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

Vijay Kumar Vs. Tara Chand

Vijay Kumar Vs. Tara Chand

SooperKanoon Citation : sooperkanoon.com/626484

Court : Punjab and Haryana

Decided On : Feb-19-2003

Reported in : (2003)134PLR340

Judge : M.K. Kumar, J.

Acts : Haryana Urban Control of Rent and Eviction Act, 1973 - Sections 15(2) and 15(6)

Appeal No. : Civil Revision No. 118 of 1999

Appellant : Vijay Kumar

Respondent : Tara Chand

Advocate for Def. : Hemant Sarain, Adv.

Advocate for Pet/Ap. : None

Disposition : Petition dismissed

Judgement :

M.M. Kumar, J.

1. This petition filed under Sub Section 6 of Section 15 of the Haryana Urban (Control of Rent & Eviction), Act, 1973 (hereinafter referred to as the Act), is directed against the judgment of the Appellate Authority, Narnaul, dated

September 22, 1988. The Appellate Authority had dismissed the appeal of the tenant-petitioner on the ground of limitation observing that the tenant-petitioner had been intentionally delaying the proceedings because after tendering the rent on August 03.1984, he filed the written statement on October 27, 1984 and thereafter, he never appeared. On December, 13, 1984, he was proceeded exparte and two years thereafter, the Rent Controller passed the order ejecting him from the demised premises on the ground that he had caused material impairment to the demised premises and had ceased to occupy the same for a period of 3 to 4 years preceding the filing of the ejectment petition, which was instituted on February 10, 1984. The Appellate Authority by taking into consideration all the facts has concluded that no effort was made by the tenant-petitioner to seek setting aside of the exparte order passed on December 13, 1984 and he had moved the appeal under Sub Section 2 of Section 15 of the Act, before the Appellate Authority. In support of his view, the learned Appellate Authority has relied upon the judgment of this Court in the case of Smt. Muya Devi and Ors. v. Mehria Gram Dali Mill, Hisar and Ors., A.I.R. 1988 Pb.& Hry. 176. The view of the Appellate Authority reads as under:-

Learned counsel for the appellant admitted that in fact he never moved for setting aside of an exparte decree before the learned Rent Controller. Even the appeal is beyond limitation in the sense that the exparte ejectment order had been passed on December 23. 1986 and he has applied for obtaining a copy of the judgment on 23.10.1987 when the limitation has already expired for filing the appeal. It has never been explained as to where diu the appellant remain from the period the exparte order was passed till he applied for a copy. He wasted the entire time and must be knowing, there is no question of the knowledge of the appellant when he himself was contesting the case and suddenly disappeared on 13.12.1984. The exparte decree has been passed two years thereafter. So, it was not a case where the learned Rent Controller acted in a haste or that the appellant did not know anything about the situation or that he did not know the consequences thereof. Sh. O.P. Sharma, Advocate, had been appearing for the appellant. The appellant himself had tendered the rent on 3.8.1984.

So, the absence of the appellant has been intentional in the case and he did not appear knowingly for some reason or the other which was in his mind.

The appellant did not file any application for setting aside the exparte ejectment order, Straightaway coming in appeal is not feasible according to law as laid down in a case of Smt. Maya Devi and Ors. v. Mehria Gram Dall Mill, Hissar and Ors., A.I.R. 1988 P&H; 176, in which it has been laid down as under;- Where no application under Order 9 Rule 13 Civil Procedure Code was moved for setting aside exparte decree, in an appeal against such decree under Section 96 (2) an error defect, or irregularity which has affected the decision of the case can be challenged. Such an appeal cannot be converted into proceedings for setting aside the exparte decree. The Code prescribes the remedy for the setting aside of the exparte decree under Order 9 Rule 13 and when a plea under the said provision under Clause (D) of Rule . 1 of Order XVIII of the Code against an order of the trial Court refusing to set aside the exparte decree. When a particular remedy is provided for setting aside an exparte decree and, there is by way of appeal, another special remedy against an order refusing to set aside such a decree. These remedies alone and none other can be taken resort to. Therefore when these remedies have not been availed of, in an appeal under Section 96(2) or in the second appeal under Section 100 of the Code, no ground can be entertained that the exparte proceedings were wrongly against the appellant, which resulted in passing of the exparte decree'.

2. When this petition came up for hearing on January 16, 1989, it was admitted and dispossession of the tenant-petitioner was stayed. When the matter was taken up on January 29, 2003, no one put in appearance on behalf of the tenant-petitioner and on that account, the petition was adjourned for hearing for today. Again, no one has put in appearance on behalf of the tenant-petitioner.

3. I have heard Mr.Hemant Sarin, learned counsel for the landlord-respondent, who on instructions from Nand lal son of Tara Chand landlord-respondent present in the Court has pointed out that not even a single penny has been paid by the tenant-petitioner since 1989 when the petition was admitted and his dispossession was stayed. He has further stated that the premises are lying locked since then.

On merit, the learned counsel submitted that the view taken by this Court in Maya Devi's Case (supra), which has also been relied upon by the Appellate Authority would be fully applicable to the revision petition also. According to the learned counsel, no revision would be maintainable, unless the tenant-petitioner has filed an appropriate application seeking setting aside of the exparte order dated December 13, 1984. Learned counsel has also pointed out that the tenant-petitioner has been absenting from the proceedings with a malafide intention as has also been recorded by the Appellate Authority.

4. After hearing the learned counsel for the respondent-landlord, I find that there is merit in his contention, because the tenant-petitioner has acted in a most irresponsible manner. Virtually after tendering the rent on August 03, 1984 before the Rent Controller and filing the written statement on October 27, 1984, he failed to appear. It is further clear that he allowed himself to be proceeded exparte on December 13, 1984. He has never made any effort to get the exparte order set aside, which culminated into the passing of order of his ejectment by the Rent Controller on December 23, 1986. Thereafter he filed the appeal before the Appellate Authority on October 29, 1987, which was delayed for more than nine months. Despite the fact that the appeal was dismissed as time barred he failed even to move an application for setting aside of the exparte order under Order 9 Rule 13 of the CPC. He has approached this Court by filing the instant revision petition. It is obvious that the tenant-petitioner lacks bona fide and has acted with malicious intention. His absence from the proceedings before this Court strengthens this belief further.

5. However, the judgment in the case of Maya Devi (supra) relied upon by the learned counsel for landlord-respondent does not lay down the proposition that no appeal is competent against ex-parte decree. There might become misapprehension entertained by the landlord-respondent on account of Explanation added in 1976 to Rule 13 of Order 9 of the Code of Civil Procedure 1908 (for brevity the Code) Rule 13 of Order 9 reads as under;-

'13. Setting aside decree exparte against defendant, - In any case in which a decree is passed exparte against a defendant, he may apply to the Court by which

the decree was passed for an order to set it aside; and if he satisfied the Court that the summons was not duly served or that the was prevented by any sufficient cause from appearing when the suit was called on for hearing the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into court or otherwise, as it thinks fit, and shall appoint a day for proceeding with the suit:

Provided that where the decree is of such a nature that it cannot be set aside against such defendant only it may be set aside as against all or any of the other defendants also.

[Provided further that no Court shall set aside a decree passed exparte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiffs claim]

[Explanation - Where there has been an appeal against a decree passed exparte under this rule, and the appeal has been and disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside the exparte decree.]

6. It is further appropriate to mention that under Section 96(2) of the Code, it is explicit that appeal would lie even against exparte decree. Section 96 of the Code reads as under;-

96. Appeal from original decree.- (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorised to hear appeals from the decisions of such court.

2. An appeal may lie from an original decree passed exparte.

3. No appeal shall lie from a decree passed by the Court with the consent of parties.

4. No appeal shall lie except on a question of law, from a decree in any suit of the nature cognizable by Courts of small causes, when the amount or value of the subject matter of the original suit does not exceed (ten thousand rupees)

7. The aforementioned provisions came up or consideration before the Supreme Court in the case of Rani Choudhury v. Lt. Col. Suraj Jit Chaoudhwy, A.I.R. 1982 S.C. 1397. The observations of their Lordships read as under;-

'2. The real question is whether the Explanation to Rule 13 of Order 9 of the Civil P.C. bars the appeal filed by the respondent against the exparte decree. The Explanation was enacted by the Civil P.C. Amendment Act, 1976 with effect from February 01, 1977. Prior to its enactment, a defendant burdened by an exparte decree could apply to the trial court under Rule 13 of Order 9 for setting aside the decree. He could also appeal under Section 96 for setting aside the decree. The mere filing of the appeal did not take away the jurisdiction of the trial Court to entertain and dispose of the application for setting aside the exparte decree. It was where the appeal was disposed of and the appellate decree superseded the trial Court decree by reversing, confirming or varying it that the trial Court could not proceed to set aside its exparte decree. For the trial Court decree was said to have merged with the appellate decree. There are of course cases where the trial Court decree does not merge with the appellate decree. Such instances arise when the appeal is dismissed as having abated by reason of the omission of the appellant to implead the legal representatives of the deceased respondent or where it is dismissed as barred by limitation. So, there is a limited area where the trial Court decree merges in the appellate decree and when that takes place an application before the trial Court for setting aside the decree loses all meaning. It was a limited area defined by the operation of the doctrine of merger. From February, 01, 1977 the area was extended enormously. With the Explanation in operation, no application for setting aside an exparte decree can lie when the defendant has filed an appeal and the appeal has been disposed of on any ground other than the ground that the appeal has been withdrawn by the appellant. No doubt, the provision is described as an 'Explanation', but as is will known, it is not the rubric which decisively defines the true nature of a statutory provision. Its true nature must be determined from the content of the provision, its import gathered

from the language employed, and the language construed in the contest in which the provision has been enacted. In the present case the rule in Heydon's case (1584)76 E.R. 637, approved of and applied by this Court in Swantraj v. State of Maharashtra. 1974(3) S.C. 287:A.I.R. 1974 S.C. .517 and many other cases, is attracted. What was the law before the amendment, what was the mischief and defect for which the law did not provide, what remedy has Parliament resolved and appointed to cure the mischief, and the true reason of the remedy.

3. It has been observed earlier that a defendant intending to avoid an exparte decree could apply to the trial Court for setting it aside and could also appeal to a superior Court against it. The Courts were open to a duplication proceedings, and although the immediate relief claimed in the two proceedings was not identical, both ultimately aimed at a re-decision on the merits. Moreover, on the two proceedings initiated by the defendants, the application under Rule 13 of Order 9 would subsequently become infructuous if the appeal resulted in a decree superseding the trial Court decree. It was also possible to envisage the appeal become infructuous if the trial Court decree was set aside on the application under Rule 13 of Order 9 before the appeal was disposed of. The plaintiff was in the unfortunate position of being dragged through two Courts in simultaneous proceedings. Public time and private convenience and money was sought to be saved by enacting the Explanation. The Code of Civil Procedure (Amendment) Act, 1976 was enacted with the avowed purpose of abridging and simplifying the procedural law. By enacting the Explanation, Parliament left it open to the defendant to apply under Rule 13 of Order 9 for setting aside an exparte decree only if the defendant has opted not to appeal against the exparte decree, or in the case where he had preferred an appeal, the appeal had been withdrawn by him. The withdrawal of the appeal was tantamount to effacing it. It obliged the defendant to decide whether he would prefer an adjudication by the appellate Court on the merits of the decree or have the decree set aside by the trial Court under Rule 13 of Order 9. The legislative attempt incorporated in the Explanation was to discourage a two pronged attack on the decree and to confine the defendant to a single course of action. If he did not withdraw the appeal filed by him but allowed the appeal to be disposed of on any other ground, he was denied the right to apply under Rule 13 of Order 9. The disposal of the appeal on any

ground, whatever apart from its withdrawal, constituted sufficient reason for brining the ban into operation'.

8. The aforementioned judgment has also been followed and applied by this Court in the case of Chanan Singh v. Dayal Singh and Ors., (1999-1)121 P.L.R. 134.

9. From the above principles laid down in Section 96(2) read with the Explanation to Rule 13 of Order 9, it is evident that the appeal is maintainable before the appellate authority even on the principles laid down in the Code. I am further of the view that strict principles laid down in the code would not apply to the proceedings before the Rent Tribunal. Therefore, I have no hesitation in rejecting the contention raised by Mr. Hemant Sarin, learned counsel for the landlord-respondent.

10. For the reasons recorded above, this revision petition fails and is hereby dismissed. The tenant-petitioner shall vacate the demised premises within one month from today, failing which the respondent-landlord shall be entitled to execute the order of ejectment.

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