

SUPREME COURT OF INDIA

Arjunan

Vs.

Universal Fertilizer Corp.

C.A.No.6145 of 2009

(Tarun Chatterjee and Rajendra Mal Lodha JJ.)

09.09.2009

JUDGEMENT

R.M. Lodha, J.

1. Leave granted.
2. The short question that falls for consideration in this appeal by special leave is: whether the High Court was justified in dismissing the miscellaneous petition filed by the applicant for extension of time in depositing the arrears of rent?
3. Bereft of unnecessary details, suffice it to say that in the petition filed by the respondent (landlord) under section 10(2)(1) of the *Tamil Nadu Buildings (Lease and Control) Act, 1960* (for short , 'Act 1960') seeking eviction of the appellant (tenant) on the ground of wilful default by not paying rent from March 1, 1997 till June 30, 2001 at the rate of Rs.400/- per, an ex-parte order of eviction against the appellant was passed by the Rent Controller, Salem on April 7, 2004.
4. The tenant filed a petition before the Rent Controller, Salem, on April 19, 2004, for setting aside the ex- parte order of eviction. He stated in the petition that the original rent control petition was posted on April 7, 2004 for cross-examination of the landlord but as he (tenant) was unwell and could not appear before the court and instruct his counsel for cross-examination, an ex-parte order came to be passed against him. He stated that his non-appearance was not wanton.
5. The landlord contested the petition for setting aside the ex-parte order of eviction on diverse grounds. Inter-alia, he stated that reasons set forth in the affidavit were false and whole intention of the tenant is to protract the proceedings.
6. The Rent Controller heard the parties and in his order dated July 5, 2004 referred to the proceedings to indicate that earlier also for want of appearance an ex-parte order of eviction was passed which was set aside on the application made by the tenant. The Rent Controller

also noticed the various dates on which the tenant sought adjournment. This is what the Rent Controller observed:

“.....The perusal of the Court's notes paper reveals that the P.W.1 was examined on 24.9.2003 in chief.

Then the said Rent Control Original Petition was adjourned for cross of P.W.1 on 30.9.2003, 6.10.2003, 9.10.2003 and on 14.10.2003. For all these hearings the petitioner who is the respondent in the main R.C.O.P. had not chosen to cross examine the P.W.1 Finally on 14.10.2003 the petitioner's counsel had endorsed no instruction and hence an ex parte order was passed in favour of the present petitioner in the main R.C.O.P. Then, later on the present applicant had filed an application of similar kind vide I.A.No.253/2003 and got it allowed. So on having been allowed I.A.No.253/2003, this Court had posted the main Rent Control Original Petition for cross of P.W.1 on 1.3.2004. Again from 1.3.2004, the case was posted to 8.3.2004 and then to 18.3.2004 for cross of P.W.1. From 18.3.2004 the case was adjourned to 25.3.2004. From 25.3.2004 again the case adjourned to 2.4.2004 for cross of P.W.1 as no further adjournment. Again on 2.4.2004 this Court in the interest of justice had adjourned the cross of P.W.1 to 7.4.2004 as no further adjournment, for the second time. On 7.4.2004 the present petitioner had not chosen to appear before the Court.....”

7. The Rent Controller although found that petition was without any substance, but in the interest of justice allowed the petition on the tenant's depositing arrears of rent to the tune of Rs.34,400/- pertaining to the period March 1997 to May 31, 2004 within 15 days from the date of the order.

8. The tenant challenged the order dated July 5, 2004 in appeal before the Rent Control Appellate Authority, Salem. The Rent Control Appellate Authority heard the parties and vide its order dated February 19, 2007 dismissed the appeal observing thus:

“.....Further till date, the appellant has not deposited the arrears of rent of Rs.34,400/- as ordered by the Rent Controller. The non compliance of the order of the Rent Controller would show the attitude of the appellant herein.

Therefore, the order of the Rent Controller is sustainable one and no infirmity found in its order, hence, the order deserves to be confirmed by dismissing the present appeal.....”

9. The tenant then approached the High Court of Judicature at Madras by filing a revision petition. The said revision was dismissed by the High Court on April 19, 2007 and the order of the Rent Control Appellate Authority was confirmed. It transpires that the counsel for the tenant, then, prayed before the High Court for some time to deposit the arrears of rent and taking note of that submission, the High Court granted a week's time to the tenant to deposit the arrears of rent amounting to Rs.34,400/- with the Rent Controller, Salem. It was further

observed that upon depositing the said amount, the Rent Controller would take up original rent control petition for consideration.

10. The tenant did not deposit the arrears of rent amounting to Rs.34,400/- within a week as was observed in the order dated April 19, 2007 by the High Court. Later on, the tenant filed a petition before the High Court for extension of time on the ground that due to non-availability of certified copy of the order dated April 19, 2007, he could not deposit the rent within the time granted by the court.

11. The High Court found no justification to show further indulgence to the tenant and dismissed the petition for extension of time on July 9, 2007 for the following reasons:

“(a) The petitioner has been directed to deposit the rent by the learned Rent Controller in I.A.No.59 of 2004 in R.C.O.P.No.41 of 2001. The petitioner without depositing the rent, has filed R.C.A. No.21 of 2004 before the Appellate Authority. The said R.C.A. was also dismissed. The petitioner has preferred a Revision before this Court in C.R.P.(NPD) No. 11876 of 2007. This Court by an order dated 19.4.2007, directed the petitioner to deposit the rent within one week from the date of the order. Without depositing the said rent within one week as directed by this court, the petitioner has come forward with the present application for extension of time. In his affidavit, the petitioner has pleaded that since the certified copy of the order passed in CRP (NPD) No.11876 of 2007 has not been furnished, he could not deposit the rent before the Rent Controller. But, unfortunately, the petitioner has not filed any document to show that he has made an attempt to deposit the rent as ordered by this Court in time and that his request for deposit has not been entertained by the office of the Rent Controller, Salem.

(b) If really, the certified copy of the order is required for depositing the rent before the Rent Controller, the petitioner through his counsel should have requested this Court for grant of certified copy at the earliest so as to enable him to deposit the rent within the time granted by this court. The petitioner has not made any such request.

(c) Admittedly, the petitioner has obtained the certified copy of the order in the revision during summer vacation. Even after obtaining the certified copy, no attempt has been made by the petitioner to deposit the rent till 4.6.2007.

(d) Even assuming that the office of the Rent Controller (District Munsif), Salem refused to entertain the request of the petitioner to deposit the rent, the petitioner should have approached this Court in time seeking extension. But, unfortunately, the petitioner has approached this Court only on 14.6.2007 seeking extension of time.

(e) Furthermore, it has to be seen that a sum of Rs.34,400/- is the rental arrears from 1.3.1997 to 31.5.2004. There is still arrears of rent subsequent to that.”

12. It is from this order that the present appeal by special leave arises.

13. On November 12, 2007, this Court issued notice to the respondent subject to the condition that the appellant deposits a sum of Rs. 34,400/- as directed by the High Court with the Rent Controller, Salem within a week therefrom.

14. That the appellant has deposited a sum of Rs.34,400/- within time granted by this Court in the order dated November 12, 2007 is not in dispute. However, the learned counsel for the respondent strenuously urged that fair rent of the premises having been determined at the rate of Rs.5,250/- per month with effect from August 1, 2001, there is shortfall in payment of rent to the tune of Rs.4,46,250/- from August 1, 2001 to August 31, 2008. He relied upon Section 11 (4) of the Act, 1960 in this regard and submitted that the appellant is not entitled to any indulgence from this Court in appeal under Article 136 of the Constitution.

15. On the other hand, learned senior counsel for the appellant submitted that the order fixing fair rent at the rate of Rs.5,250/- per month payable from August 1, 2001 has been challenged by the appellant before the High Court and the revision petition is pending.

16. In the present appeal, it is not necessary for us to go into the aspect of non-payment of rent at the rate of fair rent as it is clear that matter pertaining thereto is sub-judice before the High Court and has not attained finality. In the absence of any interim order passed by the High Court staying the operation of the order fixing the fair rent at Rs.5,250/- per month, if the tenant is not depositing the fair rent; he must be doing so at his own risk. We leave the matter at that. Suffice, however, to say that in the original petition for eviction, the landlord has averred that the monthly rent of the subject premises is Rs.400/- and that the tenant has committed wilful default in paying the rent from March 1, 1997 at the rate of Rs.400/- per month. The quantification of arrears of rent to the tune of Rs.34,400/- from March 1, 1997 to May 31, 2004 is founded on the said averment. Although the conduct of the tenant is contumacious and far from satisfactory in so far as payment/deposit of rent is concerned and the view of High Court cannot be said to be totally unjustified but now since the amount of Rs.34,400/- for the aforesaid period has been deposited by the appellant as per the order dated November 12, 2007, in the interest of justice, we direct that the time granted by the High Court in its order dated April 19, 2007 for deposit of the amount of Rs.34,400/- shall be deemed to have been extended upto the date he deposited the said amount.

17. Consequently, appeal is allowed to the aforesaid extent.

The Rent Controller, Salem shall now take up Rent Control Original Petition No.41/2001 and hear and decide the same as expeditiously as may be possible. The parties will bear their own costs.