

(2011) 08 MAD CK 0223

In the Madras High Court

Case No : CRP (NPD) No. 2909 of 2010 and M.P. No. 1 of 2010

Girdharilal Chandak and Bros (HUF)

APPELLANT

Vs

S. Mehdi Ispahani, Ali Ispahani and S. Mohamed Ispahani

RESPONDENT

Date of Decision : 02-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 25

Tamil Nadu Buildings (Lease and Rent Control) Rules, 1974 — Rule 12(3)

Citation : (2011) 5 CTC 252

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Advocate : ARL. Sundaresan, SC for AL. Gandhimathi, for the Appellant; R. Balachander, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramasubramanian, J.—This Civil Revision Petition arises out of the concurrent orders of eviction passed by the Rent Controller and confirmed by the Appellate Authority.

2. Heard Mr. ARL. Sundaresan, learned Senior Counsel for the Petitioners and Mr. R. Balachander, learned Counsel for the Respondents

3. The Respondents filed RCOP No. 311 of 2006 on the file of the XI Judge of the Court of Small Causes, Chennai (Rent Controller) against the first Petitioner herein u/s 10(2)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, contending that the Petitioner was guilty of willful default in payment of the difference between the fair rent fixed by the Court and the contractual rent. The defence taken by the first Petitioner was that the fixation of fair rent by two Courts had not attained finality, in view of the pendency of a revision petition.

4. After considering all the contentions raised on both sides, the Rent Controller passed an order on 26.2.2007, directing eviction. The appeal filed by the first

Petitioner in RCA No. 267 of 2007 was dismissed by the Appellate Authority by an order dated 24.4.2009. It is against these concurrent orders that the first Petitioner filed the above revision. During the pendency of the revision, the first Petitioner died and hence, the second Petitioner is brought on record.

5. Though the facts narrated above would have been sufficient in any other case to dispose of the civil revision petition, the case on hand would not fall under the category of a normal variety. Therefore, a few more facts which may date back to antiquity and a few facts which have happened after the institution of the eviction proceedings may have to be taken note of and hence the list of events which have happened in the past about 23 years is narrated hereunder:

(i) The Respondents filed a petition for fixation of fair rent RCOP No. 2480 of 1988. The contractual right of rent was Rs. 1,000/-per month. The tenanted premises was land and building at new Door No. 35, Anna Salai, Chennai-2, located in a land of an extent of about 2 grounds and 98 sq.ft. After considering the oral and documentary evidence on record, the Rent Controller fixed the fair rent for the premises at Rs. 31,591/-per month.

(ii) The first Petitioner as well as the Respondents filed appeals as against the order of the Rent Controller, in RCA Nos. 627 and 716 of 2004 respectively. The Appellate Authority, by an order dated 26.4.2005, enhanced the fair rent to Rs. 43,084/-payable as per the provisions of the Act, with effect from the date of the petition for fixation of fair rent viz., 1.9.1988.

(iii) Aggrieved by the fair rent so fixed by the Appellate Authority, the first Petitioner/tenant filed two revision petitions in CRP NPD Nos. 1657 and 1658 of 2005. These revision petitions were not accompanied by stay petitions. On 28.10.2005, while admitting the revision petitions, this Court passed the following order:

The revisions are admitted. The tenant/revision Petitioner will deposit a sum of Rs. 85,00,000/-(Rupees eighty five lakhs) as fixed by the Rent Control Appellate Authority at the rate of Rs. 43,084/- per month, to the credit of RCOP No. 2480 of 1988 on the file of the VII Judge, Court of Small Causes, Chennai, on or before 31.1.2006. On such deposit being made, the amount shall be invested in Indian Bank, Esplanade Branch, High Court Extension counter, Chennai-600 104, initially for a period of 3 years and shall be renewed periodically, till the disposal of the revisions.

(iv) As against that portion of the order which directed the petitioner to make a deposit of Rs. 85 lakhs and which also directed the Petitioner to deposit the fair rent fixed by the Court below, the Petitioner filed the Special Leave Petitions (Civil) Nos. 25728 and 25729 of 2005 on the file of the Supreme Court. I must take it that the Special Leave Petitions were not against the order admitting the revision petitions. But, by an order dated 3.1.2006, the Supreme Court dismissed these Special Leave Petitions. However, the Supreme Court directed this Court to dispose of the revision petitions expeditiously. But the fact remains

that they have not so far seen the light of the day.

(v) Thereafter the Respondents filed RCOP No. 311 of 2006, out of which the present revision arises, alleging willful default, on the part of the first Petitioner/tenant, on the ground that the first Petitioner was obliged to pay the fair rent, when the orders of the Court below fixing the fair rent had not been stayed. That contention was accepted by the Rent Controller as well as the Appellate Authority and both of them have passed the orders of eviction which are under challenge in this revision.

6. Before I proceed further to take into account the contentions raised, it must be noted that after the Rent Controller passed the order of eviction on 26.2.2007, the first Petitioner filed an appeal in RCA No. 267 of 2007 and sought stay of the order of eviction. But it appears that No. stay was granted by the Appellate Court, for reasons which I am not able to decipher at this distance of time. But the fact remains that the Appellate Authority did not grant interim stay of the order of eviction passed by the Rent Controller. Consequently, the Respondents filed Execution Petition in E.P. No. 226 of 2007. In the Execution Petition, the Executing Court ordered delivery in view of the fact that there was No. stay order. The first Petitioner made an attempt to get a stay of the delivery by filing MPSR No. 8407 of 2007. But the Rent Controller dismissed the said petition.

7. As against the delivery ordered in E.P. No. 226 of 2007 and the dismissal of the petition for stay in MPSR No. 8407 of 2007, the first Petitioner filed two revision petitions in CRP (NPD) Nos. 1509 and 1510 of 2007 on the file of this Court. Both these revisions were dismissed by this Court by an order dated 25.10.2007.

8. Challenging the orders passed by the Executing Court and confirmed by this Court in the revisions, the first Petitioner filed SLP (Civil) Nos. 7977 and 7978 of 2008 on the file of the Supreme Court. On 7.4.2008, the Supreme Court dismissed both the Special Leave Petitions, thereby confirming the order of delivery passed by the Executing Court on 26.4.2007.

9. In pursuance of the order of delivery, passed by the Executing Court, the Respondents also took delivery of the property on 27.4.2007. In other words, the Respondents are now in possession of the property which formed the subject matter of the eviction proceedings, for the past more than 4 years, from 27.4.2007 onwards. It is also admitted across the bar by the learned Counsel on both sides that the superstructure has been brought down and what is now available is only a vacant land.

10. In the background of the above facts, which preceded the orders of delivery as well as the orders of eviction, it is contended by Mr. AR.L. Sundaresan, learned Senior Counsel for the second Petitioner (i) that the order passed by this Court while admitting the Civil Revision Petitions CRP (NPD) Nos. 1657 and 1658 of 2005 could not be taken to be valid, in view of the decision of the Supreme

Court in G.L. Vijain v. K. Shankar {2007 (1) MLJ 630}; (ii) that when the orders of the Rent Controller and the Appellate Authority fixing the fair rent had not attained finality, due to the pendency of the revisions arising out of those orders, the Petitioners cannot be described to have committed willful default in payment of rent, so as to make them suffer an order of eviction; and (iii) that merely because the Respondents have obtained an order of delivery, during the pendency of a regular appeal u/s 23 of the Act, the above revision cannot be treated as having become infructuous, especially when the lease is in respect of both the land as well as the building. In other words, it is his contention that despite the subsequent event of the Respondents taking delivery and also demolishing the existing superstructure, there is No. impediment for this Court to consider the issues raised in the above revision petition, independently without being influenced by the subsequent events.

11. In so far as the first contention is concerned, strong reliance is placed upon the decision of the Supreme Court in G.L. Vijain. In G.L. Vijain wherein a dispute arose under identical circumstances under the very same enactment viz., Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. In that case, when the revision came up before this Court as against the orders of the Court below fixing the fair rent, this Court passed an order admitting the revision petition subject to the condition that the tenant should deposit 50% of the entire past arrears and also subject to the tenant continuing to pay the monthly rent at the rate fixed by the Courts below. When the said order passed by this Court by way of condition was challenged before the Supreme Court in G.L. Vijain, the Supreme Court held (i) that the revisional jurisdiction of this Court u/s 25 of the Act, was much larger than the revisional jurisdiction of this Court u/s 115 CPC and (ii) that in as much as the revisional jurisdiction u/s 25 of the Act, is something akin to the Appellate jurisdiction, it was not open to this Court to impose a condition even for admitting a revision petition and (iii) that the imposition of such a condition even for admitting a civil revision petition, especially in the absence of a provision in the Act for doing so, was contrary to law.

12. Mr. R. Balachander, learned Counsel for the Respondents wanted to distinguish the above decision on the ground that the case in G.L. Vijain arose out of an order which imposed a condition for the admission of the civil revision petition. But in the case on hand, the learned Judge admitted the writ petitions and issued a direction, without making the very admission subject to the compliance with such a condition. In other words, it is his contention that the admission of the revision was not made by the learned Judge subject to the compliance of the condition. According to the learned Counsel, the order admitting the revision and the order directing deposit, were not made inseparable or inter dependent.

13. I have considered the rival contentions.

14. Irrespective of whether the order passed by this Court on 28.10.2005 in CRP (NPD) Nos. 1657 and 1658 of 2005 was a conditional order or not, it is an

admitted fact that the Petitioner himself did not seek a stay of the orders passed by the Rent Controller and the Appellate Authority, while challenging the same by way of revision. If a person does not seek stay of an order passed by a Court below, it would only indicate either of the two things viz., (i) that he is willing to comply with the order or (ii) that he has No. objection to the orders of the Court below being put into execution. The failure of a person to seek from an appellate forum, a stay of the order of a subordinate forum, cannot mean anything else than the above two factors. Take for instance, a case where a decree for recovery of money is passed. If out of fear that an Appellate Court may impose a condition for the grant of stay, the judgment-debtor chooses not to seek stay of the decree for money at all, it would either mean that he has No. objection to the decree being put to execution or that he is even willing to pay the decretal debt subject to his rights in the first appeal. The failure of a person to seek a stay from an Appellate Court, cannot lead to a disastrous consequence viz., that though he would not seek stay, there will automatically be a clog on the right of the decree holder to execute it. Such an interpretation, can never be permitted.

15. Order 41, Rule 5 (1) Code of Civil Procedure, makes it clear that an appeal shall not operate as a stay of the proceedings under a decree or order appealed from, except so far as the Appellate Court may order. It also makes it clear that the execution of a decree need not be stayed merely by reason of an appeal having been preferred from the decree. As a matter of fact, the Explanation to Sub Rule (1) of Rule 5 of Order 41, goes a step further by stating that even an order granted by the Appellate Court for the stay of execution will be effective only from the date of communication of such order to the Court of first instance. However, it permits the Court of first instance even to act upon an affidavit sworn to by the Appellant, to the effect that an Appellate Court had stayed the execution of the decree. In other words, the stay is made operative only prospectively.

16. In Smt. Kamala Devi Vs. Seth Takhatmal and Another, , the Supreme Court pointed out that Order 41, Rule 5 Code of Civil Procedure, embodies the general principle of law that an appeal shall not operate as a stay of proceedings under a decree. To hold that Order 41, Rule 5 Code of Civil Procedure, embodies only the general principle of law, the Supreme Court quoted with approval the opinion of the Judicial Committee in Juscurn Bold v. Pirthi Chand Lal { (1918) LR 46 IA 52}, to the following effect:

Under the Indian Law and Procedure, a original decree is not suspended by presentation of an appeal nor is its operation interrupted where the decree on appeal is one of dismissal.

17. Therefore, the Petitioner cannot even contend that the principles of Order 41, Rule 5 Code of Civil Procedure, 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. Vs. Federal Motors Pvt. Ltd., , 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 Code of Civil Procedure, 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 of.

18. Therefore, the contention raised by the Respondents that the first Petitioner was guilty of willful default in payment of the fair rent fixed by the two Courts below, was rightly sustained by both the authorities, in view of the very failure of the Petitioner to seek stay of those orders in the revision filed by them. In other words, the orders of eviction passed by both the Courts below, cannot be and need not be made relatable to the order passed by this Court in CRP (NPD) Nos. 1657 and 1658 of 2005. Only if the contention regarding willful default is linked to the order dated 28.10.2005 passed in CRP (NPD) Nos. 1657 and 1658 of 2005 that the question as to whether it was a conditional order or not and the next question as to whether this Court is competent to impose such a condition or not, would arise. In plain and simple terms, if the conduct of the Petitioner is looked into, the same makes it clear that though he challenged the orders of fixation of fair rent, he did not want stay of those orders. If the Court did not grant stay of those orders and if he himself did not seek stay of those orders, the consequences of the same would have to follow.

19. The above issue can also be looked at from another angle. Take for instance a case, where a revision is filed against orders fixing the fair rent and the tenant also seeks stay of the orders of the Court below. For the grant of stay, if this Court imposes a condition and the revision Petitioner fails to comply with those conditions, it would automatically result in the vacation of the stay order. Once a stay is sought and it is also granted on condition and once the conditional order is not complied with, the default on the part of the tenant would automatically become a willful default. If this is the position even with regard to a person who obtains a conditional order of stay, the case of a person who does not even seek stay, cannot be placed in a better position. In other words, to say that a person who seeks stay and suffers a conditional order is worse off than a person who does not seek stay would be a travesty of justice. Therefore, the Courts below were right in looking at the issue in plain and simple terms in the sense that on account of the very action of the Petitioner in not seeking a stay, the Petitioner became liable to pay the fair rent.

20. In so far as the second contention is concerned, it is No. doubt true that the civil revision petitions arising out of the fixation of fair rent, are still pending on the file of this Court. But the mere pendency of a revision petition could not mean that the orders of both the Courts below are inexecutable. Suppose the Petitioner had vacated the place and gone out, the only remedy open to the landlord who obtained orders fixing the fair rent, would be to file a civil suit for recovery of money. If a civil suit for recovery of money had been filed, it may be open to the Petitioner to contend that the cause of action for filing the suit had not yet arisen on account of the fact that the fair rent proceedings had not attained finality. But the cause of action for a landlord to file a suit for recovery of the fair rent, would stand on a different footing than his right to enforce the order fixing the fair rent, by taking recourse to the other provisions of the Act, viz., petition for eviction on the ground of willful default. A person who suffered an order fixing the fair rent, has only one remedy viz., that of filing an appeal. But a person who obtains order fixing the fair rent, has multiple remedies viz., (i) to seek recovery of money by filing a civil suit or (ii) to seek eviction on the ground of willful default. Both these remedies stand on separate footing. So long as there is No. stay of the order fixing the fair rent and so long as the Petitioner did not want or did not seek a stay of the order fixing the fair rent, it is not open to him to contend that the proceedings had not attained finality and that therefore he was not obliged to pay the fair rent fixed.

21. As a matter of fact, the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, enables the Appellate Authority u/s 23 (2) to grant stay of further proceedings pending decision on the appeal. There is No. similar provision u/s 25. What is worse is the fact that u/s 23(4), the decision of the Appellate Authority is final and is not liable to be called in question in any Court of Law, except as provided in Section 25. Therefore, finality is reached in every proceeding under the Act, the moment an order is passed by the Appellate Authority. But it is made subject to the revisional jurisdiction of this Court. Therefore, in the absence of a stay, by this Court in a revision, the order of the Appellate Authority becomes final until it is modified or set aside by this Court. Moreover, Rule 12 of the Tamil Nadu Buildings (Lease and Rent Control) Rules, 1974, prescribes the procedure for the disposal of the applications. The third proviso to sub Rule (3) of Rule 12, states that whenever an application for setting aside an ex parte order is received for the first time, all execution proceedings would stand stayed till the disposal of that application. In other words, the Act contains one provision for stay u/s 23 (2), subject to the discretion of the Appellate Authority. The Rules contain one provision for automatic stay of execution, under the third proviso to Rule 12(3). Therefore, the construction that the admission of a revision, without any order of stay, would automatically take away the finality conferred u/s 23 (4) to an order of the Appellate Authority, would do violence to the Act and the Rules. Hence, the second contention is also unacceptable.

22. In so far as the other contentions are concerned, which relate to the

subsequent events that have happened, I do not think that I need not go into those aspects in view of the fact that even on merits, I find that the concurrent orders of the Court below are well considered and do not call for any interference. Unless I find that the petitioner was not guilty of willful default, the remedies that he will be entitled to, on account of the subsequent events, would arise for consideration. Since I have found him guilty of willful default and I have affirmed the concurrent orders of both the Courts below, the question of examining the kind of remedy that he would be entitled, in view of the subsequent developments would not arise for consideration at all.

23. In view of the above, the civil revision petition is dismissed. No. costs. Consequently, connected miscellaneous petition is also dismissed.