

Abdul Rahaman Vs. Basheer Alam

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Court : Chennai

Decided On : Mar-28-2000

Reported in : 2000(4)CTC291

Judge : K.P. Sivasubramaniam, J.

Acts : Tamil Nadu Building (Lease and Rent control) Act, 1960 -- Sections 10, 11(4), 14, 15, 16 and 25

Appeal No. : C.M.P. No. 20320 of 1999 in C.R.P. No. 2679 of 1996

Appellant : Abdul Rahaman

Respondent : Basheer Alam

Advocate for Def. : Mr. V. Raghavachari, Adv.

Advocate for Pet/Ap. : Mr. Rangarathnam, Adv.

Judgement :

ORDER

1. This petition has been filed under Section 11(4) of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 read with 151, C.P.C. during the pendency of the revision praying to direct the tenants/respondents to pay the arrears of rent to the landlord, failing which further proceedings may be stopped and the respondents be directed to put the landlord in possession of the building.

2. Learned counsel for the respondents Mr.Raghavachari has taken a preliminary objection as to the maintainability of the petition under Section 11(4) of the Act at the revisional stage. Reliance was placed on the judgment reported in Radha v. R.Govindarajulu, 1978 (91) L.W. 443. In that case the Division Bench held that when a revision under Section 25 of the Act was pending before the High Court, an application under Section 11(4) of the Act directing the tenant to put the landlord in possession on the ground that the tenant had not paid arrears of rent was not maintainable. Therefore, according to the learned counsel, the pronouncement of the Division Bench is clear on the question of maintainability.

3. It is however, contended by learned counsel for the petitioner Mr.Rangarathnam that the view taken by the Division Bench does not appear to be correct considering the judgment of the Supreme Court reported in Radhakrishnan v. Gopal Metha, : [1977]2SCR984 . In that judgment it was held that the appellate authority is entitled to entertain the application under Section 11(a) of Bihar (Lease and Rent Control) Act (corresponding to Section 11(4) of the Tamil Nadu Act.).

4. The Division Bench itself had dealt with the said judgment of the Supreme Court in paragraphs 15 and 16 of the judgment. The Division Bench has taken note of the expression in the Bihar Act, 'the application at any stage of the suit' and had held that the expression at any stage of the suit would include all the subsequent proceedings which may be considered to be a continuation of the suit. It was further pointed out that the Supreme Court itself had taken into account that the appeal was a continuation of the suit and therefore, the application made by the landlord before the appellate authority, was held to be competent. However, the Division Bench took note of the specific expressions contained in Section 11(4) of the Tamil Nadu Act which is as follows:-

'S.11(4):- If any tenant fails to pay or to deposit the rent as aforesaid, the Controller or the Appellate Authority, as the case may be, shall unless the tenant shows sufficient cause to the contrary stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building.' (Italics supplied).

5. According to the learned counsel for the landlord/petitioner, the general principle of law is always that an appeal or revision is only a continuation of the proceeding or suit. The said principle cannot be ignored merely because Section 11(4) of the Tamil Nadu Act has referred to only the Controller or the Appellate Authority.

6. I am unable to sustain the contention raised by the learned counsel for the petitioner. It is always open to the Legislature while enacting a Special Legislation like the Rent Control Act to prescribe a self contained procedure. The right of the landlord to seek eviction of the tenant under Section 11(4) is also a special remedy and is not one of the grounds of eviction enlisted under Section 10 and 14 to 16 of the Act. Therefore, the Legislature is entitled to restrict the scope of the right of the landlord in invoking the special remedy under Section 11(4). In the Tamil Nadu Act the Legislature had specifically mentioned only the Rent Controller and the Appellate Authority as authorities before whom only the petition under Section 11(4) could be filed. Therefore, I am unable to find any conflict between the judgment of the Division Bench of this Court and the judgment of the Supreme Court in Radhakrishnan v. Gopal Metha, : [1977]2SCR984 , referred to above.

7. Therefore, with the result, having regard to the views expressed by the Division Bench of this Court, the above petition is not maintainable, and the same is dismissed. Post the Revision, on 4.4.2000.