

Supreme Court of India

M/S. M. Subbarao & Sons vs Yashodamma & Ors on 17 September, 2002

Author: R Lahoti

Bench: R.C. Lahoti, Brijesh Kumar

CASE NO. :

Appeal (civil) 5912 of 2002

PETITIONER:

M/s. M. Subbarao & Sons

RESPONDENT:

Yashodamma & Ors.

DATE OF JUDGMENT: 17/09/2002

BENCH:

R.C. LAHOTI & BRIJESH KUMAR

JUDGMENT:

J U D G M E N T R.C. Lahoti, J.

Leave granted.

The landlord-respondents initiated proceedings for eviction of the tenant-appellants on the grounds available under Clauses (f), (h) and (p) of sub-Section (1) of Section 21 of Karnataka Rent Control Act, 1961 (hereinafter 'the Old Act', for short). The trial Court directed eviction of the tenants on all the three grounds. In a revision preferred by the tenants, the learned Additional District Judge held the ground under Clause (h) not available to the landlords. However, the order of eviction was sustained upholding availability of grounds under Clauses (f) and (p). The tenants and the landlords both filed revision petitions before the High Court. By order dated 11.10.2000, the High Court disposed of both the revisions holding that subletting of tenancy premises by the tenants was made out and hence order for eviction was sustainable under Clause (f). The High Court did not deem it necessary to enter into the question of bona fide requirement. On a prayer made on behalf of the tenants, they were allowed a period of one and a half years for vacating the premises which period was to expire on 11th April, 2002.

With effect from 31.12.2001, the Karnataka Rent Control Act, 1999 (hereinafter 'the New Act', for short) came into force. The suit premises are non-residential premises measuring 352 sq. ft. i.e. more than 14 sq. mts.. Section 2 of the New Act speaks of application of the Act. Sub-Section (3) thereof provides that nothing contained in this Act shall apply, amongst others, to any premises used for non- residential purpose but excluding premises having a plinth area of not exceeding fourteen square meters used for commercial purpose. It is not disputed by learned counsel for the parties that the plinth area of the suit premises exceeds 14 sq. mts. and the same are used for commercial purpose, and therefore, the New Act is not applicable to the premises.

As the tenants did not vacate the tenancy premises on or before 11.4.2002, the landlords filed execution proceedings after 11.4.2002. The tenants objected to the maintainability of the execution proceedings submitting that the decree passed under the Old Act in respect of the premises to which the provisions of the New Act are not applicable, has ceased to be executable with the repeal of the Old Act. The objection was overruled by the executing Court as also by the High Court. The aggrieved tenant-judgment debtors have preferred this appeal by special leave.

Two questions arise for consideration:-

1. What is the effect of repeal of the Old Act by Section 70 of the New Act on such decrees as were passed under the Old Act and are yet to be executed?;
2. What would be the effect of Section 70 of the New Act on special leave petitions filed under Article 136 of the Constitution or on the appeals pursuant to the leave granted thereunder?

Section 70 of the New Act and Section 6 of the Karnataka General Clauses Act, 1899 provide as under:- "70. Repeal and Savings.____(1) The Karnataka Rent Control Act, 1961 (Karnataka Act 32 of 1961) is hereby repealed.

(2) Notwithstanding such repeal and subject to the provisions of Section 69. ____

(a) all proceedings in execution of any decree or order passed under the repealed Act, and pending at the commencement of this Act, in any Court shall be continued and disposed off by such Court as if the said enactment had not been repealed;

(b) all cases and proceedings other than those referred to in clause (a) pending at the commencement of this Act before the Controller, Deputy Commissioner, Divisional Commissioner, Court, District Judge or the High Court or other authority, as the case may be in respect of the premises to which this Act applies shall be continued and disposed off by such Controller, Deputy Commissioner, Divisional Commissioner, Court, District Judge or the High Court or other authority in accordance with the provisions of this Act.

(c) all other cases and proceedings pending in respect of premises to which this Act does not apply shall as from the date of commencement of the Act stand abated.

(3) Except as otherwise provided in Section 69 and in sub-section (2) of this section, provisions of Section 6 of the Karnataka General Clauses Act, 1899 (Karnataka Act III of 1899), shall so far as may be applicable in respect of repeal of the said enactment, and Sections 8 and 24 of the said Act shall be applicable as if the said enactment had been repealed and re-enacted by this Act."

"6. Effect of repeal. ____ Where this Act or any Mysore Act or Karnataka Act made after the commencement of this act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not____

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed."

The learned counsel for the tenant-appellants submitted that the tenants having been allowed 18 months' time for vacating the suit premises under an order of eviction which achieved finality on 11.10.2000, the execution was leviable only after 11.4.2002 and, thus, there were no proceedings pending on 31.12.2001, the date on which the New Act came into force. As nothing was pending (not even the execution proceedings) on 31.12.2001, the date on which the New Act came into force, Clauses (a) and (b) of sub-Section (2) of Section 70 of the New Act would not apply; the case would be covered by Clause

(c) within the meaning of "all other cases .. in respect of premises to which this Act does not apply" and, therefore, the decree under the Old Act shall, as from 31.12.2001, the date of commencement of the New Act, stand abated. The proceedings, for execution of a decree which had stood abated, filed after the commencement of the New Act were incompetent and hence the executing Court ought not to have proceeded ahead in an execution filed after the commencement of the New Act and, instead, should have simply declared the decree inexecutable as having abated.

We find the submission of the learned counsel for the appellants devoid of any merit. A decree passed by a competent Court under the Old Act cannot be said to be a 'case pending' on 31.12.2001. Inasmuch as the decree is not covered by any of the clauses of sub-Section (2) of Section 70 of the New Act (as also by Section 69 of the New Act which speaks of transfer of pending cases) the decree would be covered under sub-Section (3) and attract applicability of Section 6 of the Karnataka General Clauses Act and would be protected thereunder. The decree defines the right of landlord to eviction of tenant and the obligation or liability of the tenant to vacate the premises under pain of execution. Such a right, obligation or liability is not affected by repeal of an enactment unless a different intention appears. No such different intention appears from the provisions of the New Act. Under Section 70(2)(a) of the New Act pending executions in respect of decrees passed under the Old Act are saved. It will be preposterous to hold that though a pending execution application is

saved, a decree, which is yet to be executed, is not saved.

A Division Bench of Karnataka High Court (R.V. Raveendran and K.L. Manjunath, JJ) had an occasion to examine such an issue in M/s. Mercury Press & Ors. Vs. Ameen Shacoor & Ors., ILR 2002 Kar 2304. During the course of its judgment the Division Bench has observed :

" Though the Old Act did not confer any rights on a landlord but only restricted the absolute right of the landlord under the provisions of the Transfer of Property Act, if an order of eviction has already been passed under the Old Act, then the right to evict the tenant has been acquired by the landlord and a corresponding obligation or liability had been incurred by the tenant to vacate the premises or be evicted from the premises, under the order of eviction. Such right (liability acquired or incurred under the order of eviction passed under the Old Act on or before 30.12.2001 remains unaffected by the repeal having regard to Section 6 of the General Clauses Act and as a consequence, the landlord becomes entitled to enforce such order of eviction by executing it, subject to any remedy to which the tenant will be entitled under law." (Para

20) The Division Bench, having examined the issue from several angles, summed up its conclusion as under:- "a) Matters pending in execution:

Where an order of eviction has already been passed under the Old Act and is pending in execution, irrespective of whether the order was in regard to premises to which the New Act applies or not, such execution proceedings can be continued and disposed of by executing Court as if the Old Act had not been repealed;

Orders of eviction passed under the Old Act which have become final and conclusive on or before 30.12.2001 in regard to which no execution was levied on or before 30.12.2001, can also be executed thereafter as if the Old Act has not been repealed."

We find ourselves in agreement with the view of law taken by the High Court of Karnataka and approve the same. We are, therefore, of the opinion that the executing Court and the High Court have not erred in any manner in holding the decree not abated and available for execution as a valid decree in spite of the repeal of the Old Act by Section 70 of the New Act.

It was submitted at the Bar that there appears to be some conflict in two decisions of this Court namely, Raminder Singh Sethi Vs. D. Vijayarangam, (2002) 4 SCC 675 and Mahendra Saree Emporium Vs. G.V. Srinivasa Murthy, (2002) 5 SCC 416. We have carefully examined both the decisions and we find that there is no conflict between the law laid down by this Court in the two decisions. In Raminder Singh Sethi's case, eviction of the tenant was directed under Section 12(1)(a) of the Old Act. Section 12 is placed in Part II of the Old Act. The eviction proceedings were commenced in the year 1982 when the period of five years from the date of construction of the building had not expired and to such a premises provisions of Part III of the Old Act were not applicable. Part III contains Section 18 which prohibits recovery of unlawful charges by the landlord including any premium or any rent in addition to fair rent. This Court upheld the eviction of tenant under Section 12(1)(a) of the Act. Before this Court the tenant pleaded that the New Act having been

brought into force during the pendency of the proceedings conferred certain additional protection on the tenant who's eviction was sought for on the ground of default in payment of arrears. Vide para 6, this Court refused to evaluate the legality of the decree passed under the Old Act by testing it by reference to the provisions of the New Act on the twin grounds: that the rights of the parties to litigation ordinarily stand crystallized on the date of the commencement of lis and have to be determined by reference to the law applicable on that day, and that the provisions of the New Act are not retrospective in their application. This Court observed inter alia that Section 70 of the New Act does not provide for the provisions of the Act being made applicable to the appeal or proceedings pending before the Supreme Court. In Mahendra Saree Emporium's case, an appeal pursuant to leave granted under Article 136 of the Constitution was pending in this Court when the New Act came into force. The decree passed by the High Court directing eviction of tenant was in issue before this Court. In view of the area of the premises being such as to which the provisions of the New Act did not apply, this Court proceeded on an assumption that the appeal shall stand abated by virtue of the provisions contained in Clause (c) of sub-Section (2) of Section 70 of the New Act. It appears that such position of law was almost not disputed and, therefore, there is no in-depth scrutiny of the provisions nor any reasons assigned for the view taken. In any case, the case before us does not bear any similarity with the facts in the case of Mahendra Saree Emporium.

No fault can be found with the view taken by the High Court. The appeal is dismissed. However, the tenant-appellants are allowed three months' time for vacating the suit premises subject to their clearing all the arrears of rent and filing an usual undertaking within three weeks from today, and thereafter continuing to pay the arrears of rent falling due month by month until delivery of possession. No order as to the costs.