

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

Hidayathullah Vs. Appellate Authority (Rent Controller) Iii Judge, Court of Small Causes, Madras and ors.

Hidayathullah Vs. Appellate Authority (Rent Controller) Iii Judge, Court of Small Causes, Madras and ors.

SooperKanoon Citation : sooperkanoon.com/791818

Court : Chennai

Decided On : Jan-28-1985

Reported in : AIR1986Mad30

Judge : Venkataswami, J.

Acts : Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 - Sections 18(1) and 18(2); ;[Code of Civil Procedure \(CPC\), 1908](#) - Sections 144

Appeal No. : W.P. No. 12895 of 1984, W.M.P. Nos. 20691 of 1984 and 308 of 1985

Appellant : Hidayathullah

Respondent : Appellate Authority (Rent Controller) Iii Judge, Court of Small Causes, Madras and ors.

Advocate for Def. : S. Doraiswami, Adv.

Advocate for Pet/Ap. : M.S. Umapathi, Adv.

Judgement :

ORDER

1. When the W. M. Ps. came up for final order, the counsel on both sides agreed for the disposal of the writ petition itself. Hence the writ petition was taken up for disposal.

2. This petition is for the issue of a Writ of Mandamus directing the first respondent (Appellate Authority, Rent Control), III Judge, Court of Small Causes, to entertain the appeal RCA No...of 1984 S. R. No. 23032 against the order in M. P. 863 of 1984 in E P. 948 of 1984 in HRC 812 of 1981, on the file of the IX Judge, Court of Small Causes, Madras and dispose of the same on merits.

2A. The facts leading to the filing of this writ petition briefly may be stated. The petitioner is a co-owner of the premises bearing Nos. 180 Anna Pillai St, Madras 1, hereinafter called the suit premises. The 3rd respondent hereinafter called the tenant was a tenant in a portion of the premises on a monthly rent of Rs. 40. The petitioner filed HRC 812 of 1981 for eviction of the tenant on the ground of willful default. The petitioner was successful before the Rent Controller as well as before the Appellate Authority and ultimately in this court. Even though the tenant filed an undertaking affidavit in this Court to peacefully deliver the property, he moved the Supreme Court by way of writ petition questioning the validity of Act 18 of 1960, The Supreme Court while dismissing the writ petition, granted time to the tenant to vacate on his paying the entire arrears due by then within a month from the date of the order. According to the petitioner, the tenant had not complied with the condition imposed by the Supreme Court for continuing in the suit premises. Therefore, the petitioner filed E. P. 948 of 1984 and got an order for delivery of possession of the suit premises and factually, delivery also was effected on 19-10-1984.

After the petitioner got possession of the suit premises, he had put up staircase in the portion of the property and also rolling shutters and has also made improvements by demolishing the wall and expanding the shop. After completing the improvements, he had inducted one Rajamani as a tenant. While so, the tenant had filed M. P. 863 of 1984 before the second respondent-Rent Controller for an order for redelivery. This application was filed by the tenant under S. 144, C.P.C. Though the petitioner objected and opposed the application for redelivery,

the second respondent ordered redelivery. Aggrieved by that order of redelivery, the petitioner preferred an appeal to the first respondent Appellate Authority and also filed a petition for stay of restitution of possession. The Appellate Authority, without going into the merits of the case, rejected the appeal which was not numbered on the ground that the appeal was not maintainable. According to the Appellate Authority, S. 18(2) of Act 18 of 1960 is a bar for entertaining the appeal as the order passed by the Rent Controller ordering restitution, will fall under S. 18(I) of the Act and not independent of that.

3. Aggrieved by the order of Appellate Authority, the present writ petition has been filed.

4. The tenant has filed a counter-affidavit denying the various allegations made in the affidavit filed in support of the writ petition by contending that the petitioner without bringing to the notice of the Rent Controller about the order of the Supreme Court, had obtained delivery order and got possession by illegal means and, therefore, the Rent Controller was justified in ordering restitution as prayed for by the tenant. It is also stated in the counter-affidavit that the delivery order was an ex parte one and the delivery effected was also paper delivery and subsequent to that forcible possession was taken by the petitioner with the help of police. Taking all these factors into consideration, the Rent Controller ordered restitution as prayed for by the tenant and that order will come only under S. 18(I) of the Act. Therefore, no appeal will lie under S. 18(2) of the Act, to the Appellate Authority and the Appellate Authority was therefore right in holding that the appeal was not maintainable.

5. Mr. M. S. Umapathy, learned counsel for the petitioner, submitted that the Appellate Authority was not right in holding that the order passed by the Rent Controller under S. 144, C.P.C. will fall under S. 18(I) of the Act. He also relied on a Division Bench judgment of this Court in *Fathima Automobiles v. P. K. P. Nair*, : AIR1985 Mad318 .

6. Mr. S. Doraiswami, learned counsel for the 3rd respondent contending contra submitted that the order passed by the Rent Controller will certainly come within the purview of S. 18(I) of the Rent Control Act, and, therefore, S. 18(2) is a bar for

filing an appeal before the Appellate Authority. To support his argument that an application for restitution under S. 144, C.P.C. is an application for execution of a decree and, therefore, the order passed on such an application, will come under S. 18(l) of the Act, the learned counsel relied on two judgments one of the Supreme Court and the other of this court. In *Mazbool Alarn Khan v. Mst. Khodaija* : [1966]3SCR479 and *Mohammed Hussain v. A. K. N. Pitchai* (1970) 2 Mad 663. He also relied on another judgment of this Court in *Purushotham Chettiar v. Pushkraj Jain*, 1980 TLNJ 155.

7. I am not going to deal with the factual aspects, namely, whether the tenant has complied with the conditions imposed by the Supreme Court for continuing the tenancy for certain period or not, as the impugned order was passed not on merits, but on the ground that the appeal itself was not maintainable.

8. After a careful consideration of the rival contentions I feel that the judgment of the Division Bench in *Fathima Automobiles v. P. K. P. Nair* : AIR1985 Mad318 (supra) supports the contention of the learned counsel for the petitioner. In that judgment, the Division Bench had considered the scope of the order passed by the Rent Controller, invoking the provisions of Order 21, Rule 97, C.P.C. and held that an order passed under Order 21, Rule 97 C.P.C. will not come within the scope of S. 18(l) of the Rent Control Act. The relevant passage in that judgment may be usefully extracted (at Pp. 320-21)

'S. 18 of the Act provides that every order made under Ss. 10, 14, 15, 16 and 17, and every order passed on appeal under S. 23 or revision under S. 25, shall be executed by the Controller, as if such order is an order of a civil Court, and for this purpose the Controller shall have all the powers of a civil Court Subsec. (2) shall not be subject to any appeal or revision. The object of S. 18(2) is to see that unlike an order of eviction which could be subject to appeal under S. 23 or revision under S. 25, no appeal or revision would lie against an order passed under the section directing delivery in execution under sub-sec. (1) of S. 18 of the Act. S. 25 of the Act provides for an appeal to an appellate authority constituted under the Act against any order passed by the Rent Controller. It is significant to note that S. 23 does not refer to an order passed under Ss. 10, 14, 15, 16 and 17. Thus, a close

reading of S. 18 and S. 23, indicates that there may be orders passed by the Rent Controller which may not fall within S. 18(l) and that those orders may be subject to appeal under S. 23 of the Act. It is further significant to note that S. 23(l)(b) confers right of appeal to 'any person aggrieved' by an order passed by the Rent Controller. The use of expression any person in S. 23(l)(b) seems to suggest that it is not only the parties to the eviction order but also persons affected by any order passed by the Rent Controller could file an appeal. If the filing of an appeal under S. 23 is contemplated only by the parties to the eviction proceeding, then the Legislature would have used the words 'any party aggrieved' instead of 'any person aggrieved'. The use of the general expression like 'person' would indicate that, as already stated, an appeal could be maintained not only by a party to the eviction proceeding but also by a person who feels aggrieved by any order passed by the Controller. In this case, the executing Court has passed an order directing the tenants to deliver possession of the property in pursuance of the order of eviction. That order alone can be taken to be an order passed under S. 18(l). Subsequent to such an order the appellant herein has obstructed the delivery and an application under Or. 21, Rule 97, CPC has been filed, and an order has been passed by the Rent Controller on that application. The order passed by the Rent Controller in an application under Or. 21 Rule 97 cannot, in our view, be taken to be an order passed under S. 18(l) of the Act. That should be taken to be an independent order passed under the Civil Procedure Code- and not under the Rent Control Act. Though the order is actually passed by the Rent Controller in an application under Order 21 Rule 97 CPC, that should be taken to have been passed by him in exercise of the powers of a civil Court as provided in S. 18(l) of the Act. We are not therefore in a position to construe the order passed by the Rent Controller under S. 18(l) so that the bar under S. 18(2) could be invoked. S. 18(2) bars an appeal or revision only in respect of an order passed in execution under sub-sec (1). But that section will not be a bar for an appeal' (underlining to give emphasis in mine)*.

From the above extract, it is clear that the Division Bench has clearly ruled that only orders passed for executing the orders passed under Ss. 10, 14, 15, 16 and 17 and every order passed on appeal under S. 23 or on revision under S. 25 alone will come within the scope of S. 18(l) of the Rent Control Act. S. 18 of the Act

reads as follows-

'18. Execution of orders : (1) Every order made under Ss. 10, 14, 15, 16 and 17 and every order passed on appeal under S. 23 or on revision under S. 25 shall be executed by the Controller, as if such order is an order of a civil court and for this purpose, the Controller shall have all the powers of a civil court.

(2) An order passed in execution under sub-sec. (1) shall not be subject to any appeal or revision'.

Applying the principles laid down in the judgment of the Division Bench, I am inclined to hold that in this case the order passed in execution of the order of eviction alone will come within the scope of S. 18(l) of the Act, and not the order passed on the application of the tenant under S. 144 C. P. C. No doubt, the judgment of the Supreme Court and another judgment of this Court referred to above support the contention of the learned counsel for the tenant that an application under S. 144 C. P. C. is to be construed as an application for execution. But that may be for the purpose of proceedings under the Code of Civil Procedure. That cannot be invoked to construe the scope of S. 18(2) of the Rent Control Act, in the light of the observations of the judgment of the Division Bench extracted above. In this case, we will have to see whether the order passed on an application under S. 144 CPC will be an order passed in execution under sub-sec (1) of S. 18 of the Rent Control Act. In my view, and on my understanding of the principles laid down in the judgment of the Division Bench, the only order that will come within the scope of S. 18(l) will be an order passed in execution of the order of eviction and nothing else. Therefore, the judgment relied on by the learned counsel for the third respondent cannot be usefully applied to the facts of this case. Another judgment relied on by the learned counsel for the third respondent in *Purushotharn Chettiar v. Pushkaraj Jain* 1980 T L N J 155 prima facie appears to support his arguments. In that judgment, the learned Judge has held that an order passed by the Rent Controller on an application under S. 47 CPC will come within the scope of S. 18(l) of the Rent Control Act and therefore S. 18(2) of the Act will be a bar to file a revision in the High Court and on that ground, dismissed the revision petition as not maintainable. As between this judgment and the

Division Bench judgment, I am bound by the Division Bench judgment and therefore have to follow the principles laid down in the latter Division Bench judgment. On that ground, I hold the judgment in Purushotharn Chettiar v. Pushkaraj Jain (supra) is also not helpful to the third respondent.

9. On the view that I have taken that the order passed by the Rent Controller on the application under S. 144 CPC will not come within the scope of S. 18(l) of the Rent Control Act, and consequently S. 18(2) of the Act is not a bar to file an appeal to the appellate authority, the impugned order of the appellate authority declining to take the appeal on file cannot be sustained. Consequently the impugned order of the appellate authority is quashed and the appellate authority is directed to take on its file the appeal and dispose of the same on merits within one month from the date of receipt of this order. The injunction will continue for another two weeks. In the meanwhile, the petitioner must move the appellate authority for continuing the injunction. There will be no order as to costs.

10. Ordered accordingly.

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