

PETITIONER:
LAXMAN MAROTRAO NAVAKHARE

Vs.

RESPONDENT:
KESHAVRAO S/O EKNATHSA TAPAR

DATE OF JUDGMENT 02/03/1993

BENCH:
SINGH N.P. (J)
BENCH:
SINGH N.P. (J)
THOMMEN, T.K. (J)

CITATION:
1993 AIR 2596 1993 SCR (2) 167
1993 SCC (2) 270 JT 1993 (2) 187
1993 SCALE (1) 771

ACT:
Constitution of India, 1950: Article 136-S.L.P. under-
Whether entertainment of petition amounts to the Court
converting itself into a court of appeal.
Central Provinces and Berar Letting of Houses and Rent
Control Order, 1949. : Clause 13-A-Effect of-Whether benefit
can be claimed if S.L.P. under Article 136 of the
Constitution of India is pending at relevant time.

HEADNOTE:

The suit plot was let out to the appellant as a monthly tenant for an automobile garage. The respondent-plaintiff issued a notice on 10th July, 1975 determining the lease in favour of the appellant with effect from 31st July, 1975, and filed a suit for eviction.

The trial Court dismissed the said suit on the finding that as the appellant was using the suit premises for manufacturing purposes, a six months' notice was required before the lease could be determined, and as the notice issued to the defendant-appellant under section 106 of the Transfer of Property Act had purported to determine the tenancy with 15 days' notice, the suit in question could not have been filed.

On appeal by the respondent, the Assistant Judge came to the conclusion that the premises in question had not been let out for any manufacturing purpose but for a motor workshop and as such the notice under section 106 of the Act was valid, and the respondent was entitled to the possession of the plot in dispute, and passed an order for possession.

The second appeal filed on behalf of the appellant was dismissed in limine by the High Court saying that no substantial question of law was involved.

In the appeal to this Court, the finding recorded by the Court of Appeal below and affirmed by the High Court that the respondent was entitled to a decree for possession, and that the appellant was liable to be

168

evicted was not questioned. However, a new stand was taken on behalf of the appellant that in view of the subsequent events the decree of eviction passed against the appellant could not be given effect to. It was submitted that by C.P.

and Berar Letting of Houses and Rent Control (Second Amendment) Order, 1989 a new clause 13A has been introduced and that was during the pendency of the present appeal, and that though clause 13-A had been introduced not with retrospective effect still it shall be applicable to proceedings pending before any Court including this court and in view of the bar imposed by the said clause 13-A no decree for eviction could be passed by this court in the present appeal against the appellant unless the respondent-landlord produces a written permission of the Controller as required by sub-clause (1) of Clause 13 of the Order.

Dismissing the appeal, this Court,

HELD: 1. Article 136(1) of the Constitution confers on this Court overriding and extensive powers of granting special leave to appeal. Article 136 does not confer a right to appeal which is in the discretion of this Court. The discretionary power under Article 136 cannot be construed as to confer a right of appeal where none exist. Although the power under Article 136(1) is unfettered, it cannot be held that after having entertained a special leave petition against any final or interlocutory order, this court converts itself into a court of appeal for the hearing of the dispute involved and as such when the appeal is dismissed the decree passed by the High Court merges into the decree of this court, and in that situation amounts to passing a decree for eviction. [175G-H, 176A]

Gyan Chand v. Kunjbehari Lal, [1977] 3 SCC 317, referred to. [176B]

2. The bar placed by clause 13-A of the Order shall be applicable only to a suit or proceeding which was pending in any court under provisions of any special Act or under the provision of the Code of Civil Procedure, as the case may be. It shall not become applicable to a special leave petition pending or an appeal registered before this court on the basis of leave granted under Article 136 of the Constitution. This Court while exercising its discretionary power under Article 136 of the Constitution even while dismissing the appeal shall not be deemed to have passed any decree for eviction. [177C-D]

3. The matter would have been different if clause 13-A instead of only

169

imposing a bar on passing a decree for eviction had also prescribed a bar on passing any order for recovery of possession of any premises or on initiation of execution proceedings on basis of any decree passed earlier. In that event, this Court could have taken note of subsequent change in the law and in exercise of its discretionary power could have passed an order directing the respondent not to recover possession of the premises on the basis of the decree for eviction passed in his favour or to pursue the execution proceedings without complying with the requirement of clause 13-A. [177E-F]

H. Shiva Rao v. Cecilia Pereira, [1987] 1 SCC 258; M/s East India Corporation Ltd. v. Shree Meenakshi Mills Ltd., JT 1991 (2) SC 397; Amarjit Kaur v. Pritam Singh, AIR 1974 SC 2068 and Sadhu Singhi v. Dharam Dev. AIR 1980 SC 1654, referred to. [172F, 173G]

(During the hearing it was brought to the notice of the Court, that the amended definition of 'Premises' and clause 13-A which had been inserted by C.P. and Berar Letting of Houses and Rent Control (Second Amendment) Order, 1989, have been struck down by a Division Bench of the Bombay High Court on 23.6.1992. But the Counsel neither produced a copy of the said judgment, nor could inform whether any special

leave to appeal against the said judgment was pending before this Court. As such, the effect of clause 13-A of the Order, has been considered, so far as the present appeal was concerned.) [177H, 178A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5899 of 1983. From the Judgment and Order dated 13.4.83 of the Bombay High Court in S.A. No. 46 of 1983.

V.A. Bobde and A.K. Sanghi for the Respondent.

The Judgment of the Court was delivered by

N.P. SINGH, J. The defendant in a suit for eviction is the appellant before this court. The suit plot was let out to the appellant as a monthly tenant for an automobile garage. The plaintiff-respondent (hereinafter referred to as "the respondent") issued a notice on 10.7.1975 determining

170

the lease in favour of the appellant with effect from 31.7.1975. Later the suit in question was filed. As the suit premises had not been let out for residential purposes, it was an admitted position that the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 was not applicable.

The Trial Court dismissed the said suit on a finding that as the appellant was using the suit premises for manufacturing purposes, a six months' notice was required before the lease could be determined and as the notice issued to the appellant under section 106 of the Transfer of Property Act (hereinafter referred as "the Act") had purported to determine the tenancy with 15 days' notice, the suit in question could not have been filed. On appeal being filed on behalf of the respondent, the Assistant Judge came to the conclusion that the premises in question had not been let out for any manufacturing purpose but for a motor workshop and as such the notice under section 106 of the Act was valid and the respondent was entitled to the possession of the plot in dispute. The second appeal filed on behalf of the appellant was dismissed in limine by the High Court saying that no substantial question of law was involved.

Before this Court the finding recorded by the court of appeal below and affirmed by the High Court that the respondent was entitled to a decree for possession and the appellant was liable to be evicted was not questioned. A new stand was taken on behalf of the appellant, that in view of the subsequent events the aforesaid decree of eviction passed against the appellant cannot be given effect to. It was pointed out that by C.P. and Berar Letting of Houses and Rent Control (Second Amendment) Order, 1989 a new clause 13A has been introduced in the said Order. The new clause 13A is as follows:

"13-A. No decree for eviction shall be passed in a suit or proceeding filed and pending against the tenant in any court or before any Authority unless the landlord produces a written permission of the Controller as required by sub-clause (1) of clause 13."

Leave to appeal was granted by this Court on 1st August, 1983 and clause 13A has been introduced in the year 1989 during the pendency of the present appeal. By that very amending Order the definition of "premises" given in the original Order has also been amended and the said

171

definition after amendment includes not only building but

even "land not being used for agricultural purposes". if the definition of the "Premises", which has been amended, had been in force on the date of the filing of the suit, then the respondent had to pursue the procedure prescribed for eviction in accordance with the provisions of the Order aforesaid instead of filing a suit after service of notice under section 106 of the Act. There is no dispute that the amendment has not been introduced with retrospective effect and it is only prospective in nature. As the suit premises is only land and not a building when the suit was filed steps for eviction of the appellant could not have been taken in accordance with the provisions of the Order aforesaid because then those provisions were not applicable. But the stand of the appellant is that although clause 13A has been introduced not with retrospective effect still it shall be applicable to proceedings pending before any Court including this Court and in view of the bar imposed by said clause 13A, no decree for eviction can be passed by this Court in the present appeal against the appellant unless the respondent-landlord produces a written permission of the Controller as required by sub-clause (1) of clause 13 of the Order. Reliance was placed on the case of H. Shiva Rao v. Cecilia Pereira, [1987] 1 SCC 258, wherein it was pointed out by this court :-

"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."

It appears that in the aforesaid case the judgment was passed for possession of the premises in question on August 27, 1970. Thereafter execution proceedings were initiated. During the pendency of the execution proceedings, the village in which the suit premises was situated was included within the Mangalore Municipality by amendment of the Karnataka Rent Control

172

Act, 1961. After issuance of the notification the provisions of the aforesaid Rent Control Act became applicable even to the suit premises during the pendency of the execution. An objection was taken on behalf of the tenant that in view of sub-section (1) of section 21 of the Act aforesaid, the decree passed in the connected suit was not executable. Sub-section (1) of section 21 provided:

"Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or other authority in favour of the landlord against the tenant."

So far the aforesaid case is concerned, once the provisions of the Karnataka Rent Control Act became applicable during the pendency of the execution proceedings, the bar imposed on the Court from passing an order for recovery of possession of any premises in favour of the landlord became

applicable. But clause 13A, with which we are concerned, is only in respect of passing a decree for eviction and "not an, order for recovery of the possession of any premises". If even in clause 13A a bar had been placed in respect of recovery of possession of any premises, then there was no difficulty in accepting the contention raised on behalf of the appellant and holding that although there is a decree for eviction in favour of the respondent, but as in the meantime a bar has been placed on recovery of the possession of the premises the decree became unexecutable.

Reference was also made to the case of M/s. East India Corporation Ltd v. Shree Meenakshi Mills Ltd., JT 1991 (2) SC 397. It will appear that when the suit in question had been filed or even when the leave had been granted by this Court, the building in question did not come within the purview of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, in view of an exclusionary provision contained in clause (ii) of section 30. During the pendency of appeal before this Court clause (ii) of section 30 was struck down by this Court in another appeal pending as being violative of Article 14 of the Constitution. The result whereof was that provisions of the aforesaid Act became applicable. In view of the subsequent events, it was urged in the aforesaid case that section 10 of that Act became applicable as well. Section 10 provided :-

"S.10. Eviction of tenants.- (1) A tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of this section or sections 14 to 16:

In view of the bar placed by section 10 aforesaid on the eviction of a tenant whether in execution of a decree or otherwise except in accordance with the provisions of section 10 or sections 14 to 16 which had become applicable in view of striking down of clause (ii) of section 30, the decrees for eviction passed by courts below were set aside. This case is clearly distinguishable because the bar had been placed in respect of eviction of the tenant whether in execution of a decree or otherwise and this Court while exercising jurisdiction under Article 136 of the Constitution could have taken note of that bar for purpose of setting aside the decree because in view of the subsequent events the decree passed in the suit became unexecutable in absence of compliance of section 10 or sections 14 to 16 of the Act.

Here as the bar is on the part of the Court from passing a decree for eviction, it has to be examined as to whether while affirming the decree for eviction passed by the High Court, it shall be deemed that a fresh decree for eviction shall be deemed to have been passed by this Court. It was submitted that even if it is held that bar under clause 13A is only on respect of passing of the decree as appeal before this Court on basis of the leave granted under Article 136 of the Constitution is a continuation of the suit/proceeding, while dismissing the said appeal, it shall be deemed that this Court has passed a decree for eviction which in view of clause 13A is barred and the said bar is applicable even on this Court. In this connection reference was made to the judgments of this Court in the cases of Amarjit Kaur v. Pritam Singh, AIR 1974 SC 2068, and Sadhu Singh v. Sharan Dev, AIR 1980 SC 1654.

In the case of Amarjit Kaur- v. Pritam Singh (supra) the suit for pre-emption in question had been decreed by the Trial Court. The appeal preferred by the vendee was dismissed. While the second appeal was pending before the

High Court, the Punjab Pre-emption (Repeal) Act, 1973

came into force. In view of section 3 of the said Act, the High Court allowed the appeal and dismissed the suit. Section 3 of that Act provided:-

"Bar to pass decree in suit for pre-emption.- On and from the date of commencement of the Punjab Pre-emption (Repeal) Act, 1973, no court shall pass a decree in any suit for pre-emption."

In view of the fact that aforesaid section 3 said in clear and unambiguous term that no court shall pass a decree in any suit for pre-emption after coming into force of the Act, the High Court was of the view that said bar applied even to the High Court, while confirming the decree for pre-emption as passed by the Trial Court because it amounted to passing a decree in a suit for pre-emption. This Court said :-

"As an appeal is a re-hearing, it would follow that if the High Court were to dismiss the appeal, it would be passing a decree in a suit for pre-emption. Therefore, the only course open to the High Court was to allow the appeal and that is what the High Court has done. In other words, if the High Court were to confirm the decree allowing the suit for pre-emption, it would be passing a decree in a suit for pre-emption, for, when the appellate court confirms a decree, it passes a decree of its own, and therefore, the High Court was right in allowing the appeal."

Again in the case of Sandhu Singh v. Dharam Dev, (supra) the same section 3 of the Punjab Pre-emption (Repeal) Act, 1973, came up for consideration and this Court held:

"The section is plain and its meaning unambiguous that there is a statutory mandate against passing a decree for enforcement of a right of pre-emption in the State of Punjab. The only point here is as to whether a decree already passed by the trial court, challenged in appeal after the Act was passed and affirmed on appeal would fall within the mischief of S. 3 while the case pends in the High Court. We think that S.3 interdicts the passing of a decree even in appeal. For one thing a decree challenged in appeal is reopened and the appellants' hearing is a

rehearing of the whole subject matter and when a decree is passed in appeal the first decree merges in the appellate decree and it comes within the scope of S. 3."

From the facts of the aforesaid case it shall appear that even in this case section 3 of the Punjab Pre-emption (Repeal) Act had come into force while appeal was pending in the High Court and the High Court had affirmed the decree of the Trial Court without taking note of the bar imposed by section 3 aforesaid. This Court said that section 3 interdicted the passing of a decree even in appeal because the decree which had been challenged in appeal had reopened the hearing of the whole subject matter and even while affirming the said decree it shall be deemed that appellate court had passed a decree for pre-emption which was not permissible in view of the bar placed by section 3 of the Act in question.

In the aforesaid cases section 3 of the Punjab Pre-emption (Repeal) Act had come into force while the appeals were pending in the High Court and effect of section 3 of that Act was considered in connection with the pendency of the appeals before the High Court and not before this Court. Can it be said that when a special leave is granted under Article 136 of the Constitution by this court, against the judgment of the High Court it is to be treated at par with an appeal entertained by the High Court against the judgment of a court subordinate to the High Court ? Whether by granting leave to appeal, the decree of the High Court is reopened "for rehearing" of the whole subject matter ? Whether on the same analogy when an appeal is dismissed by this Court, the decree of the High Court merges in the decree of this Court and amounts to passing a decree in the connected suit for eviction by this Court ?

Article 136(1) of the Constitution confers on this court overriding and extensive powers of granting special leave to appeal. Article 136 does not confer a right to appeal, it confers a right to apply for special leave to appeal which is in the discretion of this Court. The discretionary power under Article 136 cannot be construed as to confer a right of appeal where none exist. According to us, although the power under Article 136(1) is unfettered but it cannot be held that after having entertained a special leave petition against any final or interlocutory order, this Court converts itself into a court of appeal for the hearing of the dispute involved and as

76

such when the appeal is dismissed the decree passed by the High Court merges into the decree of this Court and in that situation amounts to passing a decree for eviction. This aspect has been considered by this Court in the case of Gyan Chand v. Kunjbehari Lal, [1977] 3 SCC 317, in connection with Rajasthan Premises (Control of Rent and Eviction) Act, 1950. Section 13A as amended by Rajasthan Ordinance 26 of 1975 extended the opportunity of paying arrears of rent by the tenant facing eviction. Benefit was made available in pending suits, appeals therefrom and applications for revision pending on the date of commencement of the Ordinance. This Court examined whether that benefit of section 13A can be availed by the tenant while the appeal was pending before this Court. The Ordinance aforesaid had come into force after the special leave petition had been filed before this Court. The appellant submitted that on basis of the leave granted a proceeding was pending before this Court within the meaning of clauses (a) and (b) of section 13A aforesaid and as such he was entitled to the benefit of section 13A which had come into force during the pendency of the proceeding/appeal before this Court. Chandrachud, J. (as he then was) speaking on behalf of the Court said :-

"With regard to the first submission it may be pointed out that an application for special leave under Article 136 of the Constitution against a judgment or an order cannot be equated with the ordinary remedy of appeal, as of right, under any provisions of law. It is an extraordinary right conferred under the Constitution, within the discretion of this Court, and such an application for special leave does not come within the contemplation of appeal pending before the Court under Section 13A(a). It is true that the word "proceeding" which appears in Section 13A(a)

and (b) means suit, appeal or application for revision according to the Explanation appended to Section 13A. Therefore, in order to attract Section 13A(a), a suit, appeal or application for revision must be pending on the date of commencement of the Ordinance 26 of 1975.

In view of the connotation of the word "proceeding" as given under the Explanation to Section 13A it is imper-

177

missible to extend the meaning of the word "proceeding" to include an application for special leave under Article 136 of the Constitution. The collocation of the words, "suit, appeal or application for revision" in the Explanation to denote "proceeding" would go to show that suits, regular appeals therefrom, as provided under the ordinary law and applications for revision alone are intended. It is inconceivable that if the legislature had intended to include within the ambit of "proceeding" an application for special leave under Article 136 of the Constitution it would have omitted to mention it in express terms."

The bar placed by clause 13A of the Order in question shall be applicable only to suit or proceeding which was pending in any court under provisions of any special Act or under the provision of Code of Civil Procedure. as the case may be. It shall not become applicable to a special leave petition pending or an appeal registered before this Court on basis of leave granted under Article 136 of the Constitution. This Court while exercising its discretionary power under Article 136 of the Constitution even while dismissing the appeal shall not be deemed to have passed any decree for eviction. The matter would have been different if clause 13A instead of only imposing a bar on passing a decree for eviction had also prescribed a bar on passing any order for recovery of possession of any premises or on initiation of execution proceedings on basis of any decree passed earlier. In that event, this Court could have taken not of subsequent change in the law and in exercise of its discretionary power could have passed an order directing the respondent not to recover possession of the premises on basis of the decree for eviction passed in his favour or to pursue the execution proceedings without complying with the requirement of clause 13A.

We accordingly dismiss the appeal. But, in the circumstances of the case, there shall be no orders as to costs.

Before we part with this appeal, we any mention that during the pendency of the present appeal it was brought to our notice that amended definition of "premises" and clause 13A which had been inserted by C.P. and Berar Letting of Houses and Rent Control (Second Amendment) Order, 1989, have been struck down by a Division Bench of Bombay High Court on 23.6.1992. But the counsel neither produced a copy of the said

178

judgment nor could inform this Court whether any special leave to appeal against the said judgment is pending before this Court. As such, we have considered the effect of clause 13A of the Order, so far the present appeal is concerned.

N.V.K.
179

Appeal dismissed.

JUDIS