
Before V.M. Jain, J

J.N. KATYAL AND ANOTHER,—*Appellants*

versus

KRISHAN KAPUR AND ANOTHER,—*Respondents*

R.S.A. NO. 383 OF 2002

17th September, 2004

Haryana Urban (Control of Rent Eviction) Act, 1973—S. 13—Non-payment of arrears of rent—Suit for possession by way of ejectment of the defendants from the house filed—During the pendency of suit, provisions of 1973 Act made applicable to Panchkula Town—Trial court dismissing the suit holding the same not maintainable—1st Appellate Court upholding the findings of the Trial Court—Whether after the applicability of the provisions of 1973 Act any suit which was pending at the relevant time liable to be dismissed—Held, yes—Civil Court has no jurisdiction to continue with the suit after the provisions of the 1973 Act were made applicable—Appeal liable to be dismissed.

Held, that the plaintiff-appellants being the owners/landlords of the house in dispute had filed suit for possession by way of ejectment of defendant respondents (tenants) from the house in dispute. This suit was filed on 11th October, 1999. The suit was contested by the defendants. During the pendency of the suit, the provisions of Haryana Act were made applicable to the Panchkula town,—*vide* notification dated 25th January, 2001. The learned trial Court, after considering the various authorities, found that after the application of the aforesaid Act to Panchkula town the suit filed by the plaintiffs would not be maintainable and resultantly, the suit was dismissed. This judgment was upheld in appeal by the learned Additional District Judge. No fault could be found with the findings of the courts below that the civil court had no jurisdiction to continue with the present suit after the provisions of the Haryana Act were made applicable to Panchkula town with effect from 25th January, 2001.

(Paras 7 & 21)

Deepak Sibal, Advocate, *for the appellants*
O.P. Gupta, Advocate, *for the respondents*

JUDGMENT

V.M. JAIN, J.

(1) This Regular Second Appeal has been filed by the plaintiffs against the judgments and decrees of the courts below, whereby the suit filed by the plaintiffs was dismissed by the Trial Court and the appeal filed by them was also dismissed by the learned Additional District Judge.

(2) The plaintiffs had filed a suit for possession by way of ejectment of the defendants from the house in question, bearing house Number 1455, Sector 15, Panchkula. This suit was filed on 11th October, 1999. It was alleged in the suit that defendants were in possession of the said house as tenants on payment of rent and that the tenancy had been terminated and as such a decree for possession by way of ejectment of the defendants from the house in dispute be passed along with recovery of arrears of rent etc. The suit was contested by the defendants taking up various preliminary objections including the objection regarding the maintainability of the suit. It was also alleged that the plaintiffs had not served a valid notice upon the defendants as required under Section 106 of the Transfer of Property Act. It was further alleged that the defendants had already paid the arrears of rent. The other allegations contained in the plaint were also denied and it was accordingly prayed that the suit be dismissed.

(3) Plaintiffs filed replication. Various issues were framed. Both the sides led evidence. After hearing both sides and perusing the record, the learned Trial Court dismissed the suit of the plaintiffs, holding that the suit was not maintainable in view of the fact that during the pendency of the suit, the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as Haryana Act) had become applicable to Panchkula town, in view of the notification dated 25th January, 2001 and the Civil Court had no jurisdiction to try the present suit. Resultantly, the suit was dismissed. The appeal filed by the plaintiffs was also dismissed by the learned Additional District Judge, upholding the findings of the Trial Court. Aggrieved against the same, the plaintiffs filed the present Regular Second Appeal in this court. Notice of motion was issued.

(4) I have heard the learned counsel for the parties and have gone through the record carefully.

(5) The learned counsel appearing for the plaintiff appellants submitted before me that in view of the law laid down by the Hon'ble Supreme Court in the case of **Mansoor Khan versus Motiram Harebhan Kharat (1)**, the provisions of the Haryana Act, would not apply to the present suit since the suit was pending at the time when the provisions of the said Act were made applicable to Panchkula town. Reliance was also placed on the order dated 11th March, 2003 passed by this Court, in Civil Revision No. 751 of 2002 **Shri Manohar Malhotra versus M/s Bhawani Jewellers and another**, in which the law laid down by the Hon'ble Supreme Court in **Mansoor Khan versus. Motiram Harebhan Kharat's case (supra)** was relied upon by this Court. The learned counsel also placed reliance on **M/s Ambalal Sarabhai Enterprises Ltd. versus Amrit Lal and Co. and another (2)** and **Kishan alias Krishan Kumar etc. versus Manoj Kumar etc. (3)**.

(6) On the other hand, the learned counsel appearing for the defendant-respondents submitted before me that since the provisions of the Haryana Act had come into force during the pendency of the suit filed by the plaintiffs, the present suit was not maintainable before the Civil Court and the landlord could seek the ejection of the tenants from the house in question only under the provisions of the Haryana Act. Reliance has been placed on the law laid down by the Hon'ble Supreme Court in the case of **H. Shiva Rao and another versus Cecilia Perira and others (4)** and the law laid down by a Full bench of this Court in **Sawan Ram versus Gobinda Ram and another (5)**. The learned counsel appearing for the respondents has also placed reliance on the law laid down by the Hon'ble Supreme Court in the case of **Laxmi Narayan versus Niranjan Modak (6)** and **M/s Amba Lal Sarabhai Enterprises Ltd. versus M/s Amrit Lal and Co. (supra)**, which was also relied upon by the learned counsel for the appellants.

(1) 2002 (1) R.C.R. 605

(2) AIR 2001 S.C. 3580

(3) AIR 1998 S.C. 999

(4) 1987 (1) All India Rent Control Journal 394

(5) 1980 (1) R.C.R. 21

(6) AIR 1985 S.C. 111

(7) After hearing the learned counsel for the parties and perusing the record, in my opinion, there is no merit in this appeal and the same is liable to be dismissed. As referred to above, there is no dispute about the facts in this case. The plaintiff appellants being the owners/landlords of the house in dispute had filed suit for possession by way of ejection of defendant respondents (tenants) from the house in dispute. This suit was filed on 11th October, 1999. The suit was contested by the defendants. During the pendency of the suit, the provisions of Haryana Act were made applicable to the Panchkula town,—*vide* notification dated 25th January, 2001. The learned Trial Court, after considering the various authorities, found that after the application of the aforesaid Act to Panchkula town the suit filed by the plaintiffs would not be maintainable and resultantly, the suit was dismissed. This judgment was upheld in appeal by the learned Additional District Judge. The question that comes up for consideration in the present appeal is as to whether after the applicability of the provisions of Haryana Act to Panchkula town, by virtue of notification dated 25th January, 2001, any suit which was pending at the relevant time, could be continued and would be maintainable and whether the said suit was liable to be dismissed on that ground.

(8) In **Sawan Ram Vs. Gobinda Ram and another** (*supra*), relied upon by the learned counsel for the respondents, the question before the Hon'ble Full Bench of this Court was as to whether the suits which were filed before the Civil Court for possession by way of ejection of the tenants from the shops would be maintainable after the amendment to the Haryana Act. This matter was referred by a Single Bench to a Larger Bench to consider the question regarding the jurisdiction of the Civil Courts to entertain and decide the suits for ejection of tenants after the enforcement of Punjab and Haryana Rent Acts. After considering the various aspects of the matter including the provisions of the Haryana Act, the Hon'ble Full Bench, in **Sawan Ram's case** (*supra*) held as under :—

“The second aspect which had been taken in mind and was plainly in the ken of the legislation was the fact that this applied only to the specified urban areas coming within

its ambit and not uniformly to the whole of the geographical jurisdiction of the State. Now what is an urban area to which the Act would be applicable may fluctuate and the Rent Restriction Act may designedly be extended to areas which were earlier out of its reach and where consequently civil suits for ejection and inevitably decrees both possible. Therefore, to visualise one situation, the statute had to provide that such like though granted after the promulgation of the Act would again be rendered infructuous by the extension of the Act to a new area. Taking an example nearer home, if we may assume that a small township like Morinds which may earlier have not been an urban area, was later brought within the ambit of the Act, then the decrees of eviction granted under the general law by the civil courts would be rendered inexecutable by Section 13(1) and the object of granting protection to the tenants fulfilled. Therefore, Section 13(1) of the Punjab Act had to take into account all the eventualities out of which some have been visualized above. Consequently, the language of the provision designed to meet these situations appears to us as no warrant for the proposition that the legislature had itself curiously contemplated either suits for ejection in Civil Courts or decrees to be granted therein, even in areas and fields covered exclusively by the rent legislation.”

Thus, in view of the aforesaid law laid down by the Hon'ble Full Bench of this Court, it would be clear that the subsequent applicability of the Rent Act on account of declaration of urban area would render the decree of the Civil Court inexecutable.

(9) Furthermore, the Hon'ble Full Bench in the aforesaid judgment had held that it was well settled that the law frowns on merely academic exercise in the forum of Courts and it cannot therefore, possibly enjoin an exercise in futility and, therefore, the Courts should neither be called upon nor litigants harassed to prosecute suits, in which decrees cannot possibly be executed and in short there should be no prosecution of futile suits and obtaining of sterile decrees.

(10) In this view of the matter, in my opinion, as per the law laid down by the Hon'ble Full Bench, no useful purpose will be served in proceeding with the present suit, especially when the decree, if any, that may be passed in favour of the plaintiff appellants, would not be executable, after the applicability of the provisions of the Haryana Act, to Panchkula town.

(11) In **H. Shiva Rao's case** (*supra*), relied upon by the learned counsel for the respondents, the Hon'ble Supreme Court was considering the question regarding the applicability of Karnataka Rent Control Act, 1961. A decree for possession by way of ejectment was obtained from the Civil Court in respect of the property situated in Pandavu village. On 15th February, 1980, execution petition was filed in the Civil Court. On 6th December, 1980 objections to the execution petition were filed. At that time Pandavu village was not within the Mangalore Municipality and as such the provisions of Karnataka Rent Control Act, 1961 were not applicable to the properties in Pandavu village. On 18th July, 1983, the said Act was amended by Karnataka Act No. 17 of 1983, whereby all the areas within the limits of the cities under the Karnataka Municipal Corporation Act and an area of 3 kilometre therefrom were brought under the purview of the Rent Control Act. A notification was issued on 27th October, 1983 under the provisions of the Karnataka Municipal Corporation Act, according to which the whole area comprising Pandavu Town Municipality was included in Mangalore City Corporation. On 23rd June, 1984, the Civil Court issued the warrant of possession. The revision petition against the said order and the review petition were dismissed by the High Court. Thereupon, the matter came before the Hon'ble Supreme Court. The short question which arose before the Hon'ble Supreme Court was as to whether the aforesaid decree passed by the Civil Court was executable because subsequent to the decree for possession, the Karnataka Rent Act was made applicable to the area in question.

(12) After considering various provisions of the Karnataka Rent Control Act and also referring to the various authorities, it was held by the Hon'ble Supreme Court in para 3 of the judgment, as under :—

“It is well settled legal principle that Rent Control legislations being beneficial to the tenant have to be given a liberal

interpretation. While ordinarily substantive rights should not be held to be taken away except by express provision, or clear implication in the case of Rent Control Act, it being a beneficial legislation the provision which confers immunity to the tenant against eviction by the landlord though prospective in form operates to take away the right vested in the landlord by a decree of a court which has become final, unless there is express provision or clear implication to the contrary.”

After considering various aspects of the matter, the Hon'ble Supreme Court accepted the appeal and set aside the order passed by the High Court, thereby set aside the order of the Civil Court,—*vide* which the warrant of possession was issued in favour of the landlord and against the tenant.

(13) In AIR 1985 Supreme Court 111 (*supra*), relied upon by the learned counsel for the respondents, the landlord had filed the suit for possession by way of ejection of the tenant from the tenanted premises. The said suit was decreed by the Trial Court and a decree for possession and recovery of rent was passed. The appeal filed by the tenant was also dismissed by the first Appellate Court. However, the second appeal filed by the tenant was allowed by the High Court,—*vide* judgment and decree dated 28th January, 1976 holding that by virtue of West Bengal Premises Tenancy Act, 1956 being extended to Memari during the pendency of the first appeal, the first Appellate Court was bound to take into account the change of law and to extend its benefits to the tenant and consequently, the suit of the landlord was dismissed. Thereupon, the matter came before the Hon'ble Supreme Court. After considering the provisions of the aforesaid Act and various authorities, it was held by the Hon'ble Supreme Court in para 8 of the judgment, as under :—

“It is true that when the suit was instituted the Court possessed such jurisdiction and could pass a decree for possession. But it was divested of that jurisdiction when the Act was brought into force. The language of the sub-section makes that abundantly clear and regard must be had to its object.”

Resultantly, the appeal before the Supreme Court was dismissed.

(14) In **Mani Subrat Vs. Raja Ram Vohra** the Hon'ble Supreme Court was considering the effect of the decree for possession by way of ejection of a tenant passed under the general law, after the coming into force of East Punjab Urban Rent Restriction Act, 1949 (hereinafter called as Punjab Act) to Chandigarh. After considering various aspects, it was held by the Hon'ble Supreme Court that the conclusion was inevitable that the tenant (against whom decree for possession by way of ejection had already been passed) remains a tenant and enjoys immunity under Section 13(1) of the aforesaid Act. It was further held that the execution proceedings must, therefore, fail because the statutory road block cannot be removed. It was further held that a beneficial statute intended to quieten a burning issue affecting the economics of the human condition in India shall be so interpreted as to subserve the social justice purpose and not subvert it.

15. So far as the law laid down by the Hon'ble Supreme Court in **AIR 1998 Supreme Court 999 (Supra)**, relied upon by the learned counsel for the appellants, is concerned, in my opinion, the law laid down by the Hon'ble Supreme Court in the said authority, would have no application to the facts of the present case. In the reported case, the Hon'ble Supreme Court was considering the question with regard to the applicability of the provisions of Haryana Act, in respect of those cases, where civil suits for possession by way of eviction had been filed by the landlords, seeking ejection of the tenants from the demised premises before the expiry of the exemption period of 10 years and during the pendency of those suits for possession, the said period of 10 years had expired. It was under those circumstances that it was held by the Hon'ble Supreme Court that even after the expiry of the exemption period, the Civil Court can continue the suits and can pass decrees and that execution of such decrees was not prohibited under Section 13 of the said Act. However, the law down by the Hon'ble Supreme Court in this authority would have no application to the present case, inasmuch as in the reported case,

the provisions of the Rent Act were already applicable to the area in which the building in question was situated. Only the said building was exempted from the purview of the Rent Act because it was a newly constructed building, for which exemption had been granted for a period of 10 years under the said Act. Since the suit for possession by way of ejection had been filed before the expiry of said period of 10 years, the Hon'ble Supreme Court had held that the said suit for possession by way of ejection could continue even after the expiry of the exemption period of 10 years.

(16) So far as AIR 2001 Supreme Court 3580 (*sūpra*) relied upon by the learned counsel for both the parties, is concerned, in my opinion, the said authority would also be of no help to the plaintiff appellants. In the reported case, the landlord had filed an ejection petition against the tenant under the provisions of Delhi Rent control Act, 1958. During the pendency of the said rent petition, there was amendment in the said Act with effect from 1st December, 1988 by virtue of which the jurisdiction of the Rent Controller with respect to those tenancies fetching monthly rent exceeding Rs. 3500 p.m. had been excluded, inasmuch as the amendment took away said tenancies from the purview of the said Act. Thereafter, the landlord had issued notice terminating the tenancy of the tenant under Section 106 of the Transfer of Property Act and had then filed a suit for recovery of possession. According to the tenant, the amendment covered pending cases whereas according to the landlord, the amendment would not apply to the pending cases. After considering various aspects, it was held by the Hon'ble Supreme Court that since the Rent Controller had the jurisdiction over the subject matter, it was not right for the landlord to continue with two parallel proceedings, one under the General Law and other before the Rent Controller and accordingly, the landlord was directed to withdraw one of the two proceedings. In my opinion, the law laid down by the Hon'ble Supreme in this authority would not apply to the facts of the present case, especially when the provisions of the Rent Act were already applicable to Delhi and by virtue of the amendment, the jurisdiction of the Rent Controller in respect of certain tenancies was taken away. However, so far as the present case is concerned, the position is entirely different, inasmuch as at the time of the filing of the suit, the

provisions of the Haryana Act, did not apply to Panchkula town and only general law was applicable. However, during the pendency of the suit, the provisions of the said Act were made applicable to Panchkula town and under those circumstances, both the Courts below found that the Civil Court had no jurisdiction in the matter after the coming into force of the Rent Act.

(17) So far as 2002(1) Rent Control Reporter 605 (SC) (*supra*), relied upon by the learned counsel for the plaintiff appellants, is concerned, in my opinion, the law laid down in the said authority also would not apply to the facts of the present case. In the reported case after perusing the provisions of Central Provinces and Berar Letting of Houses and Rent Control Order, 1949, it was held by the Hon'ble Supreme Court that the notification by virtue of which chapters II and IV of the said Order were made applicable to all Municipalities in the Central Provinces and Berar and the States integrated with the Central Provinces and Berar with effect from the date of the notification, would not affect the validity of the proceedings initiated before the date on which the said Order became applicable. It was further held that clause 13 of the said order did not restrain the court from exercising its powers to pass a decree for eviction and Clause 13 only provided to impose a restriction on the right of a landlord to initiate the proceedings for eviction. It was further held that the said Control Order was not retrospective in operation and it would not affect the validity of the previously instituted proceedings nor did it take away the power of the Court to pass a decree for eviction in the pending suit. The Hon'ble Supreme Court in the said authority was considering the provisions of clause 13 of the Control Order, relevant part whereof reads as under :-

“13.(1) No landlord shall, except with the previous written permission of the Controller :-

- (a) give notice to a tenant determining the lease or determine the lease if the lease is expressed to be determinable at his option; or
- (b) where the lease is determinable by efflux of the time limited thereby, require the tenant to vacate the house

by process of law or otherwise if the tenant is willing to continue the lease on the same terms and conditions.

- (2) A landlord who seeks to obtain permission under sub-clause (1) shall apply in writing to the Controller in that behalf:

Provided that where the tenancy is for a specified period agreed upon between the landlord and the tenant, no application under item (vi) and (vii) or sub-clause (3) shall be entertained by the Controller before the expiry of such period.

- (3) If after hearing the parties the Controller is satisfied.-. . . .”

[Note: Below sub-clause (3) are enumerated nine grounds on availability whereof the controller may grant the landlord permission to give notice to determine the lease as required to sub-clause (1)].”

In my opinion, the law laid down by the Hon'ble Supreme Court in this authority would have no application to the facts of the present case. In the present case, we are concerned with the provisions of Section 13 of the Haryana Act. The opening paragraph of Section 13 of the said Act reads as under :-

“13: Eviction of Tenants:-(1) A tenant in possession of a building or rented land shall not be evicted therefrom except in accordance with the provisions of this Section.”

(18) The provisions of the various Rent Acts, including Punjab Act and the Haryana Act were considered by the Hon'ble Supreme Court and by the Full Bench of this Court in the cases referred to above and it was held that no decree for possession by way of ejectment could be passed after the coming into force of the aforesaid Act and even if any such decree is passed, it was not executable and as such no useful purpose will be served in passing a decree for possession if it could not be executed. In this view of the matter, in my opinion, the plaintiff appellants cannot take any benefit of the law laid down by the Hon'ble Supreme Court in **Mansoor Khan versus Motiram Harebhan Kharat's case** (*supra*).

(19) so far as the order dated 11th March, 2003 passed by a Single Judge of this Court in Civil Revision No. 751 of 2002 (*supra*), relied upon by the learned counsel for the appellants, is concerned, in my opinion, the said order is per incurium, as the binding precedent of the Hon'ble Full Bench of this Court was not brought to the notice of the court deciding that case.

(20) In **Jagpal Rai Vs. Gurdial Singh (8)** the landlord had filed a suit for possession by way of ejection from a shop situated in Assandh, District Karnal. The suit for possession by way of ejection was decreed by the Trial Court and the decree was affirmed by the lower Appellate Court. However, during the pendency of the Regular Second Appeal in this Court, a notification issued by the State of Haryana was produced by way of additional evidence to show that Assandh had been declared to be a Notified Area Committee under the Haryana Municipal Act and considering that the shop was situated within the Notified Area Committee, it was found that the provisions of the Haryana Act would apply and the tenant can be ejected only on any of the grounds available under the said Act. Reliance was placed on the law laid down by the Hon'ble Supreme Court in the case of **Laxmi Narayan Cuin and others versus Niranjan Modak (supra)**. Similar view was also taken by this Court recently in **Ram Narain and others versus Ram Lal and others RSA No. 1683 of 1982 decided on 4th September, 2003** by Hemant Gupta J, relating to Kharkhoda town. The law laid down by this Court in these authorities would fully apply to the facts of the present case.

(21) In view of the detailed discussion above, in my opinion, no fault could be found with the findings of the courts below that the Civil Court had no jurisdiction to continue with the present suit after the provisions of the Haryana Act were made applicable to Panchkula town with effect from 25th January, 2001. Furthermore, in view of the settled proposition of law, referred to above, in my opinion, no question of law much less substantial question of law arises for determination in this appeal. Accordingly, finding no merit in this appeal, the same is hereby dismissed.

R.N.R.