M/s. Jetha Bai and Sons, Jew Town, Cochin and Others

Vs

M/s. Sunderdas Rathenai and Others

Civil Appeals Nos. 626 and 2079 of 1981

(Sabyasachi Mukharji, S. Natarajan, S. Ranganathan JJ)

04.02.1988

JUDGMENT

NATARAJAN, J. –

1. These appeals by special leave and the special leave petition have been clubbed together and listed for consideration of a common question of law involved in them, viz. whether against an order of a District Court in revision under Section 20 of the Kelara Buildings (Lease and Rent) Control Act 2 of 1965 (for short the Kerala Act), a further revision would lie to the High Court under Section 115 of the Code of Civil Procedure.

2. Though the question is not res integra in view of the decision of this Court in Aundal Ammal v. Sadasivan Pillai ((1987) 1 SCC 183 : AIR 1987 SC 203), the appeals have been listed for consideration by a Bench of three Judges of the very same question in order to see whether there is any conflict between the views taken in Aundal Ammal case ((1987) 1 SCC 183 : AIR 1987 SC 203) and a later decision of this Court in Shyamaraju Hedge v. U. Venkatesha Bhat (1987 Supp SCC 321) and whether the view taken in the earlier case requires reconsideration.

3. Even at the threshold of the judgment it has to be mentioned that Aundal Ammal case ((1987) 1 SCC 183 : AIR 1987 SC 203) arose under the Kerala Act whereas Shyamaraju Hegde case (1987 Supp SCC 321) pertained to the Karnataka Rent Control Act. Since there are essential differences between the two Acts, it is necessary to set out the relevant provisions of the two Acts and the circumstances in which the decision pertaining to each Act came to be rendered by this Court.

4. As per Section 20(5) of the Kerala Act "a Rent Control Court" means a court constituted under Section 3. Under Section 3(1) "the government may, by notification in the Gazette appoint a person who is or is qualified to be appointed, a Munsif to be the Rent Control Court for such local areas as may be specified therein". Section 11 of the Act provides that a landlord can seek eviction of his tenant only by making an application to the Rent Control Court and it also sets out the grounds on which a landlord can seek eviction of his tenant. Section 18 of the Act provides for an appeal being preferred by an aggrieved person to the Appellate Authority. The relevant portions of Section 18 are as under :

> 18. Appeal. - (1)(a) The Government may, by general or special order notified in the gazette, confer on such officers and authorities not below the rank of a Subordinate Judge the powers of appellate authorities for the purposes of this Act in such areas or in such classes of cases as may be specified in the order.

> (4) The appellate authority shall have all the powers of the Rent Control Court including the fixing of arrears or rent.
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> (5) The decision of the appellate authority, and subject to such decision, an order of the Rent Control Court shall be final and shall not be liable to be called in question in any court of law, except as provided in Section 20.

5. Then comes Section 20 which provides for revisions and it reads as follows :

> 20. Revision. - (1) In case, where the appellate authority empowered under Section 18 is a Subordinate Judge, the District Court, and in other cases the High Court may, at any time, on the application of any aggrieved party, call for and examine the records relating to any order passed or proceedings taken under this Act by such authority for the purpose of satisfying itself as to the legality, regularity or propriety of such order or proceedings, and may pass such order in reference thereto as it thinks fit.
>
> (2) The costs of an incident to all proceedings before the High Court or District Court under sub-section (1) shall be in its discretion.
>
> 20-A. Power to remand. - In disposing of an appeal or application for revision under this Act, the appellate authority, or the revising authority, as the case may be, may remand the case for fresh disposal according to such directions as it may give.

6. The scope and effect of Section 20(1) read with Section 18(5) of the Kerala Act came to be examined by a Full Bench of the Kerala High Court in Vareed v. Mary (AIR 1969 Ker 103). The Full Bench held that since the District Court exercising revisional powers under Section 20(1) of the Kerala Act functions as a court and not as a persona designata, the ordinary incidence of the procedure of that court including any right of appeal or revision will be inhered to the decision rendered by the District Court. In that view of the matter the Full Bench held that a decision of a District Court under Section 20 of the Kerala Act is undoubtedly amenable to the revisional jurisdiction of the High Court especially when there is no provision in the Act providing for an appeal against an order of the District Court under Section 20 or in the alternative any express provision declaring the finality of the said order. The decision of the Full Bench held the field for a number of years in the State of Kerala and in all subsequent cases where the competence of the High Court to entertain a revision under Section 115 CPC against an order of a District Court passed under Section 20(1) of the Kerala Act was challenged the contention was repelled by reference to the judgment of the Full Bench. One such case in point is Balagangadhara Menon v. T. V. Peter (1984 Ker LT 845).

7. The question decided by the Full Bench, however, came to be raised before this Court in Aundal Ammal case ((1987) 1 SCC 183 : AIR 1987 SC 203). A Bench consisting of E. S. Venkataramiah, J. and one of us (Sabyasachi Mukharji, J.) held that the ration laid down by the Kerala High Court in Vareed case (AIR 1969 Ker 103) cannot be approved because the High Court had not properly construed Sections 18(5) and 20 of the Kerala Act. The relevant passage in the judgment is in the following terms : (SCC p. 189, para 20)

> In our opinion, the Full Bench misconstrued the provisions of sub-section (5) of Section 18 of the Act. Sub-section (5) of Section 18 clearly stated that such decision

> of the appellate authority as mentioned in Section 18 of the Act shall not be liable to be questioned except in the manner under Section 20 of the Act. There was thereby an implied prohibition or exclusion of a second revision under Section 115 of the Code of Civil Procedure to the High Court when a revision has been provided under Section 20 of the Act in question. When Section 18(5) of the Act specifically states that "Shall not be liable to be called in question in any court of law" except in the manner provided under Section 20, it cannot be said that the High Court which is a court of law and which is a civil court under the Code of Civil Procedure under Section 115 of the Code of Civil Procedure could revise an order once again after revision under Section 20 of the Act. That would mean there would be a trial by four courts, that would be repugnant to the scheme manifest in the different sections of the Act in question. Public policy or public interest demands curtailment of law's delay and justice demands finality with quick disposal of case. The language of the provisions of Section 18(5) read with Section 20 inhibits further revision. The courts must so construe.

8. The Bench drew support for its conclusion from an earlier decision of this Court in Vishesh Kumar v. Shanti Prasad ((1980) 3 SCR 32 : (1980) 2 SCC 378 : AIR 1980 SC 892). In that case the two questions that fell for consideration were :

> (1) Whether the High Court possesses revisional jurisdiction under Section 115, Code of Civil Procedure in respect of an order of the District Court under Section 115 disposing of a revision petition ?
>
> (2) Whether the High Court possesses revisional jurisdiction under Section 115 against an order of the District Court under Section 115 against an order of the District Court under Section 25, Provincial Small Cause Courts Act disposing of a revisional petition ?

Answering both the questions in the negative, it was held insofar as question 1 is concerned, as follows : (SCC p. 384, para 8)

> In determining whether the legislature intended a further revision petition to the High Court, regard must be had to the principle that the construction given to a statute should be such as would advance the object or the legislation and suppress the mischief sought to be cured by it. It seems to us that to recognise a revisional power in the High Court over a revisional order passed by the District Judge would plainly defeat the object of the legislative scheme. The intent behind the bifurcation of jurisdiction - to reduce the number of revision petitions filed in the High Court - would be frustrated. The scheme would, in large measure lose its meaning. If a revision petition is permitted to the High Court against the revisional order of the District Court arising out of a suit of a value less than Rs. 20,000, a fundamental contradiction would be allowed to invade and destroy the division of revisional power between the High Court and the District Court, for the High Court would then enjoy jurisdictional power in respect of an order arising out of a suit of a valuation below Rs. 20,000. That was never intended at all.

The second question was answered as under : (SCC pp. 385-86, para 12)

The question before us arises in those cases only where the District Judge has exercised revisional power under Section 25. Is an order so made open to revision by the High Court under Section 115, Code of Civil Procedure ? An examination of the several provisions of the Provincial Small Cause Courts Act indicates that it is a self-sufficient code so far as the present enquiry is concerned. For the purpose of correcting decrees or orders made by a Court of Small Causes the Act provides for an appeal and a revision in cases falling under Section 24 and Section 25 respectively. Cases in which the District Judge and High Court respectively exercise revisional power are specifically mentioned. A complete set of superior remedies has been incorporated in the Act. Moreover, Section 27 of the Act provides :

> 27. Finality of decrees and orders. - Save as provided by this Act, a decree or order made under the foregoing provisions of this Act by a Court of Small Causes shall be final.

The legislature clearly intended that a decree or order made by a Court of Small Causes should be final subject only to correction by the remedies provided under the Provincial Small Cause Courts Act. It is a point for consideration that had Section 25, in its application to the State of Uttar Pradesh, continued in its original form the High Court would have exercised the revisional power under Section 25, and no question could have arisen of invoking the revisional power of the High Court under Section 115 of the Code. All the indications point to the conclusion that a case falling within the Provincial Small Cause Court Act was never intended to be subject to the remedies provided by the Code of Civil Procedure. By way of abundant caution, Section 7 of the Code made express provision barring the application of Sections 96 to 112 and 115 of the Code to courts constituted under the Provincial Small Cause Courts Act. Section 7 of the Code merely embodies the general principle against resort to remedies outside the Provincial Small Cause Courts Act. Although the court of the District Judge is not a court constituted under the Act the general principle continues to take effect. No change in the principle was brought about merely because revisional power under Section 25, before the proviso was added, was now entrusted to the District Judge. It must be remembered that the legislative intention behind the amendment was to relieve the High Court of the burden of exercising revisional jurisdiction in respect of cases decided under the Provincial Small Cause Courts Act. We are of firm opinion that the central principle continues to hold, notwithstanding the amendment effected in Section 25, that the hierarchy of remedies enacted in the Provincial Small Cause Courts Act represents a compete and final order of remedies, and it is nor possible to proceed outside the Act to avail of a superior remedy provided by another statute.

9. Taking the same view of the Kerala Act, which is also a self-contained Act it was held in Aundal Ammal case ((1987) 1 SCC 183 : AIR 1987 SC 203) that (SCC p. 190, para 23)

> the Full Bench of the Kerala High Court was in error and the High Court in the instant case had no jurisdiction to interfere in this matter under Section 115 CPC.

10. Coming now to the Karnataka Act and the decisions of the High Court and of this Court pertaining to Section 50 read with Section 48(6) of the said Act, it is first necessary to refer to the relevant provisions of the Act as they stood before and after the amendments effected by the Amendment Act 31 of 1975. The relevant portions of Sections 48 and 50, as they stood before the amendment and after the amendment are as under :

> # Before the Amendment After the Amendment48. Appeals. - (1) Notwithstanding 48. Appeals - (1) omitted.anything contained in any law forthe time being in force,

everyperson aggrieved by an order underSection 14, Section 16, Section17 or Section 21, passed by theController or the court maywithin thirty days from the date ofthe order, prefer an appeal inwriting to the District Judge havingjurisdiction over the area inwhich the premises are situate. * * * * * *(5) The appellate authority shall (5) The appellate authoritysend for the records of the case shall send for the recordsfrom the court or the Controller, of the case from theas the case may be, and after controller and after givinggiving the parties an opportunity an opportunity of being heardof being heard and if necessary and if necessary after makingafter making such further enquiry such further enquiry as itas it thinks fit, either itself or thinks fit either itself orthrough the court or the Controller, through the Controller shallas the case may be, shall decide the the appeal.appeal.Explanation .....(6) Subject to any decision of the (6) An order of the courtHigh Court under Section 50 or the Controller shall,the decision of the District Judge subject to the decision ofshall be final; and an order of of the District Judge or thethe court or the Controller shall, High Court under Section 50to the decision of the relevant or of the relevant appellateappellate authority under this authority under this ActActor of the High Court under Section be final and shall not be50, be final and shall not be liable liable to be called in questionto be called in question in any court in a suit or other proceedingof law whether in a suit or proceedings or by way of appeal or revision.or by way of appeal or revision.50. Revision by the High Court. 50. Revision. - (1) The HighCourt. - (1) The High Court may, Court may, at any time, call forat any time, call for and and examine-examine any orderexamine - passed or proceeding taken by the Court of Civil(i) the records relating to any Judge under this Act ordecision given or proceedings any order passed by thetaken by the District Judge. Controller under Section 14, 15, 16 or 17 for the purpose of satisfying(ii) any order passed or itself as to the legalityproceedings taken by the or correctness of such ordercourt under this Act or any order or proceeding and may passpassed by the Controller under such order in referenceSection 14, Section 15 or thereto as it thinks fit.Section 16,for the purpose of satisfyingitself as to the legality orcorrectness of such decision,order or proceeding and any passsuch order in reference theretoas it think fit;(2) The costs of, and incidental (2) The District Judge may,to all proceeding before at any time, call for andthe High Court shall be in its examine any order passed ordiscretion. proceeding taken by the Court of Munsiff referred to in sub-clause (iii) of Clause (d) of Section 3 for the purpose of satisfying himself as to the legality or correctness of such order in reference thereto as he thinks fit. The order of the District Judge shall be final. (3) The costs of and incidental to all proceedings before the High Court or the District Judge shall be in the discretion of the High Court or the District Judge, as the case may be.##

On a reading of the provisions it may be seen that under Section 48 as it stood prior to the amendment, an appeal lay to the District Judge against an order passed under Section 14, 16, 17 or 21 by the Rent Controller or the court and thereafter a revision lay to the High Court under Section 50 of the Act. Sub-section (6) of Section 48 further provided that the decision of the District Judge shall, subject to the decision of the High Court under Section 50, be final and the order of the court or the Controller shall subject to the decision of the relevant appellate authority under the Act or of the High Court under Section 50 be final and shall not be liable to be called in question in any court of law, whether in a suit or other proceedings or by way of appeal or revision. One of the changes effected by the Amending Act was to confer jurisdiction on Civil Judges in the place of District

Munsifs in respect of house rent control cases arising in the city of Bangalore. Another change effected was to take away the right of appeal to the District Judge against a decision of a Rent Control Court by deleting sub-section (1) of Section 48. The third change effected is of a twofold nature. The first is to restrict the High Court's powers of revision under Section 50 to only those cases decided by the City Civil Judges and the second is to confer revisional powers on District Judges in respect of cases decided by the Munsifs exercising jurisdiction in areas outside the city of Bangalore. Thus what the legislature had done was to do away with the remedy of an appeal so as to save litigants from "a large segment of time and much expenses". The resultant position is that as against the orders of District Munsifs acting as Rent Controllers a right of appeal to the District Judge and a further revision to the High Court has been taken away and instead only a right of revision to the District Court is provided. Insofar as the cases disposed of by the Civil Judges in the city of Bangalore are concerned, a right of revision is provided to the High Court. Notwithstanding the changes effected, Section 48(6) inter alia provided that an order of the court or the Controller shall, subject to the decision of the District Judge or the High Court under Section 50 be final and shall not be liable to be called in question in any court of law, whether in a suit or other proceeding or by way of appeal or revision.

11. In the background of the changes made by the legislature, a Full Bench of the Karnataka High Court went into the question in Krishnaji Venkatesh Shirodkar v. Gurupad Shivram Kavalekar (ILR 1978 Kant 1585) whether by reason of Section 48(6) a further revision against a revisional order passed by the District Judge under Section 50(2) of the Karnataka Act would lie or not to the High Court under Section 115 of CPC Venkataramiah, J. (as he then was), who spoke for the Full Bench held that in the light of the decisions of the Supreme Court in Chhagan Lal v. Municipal Corporation, Indore (AIR 1977 SC 1555 : (1977) 2 SCC 409) and Krishnadas Bhatija v. A. S. Venkatachala Shetty (Special Leave Petition (Civil) No. 913 of 1978, decided on February 13, 1978 (SC) the jurisdiction of the High Court under Section 115 CPC to revise an order of the District Judge passed under Section 50(2) will stand unaffected.

12. The correctness of this view was questioned before another Full Bench of the Karnataka High Court in M. M. Yaragatti v. Vasant (AIR 1987 Kant 186). The Full Bench took the view that in the light of the decisions of the Supreme Court in two subsequent cases, viz. Aundal Ammal case ((1987) 1 SCC 183 : AIR 1987 SC 203) and Vishesh Kumar case ((1980) 3 SCR 32 : (1980) 2 SCC 378 : AIR 1980 SC 892), the law laid down in Krishnaji case (ILR 1978 Kant 1585) cannot be considered good law any longer and as such a further revision to the High Court under Section 115 CPC will not lie against an order passed by a District Judge in exercise of his revisional powers under Section 50(2) of the Karnataka Act.

13. The correctness of the view taken by the Full Bench in Yaragatti case (AIR 1987 Kant 186) fell for consideration by the is Court in Shyamaraju case (1987 Supp SCC 321). A Bench of this Court held that insofar as the Karnataka Act is concerned, the relevant provisions warranted invoking the ratio in Chhaganlal case (AIR 1977 SC 1555 : (1977) 2 SCC 409) and Krishnadas Bhatija (Special Leave Petition (Civil) No. 913 of 1978, decided on February 13, 1978 (SC) and therefore the view taken by the earlier Full Bench in Krishnaji case (ILR 1978 Kant 1585) is the correct one and not the view taken in Yaragatti case (AIR 1987 Kant 186). The position, therefore, is that so far as the Karnataka Act is concerned, an order of a District Judge under Section 50(2), though conferred finality under the Act is nevertheless open to challenge before the High Court by means of a further revision under Section 115 CPC by the aggrieved party.

14. What now falls for consideration is whether there is any conflict between the decisions in

Aundal Ammal case ((1987) 1 SCC 183 : AIR 1987 SC 203) and Shyamaraju Hegde case (1987 Supp SCC 321) and whether the ratio in the former case requires reconsideration.

15. Even without any discussion it may be seen from the narrative given above that there is really no conflict between the two decisions because the provisions in the two Acts are materially different. However, to clarify matters further we may point out the differences between the two Act in greater detail and clarity. Under the Kerala Act, against an order passed by a Rent Control Court presided over by a District Munsif, the aggrieved party is conferred a right of appeal under Section 18. The Appellate Authority has to be a judicial officer not below the rank of a Subordinate Judge. The Appellate Authority has been conferred powers co-extensive with those of the Rent Control Court but having overriding effect. Having these factors in mind, the legislature has declared that insofar as an order of a Rent Control Court is concerned it shall be final subject only to any modification or revision by an Appellate Authority; and insofar as an Appellate Authority is concerned, its decision shall be final and shall not be liable to be called in question in any court of law except as provided in Section 20. As regards Section 20, a division of the powers of revision exercisable thereunder has been made between the High Court and the District Court. In all those cases where a revision in preferred against a decision of an Appellate Authority of the rank of a Sub-ordinate Judge under Section 18, the District Judge has been constituted the revisional authority. It is only in other case i.e. where the decision sought to be revised is that of a judicial officer of a higher rank than a Subordinate Judge, the High Court has been constituted the revisional authority. The revisional powers conferred under Section 20, whether it be on the District Judge or the High Court as the case may be are of greater amplitude than the powers of revision exercisable by a High Court under Section 115 CPC. Under Section 20 the revisional authority is entitled to satisfy itself about the legality, regularity or propriety of the orders sought to be revised. Not only that, the Appellate Authority and the revisional authority have been expressly conferred powers of remain under Section 20-A of the Act. Therefore, a party is afforded an opportunity to put forth his case before the Rent Control Court and then before the Appellate Authority and thereafter if need be before the Court of Revision viz. the District Court if the Appellate Authority is of rank of a Sub-ordinate Judge. The legislature in its wisdom has thought that on account of the ample opportunity given to a party to put for the his case before three courts, viz. the trial court, the appellate court and the revisional court, there was need to make the revisional order of the District Court subject to further scrutiny by the High Court by means of a second revision either under the Act or under the Civil Procedure Code. It has been pointed out in Aundal Ammal case ((1987) 1 SCC 183 : AIR 1987 SC 203) that the Full Bench of the Kerala High Court had failed to construe the terms of Section 20 read with Section 18(5) in their proper perspective and this failing had affected its conclusion. According to the Full Bench, a revisional order of a District Court under Section 20 laid itself open for further challenge to the High Court under Section 115 CPC because of two factors viz. (1) there was no mention in the Act that the order would be final and (2) there was no provision in the Act for an appeal being filed against a revisional order under Section 20. The Full Bench failed to notice certain crucial factors. In the first place, Section 20 is a composite section and refers to the powers of revision exercisable under that section by a District Judge as well as by the High Court. Such being the case if it is to be taken that an order passed by a District Court under Section 20 will not have finality because the section does not specifically say so, then it will follow that a revisional order passed by the High Court under Section 20(1) also will not have finality. Surely it cannot be contended by anyone that an order passed by a High Court in exercise of its powers of revision under Section 20(1) can be subjected to further revision because Section 20(1) has not expressly conferred finality to an order passed under that section. Secondly, the terms of Section 20(1) have to be read in conjunction with Section 18(5). Section 18(5), as already seen, declares that

an order of a Rent Control Court shall be final subject to the decision of the Appellate Authority and an order of an Appellate Authority shall be final and shall not be liable to be called in question in nay court of law except as provided for in Section 20. When the legislature has declared that even an order of the Rent Control Court and the decision of the Appellate Authority shall be final at their respective stages unless the order is modified by the Appellate Authority or the Revisional Authority as the case may be, there is no necessity for the legislature to declare once over again that an order passed in revision under Section 20(1) by the District Judge or the High Court as the case may be will also have the seal of finality. The third aspect is that the legislature has not merely conferred finality to the decision of an Appellate Authority but has further laid down that the decision shall not be liable to be called in question in any court of law except as provided for in Section 20. These additional words clearly spell out the prohibition or exclusion of a second revision under Section 115 CPC to the High Court against a revisional order passed by a District Court under Section 20 of the Act. This Position has been succinctly set out in para 20 of the judgment in Aundal Ammal case ((1987) 1 SCC 183 : AIR 1987 SC 203). As was noticed in Vishesh Kumar case ((1980) 3 SCR 32 : (1980) 2 SCC 378 : AIR 1980 SC 892) the intent behind the bifurcation of the jurisdiction is to reduce the number of revision petitions filed in the High Court and for determining the legislative intent, the court must as far as possible construe a statute in such a manner as would advance the object of the legislation and suppress the mischief sought to be cured by it.

16. A thought may occur to some whether by a rigid construction of Section 20(1) read with Section 18(5), the High Court's power of superintendence over the District Court, even when it functions as a revisional court under Section 20(1) of the Kerala Act, will not stand forfeited. We may only state that legislative history would indicate that the superintending and visitorial powers exercisable by a High Court under Section 115 CPC appear to have been conferred and vested.

because the supervisory jurisdiction to issue writs of certiorari prohibition over subordinate courts in the mofussil could not be exercised, [and hence] it would be reasonable to hold that it was intended ... to be analogous with the jurisdiction to issue the high prerogative writs and the power of supervision under the Charter Act and its successor provisions in the Constitution Acts.

Vide para 10 S. S. Khanna v. F. J. Dillon (AIR 1964 SC 497).

17. Incidentally, we may also point out that the legislature has not taken away and indeed it cannot take away the power of superintendence of the High Court under Article 227 of the Constitution over all courts and tribunals which are within the territories in relation to which the High Court exercise its jurisdiction.

18. Having said so much it is really not necessary for us to dwell at length about the decision in Shyamaraju case (1987 Supp SCC 321) restoring the ration in Krishnaji case (ILR 1978 Kant 1585) and disapproving the decision in Yaragatti case (AIR 1987 Kant 186). Even so we cannot but refer to the fact that in the Karnataka Act the right of appeal has been completely taken away and the entire proceedings are sought to be limited to a two tier system viz. The Rent Control Court and the revisional court, whereas under the Kerala Act there is a three tier system viz. The Rent Control Court, the appellate court and the revisional court. Though Section 48(6) of the Karnataka Act (as amended) also speaks of the finality of the order of the Rent Control Court, subject to the decision of the revisional court under Section 50 in more or less the same terms as in Section 18(5) of the Kerala Act, the force underlying the words "shall be final and shall not be liable to be called in question" etc. has to be reckoned at a lesser degree than the terms in the Kerala Act because the

words of finality in the two Acts under the relevant provisions present distinctly different perspective. It is in that situation it was found in Shyamaraju case (1987 Supp SCC 321) that the relevant provisions of the Karnataka Act warranted the application of the ratio in Chhaganlal case (AIR 1977 SC 1555 : (1997) 2 SCC 409) and Krishnadas Bhatija case (Special Leave Petition (Civil) No. 913 of 1978, decided on February 13, 1978 (SC)) rather than the ratio in Vishesh Kumar case ((1980) 3 SCR 32 : (1980) 2 SCC 378 : AIR 1980 SC 892) and Aundal Ammal case ((1987) 1 SCC 183 : AIR 1987 SC 203). In fact, it is worthy of notice that Venkataramiah, J. who spoke for the Full Bench in Krishnaji case (ILR 1978 Kant 1585) was a party to the judgment in Aundal Ammal case ((1987) 1 SCC 183 : AIR 1987 SC 203) and the learned Judge, while concurring the Sabyasachi Mukharji, J., who spoke for the Bench, has not deemed it necessary to make any reference to the Full Bench decision in Krishnaji case (ILR 1978 Kant 1585).

19. There is, therefore, no conflict between the decision rendered in Aundal Ammal case ((1987) 1 SCC 183 : AIR 1987 SC 203) and Shyamaraju case (1987 Supp SCC 321). As to the question whether a fresh thinking is called for on the scope of Section 20 read with Section 18(5) of the Kerala Act, we do not find any grounds for reconsidering the view taken in Aundal Ammal case ((1987) 1 SCC 183 : AIR 1987 SC 203) and on the contrary our renewed discussion of the matter only calls for a reiteration of the view expressed in Aundal Ammal case ((1987) 1 SCC 183 : AIR 1987 SC 203).

20. An argument was advanced that since the decision in Vareed v. Mary (AIR 1969 Ker 103) had been good law for a number of years in Kerala State and since the High Court had been entertaining revision petitions under Section 115 CPC against the revisional orders of District Courts under Section 20(1) of the Kerala Act, the decision should have been allowed to stand even though the reasoning therein was not commendable for acceptance by this Court. We are unable to countenance this argument in the circumstances of the case and the reason therefor can be set out by referring to certain English decisions and the reasoning adopted therein. In West Ham Union v. Edmonton Union ((1908) AC 1, 4-5) Lord Loreburn, L.C. spoke as under :

> Great importance is to be attached to old authorities, on the strength of which many transactions may have been adjusted and rights determined. But where they are plainly wrong, and especially where the subsequent course of judicial decision has disclosed weakness in the reasoning on which they were based, and practical injustice in the consequences that must flow from them, I consider it is the duty of this House to overrule them, if it has not lost the right to do so by itself expressly affirming them.

21. In Robinson Brothers (Brewers) Ltd. v. Houghton & Chester-le-Street Assessment Committee ((1937) 2 All ER 298 affirmed in (1938) 2 All ER 79) the members of the court, having concluded that a decision on a question of rating pronounced some forty years previously by a Divisional Court was plainly wrong, overruled it accordingly, although the earlier decision had, without doubt, been frequently acted on in rating matters in the meantime, and although no judicial doubt had previously been case on its correctness. These decisions have been referred to and followed in Brownsea Haven Properties Ltd. v. Poole Corporation ((1958) 1 All ER 205). On similar lines this Court deemed it necessary to overrule the ratio in Vareed v. Mary (AIR 1969 Ker 103) as the decision suffered from misconstruction of the relevant sections in the Act and the weakness in the reasoning become manifest in the light of the subsequent decision of this Court such as in Vishesh Kumar ((1980) 3 SCR 32 : (1980) 2 SCC 378 : AIR 1980 SC 892).

22. In the light of our conclusion all the appeals must succeed insofar as the challenge to the right of the High Court to entertain revision petitions under Section 115 CPC is concerned. In Civil Appeal Nos. 626 of 1981 and 624 of 1985, the High Court allowed the revision petition under Section 115 CPC and ordered the eviction of the tenant. In Civil Appeal No. 2079 of 1981 the District Judge set aside the order of eviction but the High Court restored the order of eviction. In Civil Appeal No. 1619 of 1986 the District Court allowed the revision and restored the order of eviction passed by the Rent Controller and the High Court has confirmed the said order in the revision preferred to it. In Civil Appeal No. 7505 of 1983 the District Court reversed the decisions of the Rent Controller and the Appellate Authority and ordered eviction and order of the District Court has been confirmed by the High Court. In Special Leave Petition No. 4311 of 1985 the Appellate Authority sustained the claim of the landlord for eviction under Section 11(3) of the Act but remanded the case to the Rent Control Court for deciding the question whether the tenant is entitled to resist the claim for eviction on the basis of the second proviso to Section 11(3) of the Act. The order of remand was confirmed by the District Court and the High Court.

23. In accordance with our pronouncement it follows that the order of the High Court under Section 115 of CPC in each of the appeals concerned, viz., Civil Appeal Nos. 626 of 1981, 624 of 1985, 2079 of 1981, 1619 of 1986 and 7505 of 1983 will stand set aside and the revisional order of the District Judge in each case will stand restored and become operative. As the appeals are directed only against the order of the High Court passed in revision the appeals will stand disposed of with the said pronouncement on the above lines.

24. In Special Leave Petition (Civil) No. 4311 of 1985 also the order of the High Court under Section 115 CPC is not sustainable but even so we do not find any merit in the petition because the finding of the Appellate Authority and the order of remand passed by it have been confirmed by the District Court and as such, there are no merits in the petition, accordingly it is dismissed. Interim orders, if any, passed in the appeals and the special leave petition will stand vacated. The parties in all the case are directed to bear their respective costs.

S. RANGANATHAN, J. (dissenting) -

I find on a cursory perusal of various State enactments on rent control that, while a number of them do confer specific jurisdiction on the State High Court, some other are broadly on the same pattern as the Kerala and Karnataka enactments. Thus, though we are concerned only with Kerala and Karnataka enactments in these cases, a similar question might well arise under the corresponding enactments of some other States as well. It is in view of this importance of the question raised that I have considered it necessary to state my views in a separate order.

26. The Kerala and Karnataka Rent Control Acts vest a power of revision in the District Judge against certain orders. The question in these matters is whether the jurisdiction of the High Court under Section 115 of the Code of Civil Procedure (CPC) can be invoked to seek a further revision of the revisional order passed by the District Judge. This question has been answered in the negative in Aundal Ammal v. Sadasivan Pillai ((1987) 1 SCC 183 : AIR 1987 SC 203) (a decision under the Kerala Act) but in the affirmative in Shyamaraju Hegde v. Venkatesha Bhat (1987 Supp SCC 321) (a decision under the Karnataka Act) and hence this reference to a larger Bench. My learned brothers are of the view that there is no conflict between the above two decisions as the two enactments are not in pari materia and that, so far as the Kerala Act is concerned, Aundal Ammal ((1987) 1 SCC 183 : AIR 1987 SC 203) should be followed. With respect, I am unable to agree.

27. Normally, a revision lies to the High Court under Section 115 of the CPC against any order of the District Judge/Court. The fact that the order may have been passed under a special statute or that the statute contains expressions purporting to confer finality on the order of the District Judge/Court or a subordinate authority or court have been held insufficient to take away this jurisdiction. This is the effect of the decisions in Chhagan Lal v. Municipal Corporation, Indore (AIR 1977 SC 1555 : (1977) 2 SCC 409), a case under the Madhya Pradesh Municipal Corporation Act and in Krishnadas Bhatija v. Venkatachala Shetty (Special Leave Petition (Civil) No. 913 of 1978, decided on February 13, 1978 (SC) and Shyamaraju case (1987 Supp SCC 321), which are direct decisions under the Karnataka Act. In my opinion, there is no vital or material difference between the two enactments in this respect and that the same result should follow under the Kerala Act also.

28. The relevant provisions of the two enactments have been extracted in the order of Natarajan, J. and need not be set out again. Under the Karnataka Act, after its amendment in 1975, rent control matters are decided, in the first instance, by the District Munsiff or the Civil Judge/Rent Controller, according as the case arises outside or inside the city of Bangalore. There is no provision for an appeal from this order by there is one for revision. This revisional power is bifurcated under Section 50 between the High Court and the District Judge. The High Court is empowered to revise the order of the Civil Judge/Rent Controller and the District Judge that of the District Munsiff. Section 50(2) specifically declares that the order of the District Judge under this provision is final. The Kerala pattern is the same except that an appeal intervenes before the revision. Section 18 provides for an appeal from the Rent Controller to an officer or an authority of the rank of a Subordinate Judge or of a superior rank. Section 20 provides for revision. The revisional power is to be exercised by the District Court where the appellate authority is the Subordinate Judge and the High Court in other cases. Section 20 does not provide, as does Section 50 of the Karnataka Act, that the decision of the District Judge shall be final. It is true that Section 18(5) of the Kerala Act lays down that the order of the Rent Control Court or, where there is an appeal, the decision of the appellate authority shall be final and shall not be called into question in any court of law except as provided in Section 20 but the language of Section 48(5) of the Karnataka Act is even stronger. It provides that the order of the court or the Rent Controller shall (subject to the decision in appeal or of the District Judge or the High Court in revision under Section 50) be final and "shall not be liable to be called into question in any court of law whether in a suit or other proceeding or by way of appeal or revision". If the much wider and more emphatic language of the Karnataka Act does not exclude the jurisdiction of the High Court under Section 115, as has been held in the two cases referred to above, it is difficult to see the justification for reading any such exclusion into the Kerala Act.

29. This poses then the question of a choice between the two views of this Court : the one in Shyamaraju (1987 Supp SCC 321) and the one in Aundal Ammal ((1987) 1 SCC 183 : AIR 1987 SC 203). As has already been pointed out, Shyamaraju (1987 Supp SCC 321) follows the earlier decision of this Court in Chhagan Lal (AIR 1977 SC 1555 : (1977) 2 SCC 409) and Krishnadas Bhatija (Special Leave Petition (Civil) No. 913 of 1978, decided on February 13, 1978 (SC). The only other decision of this Court, which has relevance in the present context, is Vishesh Kumar v. Shanti Prasad ((1980) 3 SCR 32 : (1980) 2 SCC 378 : AIR 1980 SC 892) which has been relied upon in Aundal Ammal ((1987) 1 SCC 183 : AIR 1987 SC 203). I am in agreement with the view expressed Shyamaraju (1987 Supp SCC 321) that Vishesh Kumar ((1980) 3 SCR 32 : (1980) 2 SCC 378 : AIR 1980 SC 892) was rendered in a totally different statutory context. That decision turned largely on the legislative history of Section 115 of the CPC and Section 25 of the Provincial Small Cause Courts Act in their application to the State of Uttar Pradesh. I am therefore inclined to lean in favour of the view that has commended itself to this Court as to the interpretation of the Karnataka Act and to hold that the High Court has a power of revision over the order of the District Judge

under the Kerala Act as well.

30. Aundal Ammal ((1987) 1 SCC 183 : AIR 1987 SC 203) has pointed out that such an interpretation would enable parties to have recourse to four courts under the Kerala Rent Control Act viz. : the court of the first instance, the appellate court, the district court and then the High Court whereas under the Karnataka Act there are only three courts, viz. : the court of the first instance, the district court by way of revision and the High Court by way of further revision. This is no doubt true but can this alone be a reason why identical statutory language should be given different interpretations under the two enactments ? I think not. That apart, the result of applying Aundal Ammal ((1987) 1 SCC 183 : AIR 1987 SC 203) would be to completely exclude the High Court in rent control matters and this, if I am right in thinking that the two Acts are pari materia, will leave the litigant in Karnataka with only a right of revision to the District Court. I venture to doubt whether in the absence of clear language the legislature can be held to have intended to completely exclude the jurisdiction of the High Court in such an important branch of the law. Moreover to exclude the revisional jurisdiction of the High Court under Section 115 would only encourage the recourse, by aggrieved parties, to Articles 136, 226 and 227 of the Constitution and the conclusion may not even result in reducing the spate of litigation under the Rent Control Acts in the High Courts and Supreme Court. I am, therefore, not inclined to attach much importance to this circumstance as a guide to the interpretation of the relevant provisions of the statute.

31. The above interpretation will not render the language and scheme of Section 18(5) read with Section 20 totally redundant as was suggested in arguments before us. Section 20 is necessary because though, at present, Subordinate Judges have been constituted as the appellate authorities under the Act, the Appellant Authority need not necessarily be a regular civil court and, but for such a specific statutory provision, there would be no remedy to a party aggrieved by an order of the Appellate Authority. Section 18(5) is a provision of a general nature intended to prevent the orders of the Rent Controller from being challenged in the courts. These provisions, in my opinion, do not and cannot preclude the applicability of Section 115 of the CPC to an order passed by the District Court, not as a persona designata, but as a civil court of the land. In this view of the matter, Sections 18 and 20 have a vital part to play but their effect is not to eliminate the revisional jurisdiction of the High Court under Section 115.

32. One more circumstance which I think has a bearing on the interpretation to be place on this procedural problem is this. In the State of Kerala, as early as in Vareed v. Mary (AIR 1969 Ker 103), a view was taken that the High Court can entertain a second revision and, though Shri Poti suggested that this view has been often challenged, the above Full Bench decision held the field till Aundal Ammal ((1987) 1 SCC 183 : AIR 1987 SC 203) was decided. In Karnataka, the maintainability of a second revision appears to have been taken for granted until a doubt was raised in view of certain observations made in a decision under the Cooperative Societies Act. This doubt was dispelled and it was held in Krishnaji case (ILR 1978 Kant 1585) that the High Court could maintain second revision. This view was sought to be reversed by the subsequent Full Bench in Yaragatti case (AIR 1977 SC 1555 : (1977) 2 SCC 409) in the light of the decision in Aundal Ammal ((1987) 1 SCC 183 : AIR 1987 SC 203), but that attempt was overruled in Shyamaraju case (1987 Supp SCC 321). In the result, the position has been that, right through in the State of Karnataka and for at least for a period of almost twenty years in the State of Kerala, the prevalent view has been in favour, of the maintainability of a second revision by the High Court. I think that in a matter of procedure such a long standing practice should not be disturbed unless the statutory indication is quite clear to the contrary.

33. I would, therefore, hold that the revision petitions before the High Court were maintainable and that the matters before us should be disposed of accordingly. However, the petitions and appeals will stand disposed of in accordance with the majority view of my learned brothers.

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