

Unaiza, vs Hussain,

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Court : Kerala

Decided On : Aug-03-2022

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

Appeal No. : RCRev./118/2022

Appellant : Unaiza,

Respondent : Hussain,

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 3RD DAY OF AUGUST 2022 / 12TH SRAVANA, 1944 R.C.REV. NO. 118 OF 2022 AGAINST THE ORDER DATED 24.03.2022 IN R.C.A.NO.33 OF 2019 OF THE RENT CONTROL APPELLATE AUTHORITY (ADDITIONAL DISTRICT JUDGE-VI), KOLLAM AND THE ORDER DATED 22.08.2019 IN I.A.NO.750 OF 2019 IN BRC(OP) NO.10 OF 2015 OF THE RENT CONTROL COURT (MUNSIFF), KARUNAGAPPALLY REVISION PETITIONERS:

1 UNAIZA, AGED 43 YEARS, W/O. SHAMEEM, SHAMEEM MANZIL, CHULLIMANNOOR (PO), PANA VOOR VILLAGE, NEDUMANGAD - 695 541. 2 SHABANA, W/O. ABDUL SALAM, KOLLAVANA HOUSE, KAKKAZHAM (PO), AMBALAPUZHA, ALAPUZHA - 688 561. 3 SUMAYYAMOL, W/O. MUHAMMED SAJITH, PLAMOOTTIL HOUSE, THOTTUMBHAGAM, KANJIRAPPALLY, KOTTAYAM - 686 555. 4 AMEENA H.Y., W/O. UNAIS, KUTTIYIL KIZHAKKATHIL, OACHIRA, KRISHNAPURAM VILLAGE, KARUNAGAPPALLY - 690 533. BY ADVS. K.SASIKUMAR S.ARAVIND P.S.RAGHUKUMAR

RESPONDENTS: 1 HUSSAIN, S/O. MYTHEENKUNJU, K.P. HOUSE, WARD NO. XIV, HOUSE NO. 468, PALLISSERICKAL, SATHAMCOTTA VILLAGE, KUNNATHUR TALUK - 690 521. 2 ASHIK S/O. ABDUL SALAM, HOUSE NO. XI-4, KRISHNAPURAM GRAMA PANCHAYAT , KRISHNAPURAM VILLAGE, KARTHIKAPPALLY TALUK - 690 533. BY ADV K.G.BINDU THIS RENT CONTROL REVISION HAVING COME UP FOR FINAL HEARING ON 25.06.2022, THE COURT ON 03.08.2022 DELIVERED THE FOLLOWING:

ORDER

Ajithkumar, J.

The revision petitioners are the legal representatives of the

deceased original tenant in BRC(OP) No.10 of 2015 on the file of the Rent Control Court (Munsiff), Karunagappally. The Rent Control Petition was filed by the respondents-landlords seeking eviction of the petitioner from the petition schedule shop room under Sections 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965. In that Rent Control Petition, the Rent Control Court passed an ex-parte order on 14.03.2019.

2. The tenant filed I.A.No.750 of 2019 before the Rent

Control Court invoking the provisions under Rule 13(3) of the Kerala Buildings (Lease and Rent Control) Rules, 1979, read with Section 151 of the Code of Civil Procedure, 1908, seeking an order to set aside the exparte order of eviction dated 14.03.2019. That application was opposed by the landlords by filing objection. Thereafter, considering the rival contentions, the Rent Control Court, by order dated 22.08.2019 dismissed I.A.No.750 of 2019 in BRC(OP) No.10 of 2015.

3. The revision petitioners filed R.C.A.No.33 of 2019

before the Rent Control Appellate Authority (Additional District Judge-VI), Kollam challenging the order dated 22.08.2019 of the Rent Control Court in I.A.No.750 of 2019, invoking the provisions under Section 18(1)(b) of the Act. That appeal ended in dismissal by the judgment dated 24.03.2022, confirming the order dated 22.08.2019 passed by the Rent

Control Court in I.A.No.750 of 2019. Thereafter, the petitioners has approached this Court in this Rent Control Revision invoking the provisions under Section 20 of the Act, challenging the judgment dated 24.03.2022 of the Rent Control Appellate Authority in R.C.A.No.33 of 2019 and also the order of the Rent Control Court dated 22.08.2019 in I.A.No.750 of 2019 in BRC(OP) No.10 of 2015.

4. Heard the learned counsel appearing for the petitioners-tenants and also the learned counsel appearing for the respondents-landlords.

5. The issue that arises for consideration in this Rent Control Revision is as to whether any interference is warranted on the judgment/orders of the authorities below in exercise of the revisional jurisdiction of this Court under Section 20 of the Act.

6. Section 20 of the Kerala Buildings (Lease and Rent Control) Act deals with revision. As per sub-section (1) of

Section 20, in cases, where the appellate authority empowered under Section 18 is a Subordinate Judge, the District Court, and in other cases the High Court, may, at any time, on the application of any aggrieved party, call for and examine the records relating to any order passed or proceedings taken under this Act by such

authority for the purpose of satisfying itself as to the legality, regularity or propriety of such order or proceedings, and may pass such

order in reference thereto as it thinks fit. As per sub-section

(2) of Section 20 of the Act, the costs of and incident to all proceedings before the High Court or District Court under sub- section (1) shall be in its discretion.

7. In *Rukmini Amma Saradamma v. Kallyani Sulochana* [(1993) 1 SCC 499], the scope of revisional

powers of the High Court under Section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965 came up for consideration before the Three-Judge Bench of the Apex Court. While considering whether the High Court could have re-appreciated entire evidence, the Apex Court held that, even the wider language of Section 20 of the Act cannot enable the High Court to act as a first or a second court of appeal. Otherwise, the distinction between appellate and revisional jurisdiction will get obliterated. Hence, the High Court was not right in re-appreciating the entire evidence both oral or documentary in the light of the Commissioner's report. The High Court had travelled far beyond the revisional jurisdiction. Even by the presence of the word propriety it cannot mean that there could be a re-appreciation of evidence. Of course, the revisional court can come to a different conclusion but not on a re-appreciation of evidence; on the contrary, by confining itself to legality, regularity and propriety of the order impugned before it.

8. In *T. Sivasubramaniam v. Kasinath Pujari*

[(1999) 7 SCC 275] the Apex Court held that, the words to satisfy itself employed in Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 no doubt is a power of superintendence, and the High Court is not required to interfere with the finding of fact merely because the High Court is not in agreement with the findings of the courts below. It is also true that the power exercisable by the High Court under Section 25 of the Act is not an appellate power to reappraise or reassess the evidence for coming to a different finding contrary to the finding recorded by the courts below. But where a finding arrived at by the courts below is

based on no evidence, the High Court would be justified in interfering with such a finding recorded by the courts below.

9. In *Ubaiba v. Damodaran* [(1999) 5 SCC 645]

the Apex Court considered the exercise of revisional power by the High Court, under Section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965, in the context of an issue as to whether the relationship of landlord-tenant existed or not. It was urged that whether such relationship existed would be a jurisdictional fact. Relying on the decision in

Rukmini Amma Saradamma it was contended that, however wide the jurisdiction of the revisional court under Section 20 of the Act may be, it cannot have jurisdiction to re- appreciate the evidence and substitute its own finding upsetting the finding arrived at by the appellate authority. The Apex Court held that, though the revisional power under Section 20 of the Act may be wider than Section 115 of the Code of Civil Procedure, 1908 it cannot be equated even with the second appellate power conferred on the civil court under

the Code. Therefore, notwithstanding the use of the expression propriety in Section 20 of the Act, the revisional court will not be entitled to re-appreciate the evidence and substitute its own conclusion in place of the conclusion of the appellate authority. On examining the impugned judgment of the High Court, in the light of the aforesaid ratio, the Apex Court held that the High Court exceeded its jurisdiction by re-

appreciating the evidence and in coming to the conclusion

that the relationship of landlord-tenant did not exist.

10. In *Hindustan Petroleum Corporation Limited*

v. Dilbahar Singh [(2014) 9 SCC 78] a Five-Judge Bench of the Apex Court considered the revisional powers of the High Court under Rent Acts operating in different States. After

referring to the law laid down in Rukmini Amma Saradamma the Apex Court reiterated that even the wider language of Section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965 does not enable the High Court to act as a first or a second court of appeal. The Constitution Bench agreed with the view of the Three-Judge Bench in Rukmini Amma Saradamma that the word propriety does not confer power upon the High Court to re-appreciate evidence to come to a different conclusion, but its consideration of evidence is confined to find out legality, regularity and propriety of the

order impugned before it.

11. In Thankamony Amma v. Omana Amma [AIR 2019 SC 3803 : 2019 (4) KHC 412] considering the matter in the backdrop of law laid down in Rukmini Amma Saradamma, Ubaiba and Dilbahar Singh the Apex Court

held that the findings rendered by the courts below were well

supported by evidence on record and could not even be said to be perverse in any way. The High Court could not have re- appreciated the evidence and the concurrent findings rendered by the courts below ought not to have been interfered with by the High Court while exercising revisional jurisdiction.

12. As already noticed herein-before, BRC(OP) No.10 of

2015 is one filed by the respondents-landlords seeking eviction of the original tenant from the petition schedule shop room, under Sections 11(2)(b) and 11(3) of the Act, on the ground of arrears of rent and bona fide need. In that Rent

Control Petition, the tenant raised a preliminary issue disputing the landlord-tenant relationship. That issue was decided against the original tenant by the order of the Rent Control Court dated 07.08.2017. The petitioner filed O.P.(RC) No.36 of 2019 before this Court challenging legality and correctness of the said order. While so, BRC(OP) No.10 of 2015 was listed for trial. The original tenant has filed

I.A.No.602 of 2019 before the Rent Control Court to remove the case from the list. But the court did not allow that application. Since the original tenant did not

participate in the trial, he was set exparte and an order of eviction was passed.

13. The learned counsel appearing for the petitioners

would contend that when the order of the Rent Control Court on the question raised by the petitioners regarding the landlord-tenant relationship was pending consideration of this Court, it was not possible for the petitioners to submit to the jurisdiction of the Rent Control Court by participating in the trial. It was for that reason the original tenant could not

appear before the court and in such circumstances, I.A.No.750 of 2019 should have been allowed by the Rent Control Court.

14. The Rent Control Court as well as the Appellate

Authority took the incidents transpired in the case till it was taken up for trial and held that the tenant in order to protract the matter only, I.A.No.750 of 2019 was filed. Both the authorities below accordingly held concurrently that there was no sufficient reason to set aside the order dated 13.03.2019.

15. BRC(OP) No.10 of 2015 was listed for trial on an

earlier occasion and the tenant did not turn up resulting in passing of an exparte order of eviction on 08.02.2018. At that time, the petition filed by the petitioner, I.A.No.735 of 2018 was allowed.

16. In the meantime, a petition under Section 12 of the

Act was filed by the respondent. In that petition, the Rent Control Court has directed the petitioner to pay the admitted arrears of rent. But that order was not complied with. However, the Rent Control Court did not proceed to pass any

order under Section 12(3) of the Act, instead proceeded to

hold a trial in the BRC(OP), for which the case was posted to 13.03.2019. But the petitioner remained absent and his counsel did not chose to cross-examine PW1, who was examined on the side of the respondents.

17. It was in such circumstances that the Rent Control Court passed an ex-parte order of eviction dated 13.03.2019 in BRC(OP) No.10 of 2015. The said order was sought to be

set aside by filing I.A.No.750 of 2019 invoking the provisions under Rule 13(3) of the Rules, which ended in dismissal. The appeal filed by the petitioner before the Appellate Authority against the order dated 22.08.2019 in I.A.No.750 of 2019 as R.C.A.No.33 of 2019 is also ended in dismissal.

18. As discernible from the impugned orders/

judgments of the authorities below, it is evident that the attempt of the tenant was only to protract the proceedings initiated based on the Rent Control Petition filed in the year

2015. After considering the pleadings and materials on record,

the authorities below have arrived at a conclusion that the exparte order of eviction is not liable to be interfered with either under Rule 13(3) of the Rules or under Section 18(1)

(b) of the Act. The said findings are supported by sufficient

reasons. It is seen that O.P.(RC) No.36 of 2019 was dismissed on 08.10.2021. At any rate, pendency of O.P.(RC) No.36 of 2019 was not a justification for the petitioner not to attend the court when the BRC(OP) No.10 of 2015 was taken up for trial. In the circumstances, the findings of the courts below

that the object of the tenant was nothing but to protract the eviction proceedings, do not suffer from any infirmity. We are of the view that the said findings of the court below are neither perverse nor patently illegal warranting interference of this Court in exercise of the revisional jurisdiction under Section 20 of the Act.

This Rent Control Revision fails and the same is accordingly dismissed. Sd/- ANIL K. NARENDRAN, JUDGE Sd/- P.G. AJITHKUMAR, JUDGE dkr