

# SUPREME COURT OF INDIA

B.Y.Narasimha Prasad

Vs.

M.Veerappa

Special Leave Petition (C) No.16453 of 2006

(Harjit Singh Bedi and Aftab Alam JJ.)

21.07.2008

## JUDGMENT

### **Aftab Alam, J.**

1. This petition for special leave to appeal arises from an eviction proceeding. The 2nd Additional Small Causes Judge, Bangalore, held that the eviction petition (HRC No.422/99) filed against respondent no. 1 was not maintainable under the *Karnataka Rent Act, 1999* because the proceeding was instituted within the period of 15 years since the suit house was subjected to substantial renovation and additional construction as provided under Section 2(3) (f) of the Act. In revision, the High Court affirmed the view taken by the trial court vide order dated 22 June, 2006 in House Rent Revision Petition No.554 of 2005. The petitioner seeks leave to file appeal against the High Court order.

2. The facts of the case are brief and may be stated thus. The suit premises belonged to one Shankar Narayan Rao (now deceased). He inducted respondent No.1 as a tenant in the house in the year 1976. At that time it was a single storey house without any garage as an appurtenance. In the year 1988, on the request of the tenant, another storey was added and a garage was also constructed on the ground floor. Respondent No.1 then came to occupy as tenant, the entire premises, that is to say, the ground floor and the newly added first floor and the garage on a monthly rental of Rs.2500/-.

3. In 1999, Shankar Narayan Rao filed a petition under the *Karnataka Rent Control Act, 1961* seeking the eviction of respondent No.1 on a number of grounds. Respondent no.1 resisted the eviction proceeding and filed his written statement, inter alia, stating that additional construction/renovation of the house in the year 1988 was done at his expense and in that connection he had incurred the cost of Rs.6,50,000/-.

4. The Karnataka Rent Control Act was repealed and it was replaced by the Karnataka Rent Control Act, 1999 with effect from December 2001. At that time the proceeding was pending before the trial court.

5. In the same year Shankar Narayan Rao died and the present petitioner and respondent No.2 got themselves substituted in his place to prosecute the eviction proceeding. Respondent No.2 is the widow of Shankar Narayan Rao and the petitioner claims to be his adopted son.

6. In course of the proceeding before it the trial court seems to have noticed the plea taken by respondent No.1 that the additional construction/renovation of the house was done in the year 1988 at a cost of Rs.6,50,000/-. On the basis of the evidences already on record he further found that the aforesaid amount was in excess of 75% of the valuation of the house and hence, the suit premises had undergone substantial renovation/construction within the meaning of Section 2 (3) (f) of the Act that stipulated that to such a premises no provision of the Rent Control Act, 1999 would apply for a period of 15 years from the date of completion of construction or substantial renovation. The eviction petition in question, was filed in 1999, i.e., clearly within the period of 15 years from the date of completion of additional construction/substantial renovation of the suit premises and was, therefore, not maintainable under the Act.

7. The petitioner challenged the order of the trial court in revision before the High Court. At this stage, the dispute which was till then only bipartite, being between the tenant on the one side and the petitioner and the second respondent on the other assumed a tripartite dimension. The widow of Shankar Narayan Rao who after the death of her husband had initially joined the petitioner in prosecuting the eviction proceeding changed her stand. A petition was filed on her behalf in the trial court stating that she came to know about a will allegedly created in favour of the petitioner, which according to her was a fake. She also disputed the petitioner's claim of adoption by Shankar Narayan Rao and prayed for dismissing the eviction proceeding. It was in those circumstances that in the revision filed by the petitioner before the High Court she was impleaded as the second respondent along with the tenant being the first respondent. The High Court, as noticed above, dismissed the revision and affirmed the order passed by the trial court.

8. Learned counsel appearing in support of the Leave Petition submitted that the question of maintainability of the proceeding was not even raised by respondent No.1, the tenant, and there being no such plea the trial court was in error in dismissing the petition as not maintainable. He further submitted that the suit house could not be said to have undergone construction/substantial renovation within the meaning of the explanation to Section 2(3)(f) of the Act. Learned counsel also submitted that at any rate on 21 November, 2005, the date on which the trial court dismissed the eviction petition, the 15 years period was already over. The bar of Section 2(3)(f) was thus lifted in connection with the suit house and there was no legal impediment before the court to proceed in the matter. In support of the last submission, he relied upon a decision of this Court in *Sudhir G.Angur & Ors. V. M. Sanjeev & others*<sup>1</sup>.

9. We are not impressed by any of these submissions. What was the cost of construction or the value of the single storey house that was originally let out to respondent No.1 and what was the cost of construction of the first floor and the garage and whether or not the suit house had undergone substantial renovation/additional construction within the meaning of

Section 2(3)(f) of the Act are pure questions of fact. On the basis of the evidences led before it, the trial court found and held that the cost incurred in the additional construction/renovation was in excess of 75% of the value of the original single storey house. The finding of the trial court has been affirmed by the High Court. The finding is based on evidence brought before the court and it, therefore, does not warrant any interference by us. Further, once it was established that the suit house had undergone additional construction/substantial renovation within the meaning of Section 2(3)(f) of the Act the question of maintainability of the proceeding became a jurisdictional issue and the court was legally bound to address it regardless of whether or not any objection was raised by the other side. The trial court was, therefore, perfectly justified in considering whether or not it had the jurisdiction and the competence to proceed in the matter. The Trial Court did so and found that the proceeding was not maintainable before it.

10. We are also unable to accept the contention that the date on which the order was passed the 15 years period was over and the proceeding had thus become maintainable. We are of the view that the decision in *Sudhir G. Angur* has no application to the facts of the case. The maintainability of the proceeding was to be decided with reference to the date on which the *Rent Control Act, 1999* came into force and not the date on which the order was passed by the trial court. A proceeding that was incompetent on the date the Act came into force would not revive merely because it remained pending before the court.

11. Counsel for the petitioner lastly submitted that the intent of section 3(2)(f) was to give some benefit to the landlord and further that the proceeding would not abate under Section 70(2)(c) of the Act. We find no force in the submission. It is indeed true that Section 2(3) (f) is beneficial to the landlord but then it was for the land lord, Narayan Shankar Rao to withdraw the proceeding on coming into force on the 1999 Act in terms of Section 2(3)(f) and to proceed against the tenant under the general law governing the landlord and tenant relationship. That course having not been adopted the proceeding under the Rent Control Act was clearly not maintainable and was rightly dismissed by the trial court.

12. We thus find no merit in this special leave petition and it is dismissed accordingly.

13. We may note here that the High Court has left it open to the petitioner or the 2nd respondent (the widow of Narayan Shankar Rao) to file a fresh eviction petition on the ground that by the end of December 2003 the 15 years period was over. The direction of the High Court in that regard would remain undisturbed by the dismissal of the Special Leave Petition.

<sup>1</sup>2005 (8) SCALE 762