

Davesh Nagalya (D) vs Pradeep Kumar (D) Thr.Lrs. on 10 August, 2021

Equivalent citations: AIR 2021 SUPREME COURT 3717, AIR ONLINE 2021 SC 485

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Bench: A.S. Bopanna, Hemant Gupta

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3477 OF 2010

DAVESH NAGALYA (D) & ORS.

VERSUS

PRADEEP KUMAR (D) THR. LRS. AND ORS.

JUDGMENT

HEMANT GUPTA, J.

1. The challenge in the present appeal is to an order passed by the High Court of Uttarakhand in Review Application No.105/2008 on 23.04.2008 wherein the factum of death of Pradeep Kumar, the successor-in-interest of Tika Ram - the tenant, was not considered. The argument of the appellant was that the partnership between Pradeep Kumar and Subhash Chand, Respondent No.4 herein has come to an end automatically on the death of Pradeep Kumar on 21.05.2004. Therefore, tenancy also has come to an end in view of Section 12 (2) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. It may be stated that during the pendency of the present appeal, Subhash Chand, another partner, who was 17:33:56 IST Reason:

1 Hereinafter referred to as the “Act” allowed to enter into partnership with Pradeep Kumar by the District Magistrate also died on 25.6.2014.

2. The legal heirs of Pradeep Kumar and Subhash Chand were served with notice in the Special Leave Petition which led to the present Civil Appeal. An application was filed by the appellant to implead the legal heirs of Subhash Chand namely, Amit Goyal son of late Shri Subhash Chand and Smt. Swati Goyal daughter of Shri Subhash Chand. Notice of the said I.A. Nos. 23917, 23920 and 23921 of 2019 was ordered to be issued on 26.02.2020. As per the office report, notice was issued to the proposed legal heirs of the deceased Respondent No.4. The service was effected on the proposed legal heirs as per tracking report of the postal authorities. It is thereafter, on 28.07.2021, the application for substitution of the legal heirs of Respondent No. 4 was allowed. But none has put an appearance on behalf of the legal heirs of Respondent No.4.

3. Brief facts leading to the present appeal are that an application was filed by Pradeep Kumar in July 1982 before the Court of Rent Control and Eviction Officer, Dehradun, the District Magistrate, in terms of the Act. In such application, Pradeep Kumar, the successor-in-interest of tenant Tika Ram averred that Subhash Chand was a divorcee and had no children and was willing to devote full time in the said proposed business of sale of milk, curd, ghee and butter. The application was however opposed by the landlord. It was inter alia averred that after death of Tika Ram, he had left behind 8 legal heirs who were joint tenants in the disputed property. It was stated that Subhash Chand was a sub-tenant and that he was involved in demolition, changing the structure and making furniture for last two months. Shri Pradeep Kumar has put such person in possession of the property. It is also averred that Subhash Chand has been doing the business of milk products in Dehradun and that the application has been filed in order to only cover the sub-tenancy. It was argued that Pradeep Kumar had put such person in possession of the shop who was not a member of their family and thus property would be deemed to be vacant under Section 12(2) of the Act. However, the District Magistrate permitted Subhash Chand to be inducted as a partner on 15.11.1982. It was thereafter, on 19.11.1982, a written partnership deed was signed between Pradeep Kumar and Subhash Chand, a copy of which is annexed herewith as P-4. Clause 6 of the said Partnership Deed states that all provisions of the Partnership Act would be applicable.

4. The landlord challenged the order passed by the District Magistrate before the learned District Judge. Such revision petition was dismissed on 12.12.1983. Further challenge before the High Court through Writ Petition also remained unsuccessful vide order dated 10.10.2007. The appellant challenged the said order by way of Special Leave Petition before this Court but the same was dismissed on 10.01.2008. It is thereafter, the appellant filed an application for review before the High Court inter alia on the ground that pursuant to the death of the tenant, Pradeep Kumar i.e., one of the partners of the firm, the partnership does not survive in view of Section 42(c) of the Partnership Act. Section 42(c) reads as under:

“42. Dissolution on the happening of certain contingencies.—Subject to contract between the partners a firm is dissolved,—

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) by the death of a partner

(d) xxx xxx xxx”

5. Such review was dismissed vide order impugned in the present appeal on the ground that the petitioners have entirely set up a new case and the grounds urged are different from that of the writ petition. As on record, both the partners, i.e. Pradeep Kumar and Subhash Chand had died on 21.05.2004 and 25.06.2014, respectively. Hence, now the argument is that in terms of Section 42(c), the partnership stands dissolved by law. There is no clause in the partnership deed which permits the legal heirs of the deceased partners to continue with the partnership firm. Therefore, by operation of law, the partnership has come to an end.

6. Though learned counsel for the appellant raised an argument that approval of the District Magistrate, an Executive Authority, to seek permission to sublet or admit a partner was against the principle of separation of powers between the executive and judicial or quasi-

judicial functions, however we need not examine the said question in the present appeal.

7. The relevant provisions of the Act read as under:

“12. Deemed vacancy of building in certain cases-

(1) A landlord or tenant of a building shall be deemed to have ceased to occupy the building or a part thereof if-

- (a) he has substantially removed his effects therefrom; or
- (b) he has allowed it to be occupied by any person who is not a member of his family; or
- (c) in the case of a residential building, he as well as members of his family have taken up

residence, not being temporary residence, elsewhere.

(2) In the case of non-residential building, where a tenant carrying on business in the building admits a person who is not a member of his family as a partner or a new partner, as the case may be, the tenant shall be deemed to have ceased to occupy the building.

25. Prohibition of sub-letting.-

(1) No tenant shall sub-let the whole of the building under his tenancy.

(2) The tenant may, with the permission in writing of the landlord and of the District Magistrate, sub-let a part of the building.

Explanation.- For the purposes of this section-

(i) Where the tenant ceases, within the meaning of clause (b) of sub-section (1) or sub-section (2) of Section 12, to occupy the building or any part thereof, he shall be deemed to have sub-let that building or part;

(ii) Lodging a person in a hotel or a lodging house shall not amount to sub-letting.”

8. In terms of Section 41 of the Act, U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 have been published on 1.7.1972. Every landlord had to give notice of the vacancy in writing to the District Magistrate, if a building had fallen vacant under Section 15 of the Act. Under Section 16 of the Act, District Magistrate has been authorized to pass an order in respect of user of such building. Rule 10 deals with allotment procedure of a building which has fallen vacant. Sub-Rule 6 is relevant for the purpose of present appeal, which reads thus:

“6. A person who is deemed to have ceased to occupy a building within the meaning of Section 12(1)(b), or who is evicted under Section 21 by virtue of being a tenant referred to in Explanation (1) of Section 21(1) shall not be allotted that or any other residential building and a person who is deemed to have ceased to occupy a building within the meaning of Section 12(2), shall not be allotted that or any other non-residential building for a period of two years from the date of such eviction or deemed cessation, as the case may be:

Provided that-

(a) if the District Magistrate is satisfied in a case referred to in Section 12(2) that the admission of partner or new partner is bona fide transaction and not a mere cover for sub-letting, he shall, if any application had been made in that behalf before the admission of such partner or new partner, allot the non-residential building in question afresh to the newly constituted or re-constituted firm.

(b)

9. The learned Counsel for the appellants relied upon the judgment of this Court in *Kunhayammed and Others v. State of Kerala and Another*² that the summary dismissal of the special leave petition does not bar the remedy of review as the same is permissible under law. In *Khoday Distilleries Ltd. v. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd.*³, this Court re-iterated the principles of law as under:

“26.2 xxx xxx

(iv) An order refusing special leave to appeal may be a non-

speaking order or a speaking one. In either case it does not ² (2000) 6 SCC 359 ³ (2019) 4 SCC 376 attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order i.e. gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as *res judicata* in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of the Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of the High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Order 47 Rule 1 CPC. 26.3. Once we hold that the law laid down in *Kunhayammed* [*Kunhayammed v. State of Kerala*, (2000) 6 SCC 359] is to be followed, it will not make any difference whether the review petition was filed before the filing of special leave petition or was filed after the dismissal of special leave petition. Such a situation is covered in para 37 of *Kunhayammed* case [*Kunhayammed v. State of Kerala*, (2000) 6 SCC 359]”.

10. The argument of the learned counsel for the appellant is that subsequent events consequent to the order passed by the District Magistrate had to be taken into consideration. The High Court however failed to take into consideration death of one of the partners leading to deemed vacation of the premises. The appellant relied upon the judgment of this Court in *Pasupuleti Venkateswarlu v.*

The Motor & General Traders⁴ wherein it has been held as under:

“4. We feel the submissions devoid of substance. First about the jurisdiction and propriety vis-à-vis circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is not violated, with a view to promote substantial justice- subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed. On both occasions the High Court, in revision, correctly took this view. The later recovery of another accommodation by the landlord, during the pendency of the case, has as the High Court twice pointed out, a material bearing on the right to evict, in view of the inhibition written into Section 10(3) (iii) itself. We are not disposed to disturb this approach in law or finding of act.” 4 (1975) 1 SCC 770

11. Therefore, the subsequent event of death of Pradeep Kumar being relevant was bound to be taken into consideration by the High Court in the review petition.

12. The appellant also relied upon the judgment of this Court reported as Harish Tandon v. Addl. District Magistrate, Allahabad, U.P and Others⁵ interpreting Section 12(2) and 25 of the Act. It was held as under:

“17. When sub-section (2) of Section 12 provides that whenever a tenant carrying on business in a building admits a person, who is not a member of his family, as a partner, the tenant shall be deemed to have ceased to occupy the building, full effect has to be given to the mandate of the Legislature. There is no escape from the conclusion that such tenant has ceased to occupy the building. No discretion is left to the court to enquire or investigate as to what was the object of such tenant while inducting a person as partner who was not the member of his family. It can be said that the aforesaid statutory provision requires the court to come to the conclusion that by the contravention made by the tenant, such tenant has ceased to occupy the

building. The framers of the Act have not stopped only at the stage of Section 12(2) but have further provided in Section 25, Explanation (i) another legal fiction saying that where the tenant ceases to occupy the building within the meaning of sub-section (2) of Section 12 “he shall be deemed to have sub-let that building or part”. In view of the three deeming clauses introduced in sub-section (2) of Section 12, sub-section (4) of Section 12 and Explanation (i) to Section 25, no scope has been left for the courts to examine and consider the facts and circumstances of any particular case, as to what was the object of admitting a person who is not the member of the family, as partner and as to whether, in fact, the premises or part thereof have been sub-let to such person.

xxx xxx xxx

25. The framers of the Act have clearly expressed their intention in Sections 12, 20 and 25 while protecting the 5 (1995) 1 SCC 537 tenant from eviction except on the grounds mentioned in Section 20, that after the death of the original tenant his heirs will be deemed to be holding the premises as joint tenants and for any breach committed by any of such joint tenants, all the heirs of the original tenant have to suffer.

They cannot take a plea that unless the grounds for eviction mentioned in sub-section (2) of Section 20 are established individually against each one of them, they cannot be evicted from the premises in question.”

13. We find that the order of permitting Subhash Chand as partner with Pradeep Kumar has come to an end by efflux of time and operation of law. In terms of Section 42(c) of the Partnership Act, partnership stands dissolved by death of a partner. One of the partners i.e., Pradeep Kumar died on 21.05.2004. The High Court has not taken note of such fact in the review petition and failed to take into consideration the subsequent events which were germane to the controversy. Subhash Chand, the other partner also died during the pendency of appeal on 25.06.2014. It was represented to the District Magistrate by Pradeep Kumar that Subhash Chand is a divorcee and has no children but such assertion was not found to be correct as he had two children, a son and a daughter who were impleaded as his legal heirs.

14. Therefore, with the death of both partners and not having any clause permitting continuation of the partnership by the legal heirs, the non-residential tenanted premises is deemed to be vacant in law as the tenant is deemed to have ceased to occupy the building. In view thereof, the order passed by the High Court in Review Application dated 23.04.2008 is set aside.

15. The Civil Appeal is thus allowed and the tenant is deemed to cease to occupy the premises in question. Consequently, the tenanted property has fallen vacant as well. The appellants may take recourse to remedy as may be available to them and may proceed in accordance with law and the provisions of the Act.

.....J. (HEMANT GUPTA)J. (A.S. BOPANNA)
NEW DELHI;

AUGUST 10, 2021.