

CASE NO.:
Appeal (civil) 5547 of 2007

PETITIONER:
K.N. Anantharaja Gupta

RESPONDENT:
Smt. D.V. Usha Vijaykumar

DATE OF JUDGMENT: 30/11/2007

BENCH:
TARUN CHATTERJEE & P. SATHASIVAM

JUDGMENT:
JUDGMENT

TARUN CHATTERJEE, J.

1. Leave granted.

2. An eviction petition being HRC No. 233 of 2002 was filed before the Chief Judge, Small Causes Court, Bangalore for eviction of the appellant from the residential premises bearing No. 100, Surveyor Street, Bangalore-4 (in short "the suit premises") under Section 27(2)(r) read with Section 31 of the Karnataka Rent Act (in short "the Act") on the ground that since the suit premises is old and in a dilapidated condition, the same was required to be demolished in order to put up a new construction and that the respondent required the suit premises for use and occupation by herself and her children after demolition and reconstruction of the same as she and her children were staying in her father in law's house. It was also the case of the respondent that the appellant had been residing in the suit premises for more than 20 years and therefore, he should find his own suitable accommodation and accordingly, he was liable to be evicted.

3. A written statement was filed by the appellant in which the allegations made in the eviction petition were denied and it was stated that the respondent was not entitled to evict the appellant as she did not require the suit premises for her bona fide use and occupation. It was further alleged in the written statement that since the respondent was not the sole owner of the suit premises, the eviction petition filed at her instance only was not maintainable and therefore, the same was liable to be dismissed. It was also alleged that the condition of the suit premises was not so dilapidated for which demolition and reconstruction was necessary. The Chief Judge of the Small Causes Court, Bangalore by his order dated 1st of April, 2004 dismissed the eviction petition of the respondent. Aggrieved by the aforesaid order of the Chief Judge of the Small Causes Court at Bangalore, the respondent filed a revision petition before the High Court of Karnataka at Bangalore being H.R.R.P No. 366 of 2004. The High Court by its order dated 19th of October, 2006, had set aside the order of the Chief Judge of the Small Causes Court thereby allowing the revision petition and directing eviction of the appellant from the suit premises but granted six months time to vacate and handover the possession of the same to the respondent. It is this order of the High Court, which is now under challenge in this court by way of a special leave petition in respect of which leave has already been granted.

4. Heard the learned counsel for the parties and examined the impugned order of the High Court as well as the order of the Small Causes Court and the other materials on record. In our view, the High Court was not justified in reversing the judgment of the Small Causes Court without being satisfied whether the respondent had fulfilled the conditions required for eviction of the appellant as laid down under Section 27(2)(r) of the Act. Chapter 6 of the Act deals with regulation of eviction. Section 27 of the

Act deals with protection of tenants against eviction. Sub-section (1) of Section 27 clearly says that 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 in favour of the landlord save as provided in sub-section (2) of Section 27. Sub-section (2) of Section 27 empowers the court, on an application made to it in the prescribed manner, to make an order for the recovery of possession of the premises on one or more of the grounds enumerated therein. Clause (r) of sub-section (2) of Section 27 being one such ground and involved in present case runs as under:

"(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 whose benefit the premises are held and that the landlord or such person has no other reasonably suitable accommodation..."

We have examined this provision viz., Section 27(2)(r) of the Act in detail. After a careful examination of this provision, we summarize as follows:

No order or decree for the recovery of possession of any premises shall be made by the court against the tenant, save as provided in Section 27(2). A plain reading of Section 27(2)(r) would clearly show that a decree for eviction or an order for recovery of possession can be passed by a court if the premises let is required, whether in the same form or after reconstruction or rebuilding by the landlord for occupation for himself or for any member of his family if:

- (i) he is the owner of the said premises and
- (ii) the landlord or such person has no other reasonably suitable accommodation.

It is only when the aforesaid conditions are satisfied the court can pass an order or decree of possession of the suit premises against the tenant. We have already noted that the eviction petition of the respondent was dismissed by the Chief Judge, Small Causes Court, Bangalore on the ground that the respondent had failed to prove that the suit premises was required for use and occupation by herself and her children after demolition and reconstruction and that the respondent had failed to prove that she and her children had no other reasonably suitable accommodation. This finding as to Bonafide requirement of the respondent was reversed by the High Court in revision. Let us, therefore, examine whether the High Court was justified in reversing the finding of the Chief Judge, Small Causes Court, Bangalore and whether the conditions as required under Section 27(2)(r) of the Act have been satisfied so as to evict the appellant from the suit premises. While reversing the finding of the Chief Judge, Small Causes Court, Bangalore, so far as the requirements of Section 27(2)(r) are concerned, the High Court made the following findings: -

"It is also emerged on the face of it that the petitioner needs the accommodation for her and her children and she needs to demolish and take up a construction and obtain plan from the authority. This aspect of the matter has been overlooked by the Trial Court. Therefore, I am of the considered view that the petitioner has made out a case. The premises is required for her occupation to take up the construction and to give the same for personal use by her children as the claim is bonafide."

Having found as quoted hereinabove, the High Court reversed the order of the Chief Judge, Small Causes Court, Bangalore and held that the respondent was entitled to an order of eviction under Section 27(2)(r) of the Act. As noted hereinabove, before an order or decree for eviction is passed, the court must be satisfied that the premises let is required by the landlord for occupation for himself or for any member of his family, if he is the

owner of the same and the landlord or such person has no other reasonably suitable accommodation. In the present case, the respondent is, admittedly, a co-owner of the suit premises. It is well settled that a co-owner is entitled to evict a tenant on the ground of bona fide requirement. However, this aspect need not be gone into in detail in view of the fact that the High Court had not recorded any finding on the question whether the respondent was an owner or co-owner in respect of the suit premises. Now, the question is whether the respondent and her children are in possession of a reasonably suitable accommodation. According to the respondent, she has been living with her children in the residence of her father-in-law. The question would, therefore, be whether this accommodation could be said to be reasonably suitable accommodation. Admittedly, from the record, it does not appear that there has been any threat of eviction of the respondent and her children by her father-in-law from the house in which they are presently residing. This aspect of the matter, we are afraid, was not taken into consideration by the High Court. Before passing any order of eviction, it was the duty of the High Court to come to a finding that the respondent was not in possession of a reasonably suitable accommodation, which is the mandatory requirement under Section 27(2)(r) of the Act.

5. That apart, there is another aspect of this matter. As noted hereinabove, the eviction of the tenant was sought under Section 27(2)(r) of the Act by alleging that the suit premises was required by the respondent and her children for their own use and occupation after demolition and reconstruction of the building already existing. In order to satisfy this condition, as enumerated in Section 27(2)(r) of the Act, it is essential that the court should also find that the premises let needs to be demolished and that the same would be reconstructed after demolition. It is only after this that the question of user of the same after reconstruction would be taken into consideration. From the order of the High Court passed in revision, it would be evident that the only ground on which the order of the Chief Judge, Small Causes Court, Bangalore was reversed was that the respondent needed the suit premises to demolish the same and to take up new construction and obtain plans from the authority. In our view, before granting a decree for eviction on the ground of demolition and reconstruction and then for use of the same for occupation, the court must be satisfied that: -

- (i) the suit premises is so dilapidated that it needs demolition;
- (ii) the landlord has the capacity to reconstruct the suit premises after demolition;
- (iii) the sanctioned plan has to be taken from the concerned authority.

The High Court proceeded only on the ground that the respondent required the suit premises for occupation by herself and her children and needed to demolish and take up a new construction on the same. In our view, this would not satisfy the requirements envisaged in Section 27(2)(r) of the Act. The court, as noted herein earlier, must be satisfied that all the conditions, as enumerated above, have been satisfied by the landlord by production of cogent evidence in respect of the same. Only an expression of desire would not entitle the landlord to get a decree for eviction under Section 27(2)(r) of the Act.

6. Another aspect involved in this case needs to be stated because the eviction petition was filed not only under Section 27(2)(r) of the Act but also under Section 31 of the Act, recourse to which is available to a widow only once. We, however, need not go into this question at all. In any view of the matter, the High Court, while reversing the order of the Chief Judge, Small Causes Court, Bangalore had also not adhered to this aspect of the matter and therefore, it is also not necessary for us to go into this question in this appeal.

7. For the reasons aforesaid, we are unable to sustain the order of the

High Court and accordingly, the impugned judgment of the High Court is set aside and the matter is remitted back to the High Court for a decision in the light of the findings made hereinabove. While deciding the revision petition, it will be open to the High Court either to permit the parties to lead evidence in the High Court or to frame the questions and direct the Chief Judge, Small Causes Court, Bangalore to take evidence and to make a finding on the same, which may then be transmitted to the High Court and thereafter, the High Court will decide the revision petition in the light of the findings, the evidence adduced and the evidence already on record within a period of six months from the date of supply of a copy of this order to it without granting any unnecessary adjournment to either of the parties.

8. For the reasons aforesaid, the appeal is thus allowed to the extent indicated above. There will be no order as to costs.

JUDIS