

(1985) 05 GAU CK 0004

In the Gauhati High Court

Case No : Civil Revision No. 10 (SH) /84

Union of India (UOI)

APPELLANT

Vs

Shri Murlidhar Jalan

RESPONDENT

Date of Decision : 17-05-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 17 Rule 2, Order 47 Rule 1, Order 9 Rule 3, Order 9 Rule 6, 104

Meghalaya Urban Areas Rent Control Act, 1972 — Section 2, 4, 5, 5(3), 5(4)

Citation : (1985) 2 GLR 340

Hon'ble Judges : Manisana, J

Bench : Single Bench

Advocate : B.P. Dutta, for the Appellant; S.C. Burman Roy and B. Dutta, for the Respondent

Judgement

Manisana, J.—This revision arises from the orders dated 8.7.83 and 19.4.84 passed by the learned Munsiff, Shillong, in Misc. Case No. 12(H) of 1981. The Respondent filed an application u/s 4 of the Meghalaya Urban Area Rent Control Act, 1972, for short, the "Act" for fixation of fair rent. The learned Munsiff on 8.7.1983 passed an order fixing fair rent. The Petitioner has not filed any appeal against the order as provided under the "Act". However, he has filed a petition for review of the order dated 8.7.1983. The learned Munsiff rejected the petition by an order dated 19.4.1984. Being aggrieved by the orders dated 8.7.1983 and 19.4.1984 of the learned Munsiff, the Petitioner has Tiled Civil Revision No. 10(SH)/1984 in this Court.

2. The first question which arises, before dealing with the rival contentions, for consideration is whet are the rules of procedure applicable to the proceedings under the "Act". u/s 4 of the "Act", if any dispute arises regarding the rent payable in respect of any house, it shall be determined by the court. Section 5 of the "Act", Inter alia, provides that no order or decree for recovery of possession of any house shall be made or executed, by any court us long as the tenant pays rent to the full extent allowable under the "Act" and performs the conditions of

the tenancy provided therein. u/s 5 of the "Act", institution of the suit for the recovery of possession of any house is not prohibited. The prohibition is the passing and execution of the decree or order for ejectment. Section 7 of the "Act" is a provision for enforcement of duties of landlord as envisaged thereunder.

3. The question which arises for consideration is what is the "court" to decide or pass an order under the "Act". As regards the "Court" to pass a decree for eviction of a tenant is the court of ordinary civil jurisdiction constituted under the relevant laws. The decree is to be passed in a regular "Suit" as distinct from "proceedings". Section 2(a) of the "Act" refers to the Court already constituted. Therefore the "Court" which is to decide or pass order under the "Act" is the said constituted court of ordinary civil jurisdiction having territorial and pecuniary jurisdiction to pass a decree for eviction of the tenant from house. The cause of action of the "Court" for passing any order under the "Act" is a "proceeding" which does not amount to a suit. However, any order or decision u/s 4, 5(3) and 5(4) and 7(2) of the "Act" will be deemed as a decree for the purpose of, appeal u/s 8 of the "Act".

4. The question which remains for consideration is what is the procedure applicable to the "proceedings" under the Act. The "Act" is silent in this regard. The preamble of CPC indicates to what particular instances the enactment (Code of Civil Procedure) is intended to apply. Section 4, CPC lays down that CPC shall not limit or affect any special or local law and that the provisions of CPC which are contrary to the local law will be excluded. This section does not bar the applicability of CPC where the special statute is silent. The "Act" which is a special or local statute refers to a already constituted court of ordinary civil jurisdiction as a "Court" to decide the matters under the "Act" and does not refer to the Presiding Officer of the "Court" or persona designata. Therefore said constituted court is governed by the rules of CPC in view of Section 141, CPC which provides that the procedure provided in regard to suits shall be followed in all the proceedings in any court of Civil Jurisdiction as far as it can be made applicable, in view of the discussion above, the procedure provided in CPC in regard to suits shall be followed as far as it can be made applicable in all the proceedings under the "Act" in the absence of any specific provision to the contrary in the "Act". This view of mine also finds support from the decision of the Privy Council, In AIR 1948 12 (Privy Council) the Privy Council, in *Adaikappa*, has held that where a legal right is in dispute and the ordinary Courts of the country are seized of such dispute the Courts are governed by the ordinary rules of procedure applicable thereto.

5. The next question which arises for consideration is whether any final order passed u/s 4, 5(3) and (4) and 7(2) of the "Act" is a decree or an appealable order under the provisions of Code of Civil Procedure. The order is not a decree as, such an order is not included within meaning of decree defined in Section 2(2), Code of Civil Procedure, The order also will not be appealable under CPC for the reason that such an order is not an order provided under Order 43 and

Section 104, CPC which make provisions for appeal from an order passed under Code of Civil Procedure. However, such an order shall be appealable u/s 8 of the "Act". u/s 8 of the "Act", any order or decision passed u/s 4, 5(3) and (4) and 7(2) of the "Act" is appealable as if such a decision or order were a decree in a suit for ejectment of the tenant from the house. In view of the aforesaid discussions, it is concluded that the rules of procedure provided in CPC in regards to suit which are not contrary to the provisions of the "Act" shall be followed, as far as it can be made applicable, in all the proceedings under the "Act".

6. In the background of the above principles, let us now examine the present case. Mr. S.C. Burman Roy, learned Counsel for the Respondent has submitted that the legal right in dispute is under the "Act" which is a special statute and under the "Act", the order dated 8.7.83 determining the "fair rent" is appellable and that order dated 19.4.84 rejecting the application for review of the order dated 8.7.83 relates to the right under the "Act" and as such, no revision lies in this Court. Mr. B.P. Dutta, learned Counsel for the Petitioner has submitted that under Order 47, Rule 1, CPC the learned Munsiff can review any order passed by him under the "Act" and as such, revision lies.

7. In *Adaikappa (supra)*, the Privy Council held:

The true rule is that where a legal right is in dispute and the ordinary Courts of the country are seized of such dispute the Courts are governed by the ordinary rules of procedure applicable thereto and an appeal lies, If authorised by such rules, notwithstanding that the legal right claimed arises under a special statute which does not in terms confer a right of appeal.

(emphasis added)

The decision of the Privy Council shows that CPC will be applicable to the proceedings under the "Act" as the court of ordinary Civil Jurisdiction is governed by the rules of Code of Civil Procedure. Therefore, an appeal or a revision from an order in a proceeding under the "Act" or an application for review of such an order, will lie, although the "Act" does not confer such rights. For example, the "court", in a proceeding under the "Act" has passed illegally an order that the proceeding will be beard under Order 9 Rule 6, CPC (or its spirit) *exparte* under an erroneous assumption that summons has been duly served on the opposite party and the "Court" rejected the petition of the opposite party filed before the final hearing or decision of the case for allowing him, to join the proceeding, There is no provision under the "Act" to file an appeal or a revision from such an order or for review of the order. Section 8 of the "Act" only provides an appeal from a final order. The words "any decision or order" do not imply an interlocutory order or decision. Because, the expression "as if such decision or order were decree in a suit for ejectment of the tenant" qualifies the words "any decision or order"". The word "decree" shows a final determination of the right and interest of parties concerned. Therefore, the decision or order u/s 8 is a final

and conclusive order on merit after determination of" right of the parties. In such a case appropriate remedy whether by way of revision or review as provided under CPC is to be availed of.

8. Coming to the case in band, there is no provision of review under the "Act". However, Section 114 and Order 47, Rule 1, CPC provide for review of an order. In this view of the matter, the application of the Petitioner for review of the order dated 8.7.1983 is maintainable as the Petitioner has not preferred an appeal u/s 8 of the "Act" if it is not barred by any other provisions of law such as limitation. Therefore, the revision will lie against the order of rejection of application for review passed on 19.4.84 for such an order is not appealable under Code of Civil Procedure. As regards the final order dated 8.7.83 fixing "fair rent". It is appealable u/s 8 of the "Act". As such, the revision is barred by Section 115(2), Code of Civil Procedure.

9. It has already been concluded that no revision will lie against the order dated 8.7.83 and that revision shall lie from the order passed on 19.4.94 rejecting the application for review. Let us now examine the impugned order dated 19.4.84 which runs as follows:

Parties are absent. Perused the petition. I do not find any reasonable (sic) in the petition of the opposite party as before fixing of the rent nothing was heard from their side. Hence the petition is rejected.

An application for review of a judgment or order means an application for praying that the judgment or orders be reconsidered. The order of the learned Munsiff is clear that the petition was rejected. The "Court" did not reject the petition for default, in appearance of the Petitioner, but on merits, as order show that the learned Munsiff did not find any reasonable ground in the petition of the Petitioner as before fixing the fair rent nothing was heard from the Petitioner. This clearly shows that the impugned order is a final decision of the petition on merit. Under Order 9, Rule 3, CPC where neither party appears when the matter is called for hearing, the Court may make an order that the petition be rejected. If neither party appears, the rejection" is not compulsory. The "Court" may adjourn the hearing of the petition. Whether the order is referable to Order 9 Rule 3 or Order 17, Rule 2 Code of Civil Procedure, the order is clear enough to show that it was a rejection of the petition on merit. The order does not set out the grounds of the decision or conclusion of the "Court" that there was no reasonable ground in the petition. An order in such case must be a "speaking order, A reading of the petition for review shows that the Petitioner has raised various grounds for reviewing or reconsidering the order dated 8.7.83. There is no decision on material points raised in the petition of the Petitioners. The order of the learned Munsiff is vitiated as he has acted in exercise of his jurisdiction illegally or with material irregularity. The next question which arises whether the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the Petitioner. The matter involves financial liability of the Petitioner That apart, the mistake of the Court Itself, in this context of the case, causes

injustice, in this view of the matter the order of the learned Munsiff dated 19.4.84. if allowed to stand, would occasion a failure of justice. Therefore the order dated 19.4.83 is liable to be set aside.

10. In the result, the order of the learned Munsiff dated 19.4 1984 is set aside. The case is sent back to the learned Munsiff for reconsideration of the petition of the Petitioner for review of the order dated 8.7.1983 in accordance with law. There will be no order as to costs.