

(2017) 03 KL CK 0065
In the High Court Of Kerala
Case No : 44 of 2017

K. PONNAPPAN

APPELLANT

Vs

G. CHAKRAPANI

RESPONDENT

Date of Decision : 24-03-2017

Acts Referred:

Limitation Act, 1963, Article 137, Article 137, Article 136, Article 136 -
Kerala Buildings (Lease and Rent Control) Act, 1965<

Citation : (2017) 03 KL CK 0065

Hon'ble Judges : K.Harilal, Raja Vijayaraghavan V

Bench : DIVISION BENCH

Advocate : R.AZAD BABU, HARISH, K.S.HARIHARAPUTHRAN, M.D.SASIKUMAR, GEORGE MATHEW, SUNIL KUMAR A.G

Judgement

1. The petitioner is the Judgment Debtor/tenant against whom an Execution Petition was filed under Sec.14 of the Kerala Buildings (Lease and Rent Control) Act, 1965 (for short the Act"), for executing an order of eviction passed under Sec.11(8) of the Act and the respondent is the Decree Holder/landlord therein.

2. The petitioner resisted the said Execution Petition contending that it was hopelessly barred by the law of limitation as the same was filed 10 years after passing of the order. According to him, the Execution Petition should have been filed within a "reasonable time", as held by the Single Bench of this Court in Devaki v. First Additional District Judge [1998 (1) KLT 818]. It was also contended that the subsequent events, after passing of the order of eviction, have obliterated the bona fide need put forward in the Rent Control Petition. Now, the petitioner's son is conducting the Institute for which the order of eviction was sought for under Sec.11(8) of the Act, in a plot having 25 cents purchased by him for this purpose and that event obliterated the need for eviction.

3. The respondent contended that the period of limitation for executing an order passed under Section 11 of the Act is governed by Article 136 of the Limitation Act, by virtue of the "deeming provision" in Section 14 of the Act and thereby, the period of limitation is 12 years and that the Execution Petition was filed within the said period, as held by another Single Bench of this Court in *M.V.Ali v. Kunjannamma Philipose* [1975 KLT 527].

4. After considering the rival contentions, the Execution Court rejected the aforesaid contention raised by the petitioner and issued a delivery notice. In the revision preferred by the petitioner/tenant, the learned District Judge elaborately considered the rival contentions, in the light of both the decisions referred above and confirmed the order passed by the learned Munsiff relying on the decision in *M.V. Ali's case* (supra). This OP(RC) is filed challenging the legality of the concurrent findings of the courts below and doubting the reliability and correctness of *M.V. Ali's case*, on which the courts below placed reliance.

5. In view of the divergent views expressed by the two Single Benches of this Court, in the decisions referred above, we have appointed Advocate Sri. Harish to aid and assist us to examine the correctness of the divergent views of the different Single Benches of this Court and to set the divergency at rest.

6. Heard. Sri. Azad Babu, the learned counsel for the petitioner, advanced a two fold argument. In addition to the contention that the Execution Petition should have been filed within a "reasonable time"; alternatively, it was contended that if the Limitation Act is applicable, Art.137 of the Limitation Act would come into play, as specific period of limitation is not provided in the Act or the Limitation Act for filing an Execution Petition.

7. The learned Amicus Curiae advanced arguments exhaustively in support of the proposition laid down in *M.V. Ali's case* and cited the decisions reported in *Aneeta Hada vs. M/s Godfather Travel and Tours Pvt. Ltd.*, [AIR 2012 SC 2795] and *State of Bombay v. Pandurang Vinayak and Others* [AIR 1953 SC 244] to fortify his argument. Sri. Hariharaputhran also advanced arguments to justify the concurrent findings of the courts below.

8. First of all, we shall deal with the divergent views of the Single Benches of this Court in the same question of law. In *M.V. Ali's case* (supra), the learned single Judge of this Court held that the expression "as if it were a decree passed by him", in Section 14 of the Act would make an order of eviction a decree of the Munsiff and therefore, such a construction would attract not only the provisions of the Code of Civil Procedure, dealing with execution of the decrees, but also the provisions of Article 136 of the Limitation Act, which prescribes the period of limitation for execution of the decree. Under Article 136 of the Limitation Act, the decree of a civil court is to be executed within 12 years. In the light of the legal fiction given to Section 14 of the Kerala (Buildings Lease and Rent Control) Act, as held by the High Court a period of 12 years is allowable to the landlord for executing the order of eviction passed by the Rent Control Court.

9. Whereas in *Devaki v. First Additional District Judge* (1998 (1) KLT 818), another single Judge of this Court held that "Section 14 provides that order of eviction shall be executed as if a decree. Therefore, by fiction, it is treated as a decree for the purpose of execution. Necessarily, the Execution Petition shall be taken up 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 the limitation as in the case of the revision, where also no time limit is provided." We take notice that in this decision, the learned single Judge has not taken note of the earlier decision of this Court in *M.V. Ali's case* (cited *supra*).

10. In view of the divergent views taken by the learned single Judges, the questions to be considered are: (i) What does a "deeming provision" mean and intend? (ii) What is the extent of legal effect and impact thereof of a legal fiction created by a "deeming provision" in a statute? (iii) Whether the period of limitation prescribed under Article 136 of the Limitation Act is applicable for execution of an order passed under the Sections specifically mentioned in Section 14 of the Buildings (Lease and Rent Control) Act? (iv) Which decision laid down the correct law, among *M.V. Ali v. Kunjannamma Philipose* [1975 KLT 527] and *Devaki v. First Additional District Judge* (1998 (1) KLT 818)? (v) Whether the subsequent events, after the order of eviction, would make the order unenforceable? In other words, the subsequent events, after the order, would extinguish the need, for which eviction was ordered, if he satisfies his need, for the time being.

11. It is apposite and profitable to have a look at Section 14 of the Act, which reads as follows: "14. Execution of orders.-- Every order made under Section 11 or section 12 or section 13 or section 19 or section 33 and every order passed on appeal under section 18 or on revision under section 20 shall, after the expiry of the time allowed therein be executed by the Munsiff or if there are more than one Munsiff, by the Principal Munsiff having original jurisdiction over the area in which the building is situated as if it were a decree passed by him: Provided that an order passed in execution under this section shall not be subject to an appeal but shall be subject to revision by the Court to which appeals ordinarily lie against the decisions of the said Munsiff."

12. Then, it would be advantageous to have a survey on judicial precedents on the questions of law in dispute. Lord Justice James in *Ex Parte Walton, In re, Levy* (1881 (17) Ch. D. 746), while considering the legal fiction created by deeming fiction, observed as follows: "When a statute enacts that something shall be deemed to have been done, which, in fact and truth was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to." Lord Asquith, in *East End Dwellings Co. Ltd. v. Finsbury Borough Council* (1952 AC 109), had expressed his opinion as follows: "If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the

consequences and incidents, which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it.... The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs." In *Hira H. Advani Etc. v. State of Maharashtra* [AIR 1971 SC 44], while dealing with a proceeding under the Customs Act, especially sub-section (4) of Section 171-A wherein an enquiry by the Custom Authority is referred to, and the language employed therein, namely, "to be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code", it has been opined as follows: "It was argued that the Legislature might well have used the word "deemed" in sub-section (4) of Section 171 not in the first of the above senses but in the second, if not the third. In our view, the meaning to be attached to the word "deemed" must depend upon the context in which it is used." In the Division Bench decision reported in *State of Bombay v. P. Vinayak* [AIR 1953 SC 244], the Supreme Court has observed as follows: "When a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion." In *State of Tamil Nadu v. Arooran Sugars Ltd.* [AIR 1997 SC 1815], the Constitution Bench of the Supreme Court, while dealing with the deeming provision in a Statute, ruled that the role of a provision in a Statute creating legal fiction is well settled. It was held as follows: "When a Statute creates a legal fiction saying that something shall be deemed to have been done which in fact and truth has not been done, the Court has to examine and ascertain as to for what purpose and between which persons such a statutory fiction is to be resorted to and thereafter, the courts have to give full effect to such a statutory fiction and it has to be carried to its logical conclusion." Relying on the juristic interpretation in the aforesaid decisions, a three-Judges Bench of the Supreme Court in *Aneeta Hada v. M/s. Godfather Travels & Tours Pvt. Ltd.*, (AIR 2012 SC 2795) settled the legal position, in controversy, and held as follows: "From the aforesaid pronouncements, the principle that can be culled out is that it is the bounden duty of the court to ascertain for what purpose the legal fiction has been created. It is also the duty of the court to imagine the fiction with all real consequences and instances unless prohibited from doing so. That apart, the use of the term "deemed" has to be read in its context and further the fullest logical purpose and import are to be understood. It is because in modern legislation, the term "deemed" has been used for manifold purposes. The object of the legislature has to be kept in mind."

13. In the light of the decisions referred above, it can be safely concluded as follows: The "deeming provision" in a statute creates a legal fiction and it is obligatory on the part of the court to ascertain the purpose of that legal fiction and attribute all real consequences and intents to that fiction unless it is barred by any other law. It is implied that the legislature purposefully used the word

"deemed" to give full effect to the legal fiction created by the provision so enacted. In other words, the Legislature intended to confer a status or attribute which was not possessed otherwise to a thing or person. The court cannot deviate from the strict application of the fiction with all consequences thereof arise from the fiction.

14. When applying the aforesaid principle it can be held that as per Section 14 of the Act every order made under Secs.11, 12, 13, 18, 19, 20 and 33 of the Act is a decree, in the matter of execution, and shall be executable as such in the court of the Munsiff within the local limits of whose jurisdiction the tenanted building is situated. So, in the matter of execution, the order once passed under the section specifically mentioned in Section 14 of the Act must have all the legal sanctity, texture and attributes of a decree passed by the Munsiff i.e., the civil court. So, the application for execution of an order passed under the aforesaid provisions mentioned in Section 14 of the Act must be filed within 12 years, as Article 136 of the Limitation Act would come into play. In other words, the period of limitation provided under Article 136 of the Limitation Act would be applied for the execution of an order passed under the aforesaid provisions specifically mentioned in Section 14 of the Act. Needless to say, neither Article 137 of the Limitation Act nor "reasonable time" propounded by the learned Single Judge of this Court in Devaki's case (supra) can be applied in the execution of an order passed under the provisions mentioned in Section 14 of the Act. This Court further finds that the proposition laid down by the learned single Judge of this Court in Devaki v. First Additional District Judge (1998 (1) KLT 818) is not a good law and it is per incurium also. The learned single Judge of this Court in M.V. Ali v. Kunjannamma Philipose [1975 KLT 527] correctly laid down the law in its correct perspective.

15. Coming to the last question, it is seen that the petitioner/tenant contended that the order of eviction has become unenforceable because of the subsequent events. The eviction was sought for under Sec.11(8) of the Act to enable the respondent to provide additional space for an Engineering Institute which was being conducted by the respondent. But, now the said Institute is being conducted by the son of the petitioner in a plot of 25 cents purchased for the said purpose and also in another building and thereby, need has become obliterated. Consequently, the order of eviction has become unenforceable. The respondent contended that the subsequent events would not obliterate the need as he would shift the Institute to the petition scheduled building, after getting vacant possession of the same, by execution of the order. Even though 10 years have been elapsed after passing the order of eviction by the Rent Control Court, the petitioner has not vacated the building in compliance with the order.

16. As already stated, it is obligatory on the part of the Executing Court to give full effect to the legal fiction created by the "deeming provision" with all consequences arise from the fiction i.e., the Executing Court must consider the order as if it was a decree passed by the Munsiff i.e., the civil court. It is trite law

that the Executing Court cannot go behind or beyond the decree. If that be so, this Court is of the view that the order of eviction can never be unenforceable by the subsequent events.

17. That apart, in the instant case, the order of eviction was passed under Sec.11(8) of the Act. The need projected was for additional accommodation to conduct the said Engineering Institute. This Court is of the view that the landlord cannot be asked to wait till obtaining the vacant possession of the building for expanding the business or avocation. Needless to say, the business so expanded can be shifted to the petition scheduled building when the same comes into the direct possession of the landlord. If the landlord, who obtained an order of eviction, under Sec.11(8) of the Act, was compelled to satisfy his need put forward in a Rent Control Petition, for the time being, during the interregnum period between the date of order of eviction and the date of actual delivery in execution of the said order, it cannot be said that the need has become obliterated or extinguished during the said period and thereby, the order of eviction is unenforceable.

18. We place on record our unlimited appreciation for the able assistance rendered by Sri. Harish, the learned Amicus Curiae.

19. In the above analysis, we find that there is no illegality or impropriety in rejecting the petitioner's contention by the courts below.

20. In the instant case, indisputably, the Execution Petition was filed within 12 years. Hence, there is no illegality or impropriety in the impugned order passed in R.C.R.P.No.1/2013 by the District Judge, Alappuzha, confirming the order passed in E.P.No.36/2012 in R.C.P.No.3/1995 by the Principal Munsiff's Court, Alappuzha. Thus, this O.P.(RC) is devoid of merits and dismissed accordingly.