

Beebanu Vs. Abdul Rasheed

Beebanu Vs. Abdul Rasheed

SooperKanoon Citation : sooperkanoon.com/429999

Court : Andhra Pradesh

Decided On : Nov-17-2001

Reported in : 2002(2)ALD474

Judge : S.B. Sinha, C.J. and ;I. Venkatanarayana, J.

Acts : Andhra Pradesh Buildings (Lease, Rent and Eviction) Contract Act, 1960 - Sections 20 and 20(3); Andhra Pradesh Buildings (Lease, Rent and Eviction) Contract Rules, 1961 - Rule 11 and 11(2) - Order 41, Rules 23, 23A and 25

Appeal No. : CRP Nos. 1474, 1518 and 5655 of 1999

Appellant : Beebanu

Respondent : Abdul Rasheed

Advocate for Def. : Serla Pandari, ;B. Narasimha Sarma and ;Villas V. Afzulpurkar, Advs.

Advocate for Pet/Ap. : V. Ravi Kiran Rao, ;K. Mohan and ;M. Chandrasekhar Rao, Advs.

Judgement :

Satyabrata Sinha, C.J.

1. Interpretation of Sub-section (3) of Section 20 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short 'the Act) read with Rule 11(2) of the A.P.

Buildings (Lease, Rent and Eviction) Control Rules, 1961 (for short 'the Rules'), falls for determination in these references:

2. Section 20(3) of the Act reads:

The appellate authority shall send for the records of the case from the Controller and after giving the parties an opportunity of being heard and, if necessary, after making such further inquiry as he thinks fit either personally or through the Controller, shall decide the appeal.

3. The learned Counsel appearing on behalf of the petitioner would submit that the power of the appellate Court to remand the matter to the Rent Controller, is circumscribed by reason of Sub-section (3) of Section 20 of the Act, and in support of his submission, he placed reliance upon the judgments of this Court in Ekramuddin v. Smt. Sheela Bai Ekbote, 1972 APHN 3, and Konduru Ammannachary v. Rahima Khatoon, 1984 (2) ALT 364. The learned single Judge, upon noticing a judgment of the Division Bench of this Court in Munilal v. Kurva Narayana, 1988 (2) ALT 755 (DB), wherein it was held that an order of the appellate authority, remanding the matter to the lower authority, is not a void order, but one passed in irregular exercise of jurisdiction.

4. In the aforementioned situation, the learned single Judge, referred the following two questions for an authoritative pronouncement by a Division Bench of this Court:

1. Whether the appellate authority under the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 has power to remand the matter to the Rent Controller?

2. If such power is exercised, whether such an order is void or voidable?

5. An appeal being a creation of a statute, no suitor has right of appeal unless the statute provides therefor. The power and jurisdiction of the appellate Court may be limited by the Legislature. Normally, the powers conferred upon the appellate Court are specifically stated in the statute. In this context, we may refer to the provisions of Section 107 of Code of Civil Procedure, 1908, for short 'the Code')

which confers the following powers upon the appellate Court:

Powers of Appellate Court :---(1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power--

(a) to determine a case finally;

(b) to remand a case;

(c) to frame issues and refer them for trial;

(d) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein.

6. A reading of the above provision shows that under Clause (b) of Sub-section (1) of Section 107 of the Code, the appellate Court is conferred with a power to remand a case. However, such power of the appellate Court to remand a case is restricted by reason of Order XLI, Rules, 23, 23-A and 25 of the Code. Despite the same, several High Courts held that the appellate Court has the inherent power of remand even though if the matter is not covered either under Order XLI, Rules, 23, 23-A and 25 of the Code. (See *Narayana v. Malappa*, : AIR1956 Bom246 , *Kewal Ram v. Mihi Lal Ram*, : AIR1960 All655 and *Brijnandan v. Jadunandan*, : AIR1960 Pat41),

7. Section 30 of the Act, confers power upon the Government to make rules to carry out the purpose of the Act. The Government, in exercise of such power conferred upon it, framed rules in G.O. Ms. No. 547, GA (Accommodation-B), dated 29-4-1961, known as the A.P. Buildings (Lease, Rent and Eviction) Control Rules, 1961. Rule 11(2), which is relevant for the purpose, reads:

If the appellate authority decides to make further inquiry, he may take additional evidence or require such evidence to be taken by the Controller.

8. It is now well settled law that the provisions of the Act must be considered having regard to the text and context thereof. By reason of the provisions of the said Act, a landlord can file an application for eviction of a tenant before the Rent Controller, who upon arriving at a satisfaction that any or other grounds enumerated in Sub-section (2) of Section 10 of the Act, exists may make an order directing the tenant to put the landlord in possession of the building. The procedure to be adopted for adjudicating a dispute by a Rent Controller is a summary procedure.

9. In the aforementioned background, Sub-section (3) of Section 20 of the Act read with Rule 11(2) of the Rules, must be interpreted as contra distinguished from Section 107 of the Code. Sub-section (3) of Section 20 of the Act does not confer plenary powers upon the appellate Court. A jurisdiction, is circumscribed by expressions employed therein. The appellate Court, however, has a power to make further enquiry. It can, therefore, accept additional evidence. Its jurisdiction to decide an appeal, is thus not confined only to the materials placed before the Rent Controller. Such further enquiry can be made by the appellate Court either by itself or through the Rent Controller, as provided for under Section 20(3) of the Act read with Rule 11(2) of the Rules.

10. Thus on a fair construction of the provisions of Sub-section (3) of Section 20 of the Act read with Rule 11(2) of the Rules, we are of the opinion that in a situation of this nature, the Court could obtain further materials by taking recourse to further enquiry directing the Rent Controller to take evidence.

11. To the aforementioned extent, the power of remand of the appellate Court cannot be denied.

12. In Ekramuddin and Konduru Ammannachary, the learned Judges did not consider the matter from this angle, and thus, they have committed an error in holding that the appellate Court has no power of remand at all. Incidentally, we may notice that a learned single Judge of this Court in Shaik Bandagi Saheb v. Shaik Nurulla Saheb, : 1997(1)ALT380 , placing reliance on a Division Bench judgment of this Court in Thimmasamudram Tobacco Company v. Assistant Collector, : AIR 1961 AP324 , which was rendered having regard to the provisions

of Section 35 of the Central Excise and Sale Act, held that appellate Court has inherent power to remand a case.

13. For the purpose of answering the references, we need not go into the aforementioned question. But there cannot be any doubt whatsoever that the power of remand of the appellate Court is limited. It cannot, having regard to its own power of holding further enquiry to enable it to allow the parties to bring on further materials on record, cannot set aside the judgment passed by the Rent Controller.

14. Such a power of remand can be exercised even by the Courts of appeal if the same comes within the Order XLI, Rules 23, 23-A and 25 of the Code. Even in terms of Order XLI, Rule 25, the appellate Court may while retaining the records onto itself may direct the Rent Controller to take further evidence in the event, an appropriate issue had not been framed by the Rent Controller or no evidence thereupon had been adduced. The power conferred upon the appellate Court by reason of Sub-section (3) of Section 20 read with Rule 11 of the Rules, must therefore, be held to be akin to the power conferred upon the appellate Court as envisaged under Order XLI, Rule 25.

15. We are, therefore, of the opinion that the decision rendered by a learned single Judge in Shaik Bandagi Saheb, to the extent aforementioned is correct because it lays down the correct law.

16. We answer to questions accordingly. Having regard to the views we have taken, the question as to whether the order impugned in the CRPs is void or voidable does not arise for consideration.

17. Let the CRPs be placed before the learned single Judge for disposal on merits.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com