

The Periyar District Consumer Cooperative Wholesale Stores Ltd. No. AA467 Vs. B.Balagopal (D) Through LRS. & Ors.

Civil Appeal No. 1893 of 2020 arising out of SLP (Civil) No. 781 of 2019
2020-03-02 | A.S. Bopanna,J.
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Full judgment text

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A.S. Bopanna,J.

1. Leave granted.

2. The appellant is before this Court in this appeal assailing the judgment dated 14.11.2017 passed by the High Court of Judicature at Madras in A.S.No.811 of 2009. Through the said judgment the High Court has dismissed the appeal filed by the appellant against the judgment and decree dated 18.08.2008 passed by the Additional District and Sessions Court (Fast Track Court No.I), Erode in O.S.No.37 of 2007. The respondents herein were the plaintiffs in the said suit while the appellant herein was the defendant. For the sake of convenience and clarity, the parties will be referred to in the rank assigned to them before the Trial Court below.

3. The undisputed position in the present case is that the plaintiff is the owner of the premises in question wherein the defendant was inducted as the tenant under the lease agreement dated 09.07.1980. The said lease was for a period of three years and the monthly rental was fixed at Rs.6,500/.

The advance of Rs.20,000/was paid by the defendant to the plaintiff. Subsequently the plaintiff filed the civil suit in O.S.No.95/1990 seeking eviction of the defendant and vacant possession of the suit schedule property. The Trial Court through its judgment and decree dated 08.02.1995 directed the defendant to vacate and deliver vacant possession of the premises and the compensation of Rs.15,000/was ordered for the period of three years prior to filing the suit till date of possession.

4. The defendant, claiming to be aggrieved filed an appeal under Section 96 of the Civil Procedure Code before the High Court of Madras in Appeal Suit No.714/1995. In the said appeal it was ultimately agreed that the defendant would vacate the premises in question after six months and for the said period the monthly compensation of Rs.50,000/would be paid to the plaintiff. The defendant has accordingly vacated the premises during November 2003. In the earlier proceedings since liberty was reserved to be plaintiff to initiate an appropriate proceeding for damages, the plaintiffs have initiated the present round of litigation.

5. In that regard the suit in O.S.No.37/2007 was filed by the plaintiffs seeking damages at the rate of Rs.89,000/per month. The Trial Court having adverted to the rival contentions has decreed the suit through its judgment dated 18.08.2008. The Trial Court has awarded the monthly compensation of Rs.89,000/for the periods 14.07.2000 to 14.07.2003.

Thus, in all, the suit was decreed for a sum of Rs.26,98,367/. Further sum of Rs.3,56,000/was ordered towards future loss and cost of the suit. The defendant claiming to be aggrieved by the same preferred the appeal before the High Court in A.S.No.811/2009 which was dismissed through the judgment dated 14.11.2017. It is in that light the defendant claiming to be aggrieved is before this Court in this appeal.

6. Heard Mr. Jayanth Muth Raj, learned senior counsel for the petitioner, Mr. K.K. Mani, learned counsel for the respondents and perused the appeal papers.

7. The factual position relating to the tenancy, the earlier round of litigation and the defendant having thereafter vacated the premises during November 2003, there is no serious dispute. The only issue for consideration is with regard to the liability or otherwise of the defendant to pay the damages as sought by the plaintiffs and in that regard, whether the claim as put forth by the plaintiffs and awarded by the Trial

Court is justified.

As noted, the lease had commenced on 09.07.1980 and rental fixed at that point of time was in a sum of Rs.6,500/per month. At the earlier instance the suit seeking eviction of the defendant was filed in O.S.No.95/1990 and the same was decreed directing the defendant to vacate and pay the compensation at Rs.15,000/per month. The compensation was awarded for a period of three years.

8. The defendant claiming to be aggrieved filed the appeal in A.S.No.714/1995. The appeal was disposed of on 26.02.2003 directing payment of past damages of Rs.3,47,953/at Rs.15,000/per month on or before 13.03.2003 and the defendant was granted six months' time to vacate the premises. During the said period of six months the defendant was directed to pay the damages at Rs.50,000/per month.

However, liberty was reserved to the plaintiffs/landlords to file a separate suit for damages at a higher rate than Rs.50,000/which had been fixed by the High Court. It is in that light the subsequent suit O.S.No.37/2007 was filed seeking for damages at the rate of Rs.89,000/per month.

9. In the course of consideration in the suit the Trial Court has kept in view the provisions as contained in Section 4 of the Tamil Nadu (Lease and Rent) Control Act which provides for fixation of fair rent and in that light had arrived at a conclusion that the monthly rent would work out to the sum of Rs.1,08,929/. However, since the plaintiff had limited the claim for damages at Rs.89,000/per month, the suit was accordingly decreed.

Insofar as the nature of the consideration made by the Trial Court, since the area of the premises which had been let out is not in dispute and since the rental for such area was calculated at the rate as prescribed under the Rent Control Act, the legality of the decision cannot be assailed. It is in that light the High Court while reappreciating the matter in the appeal in A.S.No.811/2009 has referred to the very aspects taken note by the Trial Court and has accordingly dismissed the appeal.

10. The learned senior counsel for the appellant while assailing the decree would contend that though the factual aspects are not in dispute, the manner in which the enhanced rent by way of damages has been awarded by the Trial Court is not justified. It is contended that in the earlier round of litigation, when an application was filed by the plaintiffs in the eviction proceedings in A.S.No.714/1995, an understanding had been reached and the defendant had accordingly agreed to vacate the premises in six months and have adhered to such undertaking and vacated the premises during November 2003.

In such event merely because liberty was reserved in the said proceedings, instituting a suit of the present nature seeking higher damages would not be justified more so in a circumstance when the High Court in the earlier instance had fixed a higher rent for the said period of six months. It is further contended that the defendant is a Consumer Cooperative Society and would not be in a position to bear such heavy financial burden. It is pointed out that the defendant has already paid the sum of Rs.10 lakhs towards the decretal amount on 27.04.2010 and as such the matter should come to an end at that. He, therefore, seeks that the above appeal be allowed.

11. The learned advocate for the plaintiffs would however seek to sustain the judgment and decree passed by the Trial Court. He contends that though the plaintiff was entitled to the damages even for the earlier period, keeping in view the law of limitation the Trial Court has decreed the suit only for the period of three years prior to the date on which the defendant vacated. In such event the defendant should not raise any further grievance in the matter. It is contended that in O.S.No.95/1990 the Trial Court had in fact fixed the compensation at Rs.15,000/per month while directing eviction.

The defendant instead of accepting the same, paying the damages and vacating the premises had filed the appeal and remained in possession for the further period. It is contended that in the instant case the Trial Court has kept in view the provision of law and has accordingly arrived at an appropriate conclusion relating to damages which does not call for interference more particularly when it is restricted to the claim which is lesser the admissible damages.

12. Having taken note of the manner of consideration made by the Trial Court as also the High Court in the earlier round of litigation relating to eviction and the present round of litigation relating to damages, an appropriate consideration is necessary in the background of the contentions put forth by the learned senior advocate for the defendant and the learned advocate for the plaintiffs and in that light keeping in view the status of the parties and their conduct.

As noticed the Trial Court while decreeing the suit through its judgment dated 18.08.2008 has made reference to the Rent Control Act, kept in mind the provisions contained therein and has thereafter arrived at a conclusion. The High Court on reappreciating the same has endorsed the view. On that aspect further consideration would not be necessary.

13. However, what is to be taken note in the present facts is that, though the ejectment suit was decreed on 08.02.1995 and the appeal had been immediately filed by the defendant in A.S.No.714/1995, during the pendency of the appeal, in view of an application filed by the plaintiff, an understanding was reached that the defendant agreed to vacate the premises within six months. While granting the said period of six months to vacate, the High Court, for the said period had also fixed the compensation at the sum of Rs.50,000/per month.

It is no doubt true that the High Court had also reserved the liberty to the plaintiff to seek for a higher amount by filing a separate suit, if need be. In a normal circumstance if the tenant had not voluntarily vacated, a claim for such damages would be very much justified. Even otherwise since such right had been reserved, the plaintiff no doubt was entitled to institute the suit.

14. In the present facts, during the course of consideration of this appeal what appealed to this Court is also that the appellant is a District Consumer Cooperative Wholesale Stores and the premises had been taken on rent for its activity and it is not a business activity in the strict sense of the term but is cooperative activity for the benefit of members who are shareholders.

In the process of eviction when time of six months was granted to vacate and rent had been fixed at Rs.50,000/per month the same was also paid by them without default. In such circumstance it was suggested by this Court that the parties arrive at an amicable settlement so that either of them are not entirely prejudiced and the equities could be balanced.

The learned senior counsel for the defendant was receptive to the said suggestion and had indicated that in addition to the sum of Rs.10 lakhs paid towards the decretal amount, a reasonable amount suggested by this Court would be paid and the matter would be brought to a close. The learned counsel for the plaintiff however did not put forth any suggestion for amicable settlement but insisted on payment of the entire amount under the decree.

15. In that background having taken into consideration all materials and the special circumstance noted above, we are of the opinion that a modification of the judgment and decree is required to be made in the interest of justice so as to limit the decretal amount to a reasonable quantum.

In that regard reference has already been made to the fact that the defendant is a Consumer Cooperative Wholesale Stores and has already vacated after paying the enhanced amount ordered by the High Court. If substantial unplanned expenditure is heaped on them for the retrospective period it would be put in a financially precarious position.

At the same time for having used the premises and considering the fact that the premises was taken in the year 1980 and the enhancement in such cases will be gradual, the drastic application of the prevailing rent though not justified in the present facts and circumstance, the plaintiffs would be entitled to a reasonable compensation. In such event when the High Court at first instance in A.S.No.714/1995 had fixed the damages at Rs.50,000/per month for the period of six months after which the defendant was to vacate, it would be justified if the said amount of Rs.50,000/per month is made applicable even to the earlier period of three years which was taken into consideration by the Trial Court. In our opinion such order will meet the ends of justice.

16. Therefore, the damages for the periods 14.07.2000 to 14.07.2003 if calculated at the rate of Rs.50,000 per month would work out to Rs.18 lakhs in all. As noted, the defendant has paid a sum of Rs.10 lakhs towards the decretal amount on 27.04.2010. Further for the overlapping period between March to July 2003 which was fixed by the High Court for vacating, the damages have already been paid at Rs.50,000/per month. If that be the position, the matter could put at rest by directing the defendant to pay further sum of Rs.7,50,000/to the plaintiff in full and final settlement of all claims, by modifying the decree to that extent.

17. In the result, we pass the following order:

(i) Judgment and decree dated 18.08.2008 passed in Suit No.37/2007 affirmed by the High Court in AS No.811/2009 stands modified holding that the defendant shall pay to the plaintiff the sum of

Rs.17,50,000/being the lumpsum damages for the periods 14.07.2000 to 17.07.2003.

(ii) Since the sum of Rs.10 lakhs has been paid by the defendant to the plaintiffs on 27.04.2010, the balance of sum of Rs.7,50,000/shall be paid within a period of three months from this date.

(iii) If the amount of Rs. 7,50,000/is not paid within the time frame of three months, the same shall carry interest at the rate of 12 per cent per annum on the expiry of three months till the date of payment.

(iv) On payment of the amount ordered herein the same will stand in full and final quit of all claims between the parties and all litigations shall come to an end.

(v) The appeal is allowed in part. The parties shall however bear their own costs in this appeal. (vi) All applications stand disposed of.

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