated 23-6-78, the findings on the grounds available under Sec. 11(3) and 11(4)(iv) were vacated and eviction on the ground available under Sec.11(2)(b) was confirmed. Thus, eviction was allowed only under Sec.11(2)(b) as per

the appellate judgment dated 23-6-1978. Landlord took up the matter in revision. Revision was allowed on 1-1-79. The tenants brought the matter before this court in Civil Revision Petitions. As per order dated 9-10-1980 the Civil Revision Petitions were allowed remanding the matter to the revisional court. On 27-3-1987 the revisions were dismissed. Thus, what survived was only the eviction ordered under Sec.11(2)(b). Civil Revision Petitions were filed by the landlord before this court. Those petitions were dismissed on 22-1-87 as not maintainable, being a second revision. Thereupon two original petitions were filed. Those were also dismissed on 25-2-1991. Thus, the matter became final on 25-2-91. What survived as on that date was an order for eviction under Sec.11(2)(b). Consequently, the landlord filed execution petitions on 30-11-91. Tenants resisted that execution pleading that the rent had already been paid. But, that was not accepted. Thereupon, objection of limitation was taken up.

2. The contention of limitation is that the order for eviction under Sec.11(2)(b) became final on 23-6-78 when R.C.A. Nos. 6 & 7 of 1977 filed by the tenants were allowed on the grounds under Sec.11(3) and 11(4)(iv) and dismissed on the ground under Sec. 11(2)(b). By the time the execution petition was filed on 30-11-91, twelve years period in terms of Art. 136 of the Limitation Act, 1963 had already elapsed. There was no challenge against the finding under Sec.11(2)(b) in the judgment dated 23-6-78 either in revisional court or before this court during any of the several stages, until original petitions were dismissed on 25-2-1991. Therefore, the eviction ordered under Sec.11(2)(b) was available for execution from 23-6-78 onwards. The landlord did not avail of that opportunity until 30-11-91. By that time 12 years period in terms of the Limitation Act is over. Order of the Rent Controller is executable as if it is a decree. Therefore, it has to be executed within 12 years period commencing from 23-6-78. This aspect has not been properly considered by the execution court in Ext.P1 and revisional court in Ext.P2, the petitioner contends. Execution petition were filed beyond 12 years, those are not maintainable, the petitioners contend.

3. In answer to these contentions, the landlord submits that the order became final only on 25-2-1991 when the original petitions filed by him were dismissed. He had applied for order of eviction in a single petition on three grounds. At the appellate stage only one ground was found in his favour as per judgment dated 23-6-78. He was not satisfied with the judgment. He continued his effort to get eviction order until all the grounds. He was agitating through out on several stages and his attempts finally failed only on 25-2-1991 when the original petitions were dismissed by this court. It was only on that date the order became final. Therefore, he has got twelve years period from that date to execute the order of eviction granted under Sec.11(2)(b). A plaintiff or a petitioner is not bound to execute decree in triplets. A plaintiff or petitioner can wait until the final stage of his suit or petition is attained. From the date of attainment of final stage alone the decree need be executed and the period provided for in Limitation Act will commence, the 3rd respondent contends. Therefore Exts.P1 and P2 are perfectly justified.

4. Counsel for the petitioners did not have any precedents to be cited. On the other hand, counsel for the 3rd respondent cited several precedents concerning the doctrine of merger. Counsel for the petitioners submits that such decision cannot have application to the facts of the case as the order of eviction under Sec.11(2)(b) was not a subject matter in the revision under the Kerala Buildings (Lease and Rent Control) Act, or the revision petition under Sec.115 of the CPC or the Original Petitions which were finally dismissed. It cannot be contended that there was merger of the judgment dated 23-2-1977 concerning the order of eviction under Sec.11(2)(b) with the judgment dated 25-2-1991 dismissing the original petition filed by the landlord. Therefore, the doctrine of merger cannot have application in this case, he contends.

5. The Kerala Buildings (Lease & Rent Control) Act provides for appeal, the period of appeal, revision and for execution. Wherever time limit is applicable in respect of applications, that is also provided in the Act. But, in for revision, there is no time limit.

6. Section 14 provides that order of eviction shall be executed as if a decree. Therefore, by fiction it is treated as a decree only for the purpose of execution. Necessarily, the execution petition shall be taken up only within the reasonable time. It cannot be said that the provisions of Art. 136 of the Limitation Act directly apply to execution of the eviction orders. Therefore, reasonable period shall be taken for the purpose of computing limitation as in the case of the revision, where also no time limit is provided.

7. The facts of the case narrated above will reveal that the landlord unsatisfied with the appellate judgment dated 23-6-78, was agitating through out at different stages until 25-2-91 seeking a full order in his petition. In such circumstances, he cannot be expected to execute eviction order under Sec. 11(2) (b) confirmed in appellate judgment on 23-6-1978. He filed only a single petition for eviction of course on three different grounds. He is entitled to agitate upto final stage seeking an order of eviction completely on his petition. Until then he cannot be expected to execute any order in respect of any part of the petition. The order on his rent control petition became final only on 25-2-91, though dismissing his contentions with regard to the grounds available under Sec.11(3) and 11(4)(iv). Only from that date onwards he is expected to execute the available order. Therefore, under ordinary circumstances and reasonably, he is expected to file an execution petition only after 25-2-91. In such circumstances E.P. Nos. 79 and 80 of 1991 filed on 30-11-91 are within reasonable time and therefore are maintainable. The findings of the court below in Exts.P1 and P2 are thus perfectly justified. It is also seen from the common order dated 1-1-79 in R.C.R.P. Nos. 73, 74, 75 and 76 of 1978 that the landlord had been granted an order of eviction on the ground of arrears of rent as well. It is found in the said order by the revision court as follows:

In O.P.(BRC) 32/1973 the landlord shall be entitled to an order of eviction on the ground of landlord's own use and necessity for reconstruction. In O.P. (BRC)

Nos. 33 and 34 of 1979 the landlord shall be entitled to get an order of eviction on the ground of own use and on the necessity for reconstruction in addition to the ground of default in payment of rent. The order of the appellate authority in the respective cases shall stand modified as above and the revision petitions are disposed of accordingly. R.C.R.P.96/1979 is dismissed confirming the order of the Appellate Judge. Both sides are directed to suffer their respective costs before this court in all the revision petitions.

Thus, the appellate judgment was modified in that revisional order, which the subject matter for subsequent revisions before this court which were allowed on 9-10-1980. This also is an added circumstance in favour of the landlord.

O.P. thus fails. Dismissed. No costs.