Schwartz Dasan Vs. K.S. Devadoss and 2 Others

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Court : Chennai

Decided On : Dec-11-1998

Reported in : 1999(1)CTC560

Judge : S.M. Abdul and; Wahab. J.

Acts : Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 -- Sections 10, 11 (1) (3) (4), 12(4) and 23

Appeal No. : C.R.P.Nos.490 and 491 of 1998

Appellant : Schwartz Dasan

Respondent : K.S. Devadoss and 2 Others

Advocate for Def. : Mr. R. Subramanian, Adv.

Advocate for Pet/Ap. : Mr. D. Peter Francis, Adv.

Judgement :
ORDER

1. C.R.P.No. 490 of 1998 has been filed against the order of the learned District and Sessions Judge, Madurai in R.C.A.No.4 of 1997 dated 15.10.1997,reversing the order of the Additional District Munsif, Madurai Town in R.C.O.P.No. 411 of 1994 dated 13.9.1996.

2. C.R.P.No.491 of 1998 has been filed against the order of the District and Sessions Judge, Madurai, dated 15.10.1997 in R.C.A.No.5 of 1997 reversing the order of the Additional District Munsif of Madurai Town in I.A.No.93 of 1995 in R.C.O.P. No.411 of 1994, dated 13.9.1996.

3. An eviction petition R.C.O.P.No.411 of 1994 was filed by the petitioner herein against the first respondent on the ground of wilful default. After the filing of the said petition, as the rents were not paid, the petitioner filed I.A.No. 93 of 1995 Section 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. An order was passed by the Rent Controller to deposit the arrears of rent in I.A.No.93 of 1995. As the first respondent failed to deposit the rent, eviction was ordered in R.C.O.P.No.411 of 1994. Hence, the first respondent filed two appeals viz., R.C.A.Nos.4 and 5 of 1997. The lower appellate authority has remitted the matter back to the Rent Controller for deciding the issue as to whether there is a relationship of landlord and tenant between the petitioner and the first respondent and whether there was wilful default in payment of rent.

4. Aggrieved by the common order dated 15.10.1997 made in R.C.A.Nos.4 and 5 of 1997, the abovesaid two revision petitions have been filed by the landlord.

5. The learned counsel for the petitioner Mr. D. Peter Francis, raised two points (1) There is no provision for the appellate authority to remand the matter back to the Rent Controller; and (2) The appeals preferred by the first respondent were not maintainable, since there was no deposit of the arrears of rent as directed by the Rent Controller under section 11(4) of the Act.

6. The learned counsel for the respondents Mr. R. Subramanian, on the other hand contended that the Rent Control Courts will have jurisdiction only when the relationship of landlord and tenant is established. As it was raised as a substantial defence, without deciding the said issue, the Rent Controller allowed the petitions filed under Section 11(4) and also passed the consequential order of eviction for not depositing the arrears. Therefore, the appellate authority was justified in remitting the cases back to the Rent Controller.

7. As regards the first contention of the learned counsel for the petitioner, i.e., there is no provision under the Tamil Nadu Building (Lease and Rent Control) Act, 1960, empowering the appellate authority to remand a case to the Rent Controller, the learned counsel cited the following decisions: reported in P. Narasimhan (died) and Others v. Narayana Chetty and others, 1982 T.L.N.J. 462. wherein Justice M.A. Sathar Sayeed, has held following decision of Ramaprasada Rao, J as he then was, reported in The Senior Superintendent of Post Offices, East Thanjavur v. K.R.M.S. Chockalingam Chettiar, 1967 (II) M.L.J. 412, that the appellate authority can retain the appeal on his file and can call for a finding of clarification with reference to the matters that are necessary for the disposal of the appeal. The learned Judge has also referred to the following decisions to hold as above:

1. Rengaswami Naidu v. The Second Judge, Court of Small Causes, Madras, 1949 (1) M.L.J. 24 ; 2. Kuttappa Nair v. Shahul Hammed, : AIR1973 Mad388

In the above cases, the decision by the Rent Controller was on merits after regular trial etc., and the remand was on the ground that some evidence was lacking and necessary for the disposal of the case. When the matter was taken up on appeal, not on any preliminary issue etc., the appellate authority after finding that some evidence was necessary or lacking, remanded the case to the Rent Controller, relying upon Section 23(3) of the Act, which directs that the appellate authority shall decide the appeal. Instead of deciding the appeal, the appellate authority sent the matter back to the Rent Controller and such a course was not permitted. But the case on hand is entirely different. The case was not decided on merits. There was no finding given as to whether the relationship of landlord and tenant existed and whether there was a wilful default. The tenant filed a counter to the effect that there was no relationship of landlord and tenant. Inspite of it the landlord has filed the petition under Section 11(4) of the Act. The Rent Controller without going into the relationship passed an order to deposit arrears of rent Therefore, the appellate authority goes into the matter and finds that there was no decision upon the relationship of landlord and tenant and without a decision on the said question, the order on the petition filed under section 11(4) of the Act was not maintainable. Hence, he found that the petition filed under Section 11(4) was not maintainable in this case. Therefore, after reversing the order passed on the

petition filed under Section 11(4), he sets it aside. Thereafter, what the appellate authority has done is that he has simply directed the Rent Controller to take up the Rent Control Petition for decision on merits. This is not a remand order. The appellate authority has finally decided the appeal before him and he has not sent back the issue that arose before him for decision by the Rent Controller. The order passed by the appellate authority is only a consequential direction for disposal of the case which gets restored before it in view of the order passed by the appellate authority. One cannot construe the order of the appellate authority as a remand order as contemplated by the provisions contained in Order 41 Rule 23 and 23A of Civil Procedure Code. As per the above provisions, remand is necessary when there is a decision on a preliminary issue by the lower Court and the decision being not accepted by the lower appellate Court and whereas a retrial is considered necessary. Has the appellate authority in this particular case reversed the order passed by the Rent Controller on a preliminary issue? Has he found that a retrial was necessary in this case No. Preliminary point was decided by the Rent Controller and there is no direction also by the appellate authority for a retrial. Only in such circumstances, the order of the appellate authority can be construed to be an order of remand under the provisions of Order 41 Rule 23 and 23A of Civil Procedure Code.

8. Justice M. Srinivasan, as he then was, has clearly indicated this distinction in R. Mani v. Shanmugam and 2 others, 1991 (2) L.W. 272. In the said case the Rent Controller closed a petition for setting aside an exparte order on the ground that the landlord had taken possession. The appellate authority after setting aside the Rent Controller's order directed him to dispose of the case on merits. The learned Judge after considering the various decisions, including the decision of Justice Ramaprasada Rao, as he then was, reported in TheSenior Superintendent of Post Offices, East Thanjavur v. K.R.M.S. Chockalingam Chettiar, 1967 (II) M.L.J., 412 held that the order passed by the appellate authority was correct. The decision of Justice M. Srinivasan, as be then was, squarely applies to the facts of the present case also. Therefore, in my view, the order passed by the appellate authority is not a remand order within the meaning of Order 41 Rule 23 and 23A of Civil Procedure Code.

9. We will come to the next point urged by the learned counsel for the petitioner, namely, that the appeal itself was not maintainable, since the tenant failed to deposit the arrears of rent. The learned counsel for the petitioner relies upon the provision contained in Section 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. Relevant portion of Section 11 of the Act reads as follows:

'No tenant against whom an application for eviction has been made by a landlord under Section 10 shall be entitled to contest the application before the Controller under that Section, or to prefer any appeal under Section 23 against any order made by the Controller on the application, unless he has paid or pays to the landlord, or deposits with the Controller or the appellate authority... ... all arrears of rent due in respect of the building...'

Now, in this revision petition we are concerned with the following words, namely,

'No tenant shall be entitled to prefer an appeal under Section 23 against the order of the Rent Controller on the application.'

Admittedly in this case, the main appeal was preferred against the order passed under Section 11(4) of the Act, directing to deposit the arrears of rent. The other appeal was filed only by way of abundant caution. Strictly speaking as per Section 11(4) of the Act, when a tenant preferring an appeal against the order passed under Section 11(4) of the Act, the Rent Controller should not pass the consequential order directing the tenant to put the landlord in possession that is he should not take up the main eviction petition, because tenant has got a sufficient cause i.e., preferring of an appeal against the order under Section 11(4) of the Act. Therefore, justice and equity demands that when it is brought to the notice of the Rent Controller that an appeal has been preferred against the order passed under Section 11(3) of the Act, he must take it that it is a sufficient cause to the contrary, as provided under Section 11(4) of the Act.

10. Why I emphasise this aspect is because, if the preference of an appeal against the order passed under Section 11(3) is taken as sufficient cause to the contrary, then the Rent Controller would not have passed an order under Section 11(4), resulting in the necessity of the tenant filing an appeal against the order in the

Rent Control petition also, because such an order is only consequential and when such an order is passed, another appeal is necessitated, resulting in wastage of time, energy and money. But whatever it is, as I have indicated, the appeal filed against the order in the main petition is only by way of abundant caution, because, once an order passed under Section 11(3) is set aside, can it be said that the order passed in the main eviction petition can stand, notwithstanding the dismissal of the petition under Section 11(4)?

11. Now, we will come back to Section 11(4) of the Act. Section 11(4) of the Act contemplates the payment of rent during the pendency of an application for eviction under section 10 of the Act, The restriction placed on the tenant is to prevent him to contest that application before the Rent Controller. Again the restriction on the tenant is only with reference to an order passed by the Rent Controller on that application. Here the words 'any order made by the Controller' is referable only to the application under Section 10 of the Act and not to any miscellaneous or interlocutory applications. So, a close analysis of Section 11 of the Act discloses that the inhibition or restriction placed upon the tenant is only with reference to his contesting the application under Section 10 and an appeal which he prefers against such an order. It does not contemplate any order passed under Section 11(3) of the Act.

12. When we come to the order to be passed under Section 11(4) it is no doubt on the petition for eviction. But as I have already indicated, the order passed under Section 11(4) is only a consequential but the order passed under Section 11(4) cannot stand by itself. In all the cases when an order is passed under Section 11(3), the main appeal is invariably against the order. Therefore, in my view, when a tenant prefers an appeal against the order passed under Section 11(3), there is no necessity for him to deposit the arrears.

13. If we construe that Section 11(1) will apply even to an appeal preferred against an order under Section 11(3), the deposit become onerous and in some cases the right of appeal itself becomes impossible. Because, in certain cases, the tenant may not be in a position to deposit the amount, even in a case where there is a genuine dispute with reference to the quantum of the amount, Section 23, which

gives the right of appeal to a tenant. Section 23(1)(b) of the Act enables the tenant to prefer an appeal against any order passed by the Rent Controller. This right of appeal under Section 23(1)(a) will get modified if we have to construe that without depositing the amount ordered under Section 11(3) no appeal can be preferred. Section 11(1) contemplates an appeal under Section 23 against an order passed on an application under Section 10. Therefore, only for the appeals preferred on the application for eviction under Section 10, the restriction comes to operation.

14. The learned counsel for the petitioner cited the following decisions in support of his contention that without deposit of the arrears of rent, the first respondent is not entitled to prefer any appeal.

1) Pichai Chetty (died) and 5 others v. N.K. Muthukrishnan, 1991 (2) L.W. 614; and Iqbal and Co. v. Abdul Rahim, 95 L.W. 245.

15. Justice S. Mohan, as he then was, has no doubt stated in Iqbal and Co. by its Partner A. Mohammed Hassim v. Abdul Rahim, 95 L.W. 245, that he was mainly concerned with the orders passed in the appeals which were dismissed notwithstanding the fact that during the pendency of the appeals the rents to be deposited were deposited. In that case, two appeals were considered together. Then the main appeal was preferred against the eviction order under Sec.11(4) Further the arguments before the learned Judge does not appear to be on the scope of Section 11(1), as it has arisen in this case. But in the said case, it wasaccepted that the arrears should be deposited, but however, they were not deposited within the time but deposited later. The question was whether the tenant should have deposited the rent and then only could have avoided the eviction. Therefore, the decision cannot be taken to have concluded the issue that has arisen before this Court now.

16. In Pichai Chetty (Died) 5 Others v. N.K. Muthukrishnan, 1991 (2) L.W. 614 Justice K. Thanikkachalam, as he then was, also taken a similar view. In the said case, there was no appeal preferred under Section 11(3). There was failure to deposit the rent as directed by the Order. The order was passed on the main eviction petition itself. Thereafter, the appeal was filed on the order passed under Section 11(4) in the main eviction petition. When the objection was raised with

reference to non-deposit of arrears, it was contended on behalf of the landlord that the appeal filed against the main eviction petition under Section 11(4) was not maintainable. Then the tenant's counsel contended that the earlier order directing the deposit of rent got merged with the eviction order itself. That contention was rejected by the learned Judge. Of course, the learned Judge has relied upon the decision reported in Iqbal & Company by its partner A. Mohammed Hussain v. Abdul Rahman, 1982 (95) L.W. 245, as I have indicated above, the decision reported in Iqbal & Company by its partner A. Mohammed Hussain v. Abdul Rahman, 1982 (95) L.W. 245 was not a decision on the relevant issue. Therefore, this decision is also not helpful to the petitioner.

17. The aforesaid two decisions are also not in conformity with the Bench decision of this Court in R. Radha v. C.R. Govindarajulu, : AIR1978 Mad399 . I had occasion to consider the aforesaid Bench decision as well as the two judgments of the learned Judges mentioned above in R. Narayanaswamy v. P.A. Abdul Majeed, : 1997(3)CTC203 . The learned Judges of the Division Bench in R. Radha v. C.R. Govindarajulu, : AIR1978 Mad399 , have finally held as follows:

'Thus a reading of S. 11 makes it clear that S.12(4) will apply only to the cases covered by S.11(1) and are only two in number, namely, the application for eviction made by the landlord under S.10 before the Rent Controller and the appeal preferred by the tenant under S.23 to the Appellate Authority against an order made against him on the application made by the landlord under S.10 of the Act. A reading of S.11(1) and S.11(4) together will exclude all other cases except these two from the scope of the operation of the provision in question.'

After citing the aforesaid passage, I considered the aforesaid two decisions and held that the aforesaid two decisions cannot be followed in view of the Bench decision. Therefore, the decisions cited by the learned counsel for the petitioner are not helpful to him.

18. On a consideration of all the relevant facts and circumstances of the case, I am of the view that the order passed by the appellate authority does not suffer from any infirmity, calling for interference by this Court. Therefore, the Civil Revision Petitions are dismissed. No costs. Consequently, C.M.P.No.2609 of 1998

is disposed of as unnecessary.