

CASE NO.:
Appeal (civil) 3328 of 2002

PETITIONER:
SRI CHAMPA LAL

Vs.

RESPONDENT:
SRGIULSSHAEIEKR NPAAJSMHUADD&INANAOLTIHAESR

DATE OF JUDGMENT: 01/05/2002

BENCH:
D.P. Mohapatra & Brijesh Kumar

JUDGMENT:

D.P. MOHAPATRA, J.

Leave granted.

Champa Lal, the appellant herein, is the tenant in occupation of the shop which is a part of the premises bearing No.16 South Street (Dowlath Khan Garden), Yellagundapalyam, Bangalore. Respondent No.1 Shaik Najmuddin @ Gulsheer Pasha and his wife Azeezunnissa are the owners of the suit premises. In this appeal the appellant assails the order passed by the High Court of Karnataka in HRRP No.1346/96 in which the High Court in exercise of its revisional power set aside the order passed by the Court of Small Causes, Bangalore in HRC No.10792 of 1987 and ordered eviction of the tenant from the premises in question.

The proceeding before the Small Causes Court was initiated on the petition filed by the landlord under section 21(1)(h) of the Karnataka Rent Control Act, 1961 (for short 'the Act') on the ground of reasonable and bona fide requirement for personal occupation. The bonafide requirement pleaded by the landlord was that the respondent No.1 intended to open a grocery shop in the shop room which is in occupation of the appellant. It may be noted here that the appellant, who is a pawn broker, used the room for purpose of his business. The appellant denied the assertion made by the landlord that there was reasonable and bona fide requirement of the premises for opening a grocery shop. He alleged that the respondent No.1 whose personal requirement was pleaded in the eviction petition had left for Saudi Arabia and further that he (Respondent No.1) had obtained vacant possession of another shop room in the same building which was vacated by a tenant named Ramaiya which could be used for opening a grocery shop but the said respondent had taken no step for putting the vacant room to such use.

The Small Causes Court on consideration of the matter rejected the case of reasonable and bona fide

requirement of the shop room by the landlords and dismissed the petition for eviction. The landlords filed the revision petition No. HRRP 1346 of 1999 under section 50 of the Act challenging the said order. The High Court by its order dated 19.3.2001 allowed the revision petition and ordered eviction of the tenant. The said order is under challenge in the present appeal.

The High Court took the view that the Small Causes Court had erred in ignoring the explanation offered by the landlord in his evidence as to why he had not used the shop room vacated by the tenant, Ramaiya. The landlord explained that he had filed the eviction petition against Ramaiya on the ground that the shop room in occupation of that tenant was required for opening a machinery shop for his (landlord's) brother, and since some preliminaries for the purpose had not been completed the machinery shop of his brother had not been opened. Further, the High Court took the view that merely because during pendency of the proceeding the landlord had left for Saudi Arabia no inference could be drawn that the bona fide requirement as pleaded in the eviction petition had ceased. The High Court observed that since the proceeding was continuing from 1987 and the landlord was without employment he was forced to go to Saudi Arabia for his sustenance and for sustenance of his family; that he may decide to return from Saudi Arabia on getting possession of the shop room which will enable him to start his own grocery business.

The thrust of the submissions of Shri Ranjan Mukherjee learned counsel appearing for the appellant was that the High Court in exercise of its revisional jurisdiction could not upset the finding of fact recorded by the Small Causes Court since such power was not vested under section 50 of the Act. He contended that from the impugned judgment it is clear that the High Court interfered with the finding of fact recorded by the lower court on re-appreciation of the evidence in the case which is not permissible.

Per contra, Smt. Kiran Suri learned counsel appearing for the respondent submitted that the finding of the High Court is not based on re-appreciation of the evidence but it is based on proper interpretation of the material on record which is within the purview of the revisional power vested in the Court u/s 50 of the Act. According to Smt. Suri on the facts and circumstances of the case the view taken by the High Court is just and proper, and is not vitiated by any illegality. As such the order does not call for any interference by this Court in exercise of the jurisdiction under Article 136 of the Constitution.

Section 50 of the Act which vests power of revision in the High Court/the District Judge reads as follows:

"50. Revision (1) The High Court may, at any time call for and examine any order passed or proceeding taken by the Court of Small Causes or the Court of Civil Judge under this Act or any order passed by the Controller under Sections 14, 15, 16 or 17 for the

purpose of satisfying itself as to the legality or correctness of such order or proceeding and may pass such order in reference thereto as it thinks fit.

(2) The District Judge may, at any time call for and examine any order passed or proceeding taken by the Court of Munsiff referred to in sub-clause (iii) of clause (d) of Section 3 for the purpose of satisfying himself as to the legality or correctness of such order or proceeding and may pass such order in reference thereto as he thinks fit. The order of the District Judge shall be final.

(3) The costs of and incidental to all proceedings before the High Court or the District Judge shall be in the discretion of the High Court or the District Judge, as the case may be."

On a fair reading of the above provision it is clear that the language of the section is wide and comprehensive and it vests power in the High Court to call for and examine any order passed or proceeding taken by the Small Causes Court under the Act and any order passed by the Controller under Sections 14,15,16 or 17 for the purposes of satisfying itself as to the legality or correctness of such order or proceeding and to pass any such order in reference thereto as the Court thinks fit. The revisional power vested in the High Court under sub-section (1) is not limited to error of law or jurisdiction. The revisional power under the section is much wider than the power under section 115 of the Code of Civil Procedure. In essence, sub-section (1) of section 50 vests in the High Court a supervisory jurisdiction over the orders passed or proceeding taken by the Courts or the Controller under the relevant provisions of the Act. Though the revisional power is wider than the revisional power vested in section 115 of the Code of Civil Procedure yet such power cannot be equated with power of an appellate court. The High Court cannot set aside the finding of fact recorded by the trial court on re-appreciation of the evidence. A similar view has been taken by this Court in *Bhoolchand and another vs. Kay Pee Cee Investments and another* (1991) 1 SCC 343 and *N.Prabhakar Rao vs. J.R. Ramesh Kumar Alias Rameshji* (2002) 1 SCC 176.

Judging the case in hand on the principles and within the parameters laid down in the abovementioned decisions we are of the view that in this case the High Court has not exceeded the limit under section 50(1) of the Act in setting aside the order passed by the Small Causes Court. The order of the High Court is not based on re-appreciation of the evidence but on proper reading of the evidence of the landlord in entirety which the trial court had omitted to do. A finding of fact recorded ignoring material evidence on record is unsustainable in law. Therefore no exception can be taken to the order passed by the High Court in interfering with such finding. For the reasons set forth above the order under challenge does not call for any interference.

Accordingly, the appeal is dismissed but in the circumstances of the case without any order for cost.

J.
(D.P.MOHAPATRA)

J.
(BRIJESH KUMAR)

May 1, 2002

JUDIS