
(1993) 06 BOM CK 0016

In the Bombay High Court

Case No : Civil Revision Application No. 6295 of 1992 (Converted as C.R.A. from Writ Petition No. 1685 of 1992)

Ram Kolekar

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 09-06-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

Citation : (1993) 3 BomCR 714

Hon'ble Judges : N.P. Chapalgaonker, J

Bench : Single Bench

Advocate : N.R. Solunke, for the Appellant; P.B. Varale, A.G.P. and S.L. Kulkarni, for the respondent No. 3, for the Respondent

Final Decision : Allowed

Judgement

N.P. Chapalgaonker, J.—This writ petition raises an important question as to whether an order passed on the basis of a compromise can be challenged in an appeal before the District Judge u/s 25 of the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954, hereinafter referred to as "the Hyderabad Rent Control Act" for the sake of brevity.

2. In Rent Control Case No. 2 of 1990 praying for eviction of the tenant from a hall admeasuring 20" x 20" which is part of House No. 5-10-30 situated at Samadhan Colony in Augrangabad city, a compromise was filed and recorded on 11-1-1991. On the basis of this compromise, the learned Rent Controller, Aurangabad was pleased to pass an order on 10-2-1992 directing the eviction of the tenant petitioner from the disputed premises. This order came to be challenged before the learned District Judge, Aurangabad in Rent Appeal No. 4 of 1992 and he was pleased to hold that the appeal is not maintainable and, consequently, dismissed the appeal vide his order dated 15-7-1992. This judgment and order has been challenged in this writ petition. Shri S.L. Kulkarni, learned Counsel on behalf of the respondent, objected to the maintainability of

the writ petition in view of the fact that alternate remedy in the form of revision u/s 26 is available. His objection is well founded. Writ petition is allowed to be converted in the Civil Revision Application u/s 26 of the Hyderabad Rent Control Act.

3. Shri N.R. Solunke, learned Counsel for the petitioner, submitted that the finding recorded by the learned District Judge that an appeal is not maintainable in view of section 96 of the CPC is not correct. According to him, section 25 of the Hyderabad Rent Control Act gives substantive right of appeal against any order passed by the Rent Controller and this cannot be taken away resorting to the provisions of Code of Civil Procedure. Shri S.L. Kulkarni, learned Counsel for respondent, defended the order of the learned District Judge contending that section 24 of the Hyderabad Rent Control Act makes Code of Civil Procedure, 1908 applicable to the enquiries under the Hyderabad Rent Control Act and, therefore, right of appeal would also be qualified by the Code of Civil Procedure.

4. It is true that section 24 of the Hyderabad Rent Control Act lays down that the Controller shall follow as nearly as possible, the procedure laid down in the Code of Civil Procedure, 1908, for the regular trial of suits, the substance only of the evidence and findings being recorded as in unappealable cases and shall record in brief the reasons for his findings. Section 34 of the Act lays down that every order under sections 3, 4, 5, 15, 17, 25, 26 and 33 may be executed by the Controller as a decree of a Civil Court. But Hyderabad Rent Control Act does not make all the provisions of the CPC applicable to the proceedings under that Act. Provisions of the CPC as far as possible are made applicable to enquiries before the Rent Controller only. The provisions of the appeal and revision contained in the CPC have not been made applicable to the proceedings under the Hyderabad Rent Control Act. There is no second appeal provided as is there u/s 100 of the CPC and the revisional powers have been specifically mentioned u/s 26 instead of making section 115 of the CPC applicable to these proceedings. There is a distinction between an appeal against decree and an appeal against an order in the Code of Civil Procedure, whereas the Hyderabad Rent Control Act provides an appeal from order made by Rent Controller, though such an order is executable as a decree of the Code of Civil Procedure. Section 25 and 26 of the Hyderabad Rent Control Act are self contained Code in respect of appellate and revisional remedies and powers in these matters under the said Act. It speaks of the forum, speaks of the remedy and speaks of the limitation also.

5. Question is whether the provisions of section 96 of the CPC will circumscribe the provisions of section 25 and will limit the right of the appeal in terms of the Code of Civil Procedure. Firstly, we will have to note that exclusion of appeal from a decree passed with the consent of the parties would be applicable in case the appeal is against decree. Though an order of the Rent Controller is executable as a decree of the Civil Court, it is nevertheless an order. Secondly, appeal is a substantive right and if the special law governing particular kind of litigation gives that right, it cannot be taken away by general law.

6. In *Garikapatti Veeraya Vs. N. Subbiah Choudhury*, , Supreme Court deduced five principles in respect of right of appeals and appellate jurisdiction. They are ---

(i) The legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding;

(ii) the right of appeal is not a mere matter of procedure but is a substantive right;

(iii) the institution of the suit carries with it the implications that all rights of appeal then in force are preserved to the parties thereto till the rest of the carrier of the suit;

(iv) the right of appeal is a vested right and such a right to enter the superior Court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced, such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of filing of appeal;

(v) this 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.

7. In *Radhakisan Laxminarayan Toshnival v. Shridhar Ramchandra Alshi and others* AIR (37)1950 Nag 177, Hidayatullah, J., was pleased to observe :

"It is now settled authoritatively that a right to continue a duly instituted suit or a right of appeal are not mere matters of procedure but are substantive rights."

On another count also, the contention raised by Shri Kulkarni that the CPC governs right of appeal in cases under the Hyderabad Rent Control Act will have to be repelled. Where a conflict arises between the special law and the general law, the special law must prevail. See *Bhaiya Mohammed Azim Khan and others v. Raja Mumtaz Ali Khan* AIR 1932 Oudh. 163.

8. The Hyderabad Rent Control Act is a special statute governing disputes between the landlord and the tenant in respect of certain matters including eviction and if this Act provides for a particular right or procedure, it will override general provisions of Code of Civil Procedure. A question arose before the Division Bench of this Court in *Nagnath Revansidhappa Cholkhane v. Osmansaheb Mohammedsaheb Pangaonkar* 1977 M.L.J. 491, that whether a District Judge hearing an appeal u/s 25 of the Hyderabad Rent Control Act can transfer an appeal to Assistant Judge or Additional District Judge and whether he would be competent to hear that appeal. This Court held that if a special statute creates certain rights and liabilities newly or either by expanding or abridging the rights and the liabilities under the general law and also creates an authority for

resolving disputes arising under that law then that authority should ordinarily be regarded as an authority of exclusive jurisdiction to resolve those disputes. This Division Bench was pleased to hold that District Judge is a personal designate, and an appeal was not maintainable before the learned Assistant Judge. General provisions governing a civil litigation were held to be inapplicable in cases under the Hyderabad Rent Control Act. Since Hyderabad Rent Control Act specifically provides that any order of the Rent Controller is appealable, appeal would be maintainable even when such an order is passed by consent of the parties irrespective of the provisions of section 96 of the Code of Civil Procedure.

9. Shri Kulkarni then submitted that on the basis of the accepted principles of jurisprudence, an appeal should not be entertained against an order passed with the consent of the parties unless consent shown to have been caused by fraud or misrepresentation. What would be the scope of such an appeal need not be considered here. It is true that in an appeal against decree or order passed by the consent, scope of inquiry would be very limited. But, nevertheless, if the statute provides an appeal unless it specifically excludes that right, it cannot be said that there shall not be an appeal against an order passed by the consent of the parties. What grounds would be permissible in such an appeal is altogether a different question. Both the learned Counsel also wanted to make submissions in respect of the merits of the case. But since I am holding that the appeal was maintainable and the learned District Judge was not correct in dismissing the appeal on the ground that it is being maintainable, it is not necessary to consider those contentions.

10. Shri Kulkarni wanted to submit that learned District Judge has made a reference in respect of the merits of the case also. But I do not find that he has considered the merits for deciding the claim of the parties as elaborately as is required by the appellate authority.

11. I, therefore, allow this revision application, set aside the order of the learned District Judge, Aurangabad dated 15th July, 1992 passed in Rent Appeal No. 4 of 1992, restore the appeal to the file of the learned District Judge, Aurangabad and direct that the said appeal be disposed of within a period of 30 days from today as provided by law after giving parties due opportunity. I direct the parties to appear before the learned District Judge, Aurangabad on Monday the 21st June, 1993. Rule made absolute in the above terms with no order as to costs.

12. It is hereby clarified that this Court has not expressed any opinion either about the merits of the case or about the desirability of setting aside the decree based on consent and sufficiency of the grounds to pass such an order. It is left to the discretion of the learned District Judge. Writ to go forthwith.