Mohammad Swalleh and Others

Vs

Third Addl. District Judge, Meerut and Another

Civil Appeal No. 2107 of 1979

(Sabyasachi Mukharji, G. L. Oza JJ)

04.11.1987

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. This is a tenant's appeal by special leave. After perusing the judgment impugned and grounds urged, we are of the opinion, that there is no substance in this appeal on merit, though there are one or two technical breaches. This is certainly not a decision which should be interfered with in the exercise of jurisdiction under Article 136 of the Constitution by this Court. The appeal arises from the judgment and order dated September 22, 1978 of the High Court of Allahabad. Respondent 2 herein, Smt. Murtaza Begum filed an application under Section 3 of the U.P. (Temporary) Control of Rent and Eviction Act, 1947 being U.P. Act 3 of 1947, hereinafter called the Old Act, against the appellants, Section 3 of the said Act provided that subject to any order passed under sub-section (3) of that section, no suit shall, without the permission of the District Magistrate be filed in any court against any tenant for his eviction from any accommodation except on the grounds mentioned therein. Sub-section (2) of Section 3 provided for revision to the Commissioner against the order of the District Magistrate. Sub-section (3) of Section 3 empowered the Commissioner to hear the application and if he was not satisfied as to the correctness, legality or propriety of the order passed by the District Magistrate or as to regularity of proceedings held before him, alter or reverse his order or make such other order as might be just and proper. By sub-section (4) of Section 3 the order of the Commissioner has been made final subject to any other order passed by the State Government under Section 7-F of the said Act. Section 7-F of the said act empowered the State Government to call for the record of any case granting or refusing to grant permission for the filing of a suit for eviction referred to and authorised him to make such order as appeared to it necessary for the ends of justice. The application for eviction was granted by the Commissioner in this case on April 17, 1971. The appellants went in revision to the State Government. The revision was, however, rejected by the State Government on February 7, 1972. The permission thereafter became final.

2. In pursuance of the aforesaid permission the respondent-landlord filed a suit, being Suit No. 464 of 1972 in the Court of Judge, Small Causes, Meerut, for eviction of the appellants. Thereafter in 1973 the landlord filed an application for withdrawal of the suit on the ground that as U.P. Urban Buildings (Regulation of Letting, Control and Eviction) Act of 1972 being U.P. Act 13 of 1972, hereinafter called the New Act, had been amended, he would file an application for the enforcement of the permission obtained under Section 3 of the Old Act. On that application the court found that as the cause of action on which the suit had been filed was rendered infructuous, the suit was liable to be dismissed. After the suit was dismissed, the landlord being respondent 2 herein filed an application under Section 43 (2)(rr) of the New Act for eviction of the appellants from the premises

in question. It was resisted on the ground that the permission had been dismissed and the application under Section 43(2) (rr) was not maintainable. The Prescribed Authority upheld the said objection of the appellants and rejected the application filed by the landlord on the ground that since permission obtained by the landlord under Section 3 of the Old U.P. Act has been exhausted, the application filed by the landlord was not maintainable. It appears to us that the Prescribed Authority was clearly in error in so holding because the permission granted has not been exhausted because the suit was dismissed on a technical plea and not on the merit of the contentions. Reference may be made to the observations in the decision of the Allahabad High Court in the case of Pahlad Das v. Ganga saran (AIR 1958 All 774 : 1957 All LJ 804), where the Division Bench of that court held that the obvious purpose of the permission under Section 3 of the Old Act was to enable the plaintiff, the landlord to evict the tenant from the premises and as long as that purpose was not fulfilled, the permission could not obviously exhaust itself. Where it was not shown that the permission was granted to file as single suit or that it had been specified in it that a second suit could not be filed, the permission could not exhaust itself simply because the first suit filed on its basis was dismissed on some technical ground and the permission obtained could be availed of for filing the second suit. In that view, the High Court affirmed the previous decision of that court.

3. It appears, however, that an appeal was filed against the order of the Prescribed Authority and the appeal was allowed by the order of the District Judge dated April 28, 1978. Aggrieved thereby the tenants filed a writ petition before the High Court. The controversy in the High Court was whether the application filed by the landlord under Section 43(2)(rr) of the New Act was not maintainable. The basis of the claim of the tenant was that as the permission had been utilised by filing the suit, another proceeding on the basis of the said permission could not be initiated. The High Court noted that Section 43(2) (rr) was added by U.P. Act 37 of 1972, and prior to the addition of Section 43(2)(rr) the relevant provision was made in U.P. Act 13 of 1972 in Section 43(2). By the addition of the new provision, the legislature conferred a right on a landlord who had obtained permission under the Old Act and had filed an application under new provision to get the tenant evicted. Section 43 (2)(rr) of the New Act was again amended by the U.P. Act 28 of 1976. By that amendment the words "whether or not a suit for the eviction of the tenant has been instituted" were inserted. The amending Act laid down that the amendment in the provision shall be deemed to have always been substituted. In other words, the Amending Act caused amendment to be retrospective in operation.

4. It is, therefore, apparent as the High Court in our opinion in the judgment under appeal rightly held that section 43 (2)(rr) as it stood in 1973 permitted the landlord to file an application for the provision was amended, the landlord was not required to file a suit to avail of the permission. The High Court in the judgment under appeal rejected the contention that once an application for permission had been filed, the second application would not lie. The High Court held that where the first suit was not decided on merits subsequent action was not precluded. The High Court noted that merits of the case were not examined by the court. The court in this appeal on this occasion did not find that the permission obtained by the landlord was invalid or illegal. The judgment of dismissal was thus on technical ground and not on merits. The High Court held that the landlord had right to file the second application. In our opinion, the High Court was right for the reasons mentioned hereinbefore.

5. It is next contended that since the suit was dismissed on the ground that the cause of action did not survive to the landlord, it should be held that the landlord had no right left to file an application under section 43(2)(rr). This was, in our opinion, rightly rejected by the High Court. The High Court negatived the contention of the tenant that dismissal of the first action taken by the landlord

after obtaining permission under the Old Act precluded the landlord from taking the second action under Section 43(2)(rr) of the Act.

6. We are of the opinion that the High Court was right. It will be appropriate at this stage to refer to the provisions Section 43(2)(rr) of the New Act which are as follows :

Where any permission referred to in Section 3 of the Old Act has been obtained on any ground specified in sub-section (1) or sub-section (2) of Section 21, and has become final, either before the commencement of this Act, or in accordance with the provisions of this sub-section, after the commencement of this Act, (whether or not a suit for the eviction of the tenant has been instituted), the landlord may apply to the prescribed authority for his eviction under Section 21, and thereupon the prescribed authority shall order the eviction of the tenant from the building under tenancy, and it shall not be necessary for the prescribed authority to satisfy itself afresh as to the existence of any ground as aforesaid, and such order shall be final and shall not be open to appeal under Section 22 :

Provided that no application under this clause shall be maintainable on the basis of a permission granted under Section 3 of the Old Act, where such permission became final more than three years before the commencement of this Act :

Provided further that in computing the period of three years, the time during which the applicant has been prosecuting with due deligence any civil proceeding whether in a court of first instance or appeal or revision shall be excluded.

In view of the aforesaid, we are of the opinion that the Prescribed Authority was clearly in error in upholding the objection of the tenant that as the previous suit had been filed by the tenant on the basis of permission and the same had been dismissed, the application under section 43(2)(rr) of the Act 13 of 1972, was not maintainable. It was clearly erroneous contention. It would frustrate the very purpose of the express provision of Section 43(2)(rr). Finality of order in judicial proceeding is one of the essential principles which the scheme of the administration of justice must strive for see in this connection the observations in D. K. Soni v. P. K. Mukerjee ((1988) 1 SCC 29).

7. It was contended before the High Court that no appeal lay from the decision of the Prescribed Authority to the District Judge. The High Court accepted this contention. The High Court finally held that though the appeal laid (sic no appeal lay) before the District Judge, the order of the Prescribed Authority was invalid and was rightly set aside by the District Judge. On that ground the High Court declined to interfere with the order of the learned District Judge. It is true that there has been some technical breach because if there is no appeal maintainable before the learned District Judge, in the appeal before the learned District Judge, the same could not be set aside. But the High Court was exercising its jurisdiction under Article 226 of the Constitution. The High Court had come to the conclusion that the order of the Prescribed Authority was invalid and improper. The High Court itself could have set it aside. Therefore in the facts and circumstances of the case justice has been done though, as mentioned hereinbefore, technically the appellant had a point that the order of the District Judge was illegal and improper. If we reiterate the order of the High Court as it is setting aside the order of the Prescribed Authority in exercise of the jurisdiction under Article 226 of the Constitution then no exception can be taken. As mentioned hereinbefore, justice has been done and as the improper order of the Prescribed Authority has been set aside, no objection can be taken.

8. In the premises there is no scope for interference under Article 136 of the Constitution. Our

attention was drawn to certain observations of this Court about the power of the State Government under Section 7-F of the Old Act in Bhagwan v. Ram Chand ((1965) 3 SCR 218 : AIR 1965 SC 1767). In the view we have taken of the facts of this case, it is not necessary to deal with this decision in any detail.

9. In the aforesaid view of the matter, this appeal must fail and is accordingly dismissed. In the facts and circumstances of the case, we however, make no order as to costs.

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