

A.J. Doss Vs. Saroja

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Court : Chennai

Decided On : Mar-23-1993

Reported in : (1993)2MLJ365

Appellant : A.J. Doss

Respondent : Saroja

Judgement :

ORDER

Pratap Singh, J.

1. This revision petition is directed against the order in R.C.A. No. 638 of 1991 dated 21.9.1992 on the file of Rent Control Appellate Authority (VII Judge, Small Causes Court), Madras, confirming the order in R.C.O.P. No. 1973 of 1986 dated 5.9.1989 on the file of Rent Controller (XI Judge, Small Causes Court), Madras.

2. Short facts are: The respondent filed R.C.O.P. No. 1973 of 1986 on the file of XI Judge, Small Causes Court, Madras, against the petitioner for eviction, on the ground of wilful default and owners occupation, alleged rent was Rs. 500 p.m. and there was arrears from September, 1985 to May, 1986. The petitioner resisted the petition. The respondent filed a petition under Section 11 (4) of Tamil Nadu Buildings (Lease and Rent Control) Act in M.P. No. 63 of 1987, claiming arrears of rent as aforesaid and after contest by the petitioner, the learned Rent Controller passed an order directing the petitioner to deposit Rs. 12,000 towards arrears of

rent on or before 29.10.1987 and further directed that in case of default further proceedings will be stopped and posted the case on 30.10.1987.

3. Before expiry of the time granted to the petitioner for payment of Rs. 12,000 the petitioner filed R.C.A. No. 770 of 1987 against the order passed in M.P. No. 63 of 1987 before VIII Judge, Small Causes Court, Madras. The learned appellate Judge granted interim stay of all further proceedings, in R.C.O.P. No. 1973 of 1986. Ultimately R.C.A. No. 770 of 1987 was dismissed on 11.4.1989. The petitioner filed C.R.P. No. 1853 of 1989 in this Court against the said order and also filed C.M.P. No. 9084 of 1989. This Court granted interim stay on condition the petitioner deposits Rs. 2,000 to the credit of R.C.O.P. on or before 31.8.1989. The petitioner deposited that amount on 16.8.1989, but not to the credit of R.C.O.P. but before the lower appellate court. When C.M.P. No. 9084 of 1989 came up for final hearing, the petitioner's counsel was not present before this Court and the court was not informed that there was compliance of the interim order. In those circumstances, the interim stay was vacated on 15.9.1989.

4. While so, the Rent Controller had passed the impugned order on 5.9.1989. According to the abstract of events, filed by the learned Counsel for the revision petitioner, the petitioner filed a petition to condone the delay in filing the above application seek to modify the order passed in C.M.P. No. 9084 of 1989, but it was dismissed. Against that order, the petitioner filed S.L.P. No. 7761 of 1990 before the Supreme Court and while admitting the same, the Supreme Court granted stay and after notice to the respondent had allowed S.L.P. and the Civil Appeal was numbered as C.A. No. 4483 of 1990 and after hearing the arguments, had allowed the appeal and set aside the order of the High Court and restored the stay order made on 28.7.1989.

5. While so, the revision petitioner had filed R.C.A. No. 638 of 1991 against the order dated 5.9.1989 in R.C.O.P. No. 1973 of 1986 and it was dismissed and hence this revision petition has been filed.

6. Mr. P. Gopalan, the learned Counsel appearing for the revision petitioner, would submit that the trial court had passed the impugned order on 5.9.1989, at a time when the stay order passed by this Court was in force and so it is liable to be set

aside. He would further submit that even though C.M.P. No. 9084 of 1989 was dismissed and interim stay was vacated on 15.9.1989, on appeal the Supreme Court had set aside the order of the High Court and restored the stay order made on 28.7.1989 and in view of the order of the Apex Court, it cannot be stated that there was no compliance of the condition imposed by the High Court and it can not be stated that there was no stay on 6.9.1989.

7. Per contra, Mr. N. Krishnamithra, the learned Counsel appearing for the respondent, would submit that the order passed on 28.7.1989 in C.M.P. No. 9084 of 1989 was a conditional order, the condition being that the petitioner should deposit in the trial court to the credit of R.CO.P. No. 1973 of 1986 a sum of Rs. 2,000 on or before 31.8.1989 and that through there was no default clause entailing automatic vacating of stay, in case of failure to comply with the condition, on failure of the condition, the stay will not enure to the benefit of the petitioner beyond 31.8.1989 and that the petitioner had not deposited Rs. 2,000 to the credit of R.C.O.P. No. 1973 of 1986, but had deposited before another forum. So he would contend that the passing of the order of eviction on 5.9.1989 by the trial court, is perfectly in order. His further submission is that the petitioner has not informed the Supreme Court about the passing of the impugned order dated 5.9.1989 when the civil appeal was ultimately heard and order was passed on 3.9.1990 and while so, he cannot take advantage of that order of the Supreme Court for holding that the order passed on 5.9.1989 is not valid. It is his further submission that the order passed on 5.9.1989 was only a consequential order. He would add that a revision under Section 25 of the Tamil Nadu Buildings Act, 1960 can be sustained only if prejudice had occurred.

8. I have carefully considered the submission made by learned/counsels. In C.M.P. No. 9084 of 1989 in C.R.P.No/1835 of 1989, this Court has passed the order as follows:

That on condition of the petitioner depositing in the trial court viz., Court of Small Causes, to the credit of the R.C.O.P. No. 1973 of 1986 a sum of Rs. 2,000 on or before 31.8.1989, the operation of the order passed in R.C.A. No. 770 of 1987 on the file of the (VIII Judge) Small Causes Court, Madras, dated 11.4.1989 shall be

stayed, pending further orders on this petition.

Thereafter, obviously, the petitioner had not deposited the sum of Rs. 2,000 to the credit of R.C.O.P. No. 1973 of 1986 on or before 31.8.1989. According to the abstract of events filed by the revision petitioner, the petitioner had deposited the said sum of Rs. 2,000 on 16.8.1989, well before 31.8.1989. Obviously this deposit was made not in R.C.O.P. No. 1973 of 1986, but in the wrong forum and that can be seen from the order of the Supreme Court in C.A. No. 4483 of 1990 the Supreme Court has observed as follows:

It is not in dispute that the interim stay made by the High Court on 28.7.1989 was complied with by depositing the amount as ordered thereon, but the deposit as not before the proper forum.

9. On 15.9.1989 final order was passed in C.M.P. No. 9084 of 1989 by this Court and the order reads as follows:

The court is not informed about the compliance with the interim order of this Court dated 28.7.1989. There is therefore, no justification to continue the interim stay any longer. Interim stay is vacated and this petition is dismissed.

Thereafter, the petitioner had filed C.M.P. No. 5057 of 1990 in C.R.P. No. 1835 of 1989 to condone the delay of 170 days in filing the petition for setting aside the order of dismissal in C.M.P. No. 9084 of 1989 on 15.9.1989. That petition was dismissed by this Court holding that no case is made out to condone the delay.

10. Against the order in C.M.P. No. 5057 of 1990, the petitioner filed Civil Appeal No. 4483 of 1990 in the Apex Court. After granting leave, it is not in dispute that interim stay made by the High Court on 28.7.1989 was complied with by depositing the amount as ordered thereon, but the deposit was not before the proper forum. Thus, the Apex Court had held that the petitioner had complied with the condition regarding deposit made in the order dated 28.7.1989 which is obviously order passed on 28.7.1989 in C.M.P. No. 9084 of 1989. While so, it is no longer open to either of the parties now to say that the condition was not complied with and so the stay granted would get automatically vacated on 31.8.1989. So I

unable to accept the submission made by Mr. Krishnamithra that the stay granted in C.M.P. No. 9084 of 1989 would get automatically vacated on 31.8.1989. Since the deposit of Rs. 2,000 was not made in R.C.O.P. No. 1973 of 1986. The deposit was made in some other forum within the time and that was considered as compliance of this condition by the Apex Court and while so this submission has to be rejected. The Apex Court has held as follows:

It is true that there was some lapse on the part of the tenant in not intimating the court the factum of deposit made by him, but then, when it was brought to the notice of the High Court, it would have been proper to have the stay restored since there was no disobedience of the order of the High Court. We accordingly, allow this appeal, set aside the impugned order of the High Court and restore the stay order made on 28.7.1989.

Here again, the Apex Court has held that there was no disobedience of the order of the High Court and has restored the stay order made on 28.7.1989. In C.M.P. No. 9084 of 1989, on 28.7.1989 this Court had granted stay, on condition. It has been held by the Apex Court that the condition was complied with and there was no disobedience of the order of the High Court. The stay granted on 28.7.1989 was vacated by this Court on 15.9.1989. Later the stay order made on 27.8.1989 was restored by the Apex Court. This order of the Supreme Court was passed on 3.9.1990. From the above, it would be clear that the impugned order dated 5.9.1989 was passed at a time when the order of stay of the High Court passed on 28.7.1989 was in force. That is certainly bad in law and cannot be sustained. The lower appellate court has failed to take note of the events in its proper perspective and hence has dismissed the appeal. For the reasons stated above, I am clear that the impugned order dated 5.9.1989 is liable to be set aside.

11. Mr. N. Krishnamithra, would submit that the impugned order is only a consequential order. I am clear that it does not make any difference as to whether the impugned order was the main order or the consequential order. When the stay granted by the High Court was in force, the courts below cannot pass any order whatsoever, even if it be a consequential order. So I do not accept this submission of Mr. N. Krishnamithra. He would further submit that C.R.P. No. 1835 of 1989 was

dismissed by this Court on 5.11.1990. The respondent is certainly entitled to have the benefit of the order of dismissal of C.R.P. No. 1835 of 1989. His further submission that a revision under Section 25 of the Buildings Act cannot be sustained, is equally untenable. While the order of stay of this Court was in force, if a subordinate court had passed an order, adverse to the revision petitioner, he would be certainly prejudiced by that order and is entitled to get redressal by invoking the revisional jurisdiction of this Court. Since none of the objections raised by Mr. N. Krishnamithra finds acceptance with me and on the facts which I have mentioned above this criminal revision petition is to be allowed and the impugned order dated 5.9.1989 has to necessarily go.

12. In view of the above, this civil revision petition is allowed and consequently, the impugned order dated 5.9.1989 is hereby set aside. No costs.

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