

SRINIVASIAH
v
SRI BALAJI KRISHNA HARDWARE STORES

NOVEMBER 20, 1998

[S. SAGHIR AHMAD AND M. JAGANNADHA RAO, JJ.]

Constitution of India, 1950: Article 137

Review—Supreme Court—Power to review its own judgment—Landlord's petition for eviction—Eviction order by Rent Controller—Order upheld by Appellate Authority and High Court—Tenant's appeal allowed by Supreme Court—Review petition by landlord—Contrary findings of courts below not brought to notice of this Court while allowing tenant's appeal—Therefore held there was ample justification for interference in review jurisdiction.

The petitioner-landlord filed an eviction petition on the ground that the shop in occupation of the tenant was *bona fide* required for the purpose of his son's business. The eviction order passed by the Rent Controller was upheld by the Appellate Authority and the High Court. Civil appeal preferred by the tenant was allowed by this Court on the ground that behind the shop occupied by the tenant there was another vacant shop and the landlord had not established that it was not suitable for his son's business. While allowing the tenant's appeal* this Court did not have the benefit of the findings of the Rent Controller and the appellate authority as the judgments of these authorities were not filed in the paper book. This Court assumed that alternative accommodation was a shop while it was of the nature of a godown. The landlord filed a review petition before this Court. From the judgments of the Rent Controller and Appellate authority-filed with the review petition-it was evident that back side portion of the shop could be utilised only as a godown and the fact of usage of godown has been admitted by the tenant in his evidence.

Allowing landlord's review petition, this Court

HELD : 1. There is ample justification for interference in review jurisdiction. The judgment* rendered by this Court proceeded on the assumption that the available accommodation was in the nature of shop. This

A assumption was not correct. From the findings of Courts below it is clear that the other premises which was available was not suitable for being used as a shop, it being in the nature of a godown. This finding was not brought to notice of this Court. Accordingly the finding of the Courts below is accepted. The Judgment in the Civil Appeal* is set aside and the judgment of the High Court is restored. [86-D; 86-C; 86-E]

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**Sree Balaji Krishna Hardware Store v. Srinivasiah*, [1998] 2 SCC 708, reversed.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 638 of 1998.

C

From the Judgment and Order dated 30.8.97 of the Madras High Court in C.R.P. No. 1857 of 1992.

A.T.M. Sampath and Balaji (R. Satish) (NP) for the Petitioner/Appellant.

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Shanti Narayanan, Ms. Asha G. Nair and Ram Kumar for the Respondent.

The Judgment of the Court was delivered by

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M. JAGANNADHA RAO, J. This is an application for review of our judgment in *Sree Balaji Krishna Hardware Stores v. Srinivasiah*, [1998] 2 SCC 708 (Civil Appeal No. 638 of 1998) dated 6.2.1998. By that judgment, the Civil Appeal preferred by the tenant was allowed and the judgment of the High Court of Madras dated 30.8.97 was set aside and the eviction petition filed by the review petitioner (Landlord) was dismissed. We may state that eviction was sought on the ground of *bona fide* requirement of the landlord for the business of his sons and eviction was ordered by the Rent Controller by his judgment dated 25.1.1990 in R.C.O.P. No. 2564 of 1986. The said judgment was confirmed by the appellate authority in RCA No. 229 of 1990 on 18.3.1992 and by the High Court in CRP No. 1875 of 1992 on 30.8.1997.

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These judgments held that the landlord *bona fide* needed the shop occupied by the tenant for the purpose of his son's business. In the Civil Appeal, these

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judgments were set aside by this Court on the short ground that behind the shop occupied by the tenant who was sought to be evicted, there was a shop-room which had fallen vacant and the landlord had not established that it was not suitable for his son's business. This Court observed that the said shop could be reached from the front-side through the passage lying between the tenant's shop on the right side and the shop on the left side occupied

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by Srinivas Glass Agencies.

The point raised in the review application was that this Court wrongly assumed that the vacant shop on the ground floor behind the shop occupied by the tenant was a 'godown' and was not a shop and that that was also the admission of the tenant and also the finding of the Rent Controller and the appellate authority. On 1.4.1998, we ordered notice in the review application. The tenant appeared and filed his counter in this application.

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We may state here that when the Civil Appeal was heard, this Court did not have the benefit of the judgments of the Rent Controller and the appellate authority. The case was argued only on the basis of the Judgment of the High Court. The said Judgments have now been filed by the landlord in this review application. The landlord has also filed the oral evidence adduced before the Rent Controller to show that the tenant admitted in his evidence that the vacant portion behind the tenant's shop was a 'godown'.

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In this review application, we have heard the learned counsel for the review petitioner Sri A.T.M. Sampath and the learned counsel for the respondent Sri K. Ram Kumar.

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We are of the view that while allowing the Civil Appeal filed by the tenant, we did not have the benefit of the findings of the Rent Controller and the appellate authority on this aspect inasmuch as the judgments of these authorities were not filed in the paper book. Now we have had the advantage of looking into the said judgments which have been filed by the review petitioner. We shall refer to the findings of the Rent Controller and of the appellate authority.

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The Rent Controller observed :

"RW1 has *admitted* that the back-side portion in question could be utilised only as a *godown* and in that place, he cannot do any business, if it is let out to him by the petitioner. I consider that since the above back-side area can be utilised *only as a godown*, the petitioner has not offered the same to his son for business purposes.

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This fact of usage of godown has been admitted by the respondent-RW1 as well".

The appellate authority too observed :

"In the above notice, the petitioner has further stated that the portion

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A on the backside of the petitioner premises is not fit and sufficient enough for carrying on business on his son, and that therefore, the said portion could be utilised as a godown.....and no averment has been made denying the above fact.”

B In the light of these findings, it is clear that the other premises which was available was not suitable for being used as a shop, it being in the nature of a godown. In fact, the tenant had said in his evidence, as noticed by the Rent Controller - that he was not prepared to shift to the godown even if offered, inasmuch as it would not be possible to do any business there.

C The judgment rendered by us in the Civil Appeal proceeded on the assumption that the said available accommodation was in the nature of shop. This assumption, as shown above, was not correct. The findings of the Rent Controller or the appellate authority above set out that this accommodation was in the nature of a 'godown' were not brought to our notice as the concerned judgments were not filed in the paper book. There is, therefore, D ample justification for interference in our review jurisdiction. We accordingly accept the finding of the said tribunals and hold that the objection raised by the tenant cannot be sustained.

E For the aforesaid reasons, the review petition is allowed and the judgment in the Civil Appeal dated 6.2.1998 is set aside and the judgment of the High Court is restored. In the circumstances of the case, the tenant is granted time to vacate upto 31.5.1999 upon filing the usual undertaking within two weeks from today. In case such an undertaking is not filed within that period or in case any of the terms of the undertaking is violated, the order granting time upto 31.5.1999 shall stand recalled and the tenant shall be liable for eviction F forthwith as per the judgment of the High Court. There will be no order as to costs in this review application.

T.N.A.

Petition allowed.