

CASE NO.:
Appeal (civil) 8422 of 2001

PETITIONER:
T.A. Hameed

RESPONDENT:
M. Viswanathan

DATE OF JUDGMENT: 21/02/2008

BENCH:
A.K.MATHUR & ALTAMAS KABIR

JUDGMENT:
JUDGMENT
O R D E R

WITH
CIVIL APPEAL NO. 1817 OF 2004
P.M. Sukumaran & Anr. ... Appellants
Versus
Puthiya Kuttimappilakath Shalima ... Respondent

C.A. No. 8422/2001

1. Heard learned counsel for the parties. Learned counsel for the parties submit that the parties have compromised the matter and, therefore, the present appeal has become infructuous.

2. The appeal is dismissed as having become infructuous. No order as to costs.

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3. This appeal by special leave is directed against the judgment and order dated 31.1.2003 passed by the Full Bench of the Kerala High Court in CRP No. 234/1997 whereby the learned Full Bench has answered the question referred to it by the Division Bench and while answering the question referred to it, the Full Bench itself decided the case on merits. The grievance of the appellant herein is that in view of the law laid down by this Court in the case of Kesho Nath Khurana Vs. Union of India and Others 1981 (Supp) SCC 38 and Kerala State Science & Technology Museum Vs. Rambal Co. and Others (2006) 6 SCC 258, the Full Bench should not have gone on the merits of the matter and the Full Bench should have after answering the reference remitted the matter back to the Division Bench for deciding the Civil Revision Petition.

4. The brief facts necessary for disposal of the present appeal are that a Reference was made by the Division Bench of the High Court of Kerala, which reads as under :- "Are the legal heirs of a deceased tenant entitled to the protection of Section 11(17) of the Kerala Buildings (Lease and Rent Control) Act?"

5. This Reference was answered by the Full Bench in para 18 of the impugned order in the following words, "the benefits under Section 11(17) to the legal heirs/tenants cannot be accepted as laying down the correct law."

In para 19 of the impugned order the learned Full Bench asked counsel for both the parties to advance arguments on merits also as the proceedings were initiated about a decade back and asked counsel for the parties for disposing of the revision petition itself and accordingly arguments were heard on merits of the Revision Petition also and Revision Petition was disposed of by dismissing the same and directing the appellant-tenant to surrender possession within six months and directing the appellant to file an affidavit of undertaking to that effect.

6. Aggrieved against the said order dated 31.1.2003 of the Full Bench, the present appeal by special leave has been filed before this Court.

7. We have heard learned counsel for the parties. The principal submission of the learned counsel for the appellant is that the Full Bench should not have disposed of the revision petition on merits. He further submitted that once the Court directed the counsels for the parties to make submission on merits, they had no option but to address the Court on merits of the matter. He, however, submitted that in view of the law laid

down by this Court in the cases of Kesho Nath (supra) and Kerala State Science (supra) the Full Bench should not have decided the revision petition on merits and after answering the reference made to it by the Division Bench, it should have remitted the revision petition to the Division Bench for decision in accordance with law. The submission of learned counsel for the appellant appears to be correct.

8. In the case of Kesho Nath (supra), in almost identical situation, this Court has taken the view that when a reference is made to a larger Bench, the larger Bench should answer the reference and thereafter remit the case to the appropriate Bench for decision on merits. In that case also the learned Single Judge had referred the matter to the Division Bench on the question "whether the order dated January 21, 1963 made by the Settlement commissioner was final and binding in the present appeal, and if so, what is its effect upon the point in controversy in the present appeal?" The Division Bench by order dated April 7, 1980 disposed of the appeal on merits and dismissed it with costs and held that the order dated January 21, 1963 made by the Chief Settlement commissioner was not final and binding in the civil proceedings and it did not exclude the jurisdiction of the civil court to decide whether there was any encroachment by the respondent on the property conveyed to the appellant under the sale certificate dated June 7, 1963 read with the corrigendum dated September 22, 1964 issued by the District Rent and Managing Officer, Simla, pursuant to the auction sale held on September 25, 1955.

9. This Court held that it is obvious that since only the aforesaid question of law was referred by the single Judge to the Division Bench, the Division Bench should have sent the matter back to the Single Judge after deciding the question of law referred to them. But instead the Division Bench proceeded to dispose of the second appeal on merits and dismissed it with costs. This Court further observed that, "We think that the Division Bench was in error in following this procedure. The Division Bench ought to have sent the appeal back to the single Judge with the answer rendered by them to the question referred by the single Judge and left it to the single Judge to dispose of the second appeal according to law."

10. Same view was reiterated by this Court in the case of Kerala State Science (supra). In that case this Court after referring to earlier decisions in para 8 held as under

:-
"It is fairly well settled that when reference is made on a specific issue either by a learned Single Judge or Division Bench to a larger Bench, i.e., Division Bench or Full Bench or Constitution Bench, as the case may be, the larger bench cannot adjudicate upon an issue which is not the question referred to."

11. In the case at hand also, almost an identical situation had taken place that a reference was made by the learned Division Bench of the Kerala High Court to the Full Bench and the Full Bench after answering the reference went on to decide the revision petition itself on merits, which the Full Bench had no jurisdiction to do as the revision petition was not referred to the Full Bench for decision. Since, only reference was made to the Full Bench, the Full Bench should have answered the question referred to it and remitted the matter to the Division Bench for deciding the revision petition on merits. Consequently, we set aside that part of the impugned order dated 31.1.2003 whereby the Full Bench has dismissed the revision petition filed by the appellant herein. We make it clear that we are not expressing any opinion with regard to the issue which was referred by the Division Bench to the Full Bench. We are only examining the matter whether the Full Bench could have disposed of the revision petition itself or not. In these circumstances, we allow this appeal to the extent that the order of the Full Bench deciding the civil revision petition filed by the appellant herein was decided on merits by the Full Bench was not correct. The revision petition filed by the appellant shall stand revived and be placed for hearing before a Division Bench, which shall dispose of the same in accordance with law after hearing both the parties. Since the matter is old, we request the Division Bench to dispose of the revision petition expeditiously.

12. The appeal is allowed to the extent indicted hereinabove. No order as to costs.