Panchaksharappa Vs. Vijayakumar

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Court : Karnataka

Decided On : Jul-11-1985

Reported in : ILR1985KAR2904

Judge : Chandrakantaraj Urs, J.

Acts : Karnataka Rent Control Act, 1961 - Sections 18(2), 21 and 29

Appeal No. : C.R.P. No. 1581 of 1985

Appellant : Panchaksharappa

Respondent : Vijayakumar

Advocate for Pet/Ap. : N.S. Prasad, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

Chandrakantaraj Urs, J.

1. The Revision Petitioner in this Court under Section 115 C.P.C., is a tenant. Sometime when he acquired lease of the building in question, he was paying Rs. 75/- as rent. Thereafter, it is alleged that the landlord demandedRs.175/-per mensem as rent which he paid. That enhancement of rent was paid from 1974. In

1979, the landlord-respondent in this proceedings filed eviction petition HRC No. 55/79 in the Court of the Munsiff, at Davanagere seeking eviction of the tenant on the ground that he required the premises for his own use and occupation, the ground available to the land-lord under clause (h) of proviso to sub-section (1) of Section 21 of the Karnataka Rent Control Act (hereinafter referred to as the 'Act'). During the pendency of the proceedings, an application was made under Section 29(1) of the Act by the landlord seeking payment of arrears of rent from the tenant before he proceeded to contest the eviction petition. In accordance with Section 29 of the Act an enquiry was held and in that enquiry the tenant was held to be in arrears of rent and he could not contest unless he deposited the arrears of rent within the time given by the Munsiff. Aggrieved by that order, he preferred a revision to the District Judge, under sub-section (2) of Section 50. He also filed an application before the District Judge that he is not liable to pay rent more than at the rate of Rs. 75/-having regard to the provisions in sub sections 2 and 3 of Section 18 of the Act. The contention, elaborated, was that the landlord was precluded from taking any premium or like sum, in cash or in kind, other than the agreed rents and therefore, the enhancement of rent by Rs. 100/- in 1974 was a sum received or such premium received in cash and in terms of sub-clause (b) of sub-section (2) of Section 18 of the Act and such amount was liable to be adjusted at the instance of the tenant. Therefore, it was contended that no rent was due by way of arrears. The Learned Judge rejected the contention solely on the ground that enhanced rent could not be equated to the premium or sum, in cash or kind or consideration referred to in sub-section (2) of Section 18 of the Act. Therefore, the present Revision Petition.

2. Mr. Prasad, Learned Counsel for the petitioner, has contended before me that the Learned District Judge had erred in construing sub-sections (2) and (3) of Section 18 of the Act. His argument was repetitive of what was argued before the District Judge.

3. A careful reading of sub-section (2) of Section 18 of the Act along with sub-section (1) of Section 18 of the Act brings about the true meaning and intent of the words employed in sub-section (2) of Section 18 of the Act. Section 14 of the Act provides for the fixation of fair rent by the Rent Controller under the Act. Sub-

section (l) of Section 18 of the Act speaks of cases where the fair rent has been fixed while sub-section (2) of Section 18 of the Act contemplates cases where such fair rent has not been fixed. Where the fair rent has not been fixed, after coming into the force of the Act, the land lord is precluded fromreceiving any premium or any sum or other consideration, in cash or kind, in addition to the stipulated rent. In case, if he has so received, as provided under Clause (b) of sub-section (2) of Section 18 of the Act, it is liable to be adjusted or refunded at the wish of the tenant. The words employed are :

'no person shall after the commencement of this Part receive or stipulate for the payment of any sum as premium or pagree or anyconsideration whatsoever in cash or kind in addition to the agreed rent.'

4. A plain reading of the above provision clearly indicates that the agreed rent, therefore, has reference notnecessarily to the rent agreed to, either before the commencement of the Act or after the commencement of the Act. It merely refers to whatever is the rent agreed to between the tenant and the landlord at any given point of time. The Court must take assistance from the words previously employed in the provision. Those words ate 'any sum as premium or pagree or any consideration whatsoever in cash or kind.' Normally premium or Pagree orconsideration as they have been used mean something other than the rent but in addition thereto and connotes a receipt of some article of agreed value or cash which may be in the form of cash or kind. If increase in the rent, by mutual consent was to be included, nothing would have prevented the Legislature to state that after coming into force of the Act no landlord shall enhance the rent even by agreement and even if the tenant is willing to pay the same. Clause (b) of sub-section (2) of Section 18 of the Act does no more than precluding the landlord from receiving any premium or like sum or consideration in cash or kind. Mr. Prasad tried to derive assistance to clause (b) of sub section (2) of Section 18 of the Act from sub-section (3) of Section 18 of the Act, to support his case. I do not see any assistance to sustain his contention from the arguments advanced. Sub section (3) of Section 18 of the Act stipulates that anything incontravention of sub-section (2) of Section 18 of the Act to be void. That does not help in any way the petitioner because no premium, consideration or any sum or pagree was paid in addition to

the rent. The Court should not lose sight of the Golden Rule of construction when confronted with such provisions and such contentions. The Golden Rule is to read the Statute as it is without creating ambiguity where none exists. Rent of the premises is the rent agreed at a particular point of time during the subsistence of the lease. It is liable, by agreement, to increase as well as decrease.

5. It is next contended that the order under revision requires intervention of this Court as the District Judge has wrongly asserted in the order that several other grounds in the application were not pressed by the Counsel. I do not think this Court should permit such assertions without an affidavit from the Counsel who argued before the Learned District Judge. The practice of making such assertions must also be discouraged by this Court as Mr. Prasad stated that despite his asking the Learned Counsel, he has not given any affidavit. This shows that Counsel made assertions either to another Counsel whom they have instructed or to the Court without courage to speak truth.

6. In the result, this Petition is dismissed.