

A. Monm and Another Vs. Gopinath

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Court : Andhra Pradesh

Decided On : Dec-22-1998

Reported in : 1999(1)ALD517; 1999(1)ALT459

Judge : Ramesh Madhav Bapat, J.

Acts : Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960; [Limitation Act, 1963](#) - Sections 14; Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 ; [Code of Civil Procedure \(CPC\), 1908](#) - Order 47

Appeal No. : Rev. CMP No. 24728 of 1998

Appellant : A. Monm and Another

Respondent : Gopinath

Advocate for Def. : Mr. Vilas Afzal Purkar, Adv.

Advocate for Pet/Ap. : Mrs. S. Jayashree Sarathy, Adv.

Judgement :

ORDER

1. The Review Petitioner herein was a landlord and the respondent herein was a tenant of the petition schedule premises. The petitioner herein filed RCC No.223 of 1981 on 27-7-1981 in the Court of the Principal Rent Controller, Hyderabad for eviction by terminating the tenancy of the respondent herein on various grounds.

The Principal Rent Controller, Hyderabad, on evidence dismissed the claim of the landlord-petitioner herein. Aggrieved by the aforesaid order, the landlord-review petitioner herein carried the matter in appeal by filing RA No.19 of 1987 in the Court of the Additional Chief Judge, City Small Causes Court, Hyderabad. The learned Judge on hearing both sides dismissed the appeal. Aggrieved by the aforesaid judgment the landlord-review petitioner herein filed CRP No.679 of 1994 in this Court. This Court dismissed the aforesaid CRP by an order dated 5-2-1997. Aggrieved by the aforesaid order, the landlord-review petitioner herein filed SLP (C) No.15734 of 1997 in the Hon'ble Supreme Court of India. On hearing the Hon'ble Supreme Court passed the following order:

'Learned Counsel for the petitioner states that a question about additional evidence being wrongly disallowed by the appellate Court was argued in revision application before the learned single Judge but as group of matters was disposed of on the same day though by separate orders it appears that the learned single Judge might have missed to consider this point. Under these circumstances, he submitted that we may consider this question or permit the petition to go by way of review before the learned single Judge. All that can be said is that it will be open to the petitioner to file review petition before learned single Judge on the grievance which he has made before us that though the point was argued it was not considered by the learned single Judge. We express no opinion on this question. It will be for the learned Judge to consider the review petition if filed, on its own merits and in accordance with law. Learned Counsel for the petitioner accordingly, seeks leave to withdraw this special leave petition with a view to filing a review petition before the learned single Judge in the revision application No.679 of 1994. It is obvious that as the Special Leave Petition was filed in this Court against the order in revision petition, the time taken in this Court during the pendency of this SLP would be available to the petitioner for being excluded under Section 14 of the Limitation Act. It will be open to the petitioner to apply for condonation of delay in the proposed review proceedings in accordance with law. The Special Leave Petition stands dismissed as withdrawn.'

2. After withdrawing the Special Leave Petition, the landlord-review petitioner herein filed the review petition before this Court as per the directions of the Hon'ble

Supreme Court. The delay in filing the review petition was condoned and the review petition was heard 'on its merits and in accordance with law' as directed by the Hon'ble Supreme Court.

3. The learned Counsel Mr. C.P. Sarathy appearing on behalf of the review petitioner herein submitted at the Bar that the subsequent events which occurred during the pendency of eviction proceedings can be taken into consideration. The learned Counsel further submitted at the Bar that as per the contention of the review petitioner herein that he wanted to shift from Elurii to Hyderabad for starting a new business stands proved. The learned Counsel invited my attention to four documents filed in the proceedings viz., (1) bona fide certificate dated 23-12-1991 of the petitioner's son studying in Hyderabad; (2) bona fide certificate of the petitioner's daughter studying in Hyderabad; (3) petitioner's LPG Transfer Advise Note dated 16-6-1990 and subscription voucher; and (4) petitioner's Bank Pass Book. All these documents were filed by the petitioner in RA No.19 of 1997 before the Additional Chief Judge, City Small Causes Court, Hyderabad and submitted at the Bar that along with these documents, 1A No.56 of 1992 was filed. All those documents were not taken into consideration by the AddL Chief Judge, City Small, Causes Court, Hyderabad, which is an error in law,

4. The learned Counsel also filed additional documents in this Court along with a list of material papers i.e., items 14 to 26 and submitted at the Bar that these documents, if taken into consideration, they will go to establish that the landlord-review petitioner has already shifted his business and residence from Eluru to Hyderabad with an intention to start business afresh. On query with the learned Counsel for the petitioner, the learned Counsel admitted at the Bar that the documents which are filed along with the material papers at serial Nos.14 to 26, he did not file any petition to take these documents on record and receive them in evidence.

5. The question arises in this review petition as to whether the subsequent events can be taken into consideration in eviction proceedings?

6. In order to substantiate the contentions raised by the learned Counsel Mr. C.P. Sarathy for the review petitioner submitted that the subsequent events can be

taken into consideration during the pendency of the eviction petition. The learned Counsel relied upon a ruling reported in *Bastichand Bhanaali v. Dharam Vir Kalia*, 1989 (2) All India Rent Control Journal 259. It was the case decided by Rajasthan High Court. Their Lordships in paras 19 and 20 held as under:

'19. The important subsequent events are that while the family of the plaintiff to a growing family in the sense that his daughter and three sons who were studying in IX, VII, V and IIIrd classes in the year 1977 when the suit was filed, have by now grown up and thus his family has increased. As against this, the defendant had discharged all his responsibilities. His youngest son Madhusudan had gone to a foreign country. His other sons G.N. Kalia and K.N. Kalia have admittedly shifted to other house. The defendant in his reply has said that they have shifted temporarily. No reason has been assigned as to why they have only shifted temporarily to other houses. The daughters of the defendant have been married. His wife has expired. Thus, the number of his dependent family members have considerably reduced and his need for the accommodation is not that much which it was before, it is true that the number of family members of the plaintiff have grown up but how can we ignore that the plaintiff can only make additions in this own house after he gets his possession and not before it. Comparative hardship in the facts and circumstances of this case is clearly greater to the plaintiff than to the defendant.

20. Consequently, I allow this appeal, set aside the decree of the Additional District Judge No.7, Jodhpur dated April 7, 1981 affirming the decree of the Additional Munsif No.1, Jodhpur dated October 27, 1980 and decree the suit of the plaintiff for ejectment of the defendant from the demised premises detailed and described in para No.1 of the plaint. The plaintiff will be entitled to recover damages for use and occupation at the rate of Rs.120/-per month after adjusting the amount already deposited by the defendant in Court till the defendant vacates the demised premises. Since the defendant will have to search for another house. I allow the defendant six months time to vacate, The plaintiff will get costs throughout from the defendant.'

7. The learned Counsel further kept reliance on a ruling reported in M/s. Durga Prasad Mahabir Prasad v. District Judge, Ghazipur; 1990 (2) Rent Control Reporter 519. It was observed by his Lordship of Allahabad High Court at paras 5 and 6 as under:

'5. In this regard there has been filed a supplementary affidavit in this Court along with documentary evidence to show that the two sons of the landlady for whose business purposes the release was sought, have since established a very flourishing cloth business under the name and style of N.C. Vastralaya in shop No.17/1 adjacent to the disputed shops. The documents have also been filed to show that cycle business originally run by Priyati Kiimar one of the three sons of the landlady, was shelved and the cloth business titled N.C. Vastralaya was started in which all the three sons of the landlady including the landlady herself were partners. Subsequently the Firm was reconstituted excluding Priya Kumar from the said business and now same is run by the two other sons of the landlady, named Veer Kumar and Raj Kiimar. The shop in which it is being run is almost double the size of the shops in question and consequently the said persons Veer Kumar and Raj Kiimar have now no bona fide requirement of the shops in question for their own occupation for business.

6. As far as the legal position is concerned, the law is well settled by a catena of decisions of this Court and also the Supreme Court, that in appropriate cases the Court must have regard to the events as they present themselves at the time when it is hearing proceedings before it.'

8. The learned Counsel for the review petitioner also relied upon a ruling reported in M. Satyanamlam v. The Deputy Secretary to the Govt. and another, 1987 (2) Rent Control Reporter 495. Their Lordships in paras 1 to 4 held as under:

'This petition arises out of the judgment and order of the High Court of Andhra Pradesh. Sri P.P. Rao, learned Counsel for the petitioner submits that the order of release was bad because the authorised officer had no power to review the previous order nor he had the power to release the property of the landlady without even giving an opportunity to the petitioner. In the facts of this case as noted by the High Court, we are unable to entertain these contentions. We are

unable to accept the contention that the Government cannot review its own order. It is well settled law of this Court that in case of bona fide need subsequent events must be taken into account if they are relevant on the question of possession of the premises in question. On a previous occasion the Government had declined to release the premises, later on the representation made by the landlady the Government changed its decision. The landlady had filed an application for releasing the premises in her favour, but the same was initially rejected on 25-9-1978. Again the landlady made a further representation stating certain additional and fresh circumstances, that is to say, that her son was not allowing her to live with him in another house belonging to her. The Government took into account the subsequent events and passed the order on 19-3-1980 releasing the premises in favour of the landlady. We do not see how to take cognizance of such subsequent events releasing the premises can be described an order in nullity in the facts of this case.

2. The next contention was that the petitioner was an allottee of the premises by virtue of his being in service but the petitioner was really a tenant of the premises in question.

3. The Government informed the petitioner to make alternative arrangements or seek accommodation. The Govt. issued several notices on 24-11-1978, 22-5-1979, 12-7-1979, 27-9-1979 and 17-1-1980 to the petitioner and these facts have been stated and have also been taken note of by the High Court in the judgment under challenge. In spite of the said notices given to the petitioner who was an allottee and who was informed about the requirement of the landlady, the petitioner did not choose to move out from the premises. In the meantime, the petitioner has retired from service in 1986 and a long time has passed now. In this case we do not think it can be said that the order was bad because the petitioner was initially not given an opportunity to show-cause. Actually the petitioner had enough opportunity. In the premises, the special leave petition fails and we do not find any ground to interfere with the order of the High Court.

4. Having regard to the facts that the petitioner had acquired Government accommodation and he has stayed in the premises in question for some time, we

allow him to make alternative arrangement by 31-12-1987. The order for eviction will not be executed until 31-12-1987 provided the petitioner files an undertaking in this Court within four weeks from to-day to vacate and hand over the premises in question.'

9. The learned Counsel for the petitioner herein also relied upon a ruling reported in *Surinder Singh v. Pritam Kaur*, 1989 (2) Rent Control Reporter 644, and submitted that the landlady's husband retired from Army at Patiala and vacated Govt. House - landlady shifted to Chandigarh but wanted to settle at Jalandhar - right of landlady to get her house at Jalandhar is not lost if she acquires another house for transitory period.

10. The learned Counsel for the petitioner further relied upon a ruling reported in *M/s. Variety Emporium v. R.M, Mohd Ibrahim Naina*, : [1985]2SCR102 . The case was under Tamil Nadu Buildings (Lease and Rent Control) Act, (18 of 1960) in which it was held by their Lordships as under:

'In a suit for eviction on the ground of bona fide requirement of premises by landlord the subsequent events ought to be taken into account for the purpose of finding out whether the landlord still required the premises in possession of the tenant. In appropriate cases, the Court must have regard to events as they present themselves at the time when it is hearing the proceeding before it and mould the relief in the light of those events.'

11. The learned Counsel further relied upon the following decisions reported in *Surinder Kumar v. Gian Chand*, : [1958]1SCR548 ; *Union of India v. T.R. Varma*, : (1958)11LLJ259SC , *Super Forgings & Steels (Sales) Pvt. Ltd. v. Thyabally Rasuljee (dead) Through LRs*, : (1995)1SCC410 ; *State of Bihar & Others v. Subhash Singh*, : [1997]1SCR850 and *P. Sriramamurthy v. Mrs. Vasantha Rarnan*, : AIR 1997 SC1388 in support of his case.

12. With these rulings on record, the learned Counsel for the petitioner submitted that the review petition be allowed and the matter be remanded to (he Court of Additional Chief Judge, City Small Causes Court, Hyderabad allowing the parties to lead additional evidence on the point of change of circumstances.

13. While rebutting the aforesaid arguments, the learned Counsel for the tenant-respondent herein Mr. Vilas Afzulpurkar submitted at the Bar that the main question arises as to whether the review petition under the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 is maintainable and second objection which was raised by the learned Counsel and submitted at the Bar that whether the rulings cited by the learned Counsel for the petitioner are applicable in the present set of facts

14. The learned Counsel Mr. Vilas V. Afzulpurkar appearing on behalf of the respondent submitted at the Bar that the rulings cited by the learned Counsel for the petitioner has no application in the present set of facts. The attention of this Court was invited by the learned Counsel for the respondent that the documents filed by the review petitioner in the first appellate Court will have to be treated as a new cause of action. My attention was also invited by the learned Counsel stating that the Rent Control Case was filed in the year 1981. At that time the review petitioner had only a desire to shift his business to Hyderabad but he had no bona fide intention to shift the same to Hyderabad. Mere desire of shifting the business or the residence at Hyderabad cannot be treated as a bona fide requirement. The learned Counsel Mr. Vilas V. Afzulpurkar brought to my attention the fact that all the documents filed by the petitioner herein was in the year 1990-91 whereas the Rent Control Case was filed in the year 1981. It means that in the year 1981 there was only a desire and bona fide requirement arises after about 10 years. When the landlord-review petitioner shifted his residence and business at Hyderabad, such event cannot be taken as a subsequent event. It can be stated as a new cause of action for the review petitioner to file a new case for eviction.

15. The learned Counsel submitted at the Bar that in the majority of cases cited by the learned Counsel for the petitioner herein, definitely knew that they are going to shift to their native place or their own place on a particular day i.e., after the requirement etc., and such subsequents can be stated to be subsequent events during the pendency of the Rent Control proceedings and those subsequent events can be taken into consideration as subsequent events for the purposes of the Rent Control proceedings but in the present case for about 10 years the petitioner continued his business at Eluru when he instituted a Rent Control Case

in the Court of the Principal Rent Controller, Hyderabad and the same position continued for about 10 years and after 10 years the review petitioner shifted to Hyderabad for his business and residence and therefore those events have to be interpreted as events giving new cause of action to the petitioner herein, and therefore submitted at the Bar that the first Appellate Court rightly rejected to receive the additional evidence when the matter was pending in the Court.

16. This Court finds a substantial force in the arguments advanced by the learned Counsel for the respondent herein.

17. The next objection was raised by the learned Counsel for the respondent herein that under A.P. Buildings (Lease, Rent and Eviction) Control Act, the Review petition itself is not maintainable and it is also not contemplated in the said Act. Review is a substantive right, which must be confirmed by the Act itself, there is no provision of reviewing the order in the A.P. Buildings (Lease, Rent and Eviction) Control Act and therefore it was submitted by the learned Counsel for the respondent herein that the review petition itself is not maintainable. In support of his contention, the learned Counsel for the respondent invited my attention to the ruling of this Court reported in D. Anthony v. M. Rajyalaxmi, 1981 (2) APLJ 456 in which the single Judge of this Court held:

'That the right of review is a substantive right and not a mere procedural right. Unless conferred by a statute, there is no such inherent power. It must be noticed that the Andhra Pradesh Buildings (Lease Rent & Eviction) Control Act, 1960 confers only one right of revision to this Court. The Court cannot, by a process of interpretation, and another right of review to it. These observations apply to the substantive right of review at the instance of the party, which stands apart from correction of arithmetical or clerical errors, or review of Inter-locutory orders or the power of reviewing an order vitiated by an error of its own or which is obtained by mis-representation or fraud.'

18. The learned Counsel for the respondent herein relied upon a ruling reported in Gantasala Eswara Rao v. Gundimi Somasekhtr ami another, : 1998(3)ALD92 (DB). It is a judgment of the Division Bench of this Court. In para 9 of the said judgment, it was observed by their Lordships as under:

'When the lis is disposed of by the Court, it becomes Functus Officio in respect of the same issue. The Court cannot arrogate power to itself and re-hear the matter which has decided rights of the parties after becoming final. Power of review under the Civil Procedure Code is granted on very limited grounds. In the absence of express or implied conferment of the jurisdiction, Court cannot infer power. Therefore, in our view the power of review conferred under Order 47, on the Civil Court or even the High Court while exercising jurisdiction under other laws cannot be imported into the provisions of the special Act, in the absence of any express provision or gathered by necessary implication. The Act in question is a special and self-contained Act. As such, application for review of an order passed in revision by the High Court is not maintainable.'

19. This Court is in agreement with the submissions made by the learned Counsel for the respondent.

20. While answering the above question, the learned Counsel Mr. C.P. Sarathy appearing on behalf of the review petitioner submitted at the Bar that the Hon'ble Supreme Court by its order dated 3-8-1998 directed this Court that 'it will be for the learned Judge to consider the review petition, if filed, on its own merits and in accordance with law.' The query was made by this Court with the learned Counsel for the petitioner herein was it the intention of the Hon'ble Supreme Court to entertain the review petition even if there is no provision of filing the review petition in the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act? To this query, the learned Counsel Mr. C.P. Sarathy appearing on behalf of the review petitioner had no answer to give when the Hon'ble Supreme Court directed this Court to consider the matter on its own merits in accordance with law, it means that this Court has also to see the merits of the case as well as the legal position as to whether the review petition is maintainable or not?

21. Considering the fact that there is no provision of filing a review petition in the A.P. Buildings (Lease, Rent and Eviction) Control Act, this Court holds that the review petition is not maintainable and it is accordingly dismissed. No costs.