

(2014) 03 KL CK 0011
In the High Court Of Kerala
Case No : R.C. Rev. No. 25 of 2014

Ernakulam Whole Sale District Co-Operative Store	APPELLANT
Vs	
R. Subramanyam	RESPONDENT

Date of Decision : 13-03-2014

Acts Referred:

Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11, 11(3), 15, 18, 18(1)(b)
Kerala Land Reforms Act, 1963 — Section 106

Citation : (2014) 3 KLJ 584

Hon'ble Judges : P. Ubaid, J;K.T. Sankaran, J

Bench : Division Bench

Advocate : P.B. Ajoy, Advocate for the Appellant; T.B. Thankappan, T.T. Harikumar, Rahul Shenoy and Ashish Vidyadharan, Advocate for the Respondent

Judgement

K.T. Sankaran, J.—The question involved in this Rent Control Revision is whether an order summarily rejecting an application under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as "the Act" for short) is appealable under Section 18(1)(b) of the Act.

2. The respondent-landlord filed the Rent Control Petition under Section 11(3) of the Act. In the Rent Control Petition itself, mention was made about RCP No. 126 of 1994 filed by the landlord and others on an earlier occasion. The tenant entered appearance in the present case and raised a contention that the present Rent Control Petition is hit by Section 15 of the Act.

3. The Rent Control Court, on a perusal of the pleadings and documents, found that the landlord had filed R.C.P. No. 126 of 1994 under Section 11(3) of the Act and that application was dismissed. The appeal therefrom was also dismissed. In revision, as CRP No.2427 of 2002, this Court directed the tenant to vacate a portion of the building. The Rent Control Court in the present case found that even according to landlord, the petition schedule building in the present Rent Control Petition is that part of the building in respect of which eviction was

declined in the earlier round of litigation. On that basis, the Rent Control Court found that the present Rent Control Petition is barred by Section 15 of the Act. Accordingly, the Rent Control Petition was rejected summarily.

4. The landlord filed an appeal before the Appellate Authority challenging the order of the Rent Control Court summarily rejecting the Rent Control Petition. Before the Appellate Authority, the tenant raised a contention that the appeal before the Appellate Authority was not maintainable.

5. The Appellate Authority held that the appeal is maintainable under Section 18(1)(b) of the Act. On the merits of the case, the Appellate Authority held that to arrive at a proper finding as to whether the Rent Control Petition is barred under Section 15 of the Act, the landlord should be given an opportunity to adduce evidence. Accordingly, the Appellate Authority set aside the order of the trial court and remanded the case to the Rent Control Court for fresh disposal of the question whether the Rent Control Petition is liable to be rejected summarily. The tenant has come up in revision challenging the judgment of the Appellate Authority.

6. Section 15 of the Act provides that the Rent Control Court shall summarily reject any application under sub-section (2), (3), (4), (5), (7) or sub-section (8) of Section 11, which raises between the same parties or between parties under whom they or any of them claim substantially the same issues as have been finally decided or purports to have been finally decided in a former proceeding under the Act.

7. Section 18 of the Act provides for appeal. Clause (b) of sub-section (1) of Section 18 provides that any person aggrieved by an order passed by the Rent Control Court may, within thirty days from the date of such order, prefer an appeal in writing to the Appellate Authority having jurisdiction.

8. The learned counsel for the petitioner-tenant submitted that an appeal is provided only against an order. In a case where a Rent Control Petition is summarily rejected under Section 15 of the Act, no order would be passed by the Rent Control Court as per the Act. The submission of the learned counsel for the petitioner is that summary rejection of the Rent Control Petition is only a proceeding and not an order. The learned counsel submitted that, if that be the position, no appeal would lie against an order rejecting the Rent Control Petition summarily.

9. The learned counsel for the respondent pointed out that the Rent Control Court had passed an order in the present case and it is seen from the copy of the order produced before this Court. Moreover, the expression that "the Rent Control Court shall summarily reject any application" occurring in Section 15 of the Act does not mean that the Rent Control Court need not pass an order. He submitted that the summary rejection of the Rent Control Petition can only be an order. Summary rejection does not constitute a "proceeding" as submitted by the learned counsel for the petitioner. The learned counsel for the respondent also

pointed out that Section 15 does not indicate that a "proceeding" shall be issued by the Rent Control Court when it summarily rejects a Rent Control Petition.

10. We are inclined to accept the submission made by the learned counsel for the respondent in this regard. Section 15 does not use the expression "proceeding". It is true that what is mentioned in Section 15 is that the Rent Control Court "shall summarily reject" the application. That does not mean that the Rent Control Court should not pass an order while summarily rejecting the Rent Control Petition. We are of the view that when the Rent Control Petition is to be summarily rejected by the Rent Control Court, it shall pass an order to that effect.

11. The next question to be considered is whether an order summarily rejecting the Rent Control Petition is an appealable order under Section 18(1)(b) of the Act. Section 18(1)(b) uses the expression "any person aggrieved by an order passed by the Rent Control Court". In *Sumathi Vs. S. Devasan and Others*, , the landlord, a retired Army Officer, who was a disabled war hero of the 1971 Indo-Pakistan war, filed the Rent Control Petition on the ground of bona fide need. The respondent in that petition contended that she was not the lessee, but her husband was a lessee. She also contended that the landlord agreed to sell the building to her and received advance sale consideration. The respondent, in the Rent Control Petition raised a preliminary point regarding the maintainability of the Rent Control Petition. The Rent Control Court dismissed the application and declined to decide the question as a preliminary issue. That order was challenged in appeal by the respondent in the Rent Control Petition. The Appellate Authority directed the Rent Control Court to consider "first at the trial" the question whether the denial of title by the tenant was bona fide. The tenant challenged the appellate order before the Revisional Court. The Revision was dismissed. The revisional order was challenged before the High Court in Original Petition. Dismissing the Original Petition, the High Court held thus:

"14. On the principle of these decisions, it is clear that any order of whatever nature made by the Rent Control Court is not made appealable under S. 18 merely because it is an order passed by the Rent Control Court. The expression "an order" cannot be construed as making each and every order, interlocutory or otherwise, appealable. S. 18 comprehends only such orders as affect the rights or liabilities of parties. Orders pertaining to matters merely of procedure or evidence or are steps in the proceedings are not appealable. An interlocutory order to be appealable, must vitally affect the right to relief, or defence of a party, if the matter were to proceed to trial on that basis.

17. A conspectus of these decisions leads to the conclusion that though S. 18(1)(b) is wide in its terms, an appeal does not lie unless the order in question is finally disposing of the proceedings or is one which affects the rights or liabilities of the parties. It will depend on the nature of the order in a given case, as to whether it is appealable or not. Each case will depend on its own facts. Thus an order admitting or refusing to admit documents will not normally be appealable, but such an order receiving documents in evidence after the trial started was

held appealable by Ratnavel Pandiari, J. in T.N. Habib Khan Vs. Arogya Mary Shanthi Lucien, . It is true that every order does affect the rights of parties in one sense or other. But that will not make it an order subject to appeal. Apart from the final orders, only those orders which virtually put an end to the proceedings or make it practically impossible for the affected party to get effective relief or to set up or substantiate a defence are rendered appealable. Refusal to try and decide a particular point as a preliminary issue is not such an order affecting the rights of any party. Such an order is not therefore appealable. As stated earlier everything depends on the nature of the particular order and its impact on the rights or liabilities in issue in the proceedings."

12. In Ulahannan Kurian Vs. Ipe Thomas, , the question whether an order passed by the Rent Control Court declining to refer the question whether the tenant was entitled to the protection under Section 106 of the Kerala Land Reforms Act was appealable, came up for consideration. The Revisional Court had taken the view that the appeal was incompetent as the order was on an Interlocutory Application. The High Court held that interlocutory orders which determine substantive rights have to be challenged in case an appeal is provided. It was also held that the order of the Rent Control Court declining to make a reference to the Land Tribunal is not a mere procedural order. But, it is one affecting the rights of parties. The decision of the Supreme Court in Central Bank of India Vs. Shri Gokal Chand, was relied on in Ulahannan Kurien v. Ipe Thomas. In Koya Haji v. Satheedevi, 1971 KLT SN 19, it was held that orders affecting the rights or liabilities of a party should be taken up in appeal before the Appellate Authority, if the party is serious about it, otherwise the order will stand against him, in further progress of the proceedings.

13. In Central Bank of India Vs. Shri Gokal Chand, , the Supreme Court considered the scope of Section 38(1) of the Delhi Rent Control Act. Section 38(1) of the said Act reads as follows:

"An appeal shall lie from every order of the Controller made under this Act to the Rent Control Tribunal (hereinafter referred to as the Tribunal) consisting of one person only to be appointed by the Central Government by notification in the Official Gazette".

The Supreme Court held thus:

"The object of S. 38(1) is to give a right of appeal to a party aggrieved by some order which affects his right or liability. In the context of S. 38(1), the words "every order of the Controller made under this Act", though very wide, do not include interlocutory orders, which are merely procedural and do not affect the rights or liabilities of the parties. In a pending proceeding, the Controller may pass many interlocutory orders under Ss. 36 and 37, such as orders regarding the summoning of witnesses discovery, production and inspection of documents, issue of a commission for examination of witnesses, inspection of premises, fixing a date of hearing and the admissibility of a document or the relevancy of a

question. All these interlocutory orders are steps taken towards the final adjudication and for assisting the parties in the prosecution of their case in the pending proceeding; they regulate the procedure only and do not affect any right or liability of the parties. The legislature could not have intended that the parties would be harassed with endless expenses and delay by appeals from such procedural orders. It is open to any party to set forth the error, defect or irregularity, if any, in such an order, as a ground of objection in his appeal from the final order in the main proceeding. Subject to the aforesaid limitation, an appeal lies to the Rent Control Tribunal from every order passed by the Controller under the Act. Even an Interlocutory order passed under Section 37(2) is an order passed under the Act and is subject to appeal under Section 38(1) provided it affects some right or liability of any party. Thus, an order of the Rent Controller refusing to set aside an ex parte order is subject to appeal to the Rent Control Tribunal."

14. An order putting an end to the proceedings or foreclosing the rights of parties or affecting the parties in subsequent proceedings are all orders which are to be distinguished from interlocutory orders. Interlocutory orders which are procedural in nature may not always affect the rights of parties. Those orders may not even affect the final disposal of the case in certain situations. An order passed by the Rent Control Court can be challenged before the Appellate Authority, if the order affects the rights or liabilities of the parties or puts an end to the proceedings or affects the defence of the parties or forbids a party from raising a contention in any other proceedings or forecloses at least some of the issues arising in the case. On the other hand, if the order passed by the Rent Control Court does not have such an effect but, it is only procedural in nature, the Courts have taken the view that such orders would not be appealable under Section 18(1)(b) of the Act. In the present case, the Rent Control Court held that the dismissal of the Rent Control Petition filed by the landlord on an earlier occasion would be a bar to him to maintain the present Rent Control Petition. This would foreclose the landlord from filing another Rent Control Petition. There is no scope for passing any other final order other than the order impugned in the Appeal. In other words, after summarily rejecting the Rent Control Petition holding that it is barred under Section 15 of the Act, no further order need be passed by the Rent Control Court. To that extent, the proceeding before the Rent Control Court has become final. We are of the view that an order passed by the Rent Control Court summarily rejecting an application under Section 11(3) of the Act is an order which is capable of being challenged in an appeal under Section 18(1)(b) of the Act. On the merits of the case, the Appellate Authority rightly held that evidence is required even to decide the question whether the Rent Control Petition is barred under Section 15 of the Act. No ground is made out to interfere with the well considered judgment passed by the Appellate Authority.

For the aforesaid reasons, there is no merit in the Rent Control Revision and it is accordingly dismissed.