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

Ramesh Basandara Vs. Moti Ram

Ramesh Basandara Vs. Moti Ram

SooperKanoon Citation : sooperkanoon.com/696225

Court : Delhi

Decided On : Jul-08-2003

Reported in : 2003VIAD(Delhi)170; 105(2003)DLT713; 2003RLR539

Judge : Mahmood Ali Khan, J.

Acts : Delhi Rent Control Act, 1958 - Sections 14(1), 14A, 14D, 25A, 25B, 25B(4) and 25B(8); Limitation Act, 1963 - Sections 5; Code of Civil Procedure (CPC) , 1908 - Sections 115 - Order 9, Rule 13 - Order 37, Rules 3(7) and 4 - Order 47, Rule 1; Constitution of India - Articles 226 and 227

Appeal No. : C.R. No. 391 of 2002 and C.M. 857 of 2002

Appellant : Ramesh Basandara

Respondent : Moti Ram

Advocate for Def. : L.K. Singh, Adv.

Advocate for Pet/Ap. : Sanjay Shangari, Adv

Disposition : Petition dismissed

Judgement :

Mahmood Ali Khan, J.

1. The petitioner, who is landlord, has filed this petition under Section 115 of the CPC assailing an order of an Additional Rent Controller dated 18.2.2002 by which he has set aside the order of eviction passed against the respondent tenant under Sub-section (4) of Section 25B of the Delhi Rent Control Act (for short the Act) and has fixed the application/affidavit of the tenant filed for obtaining leave to contest the application filed by the petitioner landlord for recovery of possession of the tenancy premises from him under Clause (e) of Section 14 of the said Act for consideration on merit.

2. This petition is purported to have been filed under Section 115 of the CPC against an order of the Additional Rent Controller (Controller). The Rent Controller is not a Civil Court. It is a Tribunal though it has all the trapping of a Civil Court. The order of the Controller are not revisable by the High Court in exercise of its jurisdiction under Section 115 of the CPC. This petition which was filed in April, 2002 has been heard on merit and it will be travesty of justice if it is rejected now on technicalities. The present petition may, thereforee, be considered by the High Court under its supervisory jurisdiction under Article 227 of the Constitution of India. However, the jurisdiction of the Court under Article 227 is limited to seeing whether the Civil Courts and the Tribunals function within the limits of their jurisdiction and not to correct the error of law. In a recent judgment the Supreme Court in Sugarbai M. Siddiq and Ors. v. Ramesh S. Hankare (D) by LRs., : (2001)8SCC477 , has held that the High Court under Article 227 has to see whether the lower Courts/Tribunal has jurisdiction to deal with the matter and if so, whether the impugned order is vitiated by procedural irregularity; in other words, the Court is concerned not with decision but with decision making process.

3. In the backdrop of the above cited principles of law the facts of the present case may be noticed. Shorn of all unnecessary details the relevant facts are that the petitioner filed an application for recovery of the possession of the tenancy premises from the respondent under Clause (e) of Section 14(1) of the Act. The summons prescribed in Schedule III was served on the respondent but he failed to appear and file affidavit within 15 days of the receipt of the summons by him in accordance with Sub-section (4) of Section 25B of the Act. But before the Controller could pass an order for eviction against him the tenant appeared and

presented an application for leave to contest before him- He also filed an application under Section 5 of the Limitation Act. The Controller holding that it had no power and jurisdiction to condone the delay rejected the application and passed an eviction order against the tenant under Clause (e). Thereafter, the respondent filed an application under Order 9 Rule 13, CPC read with Section 37 Rule 4, CPC and Section 151 of the CPC, inter alia, stating the reason which prevented him for appearing and filing affidavit for obtaining leave to contest the eviction petition within 15 days from the date of the service of the summons on him. It was accompanied by an application under Section 5 of the Limitation Act. Both the applications were resisted by the petitioner on diverse pleas including that the application is not maintainable and the impugned order dated 3.12.2001 was not an ex parte order and the Court had also become functus officio, etc.

4. The Additional Rent Controller following the judgment of a learned Single Judge of this Court in Gurdittamal v. Bal Sarup, : AIR1980 Delhi216 set aside the eviction order in exercise of his inherent powers and fixed the application for leave to contest for hearing on merit.

5. The petitioner is aggrieved and has challenged this order in the present proceeding.

6. The moot question is whether the Controller had power and jurisdiction to set aside the order of eviction passed under Sub-section (4) of Section 25B of the Act and allow the tenant to present an application for leave to contest on affidavit. Before adverting on this question it will be appropriate to consider a few provisions of the Act. The eviction application was filed under Clause (e) of Section 14(1) of the Act. By virtue of proviso to Sub-section (1) of Section 14 the Controller has jurisdiction to allow eviction of a tenant on the application of the landlord under Clause (e) on the landlord's proving (1) that he is the owner; (2) the premises were let out for residential purpose; (3) he requires the premises bona fide for occupation of self or other member of his family dependent upon him for residence and (4) that neither he nor any other person for whose benefit he held the premises or member of his family is in occupation of any other reasonably suitable residential accommodation. Sub-section (1) of Section 25B of the Act has provided

that an application under Clause (e) of Section 14(1) and Sections 14A to 14D shall be tried by the special procedure prescribed under Chapter IIIA. Section 25A is a non obstinate clause. It has provided that the provisions of Chapter IIIA or any rule made there under shall have effect notwithstanding anything inconsistent therewith contained elsewhere in this Act or in any other law for the time being in force. In other words wherever there is a conflict between the provision of Chapter IIIA on the one hand and those of the rest of the Act or any of the other law for the time being in force on the other the former shall prevail. Section 25B is in two parts. The first part has laid down the procedure for trial of the eviction application filed on the ground under Clause (e) of Section 14(1) and Sections 14A to 14D of the Act, The second part has provided the remedies which are available to the parties against the final order passed in such applications. The procedural law is contained in Sub-section (2) to Sub-sections (7) and (10). Whereas the remedial procedure against the final order is provided in Sub-sections (8) and (9) of this section. It is now well settled that Section 25B is the complete procedure and a complete code prescribed for trial of the eviction cases on the ground specified in Sub-section (1) (see Precision Steel and Engineering Works and Anr. v. Prem Deva Niranjan Deva Tayal, : [1983]1SCR498 . Section 25A excluded the application of any other law including other provisions of the Act, so far as they are inconsistent with Section 25B.

7. The summons of a case which is triable under Chapter IIIA is issued on the form prescribed in IIIrd Schedule in accordance with Sub-section (2) of Section 25B of the Act. Sub-section (3) is regarding the mode and procedure for service of summons above said, on the tenant and when it would be deemed to be a valid service of summons on him. Sub-section (4) is of some significance since it says that if the summons, as specified in IIIrd Schedule, is duly served on the tenant he would not, as a matter of right, contest the eviction petition. The tenant, on receiving the summons of the eviction application is required to file an affidavit 'stating the grounds on which he seeks to contest the application for eviction' and obtain leave from the Controller. Sub-section (4) does not specify the time during which the tenant is required to approach the Controller for such relief. But combined reading of the form of summons specified in IIIrd Schedule and the provision of Sub-section (4) it is clear that the tenant has to appear and file the

affidavit stating the ground on which he wanted to obtain leave to contest the eviction application within 15 days from the date on which he has been served with the summons of the case. The consequences of the default committed by a tenant are also specified in Sub-section (4). The consequences are that the statement made by the landlord in the eviction application shall be deemed to be admitted by the tenant and the landlord would become entitled to an order of eviction under Clause (e). In other words after the tenant is served with the summons but fails to appear and file the affidavit for leave to contest within 15 days of the receipt of the summons by him or he fails to obtain leave of the Controller to contest the eviction application the consequences as mentioned in Sub-section (4) would follow. The landlord will become entitled to an eviction order against the tenant. But the Controller is not obliged to pass an eviction order straightaway. The obstinate clause of Sub-section (1) of Section 14 debars him from passing an eviction order unless the landlord has been able to make out ground for eviction specified in Clause (e) of proviso to Sub-section (1) of the Act. If the Controller is satisfied on the basis of the deemed admission of the tenant that all the ingredients of Clause (e) (sic.) are will pass the order of eviction against the tenant. Otherwise he may require the landlord to produce evidence to substantiate ingredients of the grounds of Clause (e) which have not been proved on the basis of the admission of the tenant.

8. In the instant case the respondent tenant could not appear and file the requisite affidavit for obtaining leave to contest within 15 days of the service of the notice of demand, he presented his affidavit after the expiry of 15 days. The Controller had no jurisdiction to extend the time for appearance and filing of the affidavit by the tenant under Sub-section (4) of the Act. In view of the obstinate clause of Section 25A the provision of Limitation Act being inconsistent with the time prescribed by Sub-section (4) of the Act will not be available to the Controller for condoning the delay. It has been so held by a Division Bench of this Court in Gurdittamal v. Bal Sarup, : AIR1980 Delhi216a .

9. The question arises as to what are the remedies available to a tenant against such an order so that he could be heard on his application for leave to contest the eviction application. An order of recovery of possession of the tenancy premises

against the tenant under Clause (e) of Section 14(1) or Sections 14A to Section 14D of the Act is not applicable in view of Sub-section (8) of Section 25B. However, proviso to this sub-section empowers the High Court to call the record of the Controller to satisfy itself that the eviction order is according to law. Though ostensibly the proviso empowers the High Court to hear revision against an eviction order passed against the tenant but the Supreme Court in Vinod Kumar Chowdhry v. Smt. Narain Devi Taneja, : [1980]2SCR746 , has held that this provision is also available to a landlord whose eviction application has been dismissed by the Controller. In case a revision is not filed the parties may avail of an alternative remedy under Sub-section (9) of this Act for review of the final order made by the Controller in terms of Order 47 Rule 1, CPC. The parties do not have remedies other than the remedies provided in Sub-section (8) and Sub-section (9) of the Act for challenging the final order passed under the special procedure of Section 25B in view of obstinate clause of Section 25A of the Act.

10. In the instant case the respondent tenant did not file the revision petition against the order under Sub-section (8) of Section 25B. Instead he filed an application under Order 9 Rule 13, CPC read with Order 37 Rule 4, CPC and Section 115, CPC. Even at the risk of repetition it may be that obstinate clause of Section 25A excludes the application of any other provision of the Act or rules made there under or any other statute which is for the time being in force which are inconsistent with the provisions of Chapter IIIA. The provisions of Order 9 Rule 13, CPC or Order 37 Rule 4, CPC are indubitably inconsistent with the provision of Section 25B of the Act. An order of eviction passed under Sub-section (4) is not an ex parte order. Resort to Rule 4 of Order 37, CPC is misconceived since that provision is available for setting aside an ex parte money decree passed in a summary trial of certain suit under Order 37, CPC. These provisions cannot be imported into Chapter IIIA of the Act. It is pertinent to note that Sub-rule (7) of Rule 3 of Order 37, CPC empowers the Civil Court to condone the delay in appearance or in filing application for leave to defend the civil suit by a defendant. No such provision has been enacted in Chapter IIIA. The Court construing a provision should not easily read into its words or provisions which have not been specifically enacted. Order 9 Rule 13, CPC allows setting aside an ex parte decree in ordinary civil suits and Rule 4 of Order 37 permits setting aside the ex parte money decree

passed under the summary procedure of Order 37. Both these provisions as such are for setting aside an ex parte decree passed in civil suits. Even otherwise the remedy against an order passed under Sub-section (4) is either by way of revision filed in the High Court or by way of a review application filed before the Controller which passed the order. Here it will be noteworthy that the Controller is not an ordinary Civil Court but it is a Tribunal though it had all the trapping of a Civil Court. A Tribunal has inherent power to render complete justice to the parties. It can set right the wrong committed by it in exercise of its inherent powers. It also has ample power to prevent miscarriage of justice or to correct grave and palpable error committed by it. The Controller as such may give relief to the parties under the power of review in accordance with Order 47 Rule 1, CPC in terms of Sub-section (9) of the Act or invoke its inherent powers if exercise of such powers is necessary for doing justice in the case or undoing the wrong committed by it.

11. In the instant case as noticed above, the tenant had appeared before the Controller and presented affidavit stating the grounds for obtaining leave to contest the eviction application. But it was done by him after the expiry of 15 days time allowed to him to exercise this right. After the eviction order was passed he submitted a similar application praying that he may be allowed to contest the eviction application on the ground stated on the affidavit. He also explained the circumstances which prevented him from appearing and filing the affidavit within the specified time. The question is whether the Controller could review the order, allow and consider the affidavit of the tenant on merit if he is satisfied that the tenant was prevented by good cause in not approaching him within the prescribed limitation. Power of the Controller in reviewing the order made under Sub-section (4) of the Act is circumscribed by Order 47 Rule 1, CPC. Rule 1 of Order 47 allows review of an order when (1) there is discovery of new and important matter and evidence which despite due diligence was not within the knowledge of the applicant; (2) or it could not be produced by him at the time when the decree or order was made; (3) there is some mistake or error apparent on the face of the record pointed out by the applicant and lastly; (4) for any other sufficient reason. The case of the appellant apparently would not be covered under the first three clauses. The words 'any other sufficient reason' have been interpreted to mean 'a reason sufficient on grounds at least analogous to those specified immediately

previously' i.e. excusable failure to bring to the notice of the Court new and important matters, or error apparent on the face of the record. The case of the tenant would also not be covered by the last clause. The Controller's power were restricted to reviewing the order only in accordance with Rule 1 of Order 47, CPC and not beyond that.

12. That leads to the question whether the Court could invoke its inherent power to interfere with the eviction order and entertain the leave application/ affidavit of the tenant in exercise of its inherent power.

13. This Court in Gurdittamal (supra) : AIR1980 Delhi216 , has held that the Controller as a Tribunal has inherent power to do justice to the parties. It was also observed that such inherent powers are implied in every authority or Tribunal which had power to decide a matter otherwise it could not properly decide the matter within its power. However, such inherent power could be invoked by the Tribunal only for the limited purpose of preventing the abuse of its process or if it finds it necessary for the ends of justice. This Court held that the Tribunal under its inherent power can recall or vacate an eviction order passed under Sub-section (4) of Section 25B of the Act in case the tenant is able to give good and sufficient cause for his failure in appearance or filing application on affidavit for leave to contest the eviction case within the time specified.

14. Now reverting to the facts of the present case suffice to mention that the tenant in the application has given reasons of delay in approaching the Court for obtaining leave to defend within the prescribed time of 15 days. He appeared before the Court soon after the time had expired and moved an application for condensation of delay along with an application for obtaining leave which was rejected by the Controller for technical reasons. It had no power to extend the time for the appearance and filing of an affidavit by the tenant for obtaining leave to contest the eviction case. Soon after the eviction order was passed in terms of Sub-section (4) of Section 25B the present application was filed by him. In the application, inter alia, he contended that he was 70 years old man suffering from old age disease and was confined to bed because of giddiness and fever for almost 15 days. He was a handicapped person and his son who is carrying on

business in the tenancy premises along with him was out of station and he had gone to Jind, Haryana for discharging certain family obligations. He was out of town from 20.8.2001 and 17.9.2001 and the applicant himself was not in a position to take steps in the matter required by law and he could do so only after his son returned to Delhi on 17.9.2001. He contended that the present petition was an abuse of the process of law since earlier two eviction petitions on the ground of non-payment of rent and subletting which were dismissed and finding no other ground the present petition was filed under Section 14D of the Act for taking advantage of being widow which is the only ground left in the armory of the landlady and which is not available to her. She has not come to the Court with clean hands and she has suppressed material facts that another accommodation was available to her which was being misused for commercial purpose, etc. and that the present premise was not required by her bona fide. Certain other facts have also been mentioned in the application. The application was supported by an affidavit and an application for condensation of delay in filing the application. This application was contested by the petitioner landlady in which the facts about the applicant being an old and sick man, etc. were not specifically denied. She however stated that she denied for knowledge that the respondent was 70 years old and was suffering from old age problem. However, it was denied that he was confined to bed because of giddiness and fever or that he was handicapped in the absence of his son who was out of station. Other allegations were also controverter.

15. The learned Controller has accepted the Explanationn for delay given by the respondent in the application which are duly supported by affidavit. He has allowed the application, has set aside the eviction order passed under Sub-section (4) of Section 25B and has fixed the case for hearing on leave to contest submitted by the respondent tenant. In the totality of the facts and circumstances there is no reason for this Court to upset this order even if a different view was possible. Under the supervisory discretionary inherent powers under Article 227 of the Constitution of India the power of the High Court is limited to seeing whether the subordinate Courts and the Tribunals function within the limits of their jurisdiction. The Controller in this case has jurisdiction to grant relief to the tenant, thereforee, the impugned order is within his jurisdiction. The Court may examine

the decision making process and not the decision itself under Article 227 in view of the judgment of the Supreme Court in Mohd. Yunus v. Mohd. Mustaqim and Ors., : [1984]1SCR211 and in Sugarbai M. Siddiq and Ors. v. Ramesh S. Hankare (D) by LRs., (supra).

16. Having regard to the above discussion there is no merit in the petition. Before parting with this case it will be appropriate to refer to the judgments cited on behalf of the petitioner. In Mohan Lal v. Om Prakash, , it was held that under Order 37 Rule 4 an ex parte decree may be set aside when special circumstances are shown. After examining the provision of Order 9 Rule 13, CPC and Order 37 Rule 4, CPC it was held that the expression 'sufficient cause' used under Order 9 Rule 13, CPC is not synonymous with the expression 'special circumstances' used in Rule 4 of Order 37, CPC. This section does not apply as it has already been observed that this provision will not be attracted to a proceeding under Section 25B of the Act. Similarly, in Sagarmal Panch v. Chief Judicial Magistrate, Puri and Ors., 0043/1989 : AIR1989 Ori158 , it was held that the eviction proceeding under Section 7 of Orissa House Rent Control Act, 1967 were not of summary nature so Order 37 Rule 4, CPC is not applicable. In the face of provision of Section 25B of the Act, the judgment and the view which has been taken by this Court above, this judgment has no relevance to the present case.

17. As a result of the above discussion the petition has no merit. It is dismissed.

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