

(2015) 04 KAR CK 0310

In the Karnataka High Court

Case No : Civil Revision Petition No. 54/2014 (EX)

Sathyanarayana Raju and Others

APPELLANT

Vs

Ramaiah and Others

RESPONDENT

Date of Decision : 16-04-2015

Acts Referred:

Karnataka Rent Control Act, 2001 — Section 21(1)(a)

Citation : (2015) 04 KAR CK 0310

Hon'ble Judges : H. Billappa, J

Bench : Single Bench

Advocate : A. Madhusudhana Rao, for the Appellant; Vigneshwara S. Shastri, Advocates for the Respondent

Final Decision : Dismissed

Judgement

H. Billappa, J.—This revision is directed against the order dated 6.11.2013 passed by the Executing Court in Execution Case No. 5/2013.

2. By the impugned order, the Executing Court has dismissed the execution petition filed by the petitioners.

3. Aggrieved by that, the petitioners have filed this revision petition.

4. Briefly stated the facts are:

"The owners Sri. Sathyanarayana Raju and others filed HRC No. 4/1994 for eviction of the tenant Sri. Ramaiah. The petition came to be allowed by order dated 18.2.1999. Aggrieved by that, the tenant Sri. Ramaiah preferred revision in Rev(Rent) No. 1/1999 before the District Court. The District Court by its order dated 22.11.2000 dismissed the Rev(rent) granting one month's time to vacate the premises. Thereafter, Ramaiah preferred revision in HRRP No. 779/2000 before this court. This court by its order dated 23.2.2001 dismissed the revision petition confirming the order passed by the District Court. Thereafter, the petitioners have initiated execution proceedings in Ex. Case No. 5/2013 on

2.1.2013."

5. The respondents have resisted the Execution Petition contending that the execution proceedings are barred by limitation. The Executing Court by its order dated 6.11.2013 has dismissed the Execution Petition as barred by limitation. Therefore, this revision petition.

6. The learned counsel for the petitioners contended that the impugned order cannot be sustained in law. He also submitted that the decree for eviction was passed in HRC No. 4/1994. It was challenged in Rev(rent) No. 1/1999. It was dismissed on 22.11.2000. Thereafter, the tenant Sri. Ramaiah had preferred revision before this Court in HRRP No. 779/2000. This court has disposed of the revision by its order dated 23.2.2001 confirming the order passed by the District Court in Rev(rent) No. 1/1999. Therefore, the decree became enforceable from 23.2.2001. The Execution Petition is filed on 2.1.2013. Therefore, the Execution Petition was well within time. Therefore, the Executing Court was not justified in dismissing the Execution Petition as barred by limitation. He also submitted that the order passed in HRC No. 4/1994 and Rev.(rent) No. 1/1999 have merged with the order passed by this Court in HRRP No. 779/2000. Therefore, the limitation starts from 23.2.2001. The Execution Petition was well within time. In support of his submission, he placed reliance on the decisions of the Hon"ble Supreme Court reported in Ratansingh Vs. Vijaysingh and Others, (2000) 3 JT 499 Supp : (2000) 8 SCALE 214 : (2000) 5 SCR 510 Supp : (2000) AIRSCW 4385 : (2000) 8 Supreme 151 .

7. As against this, the learned counsel for the respondents submitted that the impugned order does not call for interference. He also submitted that HRC No. 4/1994 was disposed of on 18.2.1999. Thereafter, the revision petition was preferred in Rev(rent) No. 1/99. It was disposed of on 22.11.2000 confirming the order passed by the Trial Court and granting one month's time. Thereafter, the revision was preferred in HRRP No. 779/2000. It was disposed of on 23.2.2001. During the pendency of HRRP No. 779/2000, there was no stay. Therefore, the decree became enforceable when the order passed by the Trial Court was confirmed and one month's time was granted in Rev(rent) No. 1/1999. As there was no stay, the limitation started running from 22.11.2000 itself. The execution has been filed on 2.1.2013 and it was barred by time. The Executing Court on proper consideration of the material on record and the decisions cited by the respondents has rightly dismissed the Execution Petition as barred by limitation. Therefore, the impugned order does not call for interference. In support of his submission, he placed reliance on the decisions reported in Ram Bachan Rai and Others Vs. Ram Udar Rai and Others, AIR 2006 SC 2248 : (2006) 11 JT 63 : (2006) 144 PLR 663 : (2006) 5 SCALE 259 : (2006) 9 SCC 446 : (2006) AIRSCW 2894 : (2006) 4 Supreme 109 : (2006) 5 Supreme 259 and unreported decision of this court in CRP No. 128/2011.

8. I have carefully considered the submissions made by the learned counsel for the parties.

9. The point that arises for my consideration is:

"Whether the impugned order calls for interference?"

10. It is relevant to note, HRC No. 4/1994 was filed by the owners Sri. Sathyanarayana Raju and others under sections 21(1)(a) and (h) of the KRC Act. The petition came to be allowed by order dated 18.2.1999. The tenant Sri. Ramaiah had preferred revision petition in Rev(rent) No. 1/1999. It was dismissed by order dated 22.11.2000 and one month's time was granted to vacate the premises. Thereafter, tenant Ramaiah preferred revision petition in HRRP No. 779/2000 before this court. This court by its order dated 23.2.2001 has dismissed the revision petition at the admission stage. Thereafter, the execution proceedings have been initiated by the petitioners in Ex. Case No. 5/13. The respondents have resisted the Execution Petition contending that the Execution Petition is barred by limitation. The Executing Court by its order dated 6.11.2013 has dismissed the Execution Petition holding that it is barred by limitation.

11. The learned counsel for the petitioners contended that the decree passed in HRC No. 4/1994 and the order passed in Rev(rent) No. 1/1999 have merged with the order passed by this Court in HRRP No. 779/2000 on 23.2.2001. Therefore, the limitation starts from 23.2.2001. Reliance was placed on the decisions of the Hon"ble Supreme Court reported in Chandi Prasad and Others Vs. Jagdish Prasad and Others, (2004) 5 CTC 67 : (2004) 8 JT 255 : (2004) 8 SCALE 446 : (2004) 8 SCC 724 and (2000)6 SCC page 359.

12. In Chandi Prasad and Others Vs. Jagdish Prasad and Others, (2004) 5 CTC 67 : (2004) 8 JT 255 : (2004) 8 SCALE 446 : (2004) 8 SCC 724 the Hon"ble Supreme Court has held when an Appellate Court passes a decree, the decree of the Trial Court merges with the decree of the Appellate Court irrespective of the fact as to whether the Appellate Court affirms, modifies or reverses the decree passed by the Trial Court.

13. In Ratansingh Vs. Vijaysingh and Others, (2000) 3 JT 499 Supp : (2000) 8 SCALE 214 : (2000) 5 SCR 510 Supp : (2000) AIRSCW 4385 : (2000) 8 Supreme 151 the Hon"ble Supreme Court has held, normally a decree or order becomes enforceable from its date. But cases are not unknown when the decree becomes enforceable on some future date or on the happening of certain specified events. The expression "enforceable" has been used to cover such decrees or orders also which become enforceable subsequently. Filing of an appeal would not affect the enforceability of the decree, unless the Appellate Court stays its operation. But if the appeal results in a decree that would supersede the decree passed by the lower court then it is the Appellate Court decree which becomes enforceable. When the appellate order does not amount to a decree there would be no suppression and hence the lower court decree continues to be enforceable.

14. In Kunhayammed and Others Vs. State of Kerala and Another, AIR 2000 SC 2587 : (2000) 162 CTR 97 : (2000) 72 ECC 681 : (2001) 129 ELT 11 : (2000)

245 ITR 360 : (2000) 9 JT 110 : (2000) 5 SCALE 167 : (2000) 6 SCC 359 : (2000) 1 SCR 538 Supp : (2000) 119 STC 505 : (2000) 113 TAXMAN 470 : (2000) 2 UJ 1158 : (2000) AIRSCW 4641 : (2000) AIRSCW 4557 : (2000) AIRSCW 2608 : (2000) 8 Supreme 202 : (2000) 5 Supreme 181 : (2000) 7 Supreme 70 the Hon"ble Supreme Court has held when superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the Sub-ordinate forum merges in the decision by the superior forum and it is later which subsists, remains operative and is capable of enforcement in the eye of law.

15. The learned counsel for the respondents relied upon the following decisions;

In Ram Bachan Rai and Others Vs. Ram Udar Rai and Others, AIR 2006 SC 2248 : (2006) 11 JT 63 : (2006) 144 PLR 663 : (2006) 5 SCALE 259 : (2006) 9 SCC 446 : (2006) AIRSCW 2894 : (2006) 4 Supreme 109 : (2006) 5 Supreme 259 the Hon"ble Supreme Court has observed as follows at para 25;

"The engrossment of the final decree in a suit for partition would relate back to the date of the decree. The beginning of the period of limitation for executing such a decree cannot be made to depend upon date of the engrossment of such a decree on the stamp paper. The date of furnishing of stamp paper is an uncertain act, within the domain, purview and control of a party. No date or period is fixed for furnishing stamp papers. No rule has been shown to us requiring the court to call upon or give any item for furnishing of stamp paper. A party by his own act of not furnishing stamp paper cannot stop the running of period of limitation. None can take advantage of his own wrong. The proposition that period of limitation would remain suspended till stamp paper is furnished and decree engrossed thereupon and only thereafter the period of twelve years will begin to run would lead to absurdity. In Yeswant Deorao Deshmukh v. Walchand Ramchand Kothari, it was said that the payment of Court fee on the amount found due was entirely in the power of the decree holder and there was nothing to prevent him from paying it then and there, it was a decree capable of execution from the very date it was passed".

16. In Ratansingh Vs. Vijaysingh and Others, (2000) 3 JT 499 Supp : (2000) 8 SCALE 214 : (2000) 5 SCR 510 Supp : (2000) AIRSCW 4385 : (2000) 8 Supreme 151 the Hon"ble Supreme Court has held that the period starts running from the date when decree becomes enforceable. Filing of an appeal would not affect enforceability of the decree, unless the Appellate Court stays its operation. But if the appeal results in a decree that would supersede the decree passed by the lower court and it is the Appellate Court decree which becomes enforceable.

17. In Manohar Nale and Others Vs. Jaipalsing Rajput and Others, AIR 2008 SC 429 : (2008) 2 CLT 188 : (2008) 2 CTC 60 : (2007) 13 JT 171 : (2007) 13 SCALE 340 : (2008) 1 SCC 520 : (2007) 12 SCR 364 the Hon"ble Supreme Court has held that neither the order of dismissal of review petition nor stay granted by the Supreme Court to that order have effect of postponing starting point of limitation or execution.

18. In *Bimal Kumar and Another Vs. Shakuntala Debi and Others*, AIR 2012 SC 1586 : (2012) 2 CTC 881 : (2012) 3 SCALE 62 : (2012) 3 SCC 548 : (2012) AIRSCW 2091 : (2012) 2 Supreme 368 the Hon'ble Supreme Court has held that in the absence of any interdiction from any court, the decree holder was entitled to execute the decree. It needs no special emphasis to state that there was no impediment or disability in the way of the respondents to execute the decree but the same was not done. Therefore, the irresistible conclusion is that the initiation of execution proceedings was indubitably barred by limitation.

19. In the unreported decision of this Court in CRP No. 128/2011 this court has held the period of limitation has to be computed from the date the decree becomes enforceable. The running of time was not arrested by any order staying the execution.

20. It is clear from the decisions cited by the learned counsel for the parties that the order passed by the subordinate forum merges with the order passed by the Appellate or revisional form. The limitation period starts running from the date when the decree becomes enforceable. Filing of an appeal would not affect the enforceability of the decree unless Appellate Court stays its operation. If the appeal results in decree that would supersede the decree passed by the lower court, then, the Appellate Court decree becomes enforceable. In the present case, HRC No. 4/1994 was allowed on 18.2.1999. It was challenged in Rev(Rent) No. 1/1999. It was disposed of on 22.11.2000 granting one month's time. Thereafter, the revision was filed in HRRP No. 779/2000. Admittedly, there was no stay in HRRP No. 779/2000. The order passed in HRRP No. 779/2000 does not have the effect of superseding the order passed in HRC No. 4/1994 or Rev(Rent) No. 1/1999. The decree became enforceable after the expiry of one month from 22.11.2000. Admittedly, the Execution Petition has been filed on 2.1.2013. It is barred by limitation. In the absence of stay in HRRP No. 779/2000, the decree became enforceable from 22.12.2000. Therefore, the execution filed on 2.1.2013 is barred by limitation. Therefore, the Executing Court was justified in dismissing the Execution Petition as barred by limitation. I do not find any error or illegality in it. Therefore, the impugned order does not call for interference.

Accordingly, the revision petition is dismissed.