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Court : Kerala

Decided On : Jan-31-1989

Reported in : AIR1991Ker295

Judge : T.L. Viswanatha Iyer, J.

Acts : Kerala Buuldings (Lease and Rent Control) Act, 1965 - Sections 18 and 18(1)

Appeal No. : O.P. No. 876 of 1989-D

Appellant : Sumathi

Respondent : S. Devasan and ors.

Advocate for Def. : K.K. Ravindranath, G.P.

Advocate for Pet/Ap. : S. Sankarasubban, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

T.L. Viswanatha Iyer, J.

1. There is no merit in thisoriginal petition; nor for that matter, any bona fides.

2. A petition for eviction under the Kerala Buildings (Lease and Rent Control) Act, (the Act in brief) was filed against the petitioner in May, 1985. The landlord who is a retired Army Officer, a disabled war hero of the 1971 Indo-Pakistani War, claimed that he needed the building bona fide for his occupation. Petitioner however contended that she was not the lessee but her husband Ravindran, and since there was no landlord-tenant relationship between her and the owner of the building, the petition for eviction under the Act was not maintainable. Further, there was an agreement between her and the owner of the building, by which the latter had agreed to sell the building to her, and received an amount of Rs. 10,000/- as advance. Her possession was referable to this agreement, and not to any lease. The petition for eviction was liable to be rejected, as not maintainable on this ground as well.

3. Petitioner prayed that the point regarding maintainability of the petition may be decided as a preliminary issue. She filed a petition for the purpose. The Rent Control Court dismissed the application on December 7, 1985 and declined to deicide this question as a preliminary issue. Copy of that order is not produced. The petitioner took up the matter in appeal under S. 18 of the Act. The order of the Appellate Authority is Ext. P4. Before the Appellate Authority, counsel for the petitioner conceded that the petitioner had 'no objection' to the appeal being dismissed with a direction to the Rent Control Court to consider the question whether the 'denial of title' of the landlord by the petitioner, was bona fide, before going into 'the other aspects' arising for consideration in the rent control petition. This submission made on behalf of the petitioner was accepted, and the appeal was dismissed with a direction to the Rent Control Court 'to consider first at the trial' the question whether the denial by the petitioner of the title of the landlord was bona fide or not. This should normally have put an end to the appellate proceedings, but that was not to be.

4. Despite the concession made by her and the Appellate Authority's order Ext. P4, being strictly in accord with that concession, the petitioner challenged that order in revision before the District Court under Section 20 of the Act. The revision petition was disposed of by the order Ext, P5 after a lapse of nearly fourteen months. The revisional Court dismissed the revision petition with compensatory

costs, with a direction to the Rent Control Court to dispose of the matter after trial on merits on or before February 28, 1989. The Court noted that in spite of the concession made before the Appellate Authority, the petitioner chose to file the revision petition, and protracted the matter for a further period of fourteen months. The conduct of the petitioner required to be condemned; and the Court could express its displeasure only by awarding compensatory costs of Rs. 1,000/-.

5. The orders of the three authorities are challenged before me in this original petition under Article 227 of the Constitution.

6. I do not find any merit in this original petition. After having conceded and got the Appellate Authority to pass an order that the appeal may be dismissed with a direction to the Rent Control Court to consider the bona fides of the denial of title first at the trial, it did not lie with the petitioner to challenge that order in revision before the District Court. Evidently the petitioner's attempt was to protract the proceedings by some means or other. She succeeded in this attempt, as observed with anguish by the District Judge in the order Ext. P5. The matter was pending in the District Court for nearly fourteen months during which period the proceedings in the Rent Control Court stood stayed. The filing of the revision petition was clearly an abuse of the process of the Court, intended, not for agitation of any bona fide grievance, but only to delay the disposal of the Rent Control Petition.

7. I must observe here that I feel disturbed at the way in which the two authorities below dealt with the matter and contributed to the protraction of the rent control proceedings. The delay has occurred in part by the entertainment of the revision petition and the passing of an order of stay. The District Court exercising a jurisdiction where interference is limited to certain grounds only, ought to be circumspect in entertaining a revision petition, particularly when it arises at interlocutory stages of the proceedings before the Rent Control Court. The revision should have been weeded out at the threshold itself as a frivolous one, not worthy of being admitted for consideration under Section 20. In any event, the Court should have been careful in the matter of staying the proceedings before the trial Court. The revisional Court should first have considered whether' there was a case worthy of being admitted and entertained for consideration at all, and if so,

whether interim relief should be granted, and on what conditions. This would have been the proper mode of dealing with the matter. Such an exercise will avoid perpetration of judicial injustice, by the Court contributing its part to the delay in the dispensation of justice, by indiscriminate entertainment of frivolous matters and grant of stay. Care and close scrutiny is called for in such matters even at the initial stages; else considerable prejudice and hardship will ensue to the innocent opposite party, who in this case happens to be a disabled Army Officer, stated to be with a bullet still lodged in his abdomen.

8. The Act by its Section 4 gives vent to the fond hope of the legislature that a rent control petition should find disposal as far as possible, within four months. I wonder whether this expression of hope has materialised in any case. It is not that this time frame applies only to the Court of first instance, or that matters may languish in appeal or revision. What has been stated of the rent control petition should apply equally to the appeal and the revision. Courts in this country of over crowded dockets arc certainly not to be blamed for the delay which is contributed by a variety of other cases. But the courts should at the same time be vigilant to see that there is no judicial contribution to the delay as in this case. The revision petition which did not deserve a second look languished in the District Court for nearby fourteen months to meet the fate it deserved.

9. The question raised by the petitioneris that there is no landlord-tenant relationship between the parties. That is an aspect which has got to be looked into at the trial. So is the case of alleged agreement to sell which also is a matter required to be dealt with on evidence, at the trial. If it is found that the case made out by the petitioner is true, the Rent Control Court will have to deal with the case accordingly at the trial. The concession before the appellate authority was not an act of grace, but realisation of the stark reality that the petitioner had no case worthy of being argued in appeal. After all this, to entertain a revision, grant stay and keep the matter pending for fourteen months, looks unreasonable and oppressive, particularly in the light of the 'trauma' of the landlord to which the District Judge refers in Ext. P5.

10. The original petition is therefore, without merit. Before closing the judgment however, I must mention that the very maintainability of the appeal which the petitioner filed before the Appellate Authority was a moot point. The order impugned in the appeal was only one, by which the Rent Control Court rejected an application to hear and decide the question of maintainability of the rent control petition as a preliminary point. This order did not affect any right of the petitioner. This was purely a procedural matter by which the Rent Control Court rightly relegated the entire matter for consideration at the trial. A decision on the question of denial of title and of its bona fides, requires evidence. It is not a question of law pure and simple, but one of fact on which the parties have joined issue. The facts are not admitted. In fact, they are very much in dispute. It requires evidence before the dispute can be resolved and a decision rendered on the point. The Rent Control Court was therefore perfectly justified in refusing to deal with the question as a preliminary point.

11. The question is, was this order appealable? Section 18(1)(b) of the Act which is relevant and which provides for appeal reads :

'18(1)(b): Any person aggrieved by an order passed by the Rent Control Court, may, within thirty days from the date of such order,prefer an appeal in writing to the appellate authority having jurisdiction. In computing the thirty days aforesaid, the time taken to obtain a certified copy of the order appealed against shall be excluded.'

An appeal is thus provided against an order of the Rent Control Court. Does it mean that each and every order passed by that Court, irrespective of its nature and irrespective of whether it is final or interlocutory, is liable to be appealed against? The section, if taken literally, is wide in its sweep and amplitude. But the very amplitude of the provisions requires limitations and restrictions to be placed upon its exercise. Otherwise it can well turn out to be a self-defeating provision, stultifying the very basic philosophy of the Act of expeditious culmination of the proceedings initiated thereunder. The question is what exactly should be the connotation of the expression 'an order'.

12. The Act contemplates various types of orders to be passed by a Rent Control Court. Section 11 itself provides for orders of eviction being passed if the conditions specified therein are made out by the landlord. Section 11A makes special provisions in favour of members of the Armed Forces. Section 12 contemplates orders stopping the proceedings which are liable to be appealed against. Other appealable orders can also be postulated like those refusing to restore an application dismissed for default or to set aside an ex parte order, or to set aside abatement and the like. These arc orders, which by their very nature, are appealable under Section 18(1)(b). There can also be orders which do not attribute finality to the proceedings before the Rent Control Court, but may nevertheless be claimed to be appealable, on the wide wording of the section. I shall consider whether it should be so, and what types of orders could be made the subject of the appeal under Section 18(1)(b).

13. The Supreme Court had occasion to deal with an analogous provision under the Companies Act, 1913 in Shankarlal v. Shankarlal, AIR 1965 SC 507. An appeal was provided against any order or decision of the Company Court under Section 202 of the said Act.

The question arose whether any order of whatever nature made in the course of winding up proceedings, could be appealed against. The Court answered the question in the negative observing that, though the words occurring in the section were wide, necessarily they must exclude merely procedural orders, or those which do not affect the rights or liabilities of parties. In other words, the Court laid down the test of appeal ability as to whether the order impugned affected the rights or liabilities of parties and was not one merely procedural in nature. The ratio of this decision was reiterated in a case arising under the Delhi Rent Control Act, 1958 in Central Bank of India Ltd. v. Gokal Chand, AIR 1967 SC 799. The tenant against whom a petition for eviction had been filed, applied for the issue of a commission to report whether the landlord required the premises, bona fide for his own occupation, and to prepare a plan of the premises for the purpose. The application was rejected and that was challenged in appeal under Section 38(1) of the Act. This provision laid down that an appeal lay to the Rent Control Tribunal from every order of the Controller made under the Act. The question was whether

the appeal in question could be entertained under this provision. The Supreme Court dealt with the matter in the following words and negatived the appeal ability (at page SC 800; AIR 1967) :--

'The object of Section 38(1) is to give a right of appeal to a party aggrieved by some order which affects his right or liability. In the context of Section 38(1), the words 'every order of the Controller made under this Act', though very wide, do not include interlocutory orders, which are merely procedural and do not affect the rights or liabilities of the parties. In a pending proceeding, the Controller may pass many interlocutory orders under Sections 36 and 37, such as orders regarding the summoning of witnesses, discovery, production and inspection of documents issue of a commission for examination of witnesses, inspection of premises, fixing a date of hearing and the admissibility of a document or the relevancy of a question. All these interlocutory orders are steps taken towards the final adjudicationand for assisting the parties in the prosecution of their case in the pending proceeding; they regulate the procedure only and do not affect any right or liability of the parties. The legislature could not have intended that the parties would be harassed with endless expenses and delay by appeals from such procedural orders. It is open to any party to set forth the error, defect or irregularity, if any, in such an order as a ground of objection in his appeal from the final order in the main proceeding. Subject to the aforesaid limitation, an appeal lies to the Rent Control Tribunal from every order passed by the Controller under the Act. Even an interlocutory order passed under Section 37(2) is an order passed under the Act and is subject to appeal under Section 38(1) provided it affects some right or liability of any party. Thus, an order of the Rent Controller refusing to set aside an ex parte order is subject to appeal to the Rent Control Tribunal.'

Bant Singh Gill v. Shanti Devi, AIR 1967 SC 1360 was a case under the Delhi and Ajmer Rent Control Act of 1952 in which the tenant attempted to raise a preliminary issue that the petition for eviction had abated by virtue of Section 50(2) of the Delhi Rent Control Act of 1958. His application for that purpose was dismissed. He took up the matter in appeal under Section 34 of the 1952 Act, but the very maintainability of the appeal was challenged. After referring to the decision in Central Bank of India, (cited supra), the Supreme Court observed (at p.

1362 SC; AIR 1967) : --

'The principle was thus recognised that the word 'order' used in such context is not wide enough to include every order, whatever be its nature, and particularly orders which only dispose of interlocutory matters. In the case before us also, all that was done by the application presented by the appellant on the 13th March, 1961, was to raise a preliminary issue about the maintainability of the suit on the ground that the suit had abated by virtue of Section 50(2) of the Act of 1958. The Court went into that issue and decided it against the appellant. If the decision had been in favour of the appellant and the suit had been dismissed, no doubt there would have beena final order in the suit having the effect of a decree (see the decision of the Full Bench of the Lahore High Court in Ram Charan Das v. Hira Nand, AIR 1945 Lah 298 (FB)). On the other hand, if, as in the present case, it is held that the suit has not abated and its trial is to continue, there is no final order deciding the rights or liabilities of the parties to the suit. The rights and liabilities have yet to be decided after full trial has been gone through. The decis'ion by the Court is only in the nature of a finding on a preliminary issue on which would depend the maintainability of the suit. Such a finding cannot be held to be an order for purposes of Section 34 of the Act of 1952, and, consequently, no appeal against such an order would be maintainable. It was indicated by this Court in the case of the Central Bank of India Ltd., Civil Appeal No. 1339 of 1966, D/- 12-9-1966; (reported in AIR 1967 SC 799) (supra) that, in such a case, it is open to the appellant to canvass the error, defect, or irregularity, if any, in the order in an appeal from the final order passed in the proceedings for eviction. In the present case also, therefore, it is clearly open to the appellant to raise this plea of abatement of the suit, if and when he files an appeal against a decree for eviction passed by the trial Court.'

14. On the principle of these decisions, it is clear that any order of whatever nature made by the Rent Control Court is not made appealable under Section 18 merely because it is an order passed by the Rent Control Court. The expression 'an order' cannot be construed as making each and every order, interlocutory or otherwise, appealable. Section 18 comprehends only such orders as affect the rights or liabilities of parties. Orders pertaining to matters merely of procedure or evidence

or are steps in the proceedings are not appealable. An interlocutory order to be appealable, must vitally affect the right to relief, or defence of a party if the matter were to proceed to trial on that basis.

15. The High Court of Madras had occasion to deal with a similar provision in Chinnaraju Naidu v. Bavani Bai, 1981 (II) MLJ 354. The Court was dealing with the provisions of the Tamil Nadu Buildings(Lease and Rent Control) Act, 1960 which by its Section 23(1)(b) provided for a right of appeal against any order of the Rent Control Court. The order in that case was one by which the Rent Controller granted leave to the landlord to amend the rent control petition by correcting door number of the petition schedule premises from 36 to 37. The appeal by the tenant before the appellate authority was challenged as not maintainable. Ratnavel Pandian, J. (as he then was) went into the question in great detail. He considered the decision of the Supreme Court in Central Bank of India and Bant Singh Gill, as also some earlier decisions of the High Court of Madras in Santhanam Iyyer v. Somasundara Vanniyar, 1958 (2) MLJ 400 and Maria Gounden v. Ramaswami Gound, 1962 (I) MLJ 106. In the last of these cases Ramchandra Iyer, J. stated that the words 'every decision' occurring in Section 9(2) of the Madras Fair Rent Act of 1956 could only mean an final decision and that it could not include interlocutory orders such as the determination of a preliminary point by the Rent Control Court. In such cases, the aggrieved party shall await the final disposal of the application, and then file appeal against the final decision to the appellate authority. After considering these cases, Ratnavel Pandian, J. observed :--

'The quintessence of the above discussion, in the light of the observations made in the various decisions referred to above, is to the effect that all interlocutory orders passed during the proceedings under the Act cannot be said to be orders coming within the meaning of Section 23(1)(b) of the Act but only the orders which affect the right and liabilities of the parties, in the sense that they become final orders though passed on interlocutory applications, such as refusing to set aside an ex parte order etc., are appealable. However, it is open to the parties to set forth the error, defect or irregularity, if any, in such an order as a ground of objection in his appeal from the final order in the main proceedings.'

The learned Judge held that the appeal in question was not maintainable. (See also Murugesan v. NatrarajaMudaliar,(1987) 100 LW 157 (Mad).

16. In Mani v. T. K. Jacob, 1983 (2) MLJ 293, the High Court held that a direction by the Rent Control Court not to try a particular point as a preliminary issue does not affect the rights of parties and was therefore, not appealable.

17. A 'conspectus of these decisions leads to the conclusion that though Section 18(1)(b) is wide in its terms, an appeal does not lie unless the order in question is one finally disposing of the proceedings or is one which affects the rights or liabilities of the parties. It will depend on the nature of the order in a given case, as to whether it is appealable or not. Each case will depend on its own facts. Thus an order admitting or refusing to admit documents will not normally be appealable, but such an order receiving documents in evidence after the trial started was held appealable by Ratnavel Pandian, J. in Habib Khan v. Arogya Mary Shanthi Lucien, 1981 (2) MLJ 298: (AIR 1982 Mad 156). It is true that every order does affect the rights of parties in one sense or other. But that will not make it an order subject to appeal. Apart from the final orders, only those orders which virtually put an end to the proceedings or make it practically impossible for the affected party to get effective relief or to set up or substantiate a defence are rendered appealable. Refusal to try and decide a particular point as a preliminary issue is not such an order affecting the rights of any party. Such an order is not therefore appealable. As stated earlier everything depends on the nature of the particular order and its impact on the rights or liabilities in issue in the proceedings.

18. It is not often that this distinction is kept in mind by the appellate or revisional authorities functioning under the Act with the result orders of the nature impugned in this case are subjected to appeal. A weeding out of such frivolous appeals or revisions at the threshold before issue of notice is called for lest parties are enabled to protract the proceedings against the every avowed philosophy of the enactment enjoining expeditious disposal of proceedings under the Act.

19. In the light of what is stated above,the appeal before the appellate authority itself was not maintainable in this case. The revision before the revisional authority was also incompetent as it was directed against a consent order made by the

appellate authority. These aspects do not however seem to have been pointed out either before the appellate authority or before the revisional Court so that the appeal and the revision between them tended to delay the disposal of the rent control petition filed in May 1985 by well over three years.

20. I am tempted to make these remarks on the scope of Section 18(1)(b) only to highlight the abuse to which the provision can be subjected by litigants like the petitioner.

The original petition is therefore, dismissed in limine.

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