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Court : Kerala

Decided On : Sep-13-2012

Judge : A.V. Ramakrishna Pillai

Appeal No. : W.P.(C).No.10834 of 2010 (O)

Appellant : Sainaba

Respondent : State of Kerala, Represented by the District Collector, Palakkad and Another

Judgement :

1. The decree holder in O.S.No.433 of 2001 on the file of the Munsiff's Court, Palakkad is the petitioner. The suit was for a mandatory injunction.
2. In the decree, the second respondent has been directed to renew the license issued to the petitioner to conduct a juice shop, as per the orders of the Government from time to time subject to the revision of the rent as per the norms prescribed by the Government with effect from the date of the last renewal. According to the petitioner, she was forced to remit a total sum of Rs.1,05,120/- as she was threatened by the respondents that in case the amount was not remitted, they would cancel the licence. According to the petitioner, actually there was excess payment which had to be adjusted towards future rent. Thus the petitioner

filed E.P. before the court below for violation of decree and also for the implementation of the decree.

3. The execution petition was resisted by the respondents contending that it was the petitioner who had committed default in making prompt payments and huge amount was outstanding in arrears from her. According to them, unless the petitioner paid the rent correctly, she would not be entitled to get the fruits of the decree.

4. After enquiry, the execution court held as follows:

(A) The present actual rent/licence fee payable for the period 23.6.2009 to 22.6.2010 would be Rs.26,895/-.

(B) The total amount payable by the decree holder to the respondents till 22.6.2010 would be Rs.2,07,987/-.

(C) The balance payable by the decree holder to the respondent would come to Rs.26,667/-.

5. Finding so, the execution court directed the petitioner to pay the balance amount in two months. It was also made clear that failure to do so would entail liability to pay interest at the Government rate. Further, it was ordered that the respondents would be free to enhance the rent which shall not be arbitrary or shocking one's consciousness. It is against this order, this petition has been filed.

6. Arguments have been heard and the impugned order perused.

7. The relevant portion of the decree obtained by the petitioner reads as follows:

“.....that the 2nd defendant be hereby directed by a mandatory injunction to renew the lease of the land over which the juice stall is being conducted by the plaintiff as per the orders of the Government from time to time, subject to the revision of the rent as per the norms prescribed by the Government with effect from the last date of the last renewal till the facility granted to the plaintiff be canceled or withdrawn by the Government.”

8. The execution court observed as under in paragraph-7 of the impugned order.

“After much purgation from the bar petitioner has agreed to give rent at the enhanced rate for the initial 2 years at the rate of 20% per annum as against 50% enhancement fixed by the respondents.”

9. The learned counsel for the petitioner would submit that the above observation made by the execution court militates against the judgment of this Court in *Kannan v. Lakshmi* (1970 KLT 731) which advises against, non-recording of concessions or vital questions made by the counsel. In that case, this court was considering a second appeal which illustrated the mischief contemplated in the Circular No.28/68 of this Court on the administrative side which reads as follows:

“The High Court has not infrequently, come across statements in judgments and orders of subordinate courts such as ‘this issue was not pressed by counsel, this was conceded’, it is admitted by counsel’, the only point urged before me’. As often as not, the veracity of such statements has been challenged in appeal or in subsequent proceedings. At times these challenges are sought to be buttressed by affidavits from counsel who appeared before the subordinate courts or by affidavits by the party affected. And cases have not been wanting where these affidavits of counsel or party are controverted by other affidavits of either the opposite party or his counsel.

The High Court is of the view, for obvious reasons, that such controversies should be avoided. And it feels that this can be achieved if the presiding officer gets counsel making a concession on a point canvassed by the pleadings or the memorandum of appeal to record the concession either in the issue paper or in the memorandum or on a separate paper under his signature. This record must be initialed and dated by the presiding officer and must be available among the case records.”

10. There is nothing on record to show that there was proper endorsement of the concession as envisaged above by the counsel appearing for the petitioner before the lower court; so submitted the learned counsel for the petitioner. Administrative directions issued by the High Court in exercise of powers of superintendence and

control over subordinate courts (Art.227 and 235 of the Constitution of India) deserve to be respected and followed with due diligence by the courts subordinate to it. Presumably the aforesaid circular has not gained the attention of the learned Munsiff who passed the impugned order. However in the absence of a negative assertion by the petitioner through an affidavit, I am not inclined to brand the impugned order unacceptable.

11. The learned counsel for the petitioner would further point out that the court below overlooked the fact that the executing court was not entitled to enhance the amount and that was a realm outside the powers of the executing court. Though I see considerable force in the said submission, in the light of the concession made mention of in paragraph-7 of the impugned order, I am of the definite view that there is no scope for an interference by this Court within the well delineated contours of the jurisdiction under Article 227 of the Constitution of India. It was also brought to my notice by the learned Senior Government Pleader that similar shops in the vicinity has been rented out by the respondent subsequently to other persons at a higher rent. If that be the case, a remand by this Court would be at the peril of the petitioner.

12. Hence I dismiss this petition. However, it is made clear that the respondent shall reconsider, decide and inform the petitioner the exact amount of arrears of rent to be paid by her as on today. Till that exercise is completed, the petitioner shall not be evicted from the shop where she is conducting the business.

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