

Ramesh Chand Alias Ramesh Chander vs Uganti Devi (D) Th. Lr'S & Anr on 2 November, 2007

Bench: Tarun Chatterjee, Dalveer Bhandari

CASE NO. :

Appeal (civil) 5133 of 2007

PETITIONER:

RAMESH CHAND ALIAS RAMESH CHANDER

RESPONDENT:

UGANTI DEVI (D) TH. LR'S & ANR

DATE OF JUDGMENT: 02/11/2007

BENCH:

TARUN CHATTERJEE & DALVEER BHANDARI

JUDGMENT:

JUDGMENT IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO...5133 OF 2007 (Arising out of SLP (C) No. 2871 of 2007) RAMESH CHAND @ RAMESH CHANDER APPELLANT (S) VERSUS UGANTI DEVI (D) TH. LR'S & ANR.RESPONDENT (S) WITH CIVIL APPEAL NO. 5134 OF 2007 (Arising out of SLP (C) No. 2961 of 2007) O R D E R

1. Leave granted.

2. This appeal is directed against the final judgment and order dated 22nd of August, 2006 passed by the High Court of Delhi in CM No. 4194 of 2006 and in CRP No. 528 of 1993. So far as CM No. 4194 of 2006 is concerned, it appears that an application was filed by the appellant for deletion of the name of Respondent No. 1 from the Cause Title of the Civil Revision Petition being CR No. 528 of 1993. By the impugned order, the High Court had rejected the same on the ground that Respondent No. 1 had died on 25th February, 1994 and no steps were taken to bring on record the heirs and legal representatives of the deceased Respondent No. 1 and that the earlier Revision Petition was also dismissed for non-prosecution on 29th September, 1999, but was subsequently restored. According to the High Court, the appellant was deliberately not bringing the heirs and legal representatives of Respondent No. 1 on record only to prolong the hearing of the Civil Revision Petition. Accordingly, the High Court rejected the application holding that since Respondent No. 1 was survived by heirs and legal representatives, it was not possible to accede to the request of the appellant to delete Respondent No. 1 from the array of parties.

3. In respect of this order, which is challenged in this appeal, we have heard the learned counsel for the parties. We have examined the materials on record including the application for deletion filed by the appellant before the High Court. In our view, the High Court had acted illegally and with

material irregularity in the exercise of its jurisdiction by not allowing the said application. The carriage of the proceedings of the Civil Revision was with the appellant and since the appellant could not bring on record the heirs and legal representatives of the deceased Respondent No. 1, it would be open for him to proceed with the Civil Revision Petition at his own risk and the High Court may dismiss the Civil Revision Petition at the time of final hearing on the ground that on the death of the deceased Respondent No. 1 whose heirs and legal representatives were not brought on record, the entire Civil Revision Petition had abated. Therefore, we do not find any reason why the prayer for deletion of the name of Respondent No. 1 and to proceed with the Civil Revision case at his own risk should not be allowed and the name of Respondent No. 1 be stuck out from the Cause Title of the Civil Revision Petition. Accordingly, the application for deletion of the name of the Respondent No. 1 is allowed. We, however, make it clear that the Civil Revision Petition shall proceed in the absence of the heirs and legal representatives of the deceased Respondent No. 1 at the risk of the appellant.

4. So far as Civil Revision case being Civil Revision Petition No. 528 of 1993 is concerned, we find that the High Court had dismissed the same on the ground that since the said Revision case is pending for the last 13 years and the appellant was enjoying interim orders granted by the High Court and also considering the fact that the Revision Case was dismissed earlier for default but restored and as no steps were taken to bring on record the heirs and legal representatives of the deceased Respondent No. 1, Revision case must be dismissed.

5. We have heard learned counsel for the parties and examined the impugned order as well as material on record. It is true that the appellant was enjoying the benefits of an interim order granted by the High Court and the matter was also pending for the last 13 years before the High Court, but even then, right was given to the appellant to contest the eviction petition filed by the landlord under Section 14 (1) (e) of the Delhi Rent Control Act, 1958, which was filed on the ground of bonafide requirement of the landlord in which the appellant could be permitted to contest the same if the Court was satisfied that leave to contest the eviction petition should be granted to the appellant either conditionally or unconditionally. Therefore, the Revision Petition, which was filed against the order of the Rent Controller, rejecting the prayer of the appellant to permit him to contest, the revision petition ought to have been heard on merits and therefore, we feel it proper to give a further opportunity to the appellant to get the Civil Revision case decided at an early date. Accordingly, we allow the appeal and set aside the orders passed by the High Court in respect of which this instant SLP has been filed. The High Court is, therefore, requested to decide the Revision case at an early date preferably within two months from the date of communication of this order without granting any unnecessary adjournment to either of the parties.

6. Before parting with this order, we may say that it would be open for the High Court to consider at the time of final disposal of the Civil Revision Petition whether the entire Civil Revision case was abated on the death of Respondent No. 1 as heirs and legal representatives of the said deceased have not been brought on record.

7. Accordingly, the impugned order is set aside and the Civil Revision Petition Nos. 528 and 345 of 1993 are restored to its original file and the High Court shall now decide the same within the time specified hereinabove.

8. The appeals are allowed to the extent indicated above. There will be no order as to costs.

....., J (TARUN CHATTERJEE)J (DALVEER BHANDARI)
New Delhi November 2, 2007