

KERALA HIGH COURT

Kurien

Vs.

Chacko

C.R.P. No. 466 of 1960

(M.S. Menon and T.K. Joseph, JJ.)

27.09.1960

ORDER

M.S. Menon, J.

1. This is a petition under section 115 of the Code of Civil Procedure, 1908. The order sought to be revised is the order of the District Court of Kottayam in O. P. No. 54 of 1960.

2. The petitioner was ordered to be evicted by the Rent Control Court of Kottayam in B. R. C. No. 19 of 1957 by an order dated 16-9-1958. He filed an appeal from that order before the Subordinate Judge of Kottayam, C.M.A. No. 29 of 1958, and then an application for revision before the District Court of Kottayam, B.R.C. Revision No. 1 of 1959. The appeal was dismissed on 20-12-1958 and the application for revision on 31-3-1959.

3. On 3-4-1959 the petitioner deposited the arrears of rent with interest and cost in the Rent Control Court and prayed that the order for eviction be vacated under section 11(2)(b) of the Kerala Buildings (Lease and Rent Control) Act, 1959. The prayer was allowed. The landlord appealed to the Subordinate Judge of Kottayam, B.R.C. Appeal No. 3 of 1959 and succeeded in the appeal. The petitioner then filed O.P. No. 54 of 1960 before the District Court of Kottayam and sought a revision of the order of the Subordinate Judge in appeal. That petition was dismissed on 8-4-1960, and it is that "order of dismissal that is sought to be revised by this petition before us.

4. Section 115 of the Code of Civil Procedure, 1908, reads as follows:

"The High Court may call for the record of any case which has been decided by any court subordinate to such High Court and in which no appeal lies thereto, and if such Subordinate Court appears-

- (a) to have exercised a jurisdiction not vested in it by law, or
- (b) to have failed to exercise a jurisdiction so vested, or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit."

5. It is not contended that the District Court in dealing with an application for revision under section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1959, is not a court subordinate to the High Court, and that section 115 of the Code of Civil Procedure, 1908, is not attracted on that account. The only contention is that the powers of revision under section 115 have been excluded in such cases "as t result of sections 18(5) and 20(1) of the Kerala Buildings (Lease and Rent Control) Act, 1959. There is also no contention that if the powers under section 115 of the Code of Civil Procedure have as a matter of fact been excluded by the provisions above-mentioned that exclusion is infructuous because of any provision of the Constitution.

6. Sub-section (5) of section 18 provides:

"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."

and sub-section (1) of section 20:

"In cases 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."

We entertain no doubt that these provisions make it quite clear that the powers of the High Court in revision are confined to those cases where the appellate authority empowered under section 18 is not a Subordinate Judge. In this case the appellate authority was a Subordinate Judge, and it must follow that an application to this court for revision is not permissible.

7. In 1960 K.L.T. 895 Vaidialingarn J. appears to have taken a different view. He said:

"Before I go into the merits of the contentions of the learned counsel, I may also refer to a preliminary objection raised by Mr. T.S. Venkiteswara Iyer, learned counsel for the landlord-respondent that no revision under S. 115 of the Code of Civil Procedure lies to this Court against the order passed in revision under S. 20 of the Kerala Buildings (Lease & Rent Control) Act, Act XVI of 1959. This preliminary objection need not detain me any longer because jurisdiction has been given to the District Court under S. 20 and there

cannot be a dispute that the District Court is a subordinate court and the orders passed by that court are liable to be revised in appropriate cases by virtue of the powers vested in this court under S. 115 of the Code of Civil Procedure. Even otherwise, there are numerous authorities of the Madras High Court that the High Court has got the right to entertain a revision under S. 115, C.P.C. against orders passed by revisional authority under the corresponding provisions of the Madras Act. Therefore, the preliminary objection is overruled."

Apparently the finality conferred by sub-section (5) of section 18 and the specific wording of sub-section (1) of section 20 were not emphasised before the learned Judge. The contention before him seems to have been confined to the question as to whether a District Court functioning under Section 20 of the Act can be treated as a court subordinate to the High Court.

8. Section 12(4) of the Madras Buildings (Lease and Rent Control) Act, 1949, provides:

"The decision of the appellate authority, and subject to such decision, an order of the Controller shall be final and shall not be liable to be called in question in any Court of Law, except as provided in section 12B."

and Section 12-B(1):

"The High Court, in the case of an authority empowered by section 9 to execute an order, or of an appellate authority empowered under section 12, and functioning in the presidency-town and the District Court concerned in the case of any such authority so empowered and functioning in a district, may, at any time, on the application of any aggrieved party, call for and examine the records relating to any order passed or proceeding taken under this Act by such authority for the purpose of satisfying itself as to the legality, regularity or propriety of such order or proceeding, and may pass such order, in reference thereto as it thinks fit."

9. In (1957) Madras Weekly Notes 67, Basheer Ahmed Sayeed J. considered these two provisions and the Madras cases on the subject, and came to the conclusion that revisions under section 115 of the Code of Civil Procedure, 1908, were competent. The wording of section 12-B(1) of the Madras Act is not the same as that of section 20(1) of the Kerala Act, and we do not think any useful purpose will be served by discussing the reasoning adopted in the interpretation of provisions differently worded.

10. For the same reason it is also unnecessary to discuss the two decisions cited by counsel for the respondents, A.I.R. 1949 Lahore 94 and 1950 Calcutta 263. In the second of the two cases the provisions concerned were sub-sections (6) and (7) of section 32 of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1948. Sub-section (6) of that Act empowered the High

Court to revise an order passed by the Controller imposing a fine under sections 20, 33, or 34 when the amount of fine was not less than five hundred rupees, and sub-section (7) provided that "all decisions of the Chief Judge, or the District Judge, or a person appointed under sub-section (2), as the case may be, shall, subject to the provisions of sub-section (6), be final". C.N. Das J. (with whom Das Gupta J. agreed) said :

"In my opinion the words 'subject to the provisions of sub-section (6)' necessarily exclude whatever other powers of revision the High Court may possess."

and:

"In my opinion, a reasonable view to take of the matter is to hold that S. 32(6) and (7) of the Act by necessary intendment has taken away the powers of this Court to interfere in revision under S. 115 of the Code with an order passed by the Rent Controller or by the Chief Judge or the District Judge or the appointed Judge."

11. In view of our conclusion that no revision is competent under section 115 of the Code of Civil Procedure, 1908, from the order of the District Court in O.P. No. 54 of 1960 no other question arises for consideration and. the C.R.P. Has to be dismissed. We decide accordingly, though in the circumstance of the case without any order as to costs.

Dismissed.