

(1964) 03 KL CK 0038
In the High Court Of Kerala
Case No : W. A. No. 195 of 1963

Narayanan

APPELLANT

Vs

Muralidhara Marar

RESPONDENT

Date of Decision : 20-03-1964

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1964) KLJ 605

Hon'ble Judges : M.S. Menon, C.J;M. Madhavan Nair, J

Bench : Division Bench

Advocate : P.K. Subramonia Iyer and C.S. Ananthakrishna Iyer, for the Appellant; T. Chandrasekhara Menon, K. Chandrasekharan and M.K. Narayana Menon, for the Respondent

Final Decision : Dismissed

Judgement

Madhavan Nair, J.—This appeal is by the tenant whose application for issuance of a writ of certiorari to quash an order for his eviction has been dismissed by Govindan Nair J. The order of eviction passed by the Rent Control Court shows that there was a specific order to deposit the arrears of rent accrued during the pendency of the proceedings as required u/s 12 (2) of the Act, 16 of 1959, and that since it was "not deposited in full in spite of the court's order" eviction was ordered u/s 12 of the Act. On appeal the Subordinate Judge vacated the same and remanded the matter for fresh disposal; but the Additional District Judge reversed that order observing:

Further.....there was a specific order of that court to deposit the entire arrears. That order has not been challenged by the tenant and he is therefore estopped from contending that there are no arrears. The non-compliance with the order was therefore sufficient ground to order eviction.

2. Section 12 (2) of Act XVI of 1959 provides for an order fixing a time to deposit the arrears of rent accrued during the proceedings for eviction and subsection

(3) says that if that order is not complied with and no good cause is shown for that non-compliance, the Rent Control Court has to "make an order directing the tenant to put the landlord in possession of the building". The orders of the Rent Control Court and of the Revisional authority show that it was for non-compliance of an order passed u/s 12 (2) that eviction was ordered in this case u/s 12 (3) of the Act. The order made u/s 12 (2) is not in proof in this proceedings; but it is conceded that such an order has been made by the Rent Control Court. When a court has passed an order directing a party before it to do a particular thing, in default of which a certain statutory consequence is to follow, if the party is to be relieved of the consequences of a non-compliance of that order he has to make a specific motion therefor showing sufficient cause for his non-compliance of the order and making the appropriate prayer therein. Otherwise the order would work itself out and the default to comply with it will bring the appointed consequences on the tenant; and that was what took place in this case.

3. Counsel for the appellant-tenant contended that there was overpayment by the tenant to the landlord before the institution of the proceedings sufficient to cover the rent for all the period of pendency of the proceedings before the Rent Control Court and that therefore no rent was in arrears during the period. The Rent Control Court as well as the revisional authority have found that the rent accruing due during pendency of the proceedings was in default and therefore ordered eviction u/s 12 (3) of the Act. Whether the rent accrued due or did not accrue because of earlier excess payment is essentially a question of fact for the statutory authorities to decide. "The jurisdiction to issue a writ of certiorari" observed Gajendragadkar J. (as he then was) in *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, "is a supervisory jurisdiction and the court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings". The High Court cannot therefore be called under Article 226 of the Constitution to decide if the finding as to arrears is correct or not. In the circumstances the refusal by the learned Judge to interfere with the impugned orders appears justified. The appeal fails and is dismissed; but we make no order as to costs here.