

(2004) 01 KAR CK 0002

In the Karnataka High Court

Case No : Writ Petition No. 35623 of 2002 (HRC)

Jain Cloth Stores and Another

APPELLANT

Vs

Smt. Narangi Bai and Others

RESPONDENT

Date of Decision : 28-01-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47
Constitution of India, 1950 — Article 226, 227
Karnataka Rent Act, 1999 — Section 70 (2)

Citation : (2004) 5 KarLJ 99 : (2004) 2 KCCR 1181

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : Shekar Shetty, for the Appellant; C.B. Srinivasan, M. Bayya Reddy and Radha Jayanthi for Respondents-2(a) to (i), for the Respondent

Judgement

R. Gururajan, J.—Petitioners/legal representatives of late Mr. C. Bansilal are challenging the order dated 27-6-1999 passed in HRC No. 4351 of 1980 on the file of Small Causes Court at Bangalore- Parties are referred as per their ranking before Trial Court.

2. Respondent-landlord late Kewalchand filed HRC No. 4351 of 1980 seeking for an order of eviction. The matter was contested. After contest, learned Trial Judge ordered eviction and ordered delivery of possession to the landlord. Petitioner filed HRRP No. 1162 of 1997. This Court in terms of an order in Jain Cloth Stores Vs. M. Kewalchand (Deceased) by L.Rs, disposed of the HRRP thereby confirming the order of the learned Trial Judge. This Court granted time to the petitioners subject to an undertaking in terms of the order. Petitioner thereafter challenged the said order in SLP No. 6977 of 2002. SLP stood rejected. According to petition averments in terms of Section 70(2), the entire proceedings get abated in terms of the amended rent laws. Petitioners further contention is that the view of this Court in Jain Cloth Stores case, supra, was considered to be not a good law by the Division Bench in its judgment in Mercury Press Vs. Ameen Shacoor and Others, According to petitioners, the order of the Trial Judge gets abated in terms

of the new Act. With these averments petitioners are before me.

3. Respondents have entered appearance and they have filed an interlocutory application for vacating the stay. They have enclosed a copy of the order passed in HRRP No. 1162 of 1997 and also the order of the Supreme Court in the case of the petitioner.

4. Heard the learned Counsels for final disposal with their consent.

5. Learned Counsel for the petitioners strongly contends that the impugned order in the case on hand is a nullity in the eye of law. The said order is without jurisdiction. According to him, orders without jurisdiction can be interfered with in writ proceedings. According to him writ Court is not helpless in such cases. He strongly relies on Mercury Press case, *supra*, to contend that orders passed in petitioners' case is held to be not a good law and that therefore this Court can certainly consider the order of the learned Trial Judge notwithstanding the earlier order passed in Jain Cloth Stores case, *supra*, filed by the petitioner. His further submission is that order of the Supreme Court is not a bar in the given set of circumstances. Various judgments are pressed into service by the petitioner.

6. Learned Counsel for the respondent, *per contra*, would say that the order of the learned Trial Judge was challenged in HRRP No. 1162 of 1997, DD: 6-2-2002 and that order was confirmed. Mercury Press case, *supra*, is subsequent order passed by this Court on 5-4-2002. SLP was filed on 6-9-2002 and on that day, the order in Mercury Press case, *supra*, was available to the parties. According to the material on record, even after noticing the order in Mercury Press case, *supra*, the Apex Court has chosen to dismiss the appeal on merits. Respondents comments on the conduct of the petitioner in the light of the writ averments. Learned Counsel for the respondent says that 24 long years are over. The Apex Court has confirmed the order. In these circumstances, he says that the petition is to be dismissed with exemplary costs.

7. After hearing the learned Counsel, I have carefully considered the material on record.

8. Admitted facts reveal of an eviction order in HRC No. 4351 of 1980 and that order was unsuccessfully challenged in Jain Cloth Stores case, *supra*. The order passed in Jain Cloth Stores case, *supra*, is again unsuccessfully challenged in the Supreme Court. Therefore, what is clear to this Court is that the order in HRC No. 4351 of 1980 has attained its finality in terms of the judicial approval at the hands of the Apex Court. The question before me is as to whether the subsequent developments would come to the aid of the petitioner notwithstanding the confirmation by the Apex Court of the Trial Court's order.

9. Petitioner's contention is that the order is without jurisdiction in terms of Section 70(2) of the Act and that therefore this Court notwithstanding the confirmation of the order can interfere in a writ jurisdiction. Writ Court is not helpless. Several judgments are pressed in to service by the petitioner.

10. Lakshmi Narayan Guin and Others Vs. Niranjan Modak, is a case in which the Supreme Court considered the provisions of the West Bengal Premises Tenancy Act in the said case, and the Supreme Court ruled that a change in law during the pendency of an appeal has to be taken into account.

Sunder Dass Vs. Ram Prakash, is with regard to Section 47 of the CPC. The Supreme Court ruled as under

"An executing Court cannot go behind the decree nor can it question its legality or correctness. But, there is one exception to this general rule and that is that where the decree sought to be executed is a nullity for lack of inherent jurisdiction in the Court passing it, its invalidity can be set up in an execution proceeding".

In H. Shiva Rao and Another Vs. Cecilia Pereira and Others, the Supreme Court has ruled as under:

"It is well-settled legal principle that Rent Control legislations being beneficial to the tenant have to be given a liberal interpretation".

In Garikapatti Veeraya Vs. N. Subbiah Choudhury, the Supreme Court ruled that the vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.

In Diesel (India) Vs. Smt. Kamalamma (Deceased) by L.Rs, this Court has ruled that the premises in question is a non-residential premises and the plinth area is more than 14 sq. mts., therefore the proceedings stand abated in view of the decision rendered in Mahendra Saree Emporium v. G.V. Srinivasa Murthy. 2002 SC 2430 : 2002(4) SC 321

In Ismail and Others Vs. Sushila Bai and Others, this Court has ruled as under:

"The premises in question is in Bantwal which is neither a City Corporation nor a City Municipal Council. Therefore, the provisions of the Act would not apply to the premises in question. In such a situation Sub-clause (c) of Sub-section (2) of Section 70 would operate and the case and the proceedings in respect of the premises would abate".

In Parripati Chandrasekharrao and Sons Vs. Alapati Jalaiah, the Supreme Court has held as under:

"According to us there is a material difference between the rights which accrue to a landlord under the common law and the protection which is afforded to the tenant by such legislation as the Act. In the former case the rights and remedies of the landlord and tenant are governed by the law of contract and the law governing the property relations. These rights and remedies continue to govern their relationship unless they are regulated by such protective legislation as the present Act in which case the said rights and remedies remain suspended till the protective legislation continues in operation".

Mercury Press case, *supra*, this Court noticed the judgment delivered by this Court in respect of the impugned order and it overruled the said judgment

The Supreme Court in *Saurashtra Oil Mills Association, Gujarat Vs. State of Gujarat and Another*, ruled that the rejection of SLP is not a declaration of law by the Supreme Court.

11. Learned Counsels for the respondents, as I mentioned earlier, apart from contesting the case, has pressed into service a few judgments. In *State of Punjab v. Raghbir Singh*, the Supreme Court has considered the principles of *res judicata*. The facts of the case would show that on 12-6-1931, the High Court, Original Side, which is the Court which had passed the decree, transmitted the same for execution to the Asansol Court through the District Judge of Burdwan and that the Asansol Court thereupon acquired jurisdiction to execute the decree against properties situate within its territorial limits. The Supreme Court in the said case noticed the distinction between the case of an irregular jurisdiction and want of inherent jurisdiction. Thereafter it has ruled as under:

"It cannot be disputed that the transferee Court was invested with jurisdiction by the High Court when its decree was transferred to it for execution. The first application for execution of the decree was dismissed for default on February 27, 1932, and a document purporting to be a certificate of non-satisfaction u/s 41 of the CPC was sent by the Execution Court to the High Court. The decree was admittedly not retransmitted for execution by the High Court. Despite this fact the decree-holder made a second application for execution on November 24, 1932 (Execution Case No. 224 of 1932). Notice was duly served upon the judgment-debtor but he preferred no objection before the execution Court that it had no jurisdiction to execute the decree. This is the first occasion on which he could have raised the plea of jurisdiction".

12. From these judgments what is clear to me is that if an order is "without jurisdiction" or if there is any change in law with regard to the proceedings, those proceedings can be the subject-matter of a contest subject to certain limitations in terms of the various judgments referred to above. Let me see as to whether the petitioner has made out a case for my interference in the case on hand.

13. Admitted facts reveal that respondent-landlord filed HRC No. 4351 of 1980 which saw the light of the day in 1997. Thereafter HRRP No. 1162 of 1997 was filed which was disposed of on 6-2-2002. When the rent control Court passed the order it certainly had jurisdiction and the same is not disputed by the parties. That order is not only confirmed by this Court in *Jain Cloth Stores case*, *supra*, but also confirmed by the Supreme Court on 6-9-2002. The judgment in *Mercury Press case*, *supra*, was delivered by the Division Bench on 5-4-2002. When the Supreme Court passed the order, the *Mercury Press case*, *supra*, judgment was certainly available to the petitioner. The Supreme Court passed the order "No merits. Petition is dismissed". At this stage, I must also notice the averments

made in the writ petition reading as under:

"2. The petitioners submit that, they have challenged order passed by the Single Judge before the Hon"ble Supreme Court of India, in SLP No. CC 6977 of 2002; the said SLP came up for admission before the Supreme Court of India, and it observed that in view of the Division Bench judgment, the petitioners should approach this Hon"ble Court by way of writ petition under Articles 226 and 227 of the Constitution of India and rejected the SLP on that score. Hence, this writ petition. The copy of the Advocate's letter dated 11-9-2002 is produced herewith and is marked as Annexure-B".

14. A combined reading of the averments at para 2 and the letter at Annexure-B would show that the petitioner was aware of the Mercury's case, *supra*, when the case was argued in the Supreme Court. In the light of Annexure-B, I have again seen the order of the Supreme Court. There is absolutely no reference with regard to a permission to file a fresh writ petition in the light of the Division Bench judgment as sought to be made out by the petitioner in this petition in terms of the pleadings. This Court has to go by what the Apex Court has stated and this Court cannot rely and pass an order solely on the basis of a letter by the Advocate for the petitioner.

15. At this stage, I must also notice that the law of *res judicata* would operate against the petitioner. The Supreme Court in 1995 SCR 377, has considered the principles of *res judicata* and it has ruled as under:

"There is ample authority for the proposition that even an erroneous decision on a question of law operates as *res judicata* between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as *res judicata*. A decision in the previous execution case between the parties that the matter was not within the competence of the executing Court even though erroneous is binding on the parties -- See *Abhoy Kanta Gohain v. Gopinath Deb Goswami and Ors.* sic".

In the light of the judgment of the Supreme Court and in the given circumstances, I do not think that I should exercise my extraordinary jurisdiction under Article 22G of the Constitution of India in the case on hand.

16. I must further notice the facts of this case as well. Landlord filed a petition u/s 21(a) and (h) of the Act. Learned Trial Judge allowed the petition and the same was challenged right up to the Supreme Court. Petitioner sought for time before this Court and it was granted which again is confirmed by the Supreme Court. 24 long years are already over. Taking into account, all aspects of the matter, I refuse to exercise my discretion in favour of the petitioner in this case. In the normal circumstances, I would have imposed costs. In the case on hand, I see that the tenant has died and his legal representatives are on record. In these circumstances, I am not imposing costs.

17. In the result, writ petition is rejected. Parties are to bear their respective

costs.