

**S. Vasanthakumar Vs. Mohammed Ariff and anr.**

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**Court :** Karnataka

**Decided On :** Feb-26-2003

**Reported in :** 2003(4)KarLJ126

**Judge :** D.V. Shylendra Kumar, J.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 144 and 151 - Order 9, Rule 13

**Appeal No. :** House Rent Revision Petition No. 644 of 2002

**Appellant :** S. Vasanthakumar

**Respondent :** Mohammed Ariff and anr.

**Advocate for Pet/Ap. :** S. Gangadhara Aithal, Adv.

**Disposition :** Revision petition dismissed

**Judgement :**

ORDER

**D.V. Shylendra Kumar, J.**

1. This house rent revision petition under Section 46(1) of the Karnataka Rent Act, 1999 is by a purchaser of a tenanted property in respect of which the erstwhile landlord/owner had obtained an ex parte order of eviction against his tenant. The

eviction order had been executed, possession taken and the property sold to the present revision petitioner who claims that he has been put in possession pursuant to the purchase of the property.

2. The tenant who had suffered an ex parte eviction order, filed a miscellaneous case for setting aside the ex parte order on the premise that he had not been duly served and a fraud had been played upon him. The Court that had heard the matter, allowed the miscellaneous petition and set aside the eviction and the original petition was restored to file. The tenant later on filed Misc. No. 97 of 1997 for restitution of his possession under Section 144 read with Section 151 of the CPC. In the said miscellaneous petition, an application was also filed for immediate delivery of the possession of the premises under Section 151 of the CPC. The application appears to have been allowed earlier. The present revision petitioner, being aggrieved by this order, had preferred a revision petition before this Court. The learned Counsel for the petitioner submits that revision petition came to be allowed on the ground that the order had been passed without notice to the revision petitioner and accordingly the matter was remanded to the Trial Court to consider the application afresh after hearing the revision petitioner before the Court.

3. The matter having been remanded for the purpose of hearing the interim application which had been filed by the petitioner in Misc. No. 97 of 1997 of immediate re-delivery of possession even during the pendency of the main petition, the Trial Court considering the objections filed by the second respondent and also hearing the second respondent who had claimed that he was in possession of the premises after purchasing the same from the erstwhile owner and that he was not aware of the earlier eviction proceedings and the alleged dispossession, again allowed the application as per the impugned order dated 17-8-2002. It is aggrieved by this order, the present revision petition is filed.

4. Sri Gangadhara Aithal, learned Counsel for the revision petitioner makes a solitary but substantive submission that the Court below committed an error in granting the relief which the petitioner in Misc. No, 97 of 1997 could have got only after the main petition itself is disposed of and if it has to be allowed by way of an

order passed on an interlocutory application during the pendency of such a main petition. Learned Counsel submits that an order of this nature should have been passed only after proper enquiry and only after the Court had found occasion to allow the miscellaneous petition and not otherwise. Passing of an order of this nature even at this stage will cause great hardship and injustice to the revision petitioner.

5. I have given my anxious consideration to this submission made by the learned Counsel for the petitioner. In law, there is no impediment for passing an order which the Trial Court has passed though normally Courts will be very slow in passing such orders or granting a relief at an interlocutory stage, which relief the party may get only if the main matter itself is to be ultimately ordered in favour of such party.

6. This is essentially a matter which is in the discretion of the Court and except in a rarest of rare occasion the Court may not venture to grant a relief at an earlier stage which relief can be granted to the party at the disposal of the case which is the main relief itself. But, if the circumstances so warrant and justify, the Court in its wisdom and in its discretion, and in the ends of justice, may grant such a relief. Prima facie, in the present case the petitioner in Misc. No. 97 of 1997 had suffered an ex parte order of eviction even without notice and he had been thrown out unceremoniously. It is indeed into such a premise the present revision petitioner had got into. The plea of hardship and injustice raised on behalf of the present revision petitioner a fortiori applies to the first respondent who had himself suffered such an order earlier and had been evicted. The order does not in any way render the main matter infructuous inasmuch as if ultimately the miscellaneous petitioner is not successful in claiming the relief that he had sought for, earlier status will have to be restored. The revision petitioner himself had got into possession of the premises under fortuitous circumstances and during the period when his vendor had got into possession of the premises by executing an ex parte eviction order as against his tenant and before the tenant could realise as to what had happened and move the Court with an application for setting aside the ex parte order that was passed against him.

7. In such circumstances, I am not inclined to interfere with the impugned order.

8. Revision petition is dismissed.

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