1975 PLRonline 0002

SUPREME COURT OF INDIA

*Before: A.N. Ray(CJ), V.R. Krishnaiyer, Kuttyil Kurien Mathe*w.

Pasupuleti Venkateswarlu

v.

Civil Appeal 2120 and 2122 of 1972

18.03.1975

Suit – Maintainability of – Subsequnet events – It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice — subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed. On both occasions the High Court, in revision, correctly took this view. The later recovery of another accommodation by the landlord, during the pendency of the case, has as the High Court twice pointed out, a material bearing on the right to evict, in view of the inhibition written into Section 10(3)(iii) itself. We are not disposed to disturb this approach in law or finding of fact. [Para 4]

Judgment

V.R Krishna Iyer, J.— Once the facts are stated fairly, one is left to wonder what substantial issue of law deserving of adjudication by the Supreme Court survives at all in these appeals. We may straightway proceed to state, with brevity, the case of the appellant presented for our scrutiny and make short shrift of it as it merits little more.

2. The appellant, a landlord of a large building, had leased out in separate portions his building to several tenants. One of such tenants is the respondent. The former resolved to start a business in automobile spares and claimed eviction of the respondent by Rent Control proceedings, under Sections 10(3)(iii)(a) and (b) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. The petition was resisted and the Rent Controller dismissed the petition. The appeal by the landlord failed but, in revision, the High Court chose to remand the case to the Appellate Authority. The litigation lengthened further because the latter, after hearing parties, remitted the whole case to the trial court for fresh disposal in accordance with some directions and,

after allowing parties to lead evidence. Instead of finishing the case at the trial court level, the landlord repeated a revision to the High Court on the perhaps technically correct stand that a wholesale remittal, as against calling for a finding on a specific point, was illegal. While hearing protracted arguments it came to the ken of the Court that certain material events of fatal import to the maintainability of the eviction proceedings had come to pass and so it decided to mould the relief in the light of these admitted happenings. The learned Judge observed:9

"If the fact of the landlord having come into possession during the pendency of the proceedings of Shop No. 2 is to be taken into account, as indeed it must be, then clearly the petition is no longer maintainable under Section 10(3)(iii) of the Act, as the requisite condition for the invoking of that provision has ceased to exist viz. that the landlord was not occupying a non-residential building in the town. 'Building', of course means a portion of a building. As the prerequisite for the entitlement of the petitioner to institute and continue a petition has ceased to exist, it must follow that ABA No. 5/1967 is no longer maintainable and must be dismissed."

The inevitable sequel was the dismissal, not only of the civil revision, but also of the eviction petition. Thus, after a marathon forensic battle lasting over six years, the landlord lost even the flickering hope of success before the trial court as a result of supererogatory revision to the High Court. It is against this adverse decision he has, by special leave, come to this Court.

3. Two submissions were advanced by Sri K.S Ramamurthy to salvage his client's case. He argued that it was illegal for the High Court to have taken cognisance of subsequent events, disastrous as they proved to be. Secondly, he urged that once the High Court held — as it did — that the Appellate Tribunal acted illegally in remitting the whole case to the Rent Controller, it could not go further to dismiss his whole eviction proceedings, a misfortune heavier than would have been, had he not moved the High Court at all.

4. We feel the submissions devoid of substance. First about the jurisdiction and propriety vis-a-vis circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice — subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed. On both occasions the High Court, in revision, correctly took this view. The later recovery of another accommodation by the landlord, during the pendency of the case, has as the High Court twice pointed out, a material bearing on the right to evict, in view of the inhibition written into Section 10(3)(iii) itself. We are not disposed to disturb this approach in law or finding of fact.

5. The law we have set out is of ancient vintage. We will merely refer to **Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri AIR 1941 FC 5 , 1940 FCR 84** which is a leading case on the point. Gwyer, C.J, in the above case, referred to the rule adopted by the Supreme Court of the United States in **Patterson v. State of Alabama 294 US 600, 607** :

"We have frequently held that in the exercise of our appellate jurisdiction we have power not only to correct error in the judgment under review but to make such disposition of the case as justice requires. And in determining what justice does require, the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered."

and said that that view of the Court's powers was reaffirmed once again in the then recent case of **Minnesota v. National Tea Co. 309 US 551, 555** . Sulaiman, J., in the same case4 relied on English cases and took the view that an appeal is by way of a re-hearing and the Court may make such order as the Judge of the first instance could have made if the case had been beard by him at the date on which the appeal was heard (emphasis, ours). Varadachariar, J. dealt with the same point a little more comprehensively. We may content ourselves with excerpting one passage which brings out the point luminously (at p. 103):

"It is also on the theory of an appeal being in the nature of a re-hearing that the courts in this country have in numerous cases recognized that in moulding the relief to be granted in a case on appeal, the court of appeal is entitled to take into account even facts and events which have come into existence after the decree appealed against."

6. The High Court, in this case, in the concluding stages slightly self-contradicted itself and observed: "the civil revision petition cannot be entertained" and proceeded further to state: "it will not be desirable that I should exercise my discretion in directing an amendment of the petition".

In conclusion, the Court did interfere in revision by setting aside the order of remittal to the Rent Controller and dismissing the eviction petition, leaving the near decade-old litigation to be reopened in a fresh unending chapter of forensic fight. The learned Judge gave little comfort to the litigant who had come with a proved case of bona fide requirement to start his own business by his obscure observation:

"If so advised the petitioner may seek to obtain such relief as may be open to him by filing a fresh petition under the appropriate provision of the Act, in view of the subsequent event of his having come into possession of a portion of the building."

We think it unfair to drive parties to a new litigation of unknown duration but direct, in the special circumstances of the case (which are peculiar) that: (a) the revision before the High Court shall stand dismissed; (b) the Rent Controller will take note of the subsequent development disabling the landlord from seeking eviction on which there is already an adverse finding by the High Court; (c) the landlord be allowed to amend his petition if he has a case for eviction on any other legally permissible ground; and (d) the parties be given fair and full opportunity to file additional pleadings and lead evidence thereon. But we make it clear that the subsequent event that the petitioner had come by a non-residential accommodation of his own in the same town having been found by the High Court, cannot be canvassed over again. That finding of legal disability cannot be reopened. We keep open for enquiry only grounds, if any, which may reasonably be permitted by amendment if they are of any relevance or use for eviction.

7. With these observations we partially allow the appeal as indicated above and direct the parties to bear their respective costs.

Equivalent: **1975 AIR 1409, 1975 SCR (3) 958**

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