

(1985) 03 KL CK 0001

In the High Court Of Kerala

Case No : C.M.P. No. 4774 of 1985 in C.R.P. No. 2771 of 1983

Kappan Muraleedharan

APPELLANT

Vs

The Secretary, North Malabar District Co-Op. Supply and
Marketing Society Ltd.

RESPONDENT

Date of Decision : 15-03-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 47

Constitution of India, 1950 — Article 227

Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11, 11(3), 12, 13, 14

Citation : (1985) KLJ 309

Hon'ble Judges : K. Bhaskaran, Acting C.J.; P.C. Balakrishna Menon, J

Bench : Division Bench

Advocate : P.K. appa Nair and Suresh kumar, for the Appellant; T.L.V. Iyer, K.K. Usha and K.K. Ravindra Nath, for the Respondent

Final Decision : Dismissed

Judgement

Bhaskaran, Ag, C.J.—This petition, purported to be one u/s 151 of the Code of Civil Procedure, is stated to be for a clarification of the order passed by this Court in C.M.P. No. 1246 of 1985 dated 15-1-1985 and for a direction to the Munsiff's Court, Payyannur, to execute the order in R.C.P. No. 8 of 1978. R.C.P. No. 8 of 1978, filed by the petitioner herein, and his sister, the 2nd respondent here in, u/s 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (the Act), was allowed by the Rent Controller having found that they bona fide needed the building for their own occupation. This order was confirmed by the Subordinate Judge, the District Court, and this court, in appeal and revisions; and admittedly the SLP for appeal to the Supreme Court has been dismissed.

2. After this court dismissed C.R.P. No. 2271 of 1983 on 18-12-1984, confirming the judgment of the Appellate Authority, confirming the order of eviction passed by the Rent Controller, and before the 1st respondent herein moved the Supreme Court by the Special Leave Petition, the petitioner herein had filed C.M.P. No.

1246 of 1985 praying for the issue of necessary directions to the Munsiff's Court, Payyannur, to execute the order in R.C.P. No. 8 of 1978. This Court disposed of that petition by the order dated 15-1-1985 which reads as follows:-

Heard counsel on both sides.

I need only state that it is the duty of the execution court to execute the order of the Rent Control Court ultimately confirmed by this Court. Since it is represented that the tenant-respondent proposes to file a SLP before the Supreme Court and move for a stay of execution of the order, eviction will not be effected for a period of one month from today. The petition is disposed of as above.

Though the period of one month allowed to the 1st respondent herein for vacating the premises as per the order in C.M.P. No. 1246 of 1985 expired on 14-2-1985, the steps in execution did not proceed. On the other hand according to the petitioner herein, the Munsiff's Court (the Execution Court) passed an order staying the proceedings, on an application (I.A. No. 274 of 1985 purported to be u/s 47 of the C.P.C.) filed by the 1st respondent herein for a declaration that for the reason of the subsequent event, the order of eviction had become unexecutable.

3. It is necessary to mention here, for a proper appreciation of the circumstances leading to the filing of the present petition in the court, the fact that in C.R.P. No. 2271 of 1983, the 1st respondent herein, who was the revision petitioner, had filed C.M.P. No. 29272 of 1983 to admit a photostat copy of what was purported to be an agreement between the landlords and some third parties for sale of the 2nd petitioner's half share in the land mentioned therein. One of us (Balakrishna Menon, J.) before whom the present petition came up earlier, and who referred the matter to the Division Bench, for the reason that the 1st respondent herein had raised a question of law relating to the jurisdiction of this court to entertain the application, has, in paragraph 2 of the order of reference, quoted extensively from paragraph 3 of the order of this court dated 18-12-1984, dismissing the C.R.P. giving reasons for disallowing the prayer in C.M.P. No. 29272 of 1983. We do not consider it necessary to repeat all what has been stated therein, except to emphasise the fact that the declaration that the order of eviction was not executable, sought in I.A. No. 274 of 1985, in the execution court, was on the basis of the very same document, which the 1st respondent wanted to get admitted as additional evidence in C.R.P. No. 2271 of 1983, which prayer was rejected by this court after having found that there was no merit in the contention based on the additional document sought to be admitted in evidence.

4. We are clear in our minds that what the 1st respondent-Society attempted, amounted to an abuse of the process of the Court. The order of eviction passed by the Rent Controller having Become final, the first respondent-Society ought not to have sought a declaration putting forward the very same plea raised before this Court in C.M.P. No. 29272 of 1983, which was considered and rejected in the order in the C.R.P. dated 18-12-1984. The Munsiff's Court which

was bound to execute the order of eviction in terms of Section 14 of the Act ought not to have entertained the application for the declaration much less granted stay of proceedings on a plea totally untenable, both in law and on facts. What Section 14 lays down is as follows:

Execution of orders - Every order made u/s 11 or section 12 or section 13 or section 19 or section 33 and every order passed on appeal u/s 18 or on revision u/s 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.

(Proviso omitted)

It is rather inconceivable that a party to the order of the Rent Controller should have invoked Section 47 C.P.C. or the Munsiff's Court should have passed an order in exercise of the powers vested in that Court under that Section, even before that court took cognisance of the execution petition. In this case, the contention raised by the 1st respondent-Society in the counter affidavit filed in this petition, is that no execution petition had been filed and that no execution petition had been pending in the Munsiff's Court, and as such, the petition for clarification filed in this court was misconceived.

5. In our opinion, the Munsiff's Court has to execute the order of the Rent Controller u/s 11, as if it were a decree, and that stage would be reached only when an execution petition has been duly presented and taken on file of the execution court (the Munsiff's Court.) The provisions of Section 47 of the C.P.C. would not be attracted at a stage prior to the court taking the petition for execution on its file.

6. Assuming for the sake of argument that the petition was maintainable u/s 47, we have no doubt in mind, that it clearly, amounted to an abuse of process, intended to defeat the execution of the orders of competent authorities and courts, which have become final. This tendency has to be deprecated in the strongest words Counsel for the 1st respondent herein raised the contention that this court had no jurisdiction to entertain an application of this nature, and, in fact, it is that contention which has given rise to the reference of the matter to the Division Bench, The petition, is as already noticed, u/s 151 of the Code of Civil Procedure, and in effect, it is for a direction to the Munsiff's Court to execute the order of the Rent Controller. We have absolutely no doubt, not only by virtue of the inherent power u/s 151 C.P.C., but also in exercise of the supervisory jurisdiction under Article 227 of the Constitution, this Court has got the right and duty to check the subordinate courts from abusing their powers to defeat the course of justice or process of law. The Supreme Court in *Hart Kishan Gupta v. Mool Chand and others*, (1982) 1 SCC 481 has gone to the extent of vacating the interim injunction passed by the trial court and directing that court to execute forthwith the order of that court (Supreme Court) for handing over

possession of the premises to the landlord. The occasion for such an order by the Supreme Court was when, as against an order for eviction passed by the Supreme Court, another person claiming to be a partner of the person against whom the order of eviction was passed, put forward the claim to possession, and the trial court passed an interim injunction as prayed for by that person. The Supreme Court in *Gulam Abbas and Others Vs. State of U.P. and Others*, of the report, held as follows:-

The main decision rendered by this Court and the directions issued by it have to be implemented and removal of any impediment or obstruction in that behalf cannot be said to be beyond the powers or jurisdiction of this Court and since the acceptance and implementation of the impugned suggestion of the Chairman of the Committee would facilitate the carrying out of the main judgment of this Court issuance of directions sought by the petitioners would obviously fall within the scope of the present proceedings.

The above observations also strengthen the view we are inclined to take on the question of jurisdiction to entertain the application, and to give appropriate directions to further the ends of justice and prevent the abuse of process. In another decision, *(State of M.P. Babu Lal (A.I.R. 1977 S.C. 1718 in paragraph 5 at page 1719, Ray C.J. who spoke for the Bench, has stated as follows:-*

One of the principles on which certiorari is issued is where the court acts illegally and there is error on the face of record. If the Court usurps the jurisdiction the record is corrected by Certiorari. This case is a glaring instance of such violation of law. The High Court was in error in not issuing writ of certiorari

That is a case in which the State had contended before the High Court that a writ of certiorari should be issued to quash the judgment which was illegal and in clear violation of law. The High Court had taken the view that the State could file a suit for declaration that the decree was null and void. This view of the High Court, the Supreme Court held, was erroneous, For the foregoing reasons, we allow the petition and direct the Munsiff's Court. Payyannur, which is the Execution Court, to proceed with the Execution Petition without any loss of time. I.A. No. 274 of 1985 shall stand dismissed, and the stay granted in that application vacated. There would be no order as to costs.