

Naseera, vs S.a.Sahitha,

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Court : Kerala

Decided On : Feb-15-2023

Judge : Honourable Mr. Justice Anil K.Narendran,Honourable Mr.Justice P.G. Ajithkumar

Appeal No. : RP/847/2022

Appellant : Naseera,

Respondent : S.a.Sahitha,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN & THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR WEDNESDAY, THE 15TH DAY OF FEBRUARY 2023 / 26TH MAGHA, 1944 REVIEW PETITION NO. 847 OF 2022 AGAINST THE JUDGMENT DATED 01.06.2022 IN R.C.Rev. REVIEW PETITIONERS:

1 NASEERA, AGED 58 YEARS, W/O. LATE SALI HAJEE, BEKAL KUNNEL, PALLIKKARA VILLAGE, HOSDURG TALUK., KASARAGOD DISTRICT, PIN -671316. 2 FAIZAL. K.M., S/O. LATE SALI HAJEE, AGES 41 YEARS, BEKAL KUNNEL, PALLIKKARA VILLAGE,

HOSDURG TALUK, KASARAGOD DISTRICT. 3 ABDUL NAZER. K.M., S/O. LATE SALI HAJEE, AGED 34 YEARS, BEKAL KUNNEL, PALLIKKARA VILLAGE, HOSDURG TALUK, KASARAGOD DISTRICT. 4 MUHAMMED SHAFEEQUE. K.M., S/O. LATE SALI HAJEE, AGED 31 YEARS, BEKAL KUNNEL, PALLIKKARA VILLAGE, HOSDURG TALUK, KASARAGOD DISTRICT. 5 RABIYA. K.M., D/O. LATE SALI HAJEE, AGED 31 YEARS, BEKAL KUNNEL, PALLIKKARA VILLAGE, HOSDURG TALUK, KASARAGOD DISTRICT. 6 FAREEDA. K.M., S/O. LATE SALI HAJEE, AGED 34 YEARS,, BEKAL KUNNEL, PALLIKKARA VILLAGE, HOSDURG TALUK, KASARAGOD DISTRICT.

7 MOHAMEDALI. K.M., S/O. LATE SALI HAJEE, AGED 5YEARS,, BEKAL KUNNEL, PALLIKKARA VILLAGE, HOSDURG TALUK, KASARAGOD DISTRICT. BY ADV KODOTH SREEDHARAN RESPONDENT: S.A.SAHITHA, AGED 50 YEARS D/O K.S. ABDULLAKUNHI, PROPRIETOR, A.K. BROTHERS, OPP. LIC OFFICE, KANHANGAD, HOSDURG TALUK, KASARAGOD DISTRICT, PIN 671316. SRI T.R.HARIKUMAR- RESPONDENT THIS REVIEW PETITION HAVING COME UP FOR FINAL HEARING ON 09.01.2023, THE COURT ON 15.02.2023 DELIVERED THE FOLLOWING:

ORDER

P.G. Ajithkumar, J.

The respondents in R.C.Rev.No.434 of 2017 are the petitioners. As per the order dated 01.06.2022, the R.C.Rev. was allowed. In this petition filed under Section 114 read with

Order XLVII, Rules 1 and 2 of the Code of Civil Procedure,

1908 the petitioners seek to review that order.

2. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent.

3. R.C.Rev.No.434 of 2017 arose on the judgment

dated 13.10.2017 in R.C.A.No.6 of 2016 of the Rent Control

Appellate Authority (District Judge), Kasaragod and the order

dated 23.03.2016 in R.C.P.No.15 of 2012 of the Rent Control Court (Munsiff), Hosdurg. R.C.P.No.15 of 2012 was filed seeking eviction under Sections 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965. The Rent Control Court dismissed the petition. The petitioners carried the matter in appeal and the Appellate Authority in R.C.A.No.6 of 2016 ordered eviction under Section 11(3) of the Act by allowing the appeal. The order of the Rent Control Court rejecting the plea for eviction under Section 11(2)(b) of the Act was confirmed. The respondent filed R.C.Rev.No.434 of 2017 before this Court challenging the said judgment. The revision was allowed holding that the need urged by the respondents was not bona fide for the reason that no non- occupation of room No.1366 was not properly explained. It was further found that when such a vacant room was available, the plea for eviction by the petitioners herein was hit by the first proviso to Section 11(3) of the Act.

4. The petitioners would contend that room No.1366

got vacated after the commencement of this eviction proceedings and that being a subsequent event could not be a reason for declining eviction. The finding in that regard in the order dated 01.06.2022 is said to be an error. The learned counsel appearing for the petitioner places reliance on the decisions in Rameshwar and others v. Jot Ram and others [(1976) 1 SCC 194], Speed Line Agencies v. T.Stanes Company [(2010) 6 SCC 257] and Riyas v. Mohammed Nazer [2018 (1) KLT 754] in order to fortify his contention that, in the facts and circumstances of this case, such a subsequent event should not have been taken cognizance of for declining eviction.

5. In Rameshwar (supra) the question was relating

to the right of a tenant to purchase land owner's right under the Punjab Security of Land Tenures Act, 1953. The landowner was found to be a large landowner and therefore the tenant's right to purchase was upheld. During pendency of appeal the land owner died and on fragmentation of the land, the legal representatives individually became small landowners. They contend that the right of the tenants to purchase the ownership of the landlord was lost. Declining that contention, the Apex Court held,-

9. The impact of subsequent happenings may now be spelt out. First, its bearing on the right of action, second, on the nature of the relief and third, on its impotence to create or destroy substantive rights. Where the nature of the relief, as originally sought has become obsolete or unserviceable or a new form of

relief will be more efficacious on account of developments subsequent to the suit or even during the appellate stage, it is but fair that the relief is moulded, varied or reshaped in the light of updated facts. *Patterson v. State of Alabama* [1934 (294) US 600. 607], illustrates this position. It is important that the party claiming the relief or change of relief must have the same right from which either the first or the modified remedy may flow. Subsequent events in the course of the case cannot be constitutive of substantive rights enforceable in that very litigation except in a narrow category (later spelt out) but may influence the equitable jurisdiction to mould reliefs. Conversely, where rights have already vested in a party, they cannot be nullified or negated by subsequent events save where there is a change in the law and it is made applicable at any stage. *Lachmeshwar Prasad v. Keshwar Lal* [1940 FCR 84 : AIR 1941 FC 5] falls in this category. Courts of justice may, when the compelling equities of a case oblige them, shape reliefs cannot deny rights - to make them justly relevant in the updated circumstances Where the relief is discretionary, courts may exercise this jurisdiction to avoid injustice. Likewise, where the right to the remedy depends, under the statute itself, on the presence or absence of certain basic facts at the time the relief is to be ultimately granted, the Court,

even in appeal, can take note of such supervening facts

with fundamental impact. Venkateswarlu, AIR 1979 8C 1409 read in its statutory setting, falls in this category. Where a cause of action is deficient but later events

have made up the deficiency, the Court may, in order

to avoid multiplicity of litigation, permit amendment and continue the proceeding, provided no prejudice is caused to the other side. All these are done only in exceptional situations and just cannot be done if the statute, on which the legal proceeding is based, inhibits, by its scheme or otherwise such change in cause of action or relief. The primary concern of the court is to implement the justice of the legislation. Rights vested by virtue of a statute cannot be divested by this equitable doctrine See Choklingam Chetty [54 Mad LJ 88 : AIR 1927 PC 252]. The law stated in Ramji Lal v. State of Punjab [ILR (1986) 2 Punj 125 : AIR 1986 Punj 374 FB] is sound : "Courts do very often take notice of events that happen subsequent to the filing of suits and at times even those that have occurred during the appellate stage and permit pleadings to be amended for including a prayer for relief on the best of such events but this is ordinarily done to avoid multiplicity of proceedings or when the original relief claimed has, by reason of change in the circumstances, become inappropriate and not when the plaintiffs, suit would be

wholly displaced by the proposed amendment (see Steward v. The North Metropolitan Tramways Company [(1886) 16 QBD 178] and a fresh suit by him would be so barred by limitation." One may as well add that while taking cautious judicial cognisance of 'post natal' events, even for the limited and exceptional purposes explained earlier; no court will countenance a party altering, by his own manipulation, a change in situation and plead for relief on the altered basis.

6. In Speed Line Agencies (supra) the Apex Court

dealt with a case where a company was the tenant, and amalgamation was the cause of action for the landlord to sue the tenant company for eviction on the ground of subletting without the consent of the landlord. The petition by the landlord for eviction of the tenant was filed on 03.04.1987. The Rent Control Court ordered eviction on 09.04.1992. The appeal of the tenant was disposed of by the Appellate Authority on 10.04.2003. The Apex Court held that the cause of action has no relation to amalgamation, irrespective of whether it is prior or subsequent to the filing of the application for eviction. On that premises, the Apex Court further held that rights of the landlord are to be determined as on the date of the application for eviction.

7. This Court in *Riyas* (supra) held that the subsequent events having a fundamental impact on the bona fides of the need alone could be looked into during the pendency of the proceedings including appeal.

8. In none of the said decisions, it was enunciated as

an abstract principle that in no circumstances shall subsequent events be taken into consideration in litigations claiming eviction. Of course, if the right to get vacant possession of the landlord is matured on the date of filing of the petition and facts and circumstances on the said date alone are to be the basis for deciding that right, subsequent events shall not be taken into account. It is also explicit that a fact that has a fundamental impact on the claim for eviction shall certainly be taken into account.

9. In the *R.C.Rev.* one of the questions was whether

getting vacant possession of room No.III/1366 by the petitioners subsequent to the date of filing of *R.C.P.No.15* of 2012 satisfied their need and affected their bona fides in claiming eviction of the respondent. That question was considered in the light of the decisions of the Apex Court in *Ramesh Kumar v. Kesho Ram* [AIR 1992 SC 700], *Maganlal Kishanlal Godha v. Nanasaheb Uddhaorao Gadewar* [(2008) 13 SCC 758] and *Kedar Nath Agrawal v. Dhanraji Devi* [(2004) 8 SCC 76] and also the decision of this Court in *Gireeshbabu T.P. v. Jameela and others* [2021 (5) KHC SN 30]. After considering the facts that emerged from the materials

on record in the light of the law

laid down in the aforementioned decisions, this Court held

that subsequent events have a bearing on the relief claimed by the petitioners. Therefore, it was not without considering the question relating to the impact of the subsequent event of getting vacant possession of room No.1366 by the petitioners, the order dated 01.06.2022 was rendered.

10. In *Meera Bhanja v. Nirmala Kumari Choudhury*

[(1995) 1 SCC 170] the Apex Court held that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII, Rule 1 of the Code.

11. In *Parsion Devi v. Sumitri Devi* [(1997) 8 SCC 715] the Apex Court, in the context of the power of review

under Order XLVII, Rule 1 of the Code held that, a judgment

may be open to review *inter alia* if there is a mistake or an error apparent on the face of the record. An error that is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order XLVII, Rule 1 of the Code. In the exercise of the jurisdiction under Order XLVII, Rule 1 of the Code, it is not permissible for an erroneous decision to be reheard and corrected. A review petition has a limited purpose and cannot be allowed to be an appeal in disguise.

12. In *Lily Thomas v. Union of India* [(2000) 6

SCC 224] the Apex Court reiterated that, the power of review can be exercised for correction of a mistake but not to substitute a view. The review cannot be treated as an appeal in disguise. The mere possibility of two views on the subject is not a ground for review.

13. In *Anantha Reddy N. v. Anshu Kathuria*

[(2013) 15 SCC 534] the Apex Court held that, the review jurisdiction is extremely limited and unless there is mistake apparent on the face of the record, the order/judgment does not call for a review. The mistake apparent on record means that the mistake is self-evident, needs no search and stares at its face. Surely, review jurisdiction is not an appeal in disguise. The review does not permit the rehearing of the matter on merits.

14. The learned counsel for the respondent brought to our notice the decision of the Apex Court in *S.Madhusudhan Reddy v. V.Narayana Reddy and others* [2022 SCC OnLine SC 1034 : 2022 (5) KLT SN 18] wherein it was

held as follows:-

26. As can be seen from the above exposition of law, it has been consistently held by this Court in several judicial pronouncements that the Courts jurisdiction of review, is not the same as that of an appeal. A

judgment can be open to review if there is a mistake or

an error apparent on the face of the record, but an error that has to be detected by a process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise its powers of review under Order XLVII Rule 1 CPC. In the guise of exercising powers of review, the Court can correct a mistake but not substitute the view taken earlier merely because there is a possibility of taking two views in a matter. A judgment may also be open to review when any new or important matter of evidence has emerged after passing of the judgment, subject to the condition that such evidence was not within the knowledge of the party seeking review or could not be produced by it when the order was made despite undertaking an exercise of due diligence. There is a clear distinction between an erroneous decision as against an error apparent on the face of the record. An erroneous decision can be

corrected by the Superior Court, however, an error apparent on the face of the record can only be corrected by exercising review jurisdiction. Yet another circumstance referred to in

Order XLVII Rule 1 for reviewing a judgment has been

described as for any other sufficient reason. The said phrase has been explained to mean a reason sufficient on grounds, at least analogous to those specified in the rule (Refer: Chajju Ram v. Neki Ram [AIR 1922 PC 112] and Moran Mar Basselios Catholicos and another v. Most Rev. Mar Poulouse Athanasius and others [1855 SCR 520]).

15. In the light of the law laid down in the aforesaid

decisions, the grounds urged by the petitioners are insufficient for a review. The learned counsel for the petitioners would submit that the more probable view, in the

**facts and circumstances of the case, would have been to
order eviction. The mere possibility of two views on the**

subject is not a ground for review. In the exercise of the review jurisdiction, one view cannot be substituted by another view. In such circumstances, we are of the view that this Review Petition is devoid of merits and hence it is dismissed. Sd/- ANIL K. NARENDRAN, JUDGE Sd/- P.G. AJITHKUMAR, JUDGE dkr

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