

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4536 OF 2008
(Arising out of S.L.P. (C) No.17996 of 2006)

Somanathasa Baddi

... Appellant(s)

Versus

Chanabasappa & Ors.

... Respondent(s)

ORDER

Heard learned counsel for the parties

Leave granted.

Ist Additional Civil Judge (Junior Division)(Rent Controller) relied on the provision contained in Explanation (i) appearing below Section 27(2)(r) of the Karnataka Rent Act, 1999 (for short ‘the Act’) and granted the respondents prayer for eviction on the ground of bona fide necessity. That order has been confirmed in revision by the learned Additional District Judge. When the High Court was moved against the said order, it refused to interfere with the same. Hence, this appeal by special leave.

Learned counsel for the appellant argued that the impugned orders are liable to be set aside because the Rent Controller and Additional District Judge gravely erred by relying on Explanation (i) appearing below Section 27(2)(r), ignoring the fact that the eviction

...2/-

petition filed by the respondents was not supported by an affidavit. He further argued that High Court also committed serious error by upholding the order of eviction on the ground that the verification of the eviction petition was certified by the Administrative Officer of the Trial Court. Learned counsel emphasized that presumption envisaged in Explanation (i) appearing below Section 27(2)(r) of the Act, is required to be raised, only if the petition for eviction is supported by an affidavit and not otherwise and in the present case no such affidavit had been filed.

Learned counsel for the respondents supported the order of eviction and argued that the Courts below rightly relied on Explanation (i) appearing below Section 27(2)(r) of the Act because the verification of the eviction petition was duly certified by the Administrative Officer of the trial Court.

We have considered the respective submissions. Section 27(1)(2)(r) and Explanation (i) appended thereto reads thus:

“27. Protection of tenants against eviction – (i) 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 the Court, District Judge or High Court in favour of the landlord against a tenant, save as provided in sub-section (2).

(2) The Court may, on an application made to it in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely, ---

(a) to (q) xxx xxx xxx

...3/-

(r) that the premises let are required, whether in the same form or after re-construction or re-building, by the landlord for occupation for himself or for any member of his family if he is the owner thereof, or for any person for whom benefit the premises are held and that the landlord or such person has no other reasonably suitable accommodation.

Explanation I – For the purposes of this clause and Section 28 to 31 –

(i) where the landlord in his application supported by an affidavit submits that the premises are required by him for occupation for himself or for any member of his family dependent on him, the Court shall presume that the premises are so required.”

From a bare reading of the aforesaid provision, we have no difficulty in accepting the argument of the learned counsel for the appellant that if an application for eviction of the tenant is filed on the ground enumerated in clause (r) aforesaid and is duly supported by an affidavit, it is imperative for the Court to presume that the landlord requires the premises for his own occupation or for any member of his family dependent on him. The presumption contemplated by Explanation (i) is rebuttable and the tenant can lead evidence to show that the landlord does not require the premises for his own occupation or for any member of his family dependent on him for that his need is not bona fide.

In the present case, we find that the eviction petition was not supported by an affidavit of the landlord. The verification of the plaint, which is said to have been certified by the Administrative Officer of

....4/-

the trial Court, cannot be treated as an affidavit. Therefore, no presumption could have been raised by the Rent Controller that the landlord needed the premises for occupation for himself or for any member of his family.

A careful scrutiny of the record shows that the parties did lead oral as well as documentary evidence on the issue of requirement of the landlord, but neither the Rent Controller nor Additional District Judge considered the same and recorded a finding that de hors the presumption contemplated in Explanation (i) appearing below Section 27(2)(r), the landlord has been able to prove his requirement for the premises in dispute.

In view of the above, it must be held that the order of eviction was passed by the Rent Controller on an unfounded premise and the same is liable to be set aside. On the same ground, the orders passed by the Additional District Judge and the High Court are liable to be set aside.

Accordingly, the appeal is allowed, impugned orders are set aside and the matter is remitted to the original authority to dispose of the original proceeding in accordance with law after giving opportunity of hearing to the parties.

No costs.

..... J.
[B.N. AGRAWAL]

..... J.
[G.S. SINGHVI]

New Delhi,
July 18, 2008.