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Court : Karnataka Dharwad

Decided On : Oct-29-2015

Judge : Raghavendra S. Chauhan

Appeal No. : HRRP No. 505 of 2009

Appellant : Chandranath

Respondent : Basavva and Others

Judgement :

(Prayer: HRRP filed under Sec. 115 of CPC, against the order dtd: 29-11-2008 in Rent Revision. No. 24/2005 passed on the file of the I-Additional District and Sessions Judge, Dharwad, sitting at Hubli, allowing the revision petition filed against the order and decree dtd: 28-02-2005 in R.C.A. No. 31/2002 on the file of the II-Addl. Civil Judge (Jr. Dn) and IIIrd J.M.F.C., Hubli, dismissing the petition filed U/Sec. 36(3) of Karnataka Rent Act 1999.)

1. Aggrieved by the order dated 29/11/2008 passed by the Additional District and Sessions Judge, Dharwad, sitting at Hubli, whereby the learned Judge has allowed the rent revision petition filed by Smt. Basavva Shellikeri, and others (the respondents before this Court) and has directed the petitioner-landlord to handover the possession of the schedule property to the respondent-tenants, the petitioner has approached this Court.

2. Briefly, the facts of the case are that the respondent Smt. Basavva Shellikeri and her family members were the petitioner's tenants. The petitioner had filed a suit for eviction against the respondents under Section 21(1)(a) and (j) of the Karnataka Rent Control Act, 1961 (the Act for short), before the Principal Civil Judge Court (Junior Division), Hubli, for eviction of the respondents. The said suit was decreed by the judgment and decree dated 8/2/2001; the respondents were granted six months time to vacate the suit property; the petitioner was directed to carry out the construction immediately after the possession was delivered to him and to complete the said construction within a period of one year; he was further directed to handover the possession of the premises back to the respondent-tenants under Sections 27 and 28 of the Karnataka Rent Control Act, 1961.

3. Despite the fact that there was a clear out direction by the learned trial Court to the respondent-tenants that they should handover the possession of the property to the petitioner, despite the fact that the said judgment and decree also directed the petitioner to handover the possession to the respondent-tenants, after raising the construction, still the respondent-tenants were aggrieved by the said judgement and decree. Therefore, they filed a revision petition before the Additional District and Sessions Judge, Dharwad, sitting at Hubli. However, the said revision petition was dismissed by the learned Judge.

4. Aggrieved by the said dismissal order, the respondent-tenants preferred a revision petition before this Court, namely, HRRP 70/2001, but, even the said revision petition was dismissed by this Court. This Court directed the respondent-tenants to handover the property within six months.

5. But despite the direction of this Court, the respondent-tenants did not handover the possession of the premises to the petitioner. Therefore, the petitioner had no other option, but to move a execution petition in the form of Execution Petition No. 94/2001. Eventually, with the help of the police, the petitioner could repossess the premises on 19/9/2001.

6. After having got in the possession of the premises, (on 10/12/2001), the petitioner demolished the building. But, due to financial constrains, he could not reconstruct the building as by then he had retired from the service of the B.E.L.,

Bangalore.

7. Since the building was neither reconstructed, nor the possession was handed back to the respondent-tenants, they filed a petition before the learned trial Court under Section 36(3) of the Karnataka Rent Act, 1999, (the New Act for short) and prayed that the possession of suit property should be handed back to them after completing the construction by the petitioner. However, by the order dated 28/5/2005, the learned trial Court dismissed the said petition.

8. Since the respondent-tenants were aggrieved by the order dated 28/2/2005, they filed a rent revision petition before the learned Judge. By order dated 29/11/2008, the said petition was allowed. Hence, the present petition before this Court.

9. Mr. V.M. Sheelvant, the learned counsel for the petitioner has vehemently argued that the learned Judge has misinterpreted the scope and ambit of Section 36 of the New Act. According to the learned counsel, while Section 36 of the New Act is in favour of the tenant, while it grants the tenantal rights to seek repossession of the suit property, but, simultaneously, it does impose a duty upon the tenant to handover the possession to the landlord within the stipulated period given by the Court in its order. The fact that the section imposes a duty on the tenant has been ignored by the learned Judge. Despite the fact that the landlord had to seek police help in order to get the possession of the suit property from the respondent-tenants, inspite of the fact that the respondent-tenants did not implement the directions of the High Court, still the learned Judge has set aside the order passed by the learned trial Court and has directed to the petitioner to handover the possession of the suit premises after completing the construction. According to the learned counsel, the impugned order permits the tenant to take the benefit of his own wrong. Therefore, the order violates the letter and spirit of Section 36 of the New Act.

10. On the other hand, Mr. S.K. Kayakmath, the learned counsel for the respondent No. 2 has strenuously contended that Section 36 of the New Act is benevolent piece of legislation. It is in favour of the tenant. Therefore, under Section 36(3) of the New Act, the tenant is entitled to repossess the suit property

from the landlord. Since, the petitioner had failed to handover the possession to the respondent-tenants, the learned Judge was justified in directing that the possession of the suit property should be handed by the petitioner to respondent-tenants. Therefore, the learned counsel for the respondents has supported the impugned order.

11. Heard the learned counsel for the parties and perused the impugned order.

12. Section 36 of the New Act is as under:-

36. Recovery of possession for repairs and re-building and re-entry “ (1) In making any order on the grounds specified in clause (h) or (i) of sub-section (2) of Section 27 or of Sections 28, 29, 30, 31 or 37, the Court shall unless the landlord has obtained permission for conversion of user of the premises after re-building and repair, for a commercial purpose ascertain from the tenant whether he elects to be placed in occupation of the premises or part thereof from which he is to be evicted and if the tenant so elects, shall record the fact of these election in the order and specify therein the date on or before which he shall deliver possession so as to enable the landlord to commence the work of repairs or building or re-building, as the case may be, and the date before which the landlord shall deliver the possession of the said premises.

(2) If the tenant delivers possession on or before the date specified in the order, the landlord shall, on the completion of the work of repairs or building or re-building, place the tenant in occupation of the premises or part thereof before the date specified in sub-section (1) or such extended date as may be specified by the Court by an order.

(3) If, after the tenant has delivered possession on or before the date specified in the order, the landlord fails to commence the work or repairs or re-building within one month of the specified date or fails to complete the work in a reasonable time or having completed the work, fails to place the tenant in occupation of the premises in accordance with sub-section (2), the Court may, on an application made to him in this behalf by the tenant within such time as may be prescribed, order the landlord to place the tenant in occupation of the premises or part thereof

or to pay to the tenant such compensation being an amount not less than three times of the standard rent of that premises as the Court thinks fit. ?

13. A bare perusal of the said provisions clearly reveals that the sub-section (1) gives an option to the tenant “ whether he elects to be placed in occupation of the premises or part thereof from which he has to be evicted- and incase the tenant elects to be placed back into the suit premises, the Court should record his consent, should direct that the possession of the suit properties be handed by the tenant to landlord within a stipulated period, and should also direct the landlord to commence the work or building or rebuilding within the stipulated period of time, and to deliver the same to the tenant.

14. Sub-section (2) imposes the duty on the landlord to handover the possession of the premises or part thereof, If the tenant delivers the possession on or before the date specified in the order ?. Thus the landlord is duty bound to handover the possession only if the condition of handing over the possession to the landlord is satisfied by the tenant at the first instance. Therefore, subsection (2) imposes a duty upon the tenant to implement the order of the Court, both in a spirit and letter, and to handover the possession of the suit property to the landlord. It is only after the tenant has fulfilled his part of the duty that the landlord is duty bound to repair, to rebuild or to build and handover the possession back to the tenant. Therefore, an interference can be drawn that in case the tenant fails to handover the possession to the landlord within the stipulated period specified by the Court, the landlord is not duty bound to complete the work of repair or building or rebuilding and to handover the suit property back to the tenant.

15. Sub-section (3) has to be read in the light of Subsection (2). Even Sub-section (3) begins with the words If, after the tenant has delivered possession on or before the date specified in the order, the landlord fails to commence the work or repairs or re-building within one month of the specified date or fails to complete the work in a reasonable time, or having the completed the work, fails to place the tenant in occupation of the premises in accordance with the subsection (2), the tenant is entitled to move an application before the Court for seeking a direction to the landlord to place the tenant in occupation of the premises or part thereof or to pay

to the tenant such compensation being an amount not less than three times of the standard rent of the premises as Court thinks fit ?.

16. Therefore, before a tenant is entitled to seek the relief of re-possessing the suit property, from the Court, the prerequisite condition is that he/she must have delivered the possession of the suit property to the landlord on or before the date specified in the order for the purpose of repair, building or rebuilding ?. If the tenant fails to do so, then naturally he cannot take the benefit of Section 36(3) of the New Act.

17. Admittedly, in the present case, not only the respondent-tenants failed to handover the possession of the suit property to the petitioner, within the stipulated period of six months granted by this Court, but, also forced the petitioner to seek help of the Court on the filing the execution case and to seek the help of the police in re-possessing the suit property. Therefore, clearly, the respondent-tenants had fail to carry out the duty as imposed by Section 36(2) of the New Act. Since, they had failed to adhere to the direction of this Court, since they had failed to perform their duty, the respondent-tenants cannot be given the benefit of Section 36(3) of the New Act.

18. In case the tenants are permitted to defy the order of the Court, and yet be permitted to seek the repossession of the suit property, such an interpretation of the law would only motivate the tenants to commit contempt of Court. Thus, such an interpretation, would certainly be an absurd one. Therefore, such interpretation is clearly untenable. A person cannot be permitted to take the benefit of his own fault. Therefore, a tenant who violates the order passed by the Court, cannot be permitted to take the benefit of his own wrong for having violated the order of the Court; the tenant must necessarily lose the benefit given under Section 36 of the New Act.

19. Therefore, the learned Judge is not justified in concluding that the right of the tenant would remain intact to receive the possession of the suit property, as the right is protected by Section 36(3) of the New Act. Such an interpretation is obviously against the tenor and spirit of Section 36 of the New Act.

20. For the reasons stated above, this petition is hereby allowed. The Order dated 29/11/2008, passed by the Additional District and Sessions Judge, Dharwad, sitting at Hubli is set aside. The order dated 28/2/2005 passed in RCA No. 31/02 passed by the II Additional Civil Judge and JMFC, II, Hubli is restored.

21. No order as to costs.

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