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Court : Karnataka

Decided On : Dec-14-1984

Reported in : ILR1985KAR1625

Judge : Rajasekhara Murthy, J.

Acts : Karnataka Rent Control Act, 1961 - Sections 50(2), ;Code of Civil Procedure (CPC) - Order 41, Rule 19

Appeal No. : CRP No. 1453 of 1982

Appellant : Gunderao

Respondent : Jagunnathasingh

Advocate for Def. : Nargund, Adv. for Appa Rao, Adv.

Advocate for Pet/Ap. : Suresh S. Joshi, Adv.

Judgement :

ORDER

Rajasekhara Murthy, J.

1. This Revision Petition by the tenant is directed against the order of the Addl. District Judge, Gulbarga, dated 16-4-1982 made in Civil Misc. Petition No. 18 of 1982.

2. The Miscellaneous Petition was filed under Order 41 Rule 19 C. P. C. for restoration of the Civil Revision Petition-No. 36 of 1981. In Civil Revision Petition No. 36 of 1981, the order of the I Addl. Munsiff, J.M.F.C., Gulbarga, made in H.R.C. No. 41 of 1979 by which an order was passed against the respondent to deliver vacant possession of the schedule premises before 30-10-1981 was challenged before the Learned District Judge. The said Revision Petition was dismissed on 6-2-1982 for non-prosecution. Thereupon, the petitioner filed a Miscellaneous Petition for restoration under Order 41 Rule 19 C.P.C. This Miscellaneous Petition was dismissed by the Learned District Judge on the ground that the said Petition was not maintainable in law and he was of the opinion there is no provision for restoration of the Revision Petition filed under Section 50(2) of the Karnataka Rent Control Act. In that view, the Learned District Judge dismissed the Petition for restoration. This is challenged by Sri Joshi, Learned Counsel appearing for the petitioner, on the ground that the view taken by the Learned District Judge is erroneous. He submitted that the provisions of C.P.C. are made applicable by virtue of Rule 35 of the Rules framed under the Karnataka Rent Control Act and also submitted that order 9 C.P.C. also consequently becomes applicable in the matter of application for restoration as provided under Rule 35 of the Karnataka Rent Control Rules.

3. The proceedings before the Learned District Judge was a revision under the Rent Control Act. Section 141 C.P.C. provides that the procedure provided in the Code in regard to suits shall be followed as far as it can be made applicable, in all proceedings in any Court of Civil jurisdiction. The view of the Learned District Judge, that a revision filed under Section 50(2) of the Rent Control Act is not an appeal and hence Order 41 Rule 19 does not become applicable to the proceedings before him is again erroneous.

4. In a case decided by the Supreme Court of India in Shankar Ramachandra Abhyanker-v.- Krishnaji Dattatreya Bapat : [1970]1SCR322 the Supreme Court had occasion to deal with a similar situation wherein they held that revisional jurisdiction is a part of an appellate jurisdiction. In that view of the matter, the Learned District Judge fell into an error in dismissing the application for restoration on both the grounds stated by him.

5. Several High Courts have held that the provisions of C.P.C. are applicable to proceedings under Rent Control Act and hence an application under Order 9 Rule 13 C.P.C. could be filed in those proceedings.

In Sahadath Khan -v.- Mohammed Hussain, A.I.R. 1954 Calcutta 34 it was held that under the provisions of C.P.C. which were made applicable to proceedings under West Bengal Premises Rent Control Act, Order 9 Rule 13 of the Code are applicable to those proceedings.

In Haji Zakera Suleman -v.- The Collector, A.I.R. 1931 Bombay 233 it was held that even though the provisions of C.P.C. were not made applicable to proceedings under C.P. & Berar Letting of Houses and Rent Control Order, the Controller had the power to restore by necessary implication in the same way he had dismissed the petition for default.

The Supreme Court in Syed Shaha -v.- The Hoard of Wakfs : [1961]3SCR759 held that the Rent Control Tribunals have no inherent powers which the Civil Court possesses. But it was observed that such Tribunals have incidental powers conferred upon them by the Act in their functioning under the Act. In Thodar Ananth Bhanadri -v.- A. Rama Ameen, 1962 (2) K.L.J. 103 this Court upheld the applicability of the provisions of C.P.C. by Rule 35 of the Rent Control Rules.

6. The view taken by the Learned District Judge is therefore erroneous and the application filed under Order 41 Rule 19 in the revision was maintainable, the order passed by him on 16-4-1982 in Civil Misc. Petition No. 18 of 1982 is set aside. The Learned District Judge is directed to take back the said Petition to his file and dispose it of in accordance with law. The other reasons given by the Learned District Judge regarding sufficient cause is also set aside.