TRAVENCORE COCHIN HIGH COURT

T.K. Sivarajan

Vs

Official Receiver

A.S. No. 141 of 1952

(Sankaran and Gangadhara Menon, JJ.)

26.08.1952

JUDGMENT

Sankaran, J.

1. The lessee who had taken a property on lease from the interim receiver appointed by the District Court of Quilon in insolvency petition No.11/1122 on the file of that court, is the appellant. The owner of the property is the 2nd respondent. One Dayanidhi Rao against whom insolvency petition No.11/ 1122 has been filed had only a leasehold right over this property. Pending the question of the adjudication of the debtor as an insolvent, the Official Receiver attached to the lower court was appointed as interim receiver to take possession of the properties of the debtor. The Receiver accordingly took possession of the properties, and on 25-12-1950 leased them out to the present appellant for a period of one year. On the expiry of the lease period, certain orders were passed against the lessee for the surrender of possession of the property. In spite of those orders the lessee did not actually vacate the property but repeatedly applied for time for surrender of possession of the property. In view of such an attitude on his part, the receiver filed a report to the court on 18-2-1952 requesting necessary directions and orders for effectively recovering possession of the property from the lessee. On getting notice of that report the lessee appeared and questioned the jurisdiction of the court to order recovery of possession of the property from him. This objection was ruled out by the lower court and an order was passed on 8-3-1952 directing the lessee to surrender possession of the property to the receiver on or before 14-3-1952. In case of default, the Receiver was directed to take delivery of the property through court. The appeal is against this order.

2. For a proper appreciation of the points raised at the hearing of this appeal, it is necessary to bear in mind some more facts relating to the transaction in question. The property covered by the lease in favour of the present appellant consists of a garden land 35 cents in extent with certain buildings and structures thereon. As already stated, the lease was for a period of one year only. In the lease deed the lessee had expressly undertaken to surrender possession of the compound and the buildings at the end of the period without raising any objection whatever. There was a further undertaking that he would surrender possession of the property and the buildings even before the expiry of the period, on such a demand being made by the court at any time during the currency

of the lease. By about the close of the period of the lease, the receiver sold two temporary sheds in the property, in public auction. On the expiry of the lease the auction-purchaser, as authorised by the receiver, went to the property for removing these sheds. The lessee objected. The matter was reported to the court by the receiver. At that stage the lessee appeared through an advocate and filed an application on 8-1-1952 praying for 6 months' time to vacate the premises, after making other arrangements to shift his motor workshop. After hearing all the parties concerned, the court passed an order granting a month's time for the lessee to remove his workshop and to vacate the property. At the end of that period he filed another application on 8-2-1952 praying for five months' time more. Finding that the matter was concluded by the prior order, the second application was dismissed by the court. The lessee has not chosen to challenge any of these orders in appropriate proceedings. But at the next stage when the receiver sought the intervention of the court to secure possession of the property, the stand taken by the lessee is that the Court has no jurisdiction to direct him to surrender possession of the property to the receiver.

3. The first point urged on behalf of the appellant is that the lease in his favor is governed by the provisions of the Travencore-Cochin Buildings (Lease and Rent Control) Order, 1950 and that therefore he can be evicted only in accordance with the provisions of that Order. The receiver has met this objection with two answers. The first is that the lease arrangement is outside the scope of the Travencore-Cochin Buildings (Lease and Rent Control) Order, 1950. The second is that even assuming that the lease could be brought under the said Order, there has been a conscious waiver of the benefits conferred by the Order by this particular lessee expressly contracting out of it in executing the lease deed with an undertaking to surrender possession of the property at the end of the period without raising any objection whatever. The question of waiver as raised by the Receiver may be examined at the outset, and for this purpose it may be assumed that the lease granted by him would under normal circumstances come within the scope of the Travencore-Cochin Buildings (Lease and Rent Control) Order, 1950. The object underlying this enactment is obviously to regulate the letting out of residential and non-residential buildings and to control the rent that may be levied in respect of such buildings situated within certain specified areas. To that extent it can be said that this measure was enacted as a matter of public policy. But it has to be remembered that the measure is intended to benefit only a limited class of persons dealing with the residential and non-residential buildings in particular localities. Such benefits are conferred largely on the tenants in occupation of such buildings though some benefits are conferred on the owners of such buildings as well. It is only where the landlord and the tenant fail to come to an agreement that either party may seek the benefit and the help conferred by this enactment. The provisions made to prevent unreasonable eviction of the tenants who are in occupation or use of the buildings taken on rent, and also the levy of indiscriminate and unconscionable rates of rent are undoubtedly intended solely for the benefit and protection of these individuals in their private capacity. It is up to them to take advantage of such benefits and protection or to waive them altogether. To give up such benefits and protection cannot in any sense be said to be illegal or immoral or offending any public right or public policy.

4. The principle is well settled that every one has the right to waive and to agree to waive the advantage of a law or rule made solely for the benefit and protection of the individuals in their private capacity, provided that such waiver does not result in any infringement of any public right or public policy. The waiver may be by course of conduct or by expressly contracting out of the law providing for the benefit or protection of the individual. Where the enactment contains an express prohibition against contracting out of it, no question of waiver can arise. These principles

have gained judicial recognition. In - '*Soho Square Syndicate Ltd. v. Pollard and Co*[1].', it was pointed out that

> "where in an Act there is no express prohibition against contracting out of it, it is necessary to consider whether the Act is one which is intended to deal with private rights only, or whether it is an Act which intended, as a matter of public policy, to have a more extensive operation."

The Madras High Court had occasion to consider the same question in a more recent case i.e., in - '***Raja Chetty v. Jagannathadas', AIR 1950 Madras 284.*** That was a case under the Madras Buildings (Lease and Rent Control) Order of 1946 and there it was ruled that the Act was intended solely for the benefit and protection of the individuals in their private capacity and as such it was open to any such individual to waive such benefits by contracting out of the Act. In - '***Kolappa Pillai v. Savarimuthu', 1943 Trav LR 409*** a similar view was taken by the erstwhile Travencore High Court in respect of the benefits conferred on a certain class of debtors under the Travencore Debt Relief Act of 1116. The decision of this Court in - '***Narayanan Reddiar v. M.N. Pattar', (1950) 5 Dom LR (Trav-C) 421*** is also to the effect that a debtor who has deliberately waived or relinquished the benefits which were available to him under the Debt Relief Act cannot subsequently turn round and claim such benefits.

5. So far as the lease deed in the present case is concerned it has to be remembered that it was executed by the appellant lessee long after the Travencore-Cochin Buildings (Lease and Rent Control) Order, 1950 had come into force. It has therefore to be presumed that the lessee was conscious of the benefits that could be availed of by the parties to the lease and rent arrangements which would come under the Control Order. All the same, the lessee deliberately chose to execute the lease deed with an unconditional undertaking to surrender possession of the property at the end of the stipulated period or even earlier on a demand being made by the court on whose behalf the property was given on lease. He has thus clearly contracted out of the building lease under the Rent Control Order and has waived the benefits which he could have obtained under it. It was perfectly within his rights to have entered into a contract like that. The Control Order which was solely intended for the benefit of the class of persons coming under it, does not contain any provision prohibiting such persons from contracting out of it. The subsequent conduct of the lessee has also been such as to indicate that he did not want the benefit of the protection afforded by the provisions of the Control Order and that he had waived all such rights. The petitions filed by him before the insolvency court on 8-1-1952 and 8-2-1952 clearly go to show that he submitted to the jurisdiction of the court to order his eviction from the

[1](1940) Ch 638

property and to enforce the provisions for re-entry contained in the lease deed. It is not a case where there is a total absence of jurisdiction to the court to deal with that matter. The court has its inherent jurisdiction to enforce the stipulation in the lease deed and as such jurisdiction could be exercised but for the special procedure prescribed by the Buildings (Lease and Rent Control) Order. When the party concerned did not want to invoke the aid of the provisions of the Control Order, but chose to submit to the normal jurisdiction of the court, the court was perfectly competent to exercise such jurisdiction. The two petitions filed by the lessee were disposed of by the court by granting him a month's time to vacate the property and the order to that effect was passed in the proper exercise of the court's jurisdiction to which the lessee had clearly submitted.

Such orders also have become final and conclusive. It follows therefore that even if the lessee had any rights available to him under the Buildings (Lease and Rent Control) Order, he had clearly waived or abandoned such rights and it is now too late for him to retrace his steps and to seek relief under that Order.

6. The question whether the particular lease in favour of the appellant would come within the scope of the Travencore-Cochin Buildings (Lease and Rent Control) Order, 1950 may now be examined. If is clear from the preamble and short-title of this piece of legislative enactment that it is meant to control the leasing and letting out of buildings situated within the areas as specified in the Schedule attached to the Order and to other areas which may be notified from time to time by the State and that it is not intended to control or interfere with other ordinary lease transactions. This position is confirmed by the definition given in S.2 of the Order for the word 'building' as used in the enactment. Such definition given in clause (1) of Section 2 is as follows :

> "(1). 'building' means any building or hut or part of a building or hut, let or to be let separately for residential or non-residential purposes, and includes -
> (a) the garden, ground and out-houses, if any, appurtenant to such building, hut or part of such building or hut and let or to be let with such building or hut,
> (b) any furniture supplied by the landlord for use in such building or hut or part of a building or hut, but does not include a room in a hotel or boarding house."

As per this definition the primary and the essential test to be satisfied is that there should be a letting out of a building or hut or part of the same, separately for residential or non-residential purposes. If there has been such a separate letting out of a building or hut or part of the same for residential or non-residential purposes, then the garden, grounds and out-houses, if any, appurtenant to such building or hut would also be deemed to be included in the lease or rental arrangement. But it is obvious that the converse position cannot hold good i.e., if there has been a leasing out of a garden land together with the buildings or huts standing thereon, the transaction cannot be said to amount to letting out of the buildings or huts separately for residential or non-residential purposes. In such a case the buildings and huts will only form part of the leasehold which consists mainly of the garden land. It is clear from a perusal of the lease deed involved in the present case that there has not been letting out of any building or hut separately for residential or non-residential purposes. On the other hand it is expressly stated in the document which itself is styled as a lease deed, that what is leased out is the garden land 35 cents in extent together with all the buildings, sheds etc., standing thereon. Such being the nature of the lease arrangement entered into by the present appellant, there is no basis for contending that it comes within the scope of the Buildings (Lease and Rent Control) Order. In this view also the objection raised by the lessee that the Court has no jurisdiction to order his eviction from the property is unsustainable. The lower court was right in overruling that objection.

7. Lastly there is the objection that the lower Court went wrong in ordering the eviction of the lessee from the property in the exercise of its summary jurisdiction. The position taken up by the appellant is that the Court should have directed the receiver to file a fresh suit for the recovery of possession of the property. The rulings in - '*Krista Chandra v. Krista Sakha*[2]*',* in - '*Kesavan Nair v. Neelakanta Paniker*[3]*',* and in - '*Itti Kuruvilla v. Thomas Chacko*[4]*',* are relied on in support of this position. The question whether an undertaking given by the lessee in favour of the court in

the lease deed executed by him in respect of the property entrusted by the Court to its receiver, could not be summarily enforced by the Court, did not arise for consideration in any of these cases. All that was decided in the first two cases mentioned above is that when once the contract of lease has become complete and a lease deed has been executed by the receiver appointed by the court, no summary order could be passed to set aside the lease. The question that arose in the third case was whether the court had jurisdiction to terminate the lessee's possession contrary to the terms of the lease and to give such possession to a third party who had become a vendee under the receiver during the subsistence of the lease arrangement. The court held that the vendee from the receiver had no higher rights than an ordinary vendee and that by virtue of the sale in his favour he could only get whatever rights the vendor had on the date of the sale and that therefore the vendee had to seek his remedy in the ordinary course of law to get recovery of possession of the property from the receiver's lessee. The facts of the present case are entirely different. Here the period of the lease granted to the receiver was already over and as per the express stipulation in the lease deed the lessee was bound to surrender possession of the property without raising any objections at all. In other words, a right of re-entry was reserved in favour of the lessor and it is that right that is sought to be enforced. Even though the lease deed stands in favour of the receiver the express undertaking given by the lessee for an unconditional surrender of the property is in favour of the Court. Such an undertaking was taken with the obvious intention of obviating any hindrance or obstruction to the effective and successful management of the estate brought under the control of the court pending final decision of the proceedings in which the property is involved. The summary enforcement of the undertaking thus taken by the court is only a step towards the discharge of the duties of the court in the management of the estate and it cannot be said that the court has lost its jurisdiction in that direction merely because the property has been put in the possession of a lessee. A similar question arose for consideration in - '*Surendro Keshub Roy v. Doorgasoondary Dossee*[5]', and it was ruled in that case that a court has complete power to enforce summarily a contract made by it when managing or administering an estate. Any other view of the matter would be inconsistent with the undoubted power vested in the court to take control in

[2]36 Cal 52 [4]1950-5 Dom LR (Trav-C) 286
[3]1951 Ker LT 773 [5]15 Cal 253

appropriate cases of the property involved in the suit and keep it under its management until the final decision of the suit. We are therefore of the view that in the nature of the express undertaking given by the appellant-lessee in the lease deed executed by him that he would unconditionally surrender possession of the property on the termination of the period of the lease, it is perfectly within the competence of the court to summarily enforce that undertaking and to evict the lessee from the property. There is also the further fact that the lessee has submitted to the jurisdiction of the court in this matter by filing the application dated 8-1-1952 and 8-2-1952 for six months' time to vacate the property. He has also acquiesced in the order passed on these applications. It may also be mentioned here that he has already got more time than he had applied for. Thus, in any view of the matter, the order passed by the lower court does not call for any interference. However, we fix a further period of two weeks from this date to enable the appellant-lessee to remove his own things from the leasehold property and to vacate it. In case of default the receiver will be put in possession of the property through court, so that he may implement the prior order directing surrender of the property to the 2nd respondent, the owner.

8. The result is that the order of the lower court is confirmed subject to the directions given above and this appeal dismissed with costs.

Appeal dismissed.