

(2000) 07 KAR CK 0115

In the Karnataka High Court

Case No : House Rent Revision Petition No. 503 of 1999

Sri. H.D. Gangaraj

APPELLANT

Vs

Sri. N. Narayana Reddy and Another

RESPONDENT

Date of Decision : 26-07-2000

Acts Referred:

Karnataka Rent Control Act, 1961 — Section 14, 44, 44 (2)
Transfer of Property Act, 1882 — Section 108

Citation : (2000) 4 KCCR 2461

Hon'ble Judges : Chidananda Ullal, J

Bench : Single Bench

Advocate : Avathi Ravindranath, for the Appellant; G. Janardhana, for Respondent 1 and M.S. Varadarajan, for Respondent 2, for the Respondent

Final Decision : Allowed

Judgement

Chidananda Ullal, J.—This revision is filed by the landlord to challenge the order dated 17.4.1999 in case No. HRC 799 of 1998 passed by the Court of the Chief Judge of Small Causes at Bangalore, in so far as the same related to the permission to the Respondents-tenants to put up water sump at their cost and without fastening the liability thereto on the Petitioner-landlord herein and further giving liberty to the Respondents-tenants to keep informed the City Civil Court which passed interim injunction order in a suit.

2. The Petitioner herein is represented by Sri Avathi Ravindranath, whereas the Respondent No. 1 is represented by Sri G. Janardhan and the Respondent No. 2 is represented by Sri M.S. Varadarajan.

3. The Petitioner herein is the landlord. He was the Respondent before the trial Court, whereas the Respondents herein were the Petitioners before the trial Court and they claimed themselves as tenants.

4. The parties are henceforth referred to for convenience as the tenants and the landlord as they were before the trial Court.

5. The facts in brief are as hereunder:

That the tenants had filed a Petition u/s 44 of the Rent Control Act with a prayer that the trial Court be pleased to pass an order directing the landlord to carry out and effect the necessary repairs of white washing of walls, closing of top of the sump tank, flooring, etc., failing which, allow the tenants to carry out the said repairs.

6. The Respondent had filed a detailed objection, in filing whereof, while conceding the relationship of tenancy between him on the one side and the Petitioner No. 1 on the other, he had denied the very relationship of tenancy between him on the one side and the Petitioner No. 2 on the other. Further more, he had also contended that the very Petition filed by the Petitioners was not maintainable before the trial Court for want of statutory notice as contemplated u/s 44(2) of the Karnataka Rent Control Act, 1961 (henceforth for convenience referred to as the Act).

7. Both the sides had adduced the respective side of their evidence, both oral and documentary and in consideration of the material evidence as well as the arguments advanced by both sides, the trial Court had rejected the very Petition of the Petitioners for want of statutory notice under Sub-section (2) of Section 44 of the Act referred to above. In furtherance thereof, the learned Judge had also granted liberty to the Petitioners, more fully referred to as above.

8. To place on record the operative portion of the order that came to be passed in the hands of the trial Court, the same reads as hereunder:

The Petition filed by the Petitioner u/s 44 is held not maintainable.

In view of the submission made by the Petitioner that the Petitioner is willing to effect the repairs and to put-up water sump without causing any damage to the building, Petitioner can do so at his own cost without imposing any liability on the Respondent in accordance to any regulation or licence required and can also intimate the Court which passed an order of status-quo to fall in line with uniformity in the judicial process. No costs.

9. The learned Counsel for the Petitioner Sri Avathi Ravindranath had argued that, when the trial Court had summarily rejected the Petition filed by the Petitioners, it would have stopped at that and that it would not have given the liberty to the Petitioner as above. That he submitted for the reason that when the very Petition filed by the Petitioners had failed in their own hands before the trial Court, question of giving liberty as above to them by the trial Court did not arise at all. While taking me through the second part of the order, Sri Ravindranath vehemently argued that the grant of that liberty was totally without jurisdiction, inasmuch as it was not at all within the domain of the trial Court even to make that kind of concession to the Petitioners. According to him, the trial Court had given a kind of relief which the Petitioners did not even seek in the hands of the trial Court. It was also argued by him that the trial Court did not stop at that and

further more, it had observed therein that the Civil Court in the matter of grant of relief in the suit in question had to fall in line with the order that came to be passed by it. In this regard, Sri Ravindranath also pointed out that the trial Court had totally forgotten that it was a Court with a limited jurisdiction and in the said circumstance, it would not have made some observation, as if to guide the Civil Court in the matter of its decision in certain suit pending before it. According to Sri Ravindranath, the liberty as well as the observation as to final result in the suit were totally unwarranted. Therefore he submitted that the said part of the order are liable to be set aside in allowing the instant revision.

10. To substantiate his argument, Sri Ravindranath cited before me the reported decision of this Court reported in 1996 (5) KarLJ 118 in the case of Sarojamma and Ors. v. Shankar on the point that readiness of tenant to effect necessary repairs at his own cost does not take away the operation of Section 44 of the Act, Om Prakash and others Vs. Ram Kumar and others, on the point that unless a party seeks a relief, it was not available for a Court to grant that relief and lastly 1993 (2) Mys LJ 91, wherein the learned Single Judge of this Court held that a Court should not pass unintelligible order without applying its mind to the facts of the case.

11. Therefore he prayed that the instant revision be allowed by setting aside the impugned order in so far as the same related to the further orders by way of liberty to the Petitioners to carry out the repairs at their cost and further indicating to the Civil Court in the matter of the final result in a suit.

12. Per contra, the learned Counsel appearing for the Respondent No. 2 Varadarajan argued that the Respondent before the trial Court would have satisfied itself that under the impugned order the Petition filed by his parties came to be rejected and further more, what little concession it had extended to his party was only to allow him to carry out the repairs at his own cost. It was also argued by him that the Respondent were even otherwise entitled to for carrying out the repairs at their cost and that he submitted in view of the provision in Section 108 of the Transfer of Property Act. According to him, it is that aspect of the case the trial Court had very well appreciated and further made certain observation with regard to the pending suit in a passing way and nothing beyond. In the said circumstances, according to him there was nothing for the other side to complain before this Court against the impugned order by recourse to the instant revision Petition. To sum up, it was also argued by him that in making such an observation in the operative portion of the order, the trial Court did not do anything extraordinary and further more, it did not transgress its special jurisdiction vested under the Act.

13. Nextly, Sri Varadarajan had also argued that, an observation made in a judgment is not available to be challenged in a higher Court and on that count also, according to him, the instant revision is liable to be dismissed. It was also added by him that by giving liberty to his party to carry out the repairs at the cost of the Respondents, all that what the trial Court caused was to enjoy the

Petition schedule premises beneficially, for which purpose the same was taken on lease. Sri Varadarajan had also cited before me the following three decisions:

(1) 1994 (4) KCCR 2529 wherein this Court held that an interim order pending disposal of a Petition u/s 44 of the Rent Control Act is permissible in law.

(2) Eashwar Vs. B. Sudershan and Another, , wherein a tenant had put up a roof which had fallen down in a part of the building without permission of the landlord, it was held that the landlord was entitled to an order of injunction to remove the roof put up and to restrain tenant from making further repairs under A.P. Buildings (Lease, Rent and Eviction Control) Act No. 15 of 1960.

(3) 1984 (2) KLJ 314, wherein the term "repairs" came to be interpreted.

14. Sri Varadarajan finally submitted that the instant revision does not merit any consideration at the hands of this Court.

15. In the light of the above submissions, the question that arises for my consideration is whether the impugned order passed by the trial Court in so far as the same related to the permission to the Respondents-tenants to put up sump tank at their cost and without fastening the liability thereto on the Petitioner-landlord and further with liberty to the Respondents-tenants to keep informed the City Civil Court which passed certain injunction order in a suit, so that the Civil Court may fall in line in passing the judgment in the suit, while rejecting the very Petition u/s 44 of the Act was just and proper or not?

16. I have carefully considered the argument and the counter argument advanced before me and I have also gone through the respective side of the decisions cited produced before me.

17. Before proceeding further, I feel it appropriate to quote Section 44 of the Act. The same reads as hereunder:

44. Repairs and improvements.-(1) Every landlord shall be bound to keep the building in reasonably good repair.

(2) If the landlord neglects to make within a reasonable time after a notice by the tenant is served upon him by registered post, any repairs which he is bound to make under Sub-section (1), the tenant may make the repairs himself and deduct the cost of such repairs from the rent or otherwise recover it from the landlord:

Provided that where the tenant makes the repairs himself, the amount so deducted or recoverable in any year shall not exceed one-twelfth of the rent payable by the tenant for that year.

(3) Where the cost of such repairs exceeds one-twelfth of the rent payable by the tenant for that year or where the building is directed to be leased u/s 5 or Section 6, the Court may, by order, direct the landlord to execute such repairs which he is bound to make under Sub-section (1), and as may be specified in the

notice within such reasonable time as may be mentioned therein; and if the landlord fails to execute repairs in pursuance of such order the Court may permit the tenant to cause the repairs specified in the order, to be executed at the expense of the landlord and the cost thereof may, without prejudice to any other mode of recovery, be deducted from the rent payable to the landlord.

18. From the very provision in Sub-section (1) of Section 44 as above, it is clear that the landlord shall be bound to keep the building in reasonably good repair and in a habitable condition and in the event the landlord were to neglect to keep the building in that condition within reasonable time upon service of notice by the tenant by registered post, any repairs which the landlord was bound to make, the tenant may make the same himself and further entitle him to deduct the cost of such repairs from the landlord (not to exceed 1/12th of the rent payable by the tenant) and as per Sub-section (3) of the said section, if the cost of repairs were to exceed 1/12th of the rent payable by the tenant for that year, or where the building is liable to be leased u/s 5 or Section 6, the Court may by order direct the landlord to execute such repairs and in the event of non-compliance thereof, the Court may permit the tenant to cause for repairs at the cost of the landlord.

19. From the above scheme of things it appears to me that the primary duty to maintain the leased premises in a habitable condition is totally vested on the landlord and in the event of his failure to comply with the provision in Sub-section (2), Sub-section (3) of Section 44 shall follow. Therefore it appears to me that the carrying of the repairs by the tenant at his own cost without the permission of the landlord is totally out of the scheme of the provision u/s 44 of the Act. That in fact was the view I was carrying earlier to hearing of this matter by me.

20. The learned Counsel for the Respondent tried to convince me that the carrying out of repairs was very much available for the landlord u/s 108 of the Transfer of Property Act. Somehow, I am not convinced of that argument of Sri Varadarajan, in view of the apt decision cited by the learned Counsel Sri Ravindranath that this Court as long back as in the year 1996 in the reported case of Sarojamma and Ors. v. Shankar reported in 1996 (5) KLJ 118. In the said decision, this Court held as hereunder:

(B) Karnataka Rent Control Act, 1961, Section 14-Repairs-Readiness of tenant to effect necessary repairs at his own cost does not take away operation of Section 44 of Act-Only remedy available to tenant is to make an application u/s 44.

Held: A perusal of Section 44 would go to show that the Legislators in their wisdom have thought in terms of bringing into being a self-contained proviso relating to repairs. It is not as if there was no provision relating to repairs under the general law, that is to say, under the Transfer of Property Act enumerates the rights and the liabilities of the lessor and lessee and the various provisions thereunder are self-explanatory..... A duty is cast by the Rent Control Act on the

landlord to keep the building in a reasonably good repair. Further, if the landlord is found wanting in keeping the building in reasonably good repair, the tenant is given a remedy under the said provision. It is indeed necessary to remember that a tenant cannot even effect such repairs as would cost him even only a month's rent without giving a notice to the landlord by registered post. The fact that Plaintiff has averred that he is ready and willing to bear the entire cost relating to repairs cannot be taken as a circumstance to hold that the provisions of Section 44 of the Act cannot and would not come into operation... The order of the Court below in issuing temporary injunction restraining the Defendants from interfering with the Plaintiff carrying on repairs to the premises in question is hereby set aside.

21. The learned Counsel for the other side Sri Varadarajan had also placed reliance on the reported decision of Andhra Pradesh High Court, reported in Eashwar Vs. B. Sudershan and Another, . As I see, it is only having a persuasive effect and in the said decision, the Andhra Pradesh High Court held in a suit as hereunder:

The landlord is under an obligation to effect repairs to the part of the building collapsed due to natural causes. But on that account he has no right to put an end to the tenancy and the occupation of the tenant cannot be said to be unauthorised or illegal so long as he is not ejected under the provisions of the Act. The putting up of the roofing and the door (which had fallen down) without the permission of the landlord cannot be said to be a transgression of any provisions of law. At the most the tenant is forfeited to claim any expenditure he incurred in putting the roof. But that does not disentitle him to continue in possession. No injunction can be granted to remove the roof put up or to restrain the tenant to make any repairs.

22. Nearer home, when I have got a decision of our own High Court reported in 1996 (5) KLJ 118 well relied upon by the learned Counsel for the Respondents Sri Ravindranath, I feel that is the one I should follow, more so when I also hold the very same view; let apart, the decision of the Andhra Pradesh High Court appears to be a decision rendered in a suit for decree of permanent injunction. Admittedly in the instant case in hand, the trial Court had rejected the Petition filed by the Petitioners, one u/s 44 of the Act and further more, the Respondents did not challenge the same before this Court even to this day. That is the impression I have been given both by the learned Counsel appearing for the contending parties before me during the course of hearing the matter. But the point is, whether the trial Court was justified in granting certain liberty to the Petitioners in the matter of carrying out the repairs at their own cost and further hinting that the Civil Court has to take note of the decision of the impugned order passed by the trial Court in deciding the suit were justified in the facts and circumstances of the case. To me, it appears, it were not, the reasons being as hereunder:

When the trial Court had rejected the very Petition filed by the Petitioners u/s 44

of the Act, it would not have granted liberty by way of relief to the Petitioners to carry out the repairs to the subject premises, no matter at the cost of the landlord. In a way, the trial Court had granted a kind of relief which the Petitioners did not seek at all in its hands. This leads me to cull out the prayer made in the Petition by the Petitioners. To quote that part of the Petition, the same reads as hereunder:

Wherefore, it is humbly prayed that this Hon''ble Court be pleased to pass an order directing the Respondent to carryout and effect the necessary repairs of white washing of walls, closing of the top of the sump and flooring, failing which, allow the Petitioners to carryout and effect the necessary repairs and to carryout the business and to deduct the one years rent towards the expenditure in the interest of justice.

23. From the above, to me it appears that there was no prayer, the one the trial Court had granted giving liberty to the Petitioners to carry out the repairs at their cost.

24. During the course of the argument advanced by the learned Counsel Sri Varadarajan appearing for the Respondent No. 2, it was submitted by him that his party as well as the Respondent No. 1 had made a oral prayer through their Counsel that they be permitted to carry out the repairs. That in fact was referred to by the learned Judge in the operative portion of the order.

25. In the facts and circumstances of the case, it appears to me that, the above part of the relief and further more suggestion to the Civil Court to "fall in line" with the impugned order passed by the trial Court was totally without jurisdiction and therefore is liable to be set aside in allowing the revision.

26. In the result, the instant revision is allowed. The impugned order in so far as the same related to grant of liberty to the Petitioners to carry out the proposed repairs at their own cost and further observation that the Civil Court has to fall in line with the impugned order in the matter of grant of final relief in the suit are hereby set aside as the same was totally without jurisdiction and further more totally uncalled for.

27. At this stage the learned Counsel for the Petitioners Sri G. Janardhan appearing along with Sri Varadarajan submitted that liberty be granted to his party to recourse to a Petition before the Court of Small Causes as contemplated u/s 44 of the Act. As against this prayer made, I only say that no liberty need be given by this Court, if it is available to the Petitioner to recourse to that under law.

28. The revision Petition therefore succeeds and accordingly stands allowed.

29. In the peculiar facts and circumstances of the case, I do not propose to award any cost in the Petition; hence, let the parties bear the respective side of the cost.