

Kothari Intergroup Ltd. Vs. Baldev

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Court : Karnataka

Decided On : Jul-29-1994

Reported in : ILR1994KAR2456; 1994(3)KarLJ538

Judge : Vasanthakumar, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 23, Rule 3; Karnataka Rent Control Act, 1961 - Sections 21(1)

Appeal No. : C.R.P. No. 857 of 1993

Appellant : Kothari Intergroup Ltd.

Respondent : Baldev

Advocate for Def. : C.M. Desai, Adv.

Advocate for Pet/Ap. : H.J. Sanghavi, Adv.

Disposition : Revision petition allowed

Judgement :

ORDER

Vasanthakumar, J.

1. This Revision is directed against the order dated 17-7-93 passed in HRC 1338/91 by the Courts of the Additional Small Causes Bangalore on Interlocutory

Applications numbered as IA No. II and III tiled by the Tenant under Order 23 Rule 3(A) 1 & 2 read with Section 96(B) and Section 151 of the Code of Civil Procedure.

2. Before dealing with the contentions advanced by the Counsel on record, it would be proper to understand the scope of Order 23 Rule 3 under Rent Legislation in force.

It is well settled that where Rent Control and Restriction Acts are in operation, a landlord cannot obtain eviction of the tenant unless he can satisfy the requirements of the provisions in those Acts. The General law of landlord and Tenant to that extent will give way to the Special Act in that behalf. It is also settled that if the Court does not find the permissible grounds for eviction disclosed in the pleadings and other materials, on the record no consent or compromise will give jurisdiction to the Court to pass a valid decree of eviction.

As such one has to look into the decree for eviction that has been passed. If the Court has not applied its mind for the purposes of being satisfied either on the face of the decree or on materials on record to pass a decree on any of admissible grounds then it is open for the aggrieved party to challenge the same as being invalid.

On the other hand if the Court has examined the pleadings, the terms of the compromise as well as evidence on record and resultant order of eviction has been passed then it would not be possible to accede to the submission that Court did not apply its mind to the relevant question that was necessary to be considered at that stage while passing the decree or order thereof.

3. It is well established that if on pleadings and other materials on record make out a prima facie case about the existence of statutory ground for eviction, a compromise decree cannot be held to be invalid.

4. The Court can pass a decree on the basis of compromise. In such a situation, the only thing to be seen is whether the compromise is in violation of the requirement of the law. In other words, parties cannot be permitted to have tenant's eviction merely by agreement without anything more. The compromise

must indicate either on its face or in the background of other materials in the case that the tenant expressly or impliedly is agreeing to suffer a decree for eviction because the landlord in the circumstances is entitled to have such a decree under law.

5. If the agreement or compromise for eviction of the tenant is found on facts of a particular case to be in violation of particular Rent Restriction or Rent Control Act the Court would refuse to record the compromise as it will not be a lawful agreement. If on the other hand, the Court is satisfied on consideration of the terms of the compromise and if necessary by considering them in the context of pleadings and other materials in the case, the Court is bound to record the compromise and pass a decree in accordance therewith, Passing a decree for eviction on adjudication of requisite facts or on their admission in a compromise either express or implied is not different. The object of Order 23 Rule 3, is to enable the Court to give effect to a lawful agreement or compromise. The agreement of compromise recorded under this Rule would result in passing a decree in accordance with terms of compromise in so far as they relate to reliefs sought for. The words 'where it is proved to the satisfaction of the Court' with which the Rule opens impose an obligation on the part of the Court to be satisfied that the matter has been genuinely adjusted.

6. If one party sets up an agreement or compromise whose terms are lawful and other party to such alleged agreement or compromise denies it or alleges that it has been brought about by fraud, undue influence, coercion or misrepresentation as vitiating compromise, then recording of such compromise cannot be said to be lawful agreement and that it was arrived at to the party's free will and consent, it is not intended to sow the seeds of fresh litigation or to leave the contentions raised by the parties to a further suit.

7. Sri H.J. Sanghvi places reliance on the ratio decided by the Supreme Court in the under mentioned cases. IN HIRALAL MOOLCHAND DOSHI v. BAROT RAMAN LAL RANCHHODDAS (dead) by L.Rs. 1. : AIR 1993 SC1449 , the Supreme Court has explained the scope of Order 23 Rule 3 under Rent Restriction Acts while dealing with Bombay Rents, Hotel and Lodging House Rates Control

Act. The relevant observations of the Supreme Court are found at Paras 15 and 19 read thus:-

Para-15: It is clear that whenever there is any lawful agreement the Court is bound to record the agreement or compromise. There is no provision in the Act which made Rule 3 of Order 23 of the Code of Civil Procedure inapplicable to proceedings contemplated by the Act. Nor there is any provision in the Act which prohibits parties entering into a compromise in the suit for eviction filed under the Act.

Para-19: There being no evidence recorded on the merits before the compromise order was passed, the Court had to consider the nature and extent of material on which the Court could be said to have satisfied itself about the existence of the grounds. The Court inferred that there was implied admission in the compromise which provided for payment of arrears of rent by the tenant in respect of the first ground and that the satisfaction of the Court in the matter may be based on an admission made by the tenant. The Court observed (para-26 at pp.476-77 of AIR):-

'From a conspectus of the cases cited at the Bar, the principle that emerges is that if at the time of the passing of the decree, there was some material before the Court, on the basis of which, the Court could be prima facie satisfied about the existence of a statutory ground or eviction, it will be presumed that the Court was so satisfied and the decree for eviction apparently passed on the basis of a compromise would be valid. Such material may take the shape either of evidence recorded or produced in the case, or, it may partly or wholly be in the shape of an express or implied admission made in the compromise agreement itself. Admission, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of -proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are by themselves not

conclusive. They can be shown to be wrong.'

IN BANWARI LAL v. CHANDO DEVI (through L.R) AND ANR. 2. AIR 1993 SCW 354, the Supreme Court has explained the scope of Order 23 Rule 3A of C.P.C. The relevant observations are found at Para-7, which reads as follows:-

'By adding the proviso along with an explanation the purpose and the object of the amending Act appears to be to compel the party challenging the compromise to question the same before the Court which had recorded the compromise in question. That Court was enjoined to decide the controversy whether the parties have arrived at an adjustment in a lawful manner. The explanation made it clear that an agreement or a compromise which is void or voidable under the Indian Contract Act shall not be deemed to be lawful within the meaning of the said Rule, Having introduced the proviso along with the explanation in Rule 3 in order to avoid multiplicity of suit and prolonged litigation, a specific bar was prescribed by R.3A in respect of institution of a separate suit for setting aside a decree on basis of a compromise saying:-

'3A. Bar to suit.- No suit lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.'

8. The trial Court has dismissed the application filed by the tenant under Order 23 Rule 3A of CPC. mainly on the ground of limitation. The trial Court has equated the application filed under Order 23 Rule 3A CPC as being an application seeking review of the order under Section 114 of CPC.

9. Few facts for better appreciation are as stated hereunder:-

One Baldev initiated eviction proceedings against M/s Kothari Inter Group Ltd., under Section 21 (1)(a) and (h) of the Karnataka Rent Control Act 1961 (hereinafter referred to as the Act) proceedings being numbered as H.R.C. 1338/91. The tenant filed statement of objections, conceding the requirements of the landlord under Section 21 (1)(h) of the Act. Further, the parties have filed an application under Order XXIII Rule 3 of CPC. during the pendency of HRC proceedings. Landlord has examined as P.W.1 Tenant also examined one Babulal

Kothari one of the Directors of the tenant's Company as R.W.1.

10. From the perusal of the pleadings, evidence and the compromise petition, the trial Court granted the reliefs sought for by the landlord under Section 21 (1)(h) of the Act. As stated supra, if on the other hand the Court is satisfied on considerations of terms of compromise and if necessary by considering them in the context of pleadings and other materials in the case the Court is bound to record compromise either express or implied is not different. It is this order based on consideration of pleadings, materials and compromise that is challenged by the tenant on the ground that the eviction order that was passed on 22-10-1991 as being a nullity as it is being vitiated by fraud. The application filed by the tenant under Order 23 Rule 3-A is numbered as I.A. III. Sri Sanghvi, Counsel for the tenant, contends that the trial Court has not applied its mind the legal aspects of the case at hand and committed gross error in dismissing, the same on the ground of limitation by applying wrong Article of Limitation to the cause.

11. Sri C.M. Desai, learned Counsel for the respondent, submits that the tenant is not entitled to any sympathetic consideration and that the tenant should not be permitted to agitate the matter over and over again at different stages of proceedings between the parties and the tenant is estopped by the principles of conduct and constructive res judicata. It is submitted that the conduct of the tenant in putting untenable pleas to every stage should not be encouraged, and further he supports the impugned order as being legal.

12. From the records, it could be made out that an eviction order was passed on 22-10-91 based on statement of objections and as well as evidence on record and compromise petition. The trial Court granted 12 months time to the tenant to vacate, with conditions as to payment of rent regularly and in default of payment of rent for three consecutive months, the landlord being entitled to recover possession. Landlord sued out execution proceedings numbered Ex.228/92 and the same was dismissed on 9-9-1992 on the ground that the same as being premature. Subsequently, another execution petition was filed seeking recovery of possession after the expiry of one year proceeding being numbered as Ex.12416/92. The tenant contested the matter, on the ground that the order being

nullity and the same as being inexecutable. During the pendency of the execution proceedings another Director of the Company by name Shantilal Kothari made an application under Order 21 Rules 97, 99 and 101 of CPC., setting up tenancy other than the one pleaded by the landlord and the same was dismissed. In the meanwhile, the tenant filed a Original Suit seeking the following reliefs:-

'i) That the HRC. 1338/91 filed by the defendant against the plaintiff before the XVII Addl. Small causes Judge at Bangalore City on 22-10-1991 the said order is illegal null, void and unexecutable against the plaintiff.

ii) That the plaintiff is not liable to pay rent to the defendant as per the Lease Agreement dated 2-11-87 since the defendant has miserably failed to execute the sale deed.

iii) That there is no jural relationship of Landlord and tenant between the plaintiff and defendant in view of the agreement of sale deed dated 31-10-87 and decree obtained by the defendant in HRC.1338/91 is unexecutable.

iv) To Grant Mandatory injunction thereby directing the defendant to comply with the prayer as per the agreement to sell dated 31-10-87.

v) To execute the Sale deed in respect of the Schedule property in favour of the plaintiff.

Or

The defendant shall return the Advance amount along with Misc. amount along with double the amount of Flat cost i.e., Rs. 800/- per Sq.ft. as liquidated damages to the plaintiff and the same shall be recovered from the defendant through his movable and immovable properties.

vi) To declare that the plaintiff is at liberty and he shall not be liable to pay the rent to the defendant unless he execute the sale deed or pay the damages and grant all other reliefs as this Hon'ble Court deem fit in the ends of justice and equity.'

It is stated that the Original Suit is pending consideration along with application filed under Order 39 Rules 1 and 2 CPC.

11. The tenant once again made an application under Order 21 Rule 29 CPC numbered as I.A.10 seeking stay of execution proceedings on the ground that he has filed Original Suit proceedings challenging the validity of the order passed in the proceedings and further raised a plea of non-existence of jural relationship of landlord and tenant. The trial Court dismissed the application. Thereafter the tenant requested the executing Court to permit him to lead evidence in respect of his objections as to the inexecutability of the eviction order in question. The trial Court refused the request made by the tenant. Tenant being aggrieved preferred a revision before this Court, proceeding being numbered as C.R.P.675/93. On 8-7-93, this Court dismissed the revision petition with an observation that it is open for the tenant to establish his rights in accordance with law. Once again, the tenant made frantic efforts to thwart further proceedings in the execution side by filing an application for stay which was also refused. Thereafter, the tenant has filed two applications one under Order 23 Rule 3A read with Section 151 and another under Section 151 of C.P.C., which have been numbered as I.A.2 and I.A.3. In I.A.2, the tenant has sought for recalling of the order dated 22-10-91 passed in H.R.C. 1338/91 on the ground of fraud having been played by the Counsel on record in filing statements and compromise petition which resulted in the order of eviction and I.A.III tenant sought stay of further proceedings in the pending execution proceedings. The trial Court has dismissed these applications on the ground of limitation. Reliance of ratio decided by this Court in GURAPPA REDDY v. KALAPPA REDDY 3. : ILR 1993 KAR1350 , is not of much assistance in view of the Supreme Court Decision rendered in Banwarilal v. Smt. Chando Devi.

12. The findings recorded by the trial Court while disposing of I.A.Nos. 2 and 3 requires to be set-aside. The assumption of the trial Court that an application under Order 23 R 3A to be treated as an application under Section 114 of CPC and application of Article of limitation governing review application to the application filed under Order 23 Rule 3A is to be stated is not correct.

13. The impugned order is hereby set-aside. Since the tenant has elected to resort to the amended provisions of Order 23 Rule 3 for challenging the order of eviction, without prejudice to the rights of the parties it is open for the landlord to move the jurisdictional Court where original suit proceedings are pending for striking of the

reliefs touching upon the jural relationship of landlord and tenant, subsistence of tenure of lease, payment of rent invalidity and inexecutability of the order passed in H.R.C. 1338/1991 particularly the reliefs such as i, ii, iii and vi as claimed by the tenant in O.S.No. 6676/1992 and the jurisdictional Court may consider and pass such orders in accordance with law. When once element of fraud has been set up for deciding the proceedings as a nullity it is just and proper that till enquiry and findings are given on the questions relating to validity or otherwise of orders passed, it is not proper to give effect to the order which is sought to be declared as nullity as the same is based on maxim EX NIHILO NIHILIT (out of nothing comes nothing).

Both the parties are permitted to adduce evidence if any on I.A.No.2 and thereafter the trial Court may dispose of the application on merits in accordance with law.

14. Subject to the above observations this Civil Revision Petition is allowed.

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