

CASE NO.:
Appeal (civil) 5183 of 2006

PETITIONER:
G.L. Vijain

RESPONDENT:
K. Shankar

DATE OF JUDGMENT: 24/11/2006

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) No. 23738 of 2004)

S.B. SINHA, J.

Leave granted.

Extent of application of revisional jurisdiction of High Court under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (for short "the Act") falls for question in this appeal which arises out of a judgment and order dated 30.09.2004 passed by a learned Single Judge of the Madras High Court (Madurai Bench) which is in the following terms:

"This Revision Petition is admitted, subject to the condition that the petitioner deposits 50% of the entire post arrears, by calculating the monthly rent as Rs. 12,650/-, fixed by the appellate authority from the date of fair rent control petition, named, 30.03.1992, which shall be paid within a period of eight weeks from today. The petitioner shall also continue to pay the monthly rent of Rs. 12,650/- on or before 10th of every succeeding month."

Having regard to the point involved in this matter, it is not necessary to state the fact of the matter in details. Suffice it to notice that Appellant, herein is a tenant. Respondent filed an application for fixation of fair rent before the Rent Controller. The Additional District Court, Madurai (Rent Controller) fixed rent of Rs. 15,870/- per month in respect of the tenanted premises by an order dated 4.04.2000. The said amount of fair rent determined by the Rent Controller was directed to be paid from the date of filing of the said petition, viz., 30.03.1992. An appeal was preferred therefrom before the Principal Subordinate Judge, Madurai, being the appellate authority under the Act. The appellate authority by an order dated 27.01.2004 fixed fair rent @ Rs. 12,650/- per month for the said premises and directed the appellant to pay the same from the date of institution of the application filed before the Rent Controller. Aggrieved by and dissatisfied therewith, the appellant filed a revisional application before the High Court wherein the aforementioned order was passed.

We are not concerned herein with the merit of the matter.

The short question which arises for consideration is as to whether while admitting the revision petition, the High Court could have imposed conditions as has been purported to be done by reason of the impugned judgment.

Mr. K.V. Viswanathan, learned counsel appearing on behalf of the

respondent, in support of the impugned order, would submit that the High Court has plenary jurisdiction to pass such an order as:

- (i) its powers are implied and, thus, there need not be any express provision in this behalf;
- (ii) a statute can never be exhaustive and, thus, the court can exercise its inherent jurisdiction;
- (iii) the High Court's jurisdiction being plenary, it can evolve its own procedure;
- (iv) the power to pass any interim order is incidental or ancillary to its appellate jurisdiction;
- (v) the revisional power conferred under Section 25 of the Act is wider.

We would start with the last contention of the learned counsel that Section 25 of the Act confers a wide jurisdiction upon the High Court. The said jurisdiction is wider than one under Section 115 of the Code of Civil Procedure. The revisional court, therefore, would exercise its jurisdiction if the conditions precedent laid down in Section 25 of the Act are fulfilled. The limitation of power as contained in Section 115 of the Code of Civil Procedure, therefore, is not applicable. [See *Sri Raja Lakshmi Dyeing Works and Others v. Rangaswamy Chettiar* (1980) 4 SCC 259]

There cannot be any dispute with regard to the proposition of law that the High Court having plenary jurisdiction has incidental or ancillary power. There cannot further be any dispute that the court in appropriate cases can exercise its inherent jurisdiction to pass an interim order.

It is, however, one thing to say that the court has an incidental, ancillary or inherent power, but, it is another thing to say that its revisional jurisdiction can be curtailed by imposing condition while admitting a revisional application. Incidental or ancillary powers are provided for in the Code of Civil Procedure. They otherwise inhere in the jurisdiction of the court exercising plenary jurisdiction in certain situations but it must be stated that an appellate court can exercise the incidental or ancillary power only after the appeal has been entertained and not as a condition precedent for entertaining the same.

It must be borne in mind that incidental power is to be exercised in aid to the final proceedings. In other words an order passed in the incidental proceedings will have a direct bearing on the result of the suit. Such proceedings which are in aid of the final proceedings cannot, thus, be held to be at par with supplemental proceedings which may not have anything to do with the ultimate result of the suit.

Such a supplemental proceeding is initiated with a view to prevent the ends of justice from being defeated. Supplemental proceedings may not be taken recourse to in a routine manner but only when an exigency of situation arises therefor. The orders passed in the supplemental proceedings may some time cause hardships to the other side and, thus, are required to be taken recourse to when it is necessary in the interest of justice and not otherwise. There are well-defined parameters laid down by the Court from time to time as regards the applicability of the supplemental proceedings.

Incidental proceedings are, however, taken recourse to in aid of the ultimate decision of the suit which would mean that any order passed in terms thereof, subject to the rules prescribed therefor, may have a bearing on the merit of the matter. Any order passed in aid of the suit is ancillary power.

The expression 'ancillary' means aiding, auxiliary; subordinate; attendant upon; that which aids or promotes a proceeding regarded as the principal.

The expression 'incidental' may mean differently in different contexts. While dealing with a procedural law, it may mean proceedings which are procedural in nature but when it is used in relation to an agreement or the delegated legislation, it may mean something more; but the distinction

between an incidental proceeding and a supplemental proceeding is evident.

There is furthermore no dispute that the High Court can exercise its inherent jurisdiction in appropriate cases. The revisional jurisdiction, however, in effect and substance is an appellate jurisdiction.

In *Narinder Mohan Arya v. United India Insurance Co. Ltd. and Others* [(2006) 4 SCC 713], this Court observed:

"47. A revisional jurisdiction as is well known involves exercise of appellate jurisdiction. (See *Shankar Ramchandra Abhyankar v. Krishnaji Dattatreya Bapat and Nalakath Sainuddin v. Koorikadan Sulaiman.*)"

The court's power to impose condition for entertaining an application must be provided for under the statute itself. We may immediately notice the distinction between the power of the court exercised under Order IX, Rule 7 of the Code of Civil Procedure vis-à-vis Order IX, Rule 13 thereof. Whereas while exercising its jurisdiction under Order IX, Rule 7 of the Code of Civil Procedure, the court can impose conditions in regard to payment of costs, but while exercising its power under Order IX, Rule 13 thereof, the court can exercise a larger jurisdiction in the sense that it can impose other conditions.

In *Tea Auction Ltd. v. Grace Hill Tea Industry & Anr.* [2006 (9) SCALE 223], it was stated:

"Order IX Rule 13 of CPC did not undergo any amendment in the year 1976. The High Courts, for a long time, had been interpreting the said provision as conferring power upon the courts to issue certain directions which need not be confined to costs or otherwise. A discretionary jurisdiction has been conferred upon the court passing an order for setting aside an ex parte decree not only on the basis that the defendant had been able to prove sufficient cause for his non-appearance even on the date when the decree was passed, but also other attending facts and circumstances. It may also consider the question as to whether the defendant should be put on terms. The court, indisputably, however, is not denuded of its power to put the defendants to terms. It is, however, trite that such terms should not be unreasonable or harshly excessive. Once unreasonable or harsh conditions are imposed, the appellate court would have power to interfere therewith..."

Strong reliance has been placed by Mr. Viswanathan on *Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.* [(2005) 1 SCC 705] wherein Lahoti, CJ, speaking for a Division Bench of this Court, opined that conditions may be imposed by the revisional court while granting stay. There is no dispute with regard to the said legal proposition inasmuch as the court can exercise such a power in terms of Order XLI, Rule 5 of the Code of Civil Procedure or the provisions akin or analogous thereto. This Court did not say that such conditions can be exercised while admitting a revision petition.

However, we may notice that in *Devi Theatre v. Vishwanath Raju* [(2004) 7 SCC 337], a Division Bench of this Court has clearly held:

"5. The learned counsel for the appellant submits that appeal lies from every decree passed by any court exercising original jurisdiction. The

jurisdiction of the court in first appeal extends to examine the questions of facts as well as that of law. It is though true as pointed out by the learned counsel for the respondent that under Order 41 Rule 11 CPC it would be open for the court to dismiss the appeal in limine at the time of admission but even examining the matter from that point of view we find that the court while considering the question of admission of appeal filed under Section 96 CPC, may admit the appeal if considered fit for full hearing having prima facie merit. Otherwise, if it finds that the appeal lacks merits, it may be dismissed at the initial stage itself. But admission of the appeal, subject to condition of deposit of some given amount, is not envisaged in the provision as contained under Section 96 read with Order 41 Rule 11 CPC. The deposit of the money would obviously have no connection with the merits of the case, which alone would be the basis for admitting or not admitting an appeal filed under Section 96 CPC. Further, imposition of condition that failure to deposit the amount, would result in dismissal of the appeal compounds the infirmity in the order of conditional admission.

6. It is a different matter, in case the appellant prays for stay of the execution of the decree or for any order by way of an interim relief during the pendency of the appeal; it is open for the court to impose any condition as it may think fit and proper in the facts and circumstances of the case. Otherwise imposing a condition of deposit of money subject to which an appeal may be admitted for hearing on merits, is not legally justified and such order cannot be sustained."

It is, therefore, evident that while the court can impose conditions while granting stay in exercise of its jurisdiction under Order XLI, Rule 5 of the Code of Civil Procedure, it cannot pass any such order where the appellate or revisional jurisdiction is to be exercised.

We may, however, hasten to add that by saying so, we do not mean that the revision petitions are to be admitted as a matter of course. This Court, while exercising its revisional jurisdiction, may also consider the merit of the matter and may not admit the same. But, in any event, upon application of mind, if the court comes to the conclusion that it is a fit case where revisional jurisdiction should be exercised, in our opinion, no condition therefor can be imposed. Such conditions, it will bear repetition to state, can be imposed only when the court considers the question of grant of stay.

For the reasons aforementioned, the impugned judgment cannot be sustained and that part of the order whereby conditions have been imposed for admission of the revision application is set aside. This appeal is allowed. No costs.