

(2015) 03 RAJ CK 0093
In the Rajasthan High Court
Case No : Civil Writ Petition No. 8987/2014

Onkar Lal

APPELLANT

Vs

Rent Appellate Tribunal, Jodhpur and Others

RESPONDENT

Date of Decision : 13-03-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Constitution of India, 1950 — Article 226, 227

Citation : (2015) 03 RAJ CK 0093

Hon'ble Judges : Arun Bhansali, J.

Bench : Single Bench

Advocate : O.P. Mehta, for the Appellant; G.R. Singhvi, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Arun Bhansali, J.—This writ petition has been filed by the petitioner under Article 227 of the Constitution of India aggrieved against order dated 18.07.2014 passed by the Appellate Rent Tribunal, whereby, the application filed by the petitioner under Order VI, Rule 17 CPC seeking amendment in the reply has been rejected.

2. A petition for eviction was filed by Dev Dutt Bissa, inter alia, seeking eviction of the petitioner - tenant from the shop on the ground of default in payment of rent and reasonable and bona fide requirement; the bona fide requirement indicated in the petition pertained to the fact that the landlord and his wife were quite old and were mostly not keeping well and on account of suffering it was difficult for them to climb the stair to go up to their residence on first floor and, therefore, the shop which was just below the residence was required for his use and occupation so that essential facilities be arranged and the landlord and his wife can live peacefully in their old age.

3. The petition for eviction was opposed by the petitioner.

4. However, after trial, the rent Tribunal by its judgment dated 25.03.2009 accepted the petition filed by the landlord and directed issuance of recovery certificate.

5. Feeling aggrieved, the petitioner filed an appeal before the Appellate Rent Tribunal.

6. During the pendency of the appeal the landlord and his wife both expired.

7. Present application was filed by the petitioner, inter alia, with the averments that on account of death of landlord Shri Dev Dutt Bissa, the requirement for which the eviction of the petitioner was being sought has eclipsed and, therefore, the petitioner may be permitted to amend the reply and take plea in this regard.

8. Though no reply to the application was filed by the respondent, the application was opposed.

9. It was, inter alia, submitted that if every subsequent event was permitted to be added at any stage, the same would result in endless litigation and would encourage the tenants to keep the proceedings pending so as to ensure that the bona fide requirement comes to an end.

10. After hearing the parties, the Appellate Rent Tribunal came to the conclusion that though Shri Dev Dutt Bissa for whose reasonable and bona fide requirement the petition was filed, has expired but the petition has not been filed on account of reasonable and bona fide requirement only and if amendment based on every subsequent event was permitted then the disposal of petition would become impossible and, therefore, at the stage when the amendment was sought was not justified as the same would take the petition to its initial stage and would result in endless litigation and, consequently, dismissed the application.

11. It is submitted by learned counsel for the petitioner that admittedly the petition was filed indicating the bona fide requirement of Shri Dev Dutt Bissa and his wife based on their ill-health and inconvenience, the landlord and his wife expired during the pendency of the proceedings and in view of the fact that the bona fide requirement, for which, the eviction was sought has come to an end, the same being subsequent event ought to have been permitted to be incorporated in the pleadings of the parties.

12. Reliance was placed on several judgments of Hon"ble Supreme Court regarding grant of amendment including Pankaja and Another Vs. Yellappa (D) by Lrs. and Others, and Rajesh Kumar Aggarwal and Others Vs. K.K. Modi and Others, .

13. Vehemently opposing the submissions made by learned counsel for the petitioner, learned counsel for the respondent submitted that the writ petition under Article 227 of the Constitution of India filed by the petitioner is not maintainable in view of the law laid down by Hon"ble Supreme Court in *Jai Singh and Others Vs. Municipal Corporation of Delhi and Another*, and,

therefore, the petition deserves to be dismissed.

14. It was further contended that merely because the applicant Dev Dutt Biassa and his wife have expired, cannot be a ground seeking amendment in the pleadings; the petition for eviction is not solely founded on the ground of bona fide requirement and, therefore, the fact of death has no implication and the application has apparently been filed only with a view to delay the proceedings before the Appellate Rent Tribunal; further submissions was made that the landlord Dev Dutt Bissa had expired long back and the amendment was being sought belatedly, which clearly establishes the lack of bona fides in filing the application and, therefore, the writ petition deserves to be dismissed.

15. I have considered the rival submissions made by learned counsel for the parties and have perused the material placed on record.

16. From a perusal of the copy of eviction petition (Annexure-1) it is apparent that the requirement set up in the petition pertained to the requirement of Shri Dev Dutt Bissa and his wife on account of their advanced age, ill-health and inconvenience faced by them in residing at the first floor; it is also not in dispute that the original petitioner Shri Dev Dutt Bissa and his wife expired during the pendency of the appeal; the fact of death of Shri Dev Dutt Bissa is already on record of the Appellate Rent Tribunal as his legal representative has already been brought on record and the fact of death of wife of the original petitioner has not been disputed either before the Appellate Rent Tribunal or before this Court.

17. The relevance of the fact of death of persons for whom bona fide requirement is pleaded has been considered by Hon"ble Supreme Court in the case of Kedar Nath Agrawal (Dead) and Another Vs. Dhanraji Devi (Dead) by LR. and Another, which was followed in Seshambal (dead) through L.Rs. Vs. Chelur Corporation Chelur Building and Others, , wherein, the Hon"ble Supreme Court, inter alia, observed as under:-

"10. Confronted with the above position Mr. Vishwanathan made in generous submission. He contended that the rights and obligations of the parties get crystallized at the time of institution of the suit so that any subsequent development is not only inconsequential but wholly irrelevant for determination of the case before this Court. Learned counsel sought to extend that principle to the case at hand in an attempt persuade us to shut out the subsequent event of the death of the original petitioners from consideration. We regret to say that we do not see any basis for the submission so vehemently urged before us by Mr. Vishwanathan. While it is true that the right to relief must be judged by reference to the date suit or the legal proceedings were instituted, it is equally true that if subsequent to the filing of the suit, certain developments take place that have a bearing on the right to relief claimed by a party, such subsequent events cannot be shut out from consideration. What the Court in such a situation is expected to do is to examine the impact of the said subsequent development on the right to relief claimed by a party and, if necessary, mould the relief

suitably so that the same is tailored to the situation that obtains on the date the relief is actually granted...."

18. In view of the law laid down by Hon"ble Supreme Court, it cannot be said that the fact of death of original petitioner Shri Dev Dutt Bissa and his wife are not relevant and, therefore, the rejection of application by the Tribunal based on finding that permitting amendment would take the proceedings to the preliminary stage, cannot be sustained.

19. However, keeping in view the nature of subsequent event i.e. the death of original petitioner, which fact is already on record and death of his wife, which fact is not disputed, there apparently is no requirement to amend the reply filed by the petitioner before the Rent Tribunal and the amendment sought by way of application under Order VI, Rule 17 CPC, if permitted to be incorporated in the memo of appeal before the Appellate Rent Tribunal, the same would be sufficient and would not delay the further consideration of the matter by the Appellate Rent Tribunal, which appears to be the apprehension of the respondent landlord.

20. There appears to be substance in the submissions of learned counsel for the respondent that the application filed is delayed but that aspect can be compensated by way of ordering payment of cost, which in the present case is quantified at Rs. 3000/-.

21. So far as the objection about maintainability of the present writ petition and/or exercise of jurisdiction by this Court under Article 227 of the Constitution of India is concerned, Hon"ble Supreme Court in the case of Jai Singh (supra) relied on by learned counsel for the respondent, inter alia, observed as under:-

"15. We have anxiously considered the submissions of the learned counsel. Before we consider the factual and legal issues involved herein, we may notice certain well-recognised principles governing the exercise of jurisdiction by the High Court under Article 227 of the Constitution of India. Undoubtedly the High Court, under this article, has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi-judicial tribunals, exercise the powers vested in them, within the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in accordance with the well-established principles of law. The High Court is vested with the powers of superintendence and/or judicial revision, even in matters where no revision or appeal lies to the High Court. The jurisdiction under this article is, in some ways, wider than the power and jurisdiction under Article 226 of the Constitution of India. It is, however, well to remember the well-known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well-recognized constraints. It can not be exercised like a "bull in a china shop", to correct all errors of judgment of a court, or tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave

dereliction of duty or in flagrant abuse of fundamental principles of law or justice.

16. The High Court cannot lightly or liberally act as an appellate court and reappreciate the evidence. Generally, it can not substitute its own conclusions for the conclusions reached by the courts below or the statutory/quasi-judicial tribunals. The power to reappreciate evidence would only be justified in rare and exceptional situations where grave injustice would be done unless the High Court interferes. The exercise of such discretionary power would depend on the peculiar facts of each case, with the sole objective of ensuring that there is no miscarriage of justice."

22. The parameters laid down by Hon''ble Supreme Court are well recognized; however, the exercise of jurisdiction has not been completely taken away and as observed in the above judgment, the jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice and the exercise of such discretionary power would depend on the peculiar facts of each case with the sole objective of ensuring that there is no miscarriage of justice.

23. As already observed hereinbefore, the law pertaining to subsequent events is well settled by various judgments of Hon''ble Supreme Court, two of which, Kedar Nath Agrawal (supra) and Seshambal (supra) have been cited hereinbefore. Despite presence of such law, the Appellate Rent Tribunal chose to reject the application filed by the petitioner and did not even made observation that the fact of death of the original petitioner and his wife would be taken into consideration while deciding the appeal, which observation also would have suffice for the purpose of taking into consideration the subsequent event having implication on reasonable and bona fide requirement of the landlord and, therefore, it is apparent that exercise of powers under Article 227 of the Constitution of India in the present case is necessary to set right the ignorance of fundamental principles of law and to ensure that there is no miscarriage of justice.

24. In view of the above discussions, the writ petition filed by the petitioner is partly allowed. The order dated 18.07.2014 passed by the Appellate Rent Tribunal is set aside. The petitioner is permitted to incorporate the fact of death of original petitioner and his wife by way of amendment of memo of appeal before the Appellate Rent Tribunal, on payment of costs of Rs. 3,000/- to the respondent. The amendment would be confined to incorporating an additional ground in the memo of appeal and the same would be done within a period of one week from today and whereafter the Appellate Rent Tribunal is directed to hear and decide the appeal within a period of four weeks thereafter. In case the petitioner fails to amend the memo of appeal and pay the costs within a period of one week, the petitioner shall thereafter would not be permitted to do the same and his application in this regard would be deemed to have been dismissed by this Court.