

V.Uthirapathi vs Ashrab Ali & Ors on 18 February, 1998

Author: M. Jagannadha Rao

Bench: S. Saghir Ahmad, M. Jagannadha Rao

PETITIONER:

V. UTHIRAPATHI

Vs.

RESPONDENT:

ASHRAB ALI & ORS.

DATE OF JUDGMENT: 18/02/1998

BENCH:

S. SAGHIR AHMAD, M. JAGANNADHA RAO.

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T M. JAGANNADHA RAO, J.

We are disposing of this SLP by a reasoned order at the stage of admission, after condoning the delay. The SLP is preferred by the tenant against the order of the High Court of Madras in CRP 2272 of 1997 dated 19.9.1997 and the order dismissing the Review application No. 104 of 1997 dated 12.11.1997. The matter arises in execution proceedings under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter called the Act).

The eviction proceedings under the Act were started in 1982 by the respondents' father in RCOP 17/1982. Eviction was ordered and the said order was confirmed by the appellate authority. The decree holder filed an execution petition (within time for filing an execution petition) but later he died on 27.2.1993. In the said pending execution petition, the respondents, who are the decree holder's legal representatives filed an interlocutory application for their impleadment as the legal representatives of the decree holder, on 26.4.1994. The petitioner-tenant contended in the execution Court that the impleadment application thus filed in the main execution petition was time- barred as it was filed beyond as it was filed beyond the period of one month specified in Rule 25 of the Rules,

Rule 25 prescribes 'the time limit for bringing the legal representatives on record in proceedings under the Act'. Accepting the said objection, the impleadment application was dismissed.

The applicants in that IA filed CRP No. 2272/1997 in the High Court. By an order dated 19.9.1997, the High Court allowed the revision on the ground that under Section 18 of the Act, the Rent Controller has to execute the eviction order, "as if such order is an order of a Civil Court" and hence there was no question of limitation. The High Court relied upon a Division Bench in Subramania Pillai Vs. Rajakanni Nadar [1971 (1) MLJ 223] rendered before the amendment of section 18 by Act 23/73 and on N. Ramanujam Naidu Vs. Panchanath Mudaliar [1980 (1) MLJ 232]. Thereafter, the tenant filed a review application contending that the High Court, while allowing the revision, had not taken note of Hydro-Chains (P) Ltd. Vs. Mary Thomas Marattukulam [1994 (2) L.W.443] which was confirmed by this Court in Hydro-Chains Pvt.Ltd. Vs. Thomas Marattukulam [1994 (5) SCC 337]. The review application was disposed of on 12.11.1997 and it was held that it was not a fit case for review under Order 47 Rule 1 CPC inasmuch as, even if the application filed by the legal representatives of the landlord was beyond one month as stipulated in Rule 25, it was conceded for the tenant that the said heirs could file an independent execution petition and, therefore, there was no point in allowing the revision, dismissing the impleadment application filed in the execution application and permitting the heirs of the landlord to file a fresh execution petition. In the result, the review application was dismissed. It is against both these orders that the SLP is filed by the tenant.

It is contended in this SLP that in Hydro-Chains case, [1994 (2) LW 443], the High Court had considered all the previous decisions including Ramanujam Naidu's case [1971 (1) MLJ 223] and made a distinction between an application for bringing on record the legal representatives during the pendency of an execution petition and an application for bringing on record the legal representatives of the landlord the time of filing the execution petition and that Rule 25 would be attracted only to the former. It is contended that the High Court erred in thinking that there was no time limit for the legal heirs to come on record. It is stated that the Division Bench Judgement in Subramania Pillai's case [1971 (1) MLJ 223] was one rendered before Section 18 of the Act was amended in 1973 by 23/73. It is pointed out that the principle laid down by the High Court in Hydro Chains (P) Ltd [1994 (2) LW 443] had been accepted by this Court in Hydro -Chains [1994 (5) SCC 337], a case where the point arose after the amendment to Section 18 of the Act in 1973 under T.N. Act 23 of 1973, as is the case before us and that the learned Single Judge of the High Court, in the order allowing the revision, erred in following Subramania Pillai's case rendered before the 1973 amendment.

The point that arises for consideration is whether - in view of section 18, amended in 1973 - Rule 25 introduced on 28.10.74 alongwith other Rules, was not intended to apply to execution proceedings and whether, in any event, a fresh execution petition could have been filed by the legal representatives of the decree holder?

We shall briefly refer to certain provisions of the Act and Rules. Section 2(3) defines 'Rent Controller' as any person appointed by the Government, by notification, to exercise the powers of a 'Controller' under the for such area as may be specified in the notification. Section 23(1)(a) enables

the government to notify the 'appellate authorities'.

"Section 18: Execution of orders:

(1) Every order made under sections

10. 14.15. 16 and 17 every orders passed on appeal under section 23 or on revision under section 25, shall be executed by the Controller, as if such order is an order of the Civil Court and for this purpose, the Controller shall have all the powers of a Civil Court."

Rules have been issued in GOMs No. 2529 dated 28.10.1974. Rule 11 of the rules deals with filing of applications under the Act for release under section 3-A or for eviction under section 10 or for recovery of possession under section 12 or 14. (These sections are concerned with eviction on separate grounds and do not concerned with eviction on separate grounds and do not concern execution proceedings). Rule 12 deals with the procedure for disposal of applications, giving of a hearing, setting parties ex- parte etc. Rule 15 deals with filing of appeals and Rule 16 with procedure in appeals. Rule 21 deals with appearance of parties in person or through counsel before the Rent Controllers, authorised officers or appellate authorities. Rule 23 deals with scale of process fee. Rule 25 deals with the time limit for bringing the legal representatives on record in 'proceedings under the Act'. That rule reads as follows :

"Rule 25: Every application for making the legal representative or representatives of a deceased person, party to a proceeding under the Act, shall be preferred within one month from the date of the death of the person concerned or the date of having knowledge of the death of the person concerned."

A reading of section 18 of the Act as brought in by the 1973 amendment shows that when an execution petition is filed before the Rent Controller, the Rent Controller shall have all the powers of a Civil Court and the eviction order is to be executed as an order of a Civil Court. The first question is what are the powers of a Civil Court while executing orders passed by it?

Powers of Civil Court :

If during, the pendency of a regular execution proceeding filed on the basis of a decree or order of a Civil Court, the decree holder or the judgment debtor dies and his legal representatives are not brought on record within ninety days, can the Civil Court dismiss the execution petition as abated?

Order 22 Rule 12 of the Code of Civil Procedure reads as follows:

"Order 22 Rule 12: Application of order to execution proceedings: Nothing in proceedings in execution of a decree or order."

In other words the normal principle arising in a suit - Before the decree is passed - that the legal representatives are to be brought on record within a particular period and if not, the suit could abate, - is not applicable to cases of death of the decree holder or the judgment debtor in execution proceedings.

In Venkatachalam vs. Ramaswami [1932 ILR 55 Mad. 352 = AIR 1932 Mad. 73 (FB)], a Full Bench of the Madras High Court has held that this rule enacts that the penalty of abatement shall not attach to execution proceedings. Mulla's Commentary on CPC (Vol.3) p. 2085 (15th Ed., 1997) refers to a large number of judgments of the High Court:

"Rule 12 engrafts an exemption which provides that where a party to an execution proceedings dies during its pendency, provisions as to abatement do not apply. The rule is, therefore, for the benefit of the decree holder, for his heirs need not take steps for substitution under Rule 2 but may apply immediately or at any time while the proceeding is pending, to carry on the proceeding or they may file a fresh execution application."

In our opinion, the above statement of law in Mulla's Commentary on the CPC, correctly represents the legal position relating to the procedure to be adopted by the parties in execution proceedings and as to the powers of the Civil Court.

It is clear, therefore, that if after the filing of an execution petition in time, the decree holder dies and his legal representatives do not come on record - or the judgment debtor dies and his legal representatives are not brought on record, then there is no abatement of the execution petition. If there is no abatement, the position in the eye of law is that the execution petition remains pending on the file of the execution Court. If it remains pending and if no time limit is prescribed to bring the legal representatives on record in execution proceedings, it is open in case of death of the decree holder, for his legal representative to come on record at any time. The execution application cannot even be dismissed for default behind the back of the decree holder's legal representatives. In case of death of the judgment debtor, the decree holder could file an application to bring the legal representatives of the judgment debtor on record, at any time. Of course, in case of death of judgment-debtor, the Court can fix a reasonable time for the said purpose and if the decree holder does not file an application for the aforesaid purpose, the Court can dismiss the execution petition for default. But in any event the execution petition cannot be dismissed as abated. Alternatively, it is also open to the decree holder's legal representatives, to file a fresh execution petition in case of death of the decree holder; OR, in case of death of the judgment debtor, the decree holder can file a fresh execution petition impleading the legal representatives of the judgment debtor; such a fresh execution petition, if filed, is, in law, only a continuation of the pending execution petition - the one which was filed in time by the decree holder initially. This is the position under the Code of Civil Procedure.

Position of execution proceedings under the Act :

We have already referred to Rule 25 which is one of the rules introduced on 28.10.74 after the amendment of section 18 by Act 23 of 1973. According to that rule, every application for making the legal representative or representatives of a deceased person, party to a proceeding under the Act, shall be preferred within one month from the date of death of the person concerned or the date of knowledge of the death of the person concerned.

The question is : what is the meaning of the words "a proceeding under the Act". Is an execution petition not a proceeding "under the Act".

Section 18 as introduced in 1973 says that the order for eviction passed under section 190, 14, 15, 16 and 17 "shall be executed by the Controller, as if such an order is an order of the Civil Court and for this purpose, the Controller shall have all the powers of a Civil Court".

Inasmuch as the words 'as if' have been used in section 18, the eviction order, in our opinion, is to be deemed to be an order of a Civil Court and the execution petition has to be treated as an execution petition filed in the Civil Court for execution of an order of a Civil Court. If section 18 were not here, the orders of eviction under section 10, 14, 15, 16 and 17 could not be treated as orders of a Civil Court and were to be treated only as orders passed by the Rent Controller under the Act. But, because of the fiction, they are to be treated as orders of a Civil Court. The effect of section 18 is that the orders of the Rent Controller under section 10, 14, 15, 16 and 17 will cease to be orders passed "under the Act by the Rent Controller "

when they reach the stage of execution. Lest objection be raised that the Rent Controller cannot execute an order of a Civil Court, section 18 further clarifies that 'for this purpose' the Rent Controller shall also have all the powers of a Civil Court, - which Civil Courts have, while dealing with execution petitions filed to execute orders of the Civil Courts. What is the effect of the fiction created by use of the words 'as if'?

In *Dargah Committee. Ajmer vs. State of Rajasthan* [AIR 1962 SC 574] the words 'as if' fell for consideration. The case arose out of the Ajmer-Merwara Municipalities Regulation, 1925, which by Section 93 provided for appeals against the levy of any tax. Under section 222(4) it was stated that any money recoverable by the committee under section 222(1) shall be recoverable as if it were a tax levied by the Committee". The question was whether an appeal could be filed under section 93 against a claim of money by the municipal Committee under section 222(!). It was held by this Court that an appeal lay in view of the fiction created by the words 'as if'. It was observed :

"If by the fiction introduced by section 222(4), the amount in question is to be deemed as if it were a tax, it is obvious that full effect must be given to this legal fiction; and in consequence, just as a result of the said fiction the recovery procedure prescribed by section 234 (for taxes) becomes available to the Committee, so would

the right of making an appeal prescribed by section 93(1) be available to the appellant."

If therefore "full effect" is to be given to the fiction and if the eviction orders under section 10, 143, 15, 15, and 17 are to be deemed to be orders of the Civil Court and if the Rent Controller is to be deemed to be a Civil Court, then the execution petition, already filed in the Rent Controller's Court, (within the time limited for filing execution petition) in our opinion become by force of the fiction, execution petition under the Code of Civil Procedure and not under the Act. Death of decree holder or judgment debtor does not result in abatement of the execution petition. If it does not abate, it remains pending. Then what we have said in regard to the execution proceedings, under the heading 'powers of Civil Court' is equally applicable to execution proceedings filed in the Rent Controller's Court. That appears to us the logical result of the fiction.

Further, after section 18 was introduced in 1973, the rule making authority which made the rules on 28.10.1974 must be deemed to be aware that the execution petition is to be disposed of as an execution petition in a Civil Court, and also aware that because of section 18, there is no period of limitation fixed for bringing the legal representatives of a person, so far as execution proceedings in a Civil Court are concerned. The rule making authority when it fixed a period of 30 days for bringing legal representatives on record must, therefore, must be deemed to have used the words, "proceeding under the Act" as applicable to proceedings before the passing of the order of eviction and not after. We are, therefore, of the view that Rule 25 does not apply to execution proceedings.

The High Court was, therefore, right initially in its order dated 19.9.1997 in setting aside the order of the execution Court and allowing the impleadment application, on the basis that Rule 25 did not apply for bringing the legal representatives on record in execution proceedings.

There is equally no fault in what the High Court did in its order dated 12.11.1997 rejecting the review application. All that it said was that if it was conceded that a fresh execution petition lay, then there was no point in allowing the review, dismissing the revision against the refusal to implead and in permitting a fresh execution petition to be filed. That would be an idle formality. The Court has to avoid unnecessary multiplicity of proceedings.

The point taken in the SLP that the High Court's order runs counter to the judgment of this Court in *Hydro - Chains* case [1994 (5) SCC 337] approving the judgment of Raju, J. in *Hydro-Chains* [1994 (2) LW 443] is equally incorrect. It is true that this Court affirmed the judgment of Raju, J. by way of short speaking order. But, upon reading the judgment of Raju, J., we find that the learned Judge followed *Ghouse Khan vs. Rent Controller, Coimbatore* [1991 (2) LW 274] and *Trigolchand vs. Baffna* [(1986) 99 LW 438]. In the first of these cases, Vankataswami, J. (as he then was) followed the judgment of V. Ramaswami, J. (as he then was) in *Ramanujam Naidu vs. Panchanath Mudaliar* [1980 (1) MLJ 232] that Order 22 Rule 12 applies and Rule 25 does not apply to execution proceedings. It was also held that as long as the decree could be enforced, an application to bring the legal representatives on record, could be presented within that period.

Here we have clarified further that if the execution petition was initially filed in time, (that is within the time limited for filing execution petition) it remains to be pending even if the legal representatives are not brought on record within 30 days. If the decree holder dies, the petition cannot be dismissed even for default, behind the back of his legal representatives. Again if the judgment debtor died and the decree holder does not bring the legal representative on record, the Court could fix reasonable time and if the legal representatives of the judgment debtor are not brought on record within the time granted by Court, the execution petition could be dismissed for default.

In the second case, Shanmugham, K. pointed out that Order 23 Rule 12 applied and the ratio of the Division Bench which decided Subramania Pillai vs. Rajakanni Nadar [1971 (1) MLJ 223], before the 1973 amendment of Section 18 and the old Rule 32 - still held good. In that case, the Division Bench held that rule 32 did not apply to execution proceedings. That was also the view of V. Ramaswami, J. (as he then was) and K. Venkataswami, J. (as he then was) in the cases referred to above which related to post - 1973 cases. All the Judges in the above cases disapproved of a dictum of Ratnavel Pandian, J. (as he then was) in Ghouse Khan vs. Rent Controller [84 LW 568 = 1981 (2) MLJ 388] that section 18 dealt with powers of the Civil Court under Order 21 CPC and not with powers under Order 22 Rule 12. We agree with the learned Judges in their dissent of the opinion of Ratnavel Pandian, J. and we are of the view that section 18 attracts Order 22 Rule 12 also and not merely Order 21 CPC.

In our opinion, the High Court was right in initially allowing the writ petition on the ground that Rule 25 was not applicable to execution proceedings and in later observing, in the review petition, that if a fresh eviction petition could be filed, there was not point in allowing the review application.

For the above reasons, this special leave petition is dismissed.