

Nirbhay Singh Vs. State of Rajasthan

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SooperKanoon Citation : sooperkanoon.com/752449

Court : Rajasthan

Decided On : Jul-30-2001

Reported in : AIR2002Raj28; 2003(2)WLN357

Judge : N.N. Mathur and; Jagat Singh, JJ.

Acts : Rajasthan Premises (Control of Rent and Eviction) Act, 1950 - Sections 2(3)

Appeal No. : D.B. Civil Misc. Application No. 68 of 1999

Appellant : Nirbhay Singh

Respondent : State of Rajasthan

Advocate for Def. : H.S. Sandhu and; A.K. Khatri, Advs. and; R. Kalla, A

Advocate for Pet/Ap. : D.S. Sishodia, Sr. Adv. and; Vijay Kumar Aggarwal, Adv.

Disposition : Application dismissed

Judgement :

Mathur, J.

1. The applicants, 66 in number, are tenants in the shops belonging to the third respondent Gurudwara Shri Guru Singh Saheb, Hanumangarh Town and Junction by way of joint application seeks leave to special appeal against the judgment of

the learned Single Judge dated 7.10.1996 rendered in S.B. Civil Writ Petition No. 4522/1993 Gurudwara Shri Guru Singh Saheb, Hanumangarh Town and Junction v. State. The applicants have also filed a joint writ petition seeking direction to quash notification of the State Government dated September 15, 1998 and June 3, 1999 in exercise of powers conferred by Sub-section 3 of Section 2 of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950' issued in compliance of the order of the learned Single Judge dated 7.10.96. The effect of the notification is that third respondent has been exempted from the application of the provisions of the Act of 1950.

2. We have heard Shri D.S. Sishodia, Senior Advocate with Shri Vijay Kumar Aggarwal at length. Before averting to the contentions advanced by the learned counsel, we consider it necessary to give a prelude to the controversy involved. The third respondent Gurudwara Shri Guru Singh Saheb, Hanumangarh Town and Junction (hereinafter referred to as 'the trust') is a registered body. It claims to be an education and charitable trust. According to the trust, its entire income is utilised for the purpose of running of its educational institutions. It is running a Guru Harikishan Public School upto 8th standard with English medium and also provided free facilities of boarding and lodging to the passengers. Its only source of income is rent from the shops. About 100 shops were constructed 40 years ago and rented out on a meagre rent. The trust approached to the State for granting exemption to them under the Act of 1950. Section 2(3) of the Act, reads as follows:-

(3) The State Government if it is satisfied that it is necessary or expedient so to do in public interest may, by notification in the official Gazette, exempt from all or any or the provisions of this Act any premises owned by any educational religious or charitable institution the whole of the income derived from which is utilised for the purpose of that institution.

In identical matter, the learned Single Judge in S.B. Civil Writ Petition No. 55/1981 (1), after thread bare discussion of the controversy directed the State to issue notification under Sub-section 3 of Section 2 of the Act of 1950 giving exemption to the trust from the application of the Act of 1950, by judgment dated 29.8.1991. The

learned Single Judge following the judgment in said case allowed the writ petition in the same terms. The effect of the writ is that State was required to issue a notification under Sub-section 3 of Section 2 of the Act of 1950 exempting the third respondent Gurudwara Shri Guru Singh Saheb, Hanumangarh Town and Junction from the application of the Act of 1950. The State preferred a Special Appeal against the judgment of the learned Single Judge dated 07.10.1996 being D.B. Civil Special Appeal No. 140/1998 (defect) State of Rajasthan and Ors. v. Gurudwara Shri Guru Singh Saheb, Hanumangarh Town and Junction. Alongwith this special appeal, an application Under Section 5 of the Limitation Act for the condonation of delay in filing the special appeal was also filed. The said application was rejected by the order of the Division Bench dated 04.05.1996 issued impugned notification under Section 2(3) of the Act of 1950 giving exemption to the third respondent Gurudwara Shri Guru Singh Saheb, Hanumangarh Town and Junction from the provisions of application of the Act of 1950.

3. The application for leave to special appeal against the judgment of the learned Single Judge dated 07.10.1996 deserves to be rejected for the simple reason that after dismissal of the special appeal filed by the State against the order of the learned Single Judge, though on the ground of delay and not merit, a second special appeal is not maintainable. In any case it cannot be maintained at the instance of third party. It is true that the order rejecting the special appeal on the ground of delay or rejection of S.L.P. are not order of affirmation or a binding precedent of the Division Bench or Supreme Court, but it is final and evocative as between the parties and binding precedent as a judgment of the Single Judge. Similarly, the writ petition also deserves to be rejected for the reason that as the impugned notification has been issued in compliance of the judicial order which has attained finality.

4. It is contended by Mr. D.S. Sishodia, Senior Advocate for the applicants that the special appeal against the judgment of the learned Single Judge is maintainable as the dismissal of the special appeal filed by the the State was not on merit but on the ground of delay. It is also submitted that the rejection of the special leave to appeal filed by the State against the order of the Division Bench will not come in

way in maintaining the special appeal before the Division Bench as the Supreme Court has also not decided the matter on merit. It is submitted that the order of the learned Single Judge has not attained finality as it has not merged in the order of the Division Bench and subsequently the order of the Supreme Court. In support of the contention, learned counsel has placed reliance on the decision in Kunhayammed and Ors. v. State of Kerala and Another (2) and Ratan Singh v. Vijay Singh and Ors. (3).

5. We have carefully gone through both the binding decisions of the Apex Court. The ratio laid down in both the cases does not advance the case of the applicants, on the contrary the views expressed by us in preceding para gets sustained from both the said judgments. In Kunhayammed's case (supra) the High Court dismissed a writ petition against the order of the Forest Tribunal by an elaborate order. The special leave to appeal filed by the State under Article 136 of the Constitution of India before the Apex Court was also dismissed. Subsequently, a review was sought of the order of the High Court. A preliminary objection was raised to the effect that after the rejection of the special leave to appeal by the Supreme Court, the order of the High Court merged therein and as such the review application was not maintainable. The objection was overruled by the High Court. The Apex Court surveyed almost all its earlier decisions on the point. While dealing with theory of doctrine of merger under the heading of stage of S.L.P. and post leave stage, it is held that in spite of a petition for special leave to appeal having been filed, the judgment, decree or order against which leave to appeal has been sought for, continues to be final, effective and binding as between the parties. The Court held that once leave to appeal has been granted, the finality of the judgment, decree or order appealed against is put in jeopardy though it continues to be binding and effective between the parties unless it is a nullity or unless the court may pass a specific order staying or suspending the operation or execution of the judgment, decree or order under challenge. The Apex Court explained its earlier decision in *Sree Narayana Dharmasanghom Trust v. Swami Prakasanada* (3), in para 6, as follows:-

'In our opinion, the order is final in the sense that once a special leave petition is dismissed, whether by a speaking or non-speaking order or whether in limine or on

contest, second special leave petition would not lie. However, this statement cannot be stretched and applied to hold that such an order attracts applicability of doctrine of merger and excludes the jurisdiction of the Court or authority passing the order to review the same.'

6. Thus, the Apex Court made it clear that as far as the rejection of the special leave is concerned, it is final whether it has been disposed of by a speaking or non-speaking order in limine or on contesting and no second special leave petition will lie. Secondly rejection of such a special leave to appeal will not attract the applicability of doctrine of merger and as such the court will have a jurisdiction to review the order against which the S.L.P. has been rejected by the Apex Court. In Ratan's case (supra) the appellant obtained a decree for possession on 14.12.1970. The appeal filed by the respondent against the said judgment was dismissed on 01.08.1973. The second appeal was rejected by the order of the High Court dated 31.03.1976 on the ground of delay. The execution petition was filed on 24th March, 1988. The question arose as to whether the limitation of 12 years is to be computed from the date of dismissal of first appeal by judgment and decree dated 01.08.1973 or the dismissal of second appeal only on the ground of delay by order dated 31.03.1976. The Apex Court held that when the first appellate court dismissed the appeal on 01.08.1973, the order of the trial court merged therein. However, when the second appeal was dismissed by the High Court only on the ground of delay, it was only an incidental order and that could not be a decree. Therefore, the Court held that the limitation was to be computed from the date when first appeal was rejected on 01.08.1973. The Apex Court after referring a Full Bench decision of the Calcutta High Court in the case of Mamuda Khateen v. Beniyan Bibi observed as under:-

'If the application under Section 5 of the Limitation Act was rejected the resultant order cannot be a decree and the order rejecting the memorandum of appeal is merely an incidental order.'

7. In the instant case, as the special appeal filed by the State before the Division Bench of this Court was dismissed only on the ground of delay, the order of the learned Single Judge cannot be said to have merged in the order of the Division

Bench. Therefore, the order of the learned Single Judge cannot be substituted as a binding precedent as a judgment of the Division Bench. The another effect is that review of the order of the learned Single Judge cannot be declined solely on the ground that a special appeal against the said judgment has been rejected. The order of the learned Single Judge shall continue to be final, effective and binding as between the parties. It is also a binding precedent as a judgment of the Single Judge, The same is the consequence of the rejection of the special leave to appeal by he Apex Court. As no second appeal can be maintained against the same judgment of the learned Single Judge, the question of leave to special appeal does not arise.

8. The learned counsel has also challenged the notification of Stale Government dated 15.09.1998 and 03.06.1999 on various grounds. As the impugned notifications have been issued in compliance of a judicial order, it is not open to examine the legality of the notification so long as the judgment of the learned Single Judge continues to be final, effective and binding.

9. Consequently, leave to special appeal is declined and the application filed by (he applicants is rejected. The writ petition challenging the notifications dated 15.09.1998 and 03.06.1999 is also dismissed in limine.