

(FOR JUDGMENT)

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NOS.2303-2308 OF 2005.

(Arising out of S.L.P.(C) Nos.18964-18969/2004)

N.S. VISHWANTHA SHETTY

Petitioner(s)

VERSUS

K.R. SHIVASWAMY & ORS.

Respondent(s)

(HEARD BY HON'BLE P.VENKATARAMA REDDI AND A.K. MATHUR, JJ)

Date: 31/03/2005 These Petitions were called on for pronouncement of
Judgment/Order today.

CORAM :

HON'BLE MR. JUSTICE P. VENKATARAMA REDDI

HON'BLE MR. JUSTICE P.P. NAOLEKAR

For Petitioner(s)

Mr. P.P. Singh,Adv.

For Respondent(s) Mr. S.N. Bhat,Adv.

RECORD OF PROCEEDINGS

order of the Hon'ble Mr. Justice P. Venkatarama Reddi pronounced the

Bench comprising his Lordship and Hon'ble Mr. Justice A.K. Mathur.

(A.S. BISHT)

(PUSHAP LATA BHARDWAJ

COURT MASTER

COURT MASTER

(Signed order which is not reportable is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.2303-2308 OF 2005

(Arising out of SLP(C)Nos.18964-18969/2004)

N.S VISWANATHA SHETTY

... APPELLANT

VERSUS

K.R. SHIVASWAMY & ORS.

... RESPONDENTS

O R D E R

Delay condoned.

Leave granted.

The appellant herein is the owner of three shops situate in Kollegal Town, which is a

town municipal council constituted as such under the Karnataka Municipalities Act, 1964. The

appellant filed eviction petitions under the Karnataka Rent Control Act, 1961 (since repealed)

for eviction of the respondents-tenants on the ground of bona fide need for personal occupation.

Eviction was ordered by the learned Munsif. The District Judge, Mysore confirmed the eviction

order on a revision filed by the aggrieved tenants under Section 50(2) of the said Act.

Thereupon, the respondents filed further revisions before the High Court of Karnataka under

Section 115 of the Code of Civil Procedure. During the pendency of revisions in the High Court,

the Karnataka Rent Act, 1999 came into force on and from 31st December, 2001. Before the

revision petitions were taken up for hearing, the learned counsel appearing for the tenants filed a

Memo stating that the premises in question was situate in a town municipal council area and,

therefore, it was excluded from the purview of the Karnataka Rent Act, 1999 and by virtue of

Clause (c) of sub-Section (2) of Section 70 of the said Act, the entire proceedings at whatever

stage they were, stood abated. Accepting the submission made by the learned counsel for the

tenants, the learned Single Judge held that the eviction proceedings stood abated. The learned

Judge then observed that it would not come in the way of the landlord's right to initiate

proceedings for eviction under any other law in force. The review petitions filed by the

appellant-landlord were also dismissed with an observation that in view of the location of the

premises (in the town municipal area), "no useful purpose will be served even if it is held that

only revision proceedings would abate and not the entire proceedings having regard to Clause (c)

of sub-Section (2) of Section 70". After the dismissal of the review petitions, the special leave

petitions giving rise to the present appeals were preferred by the land-lord.

The learned counsel for the appellant submits that the assumption of the High Court

that the new Act had no application to the premises situate in town municipal area and,

therefore, the proceedings stood abated under Clause (c) of Section 70(2) of the Act of 1999 is

not correct. According to him, the expression 'City Municipal Council' encompasses within its

scope the town municipal council as well. This contention was not pursued in view of the

alternative submission made by the appellant's counsel seeking remand of the case to the High

Court on a different ground.

The respondents filed revision petitions before the High Court under Section 115 of C.P.C.

inasmuch as they already availed of the remedy of revision to the District Judge as provided for

by Section 50(2) of the Act of 1961. Such revisions filed under Section 115 C.P.C., according to

the learned counsel, are not in any way hit by the Repeal and Savings provision contained in the

new Act and, therefore, the revision ought to have been decided on merits. The observations

made by the Division Bench of the Karnataka High Court in M/s. Mercury Press & Ors. vs.

Ameen Shacoor & Ors. ILR 2002 KAR 2304 are relied upon in this context. It was observed

therein :

"iii) The proceeding that get abated under Section 70(2)(c) are only proceeding initiated under the provisions of the Old Act. I t the proceeding pending is not initiated under the Old Act (as for example a suit for recovery of rents under Section 26 of CPC or a revision proceeding under Section 115 CPC, then obviously, Section 70(2)(c) will not apply."

It is also the contention of the learned counsel for the appellant that the law laid down

in the aforesaid decision was not kept in view while passing the impugned orders. Elaborating

this contention the learned counsel for the appellant further submits that irrespective of the

applicability of the new Rent Act to the buildings in question, the revision petitions ought not to

have been thrown out relying on Clause (c) of sub-Section (2) of Section 70. It is brought to our

notice that the special leave petition filed against the judgment of the Division Bench referred to

supra was dismissed in limine. The correctness of the ruling of the Division Bench has not been

questioned before us. The learned counsel for the respondents could not seriously resist the

request for remand realizing the fact that the impugned order did not refer to the decision in

Mercury Press case. In the circumstances, we are of the view that it would be just and expedient

to set aside the impugned order and remit the revision petitions to the High

h Court for fresh

disposal so that the matter could be decided afresh in the light of the principles laid down in

Mercury Press (ILR 2002 KAR 2304) and on merits, if necessary.

The appeals are, accordingly, allowed without expressing any view on the merits of the case.

.....J.

(P. V

ENKATARAMA REDDI)

.....J

(A.K

. MATHUR)

New Delhi,

March 31, 2005.