

Shiyas 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./120/2022

Appellant : Shiyas

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. 120 OF 2022 AGAINST THE JUDGMENT DATED 31.03.2022 IN R.C.A.NO.31 OF 2019 OF THE RENT CONTROL APPELLATE AUTHORITY (ADDITIONAL DISTRICT JUDGE-VI), KOZHIKODE AND THE ORDER DATED 14.08.2019 IN I.A.NO.628 OF 2019 IN BRC(OP) NO.9 OF 2015 OF THE RENT

CONTROL COURT (MUNSIFF), Ka RUNAGAPPALLY REVISION PETITIONER: SHIYAS AGED 46 YEARS, S/O. AHAMMED KOYA,

SATHAR STORES, MAIN ROAD, OACHIRA (PO), OACHIRA VILLAGE, KARUNAGAPPALLY - 690 526. 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, SASTHAMCOTTA VILLAGE, KUNNATHUR TALUK - 690 521. 2 ASHIK S/O. ABDUL SALAM, AISHA BUNGLOW, 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 25.07.2022, THE COURT ON 03.08.2022 DELIVERED THE FOLLOWING:

ORDER

Ajithkumar, J.

The petitioner is the tenant in BRC(OP) No.9 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 26.02.2019.

2. The tenant filed I.A.No.628 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 26.02.2019. That application was opposed by the landlords by filing an objection. Thereafter, considering the rival contentions, the Rent Control Court, by order dated 14.08.2019 dismissed I.A.No.628 of 2019 in BRC(OP) No.9 of 2015.

3. The tenant filed R.C.A.No.31 of 2019 before the

Rent Control Appellate Authority (Additional District Judge-II), Kollam challenging the order dated 14.08.2019 of the Rent Control Court in I.A.No.628 of 2019, invoking the provisions under Section 18(1)(b) of the Act. That appeal ended in dismissal by the judgment dated 31.03.2022, confirming the

order dated 14.08.2019 passed by the Rent Control Court in

I.A.No.628 of 2019. Thereafter, the tenant has approached this Court in this Rent Control Revision invoking the provisions under Section 20 of the Act, challenging the judgment dated 31.03.2022 of the Rent Control Appellate Authority in R.C.A.No.31 of 2019 and also the order of the Rent Control Court dated 14.08.2019 in I.A.No.628 of 2019 in BRC(OP) No.9 of 2015.

4. Heard the learned counsel appearing for the petitioner-tenant 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.9 of

2015 is one filed by the respondents-landlords seeking eviction of the petitioner-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 petitioner by the order of the Rent Control Court dated 04.02.2019. The petitioner filed O.P.(RC) No.43 of 2019 before this Court challenging legality and correctness of the said order. While so, BRC(OP) No.9 of 2015 was listed for trial. The petitioner has filed I.A.No.289 of 2019 before the

Rent Control Court to remove the case from the list. But the court did not allow that application. Since the petitioner did not participate in the trial, he was set exparte and an order of eviction was passed.

13. The learned counsel appearing for the petitioner

would contend that when the order of the Rent Control Court on the question raised by the petitioner regarding the landlord-tenant relationship was pending

consideration of this Court, it was not possible for the petitioner to submit to the jurisdiction of the Rent Control Court by participating in the trial. It was for that reason the petitioner could not appear before the court and in such circumstances, I.A.No.628 of 2019 should have been allowed by the Rent Control Court.

14. The Rent Control Court as well as the Appellate

Authority after considering the incidents transpired in the case till it was taken up for trial, took the view that the petitioner for protracting the matter only, I.A.No.628 of 2019 was filed. Both the authorities below accordingly held concurrently that there was no sufficient reason to set aside the order dated 26.02.2019.

15. As discernible from the impugned orders/ judgments

of the authorities below, it is evident that the attempt of the petitioner 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 set aside 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.43 of 2019 was dismissed on 08.10.2021. At any rate, pendency of O.P.(RC) No.43 of 2019 was not a justification for the petitioner not to attend the court when the BRC(OP) No.9 of 2015 was taken up for trial. In the circumstances, the findings of the courts below that object of the petitioner 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