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C.V. RAJENDRAN AND ANR.

v.

N.M. MUHAMMED KUNHI

SEPTEMBER 13, 2002

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[SYED SHAH MOHAMMED QUADRI AND S.N. VARIAVA, JJ.]

*Kerala Buildings (Lease and Rent Control) Act, 1965:*

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*s. 15(3)—Second eviction petition—Maintainability—Landlord filed earlier petition for eviction of tenant on ground of bona fide requirement of son—Requirement found bona fide but eviction order not passed for want of alternative accommodation—Second eviction petition filed by landlord for his bona fide requirement—Rent controller declining relief holding that second eviction petition was barred by s. 15(3)—Appellate authority remanded the case to Rent Controller holding that the second petition was maintainable—Order confirmed by District Judge—Thereafter Rent Controller allowed eviction petition—When matter taken to High Court by tenant High Court held that issue of maintainability of second eviction petition, having become final could not be re-agitated afresh—It also held that s.15 did not bar subsequent eviction petition—Held, sub-section (2) of s. 105 of C.P.C. deals with an order of remand and provides that notwithstanding the provisions of sub-section (1), where any party aggrieved by an order of remand from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness—Here what is sought to be agitated is not really the order of remand but the order deciding a germane issue which was allowed to become final at an earlier stage of the same suit—As the question whether s.15 of the Act bars the present eviction petition, was decided against the appellants by the Appellate Authority at the earlier stage of suit and it was allowed to become final, it is not open to the appellants to re-agitate the same at the subsequent stage of the suit—Code of Civil Procedure, 1908—ss.105(2)—s.11—Res judicata.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5832 of 2002.

From the Judgment and Order dated 6.7.2002 of the Kerala High Court in C.R.P.No. 2147 of 1992.

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P.P. Rao, A. Raghunath, A.D. Sikri for the Appellants.

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K. Sukumaran Ms. Karthika S.N.R. Shonker, Ms. Malini Pduval for the Respondent.

The following Order of the Court was delivered :

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Leave is granted.

The short point that arises for consideration in this appeal is : whether the order of remand passed by the Rent Control Appellate Authority,, Payyannur, dated November 25, 1988, holding that the second eviction petition (RCP No.13/87) filed by the respondent against the appellants under sub-section (3) of Section 11 of the Kerala Buildings (lease and Rent Control) Act, 1965 (for short, 'the Act') is not barred by Section 15 of the Act, can be permitted to be reagitated in proceeding arising from the order passed by the Rent Controller pursuant to the order of remand.

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The appellants are the tenants of the petition schedule building of which the respondent is the landlord. In the first round of litigation between the parties for eviction of the appellants from the schedule building, it was held that the requirement of the son of the respondent was *bona fide* but eventually the order of eviction could not be passed on the ground that no alternative accommodation was available for the appellants in the locality. The respondent, thereafter, initiated the proceedings for eviction of the appellants, out of which this appeal arises, on the ground of his *bona fide* requirement. The learned Rent Controller declined relief to the respondent on the ground that under Section 15(3) of the Act the eviction petition was not maintainable. On November 25, 1988 the Appellate Authority allowed the appeal of the respondent holding that the eviction petition was maintainable and remanded the case to the Rent Controller for fresh disposal on merits in accordance with law which became final as that order was confirmed in RCRP No. 42/ 89 by the District Judge, Thalassery, on December 3, 1990. After remand, the learned Rent Controller found that the need of the respondent was *bona fide*, and alternative accommodation in the area was available, so allowed the eviction petition on September 25, 1991 which was confirmed by the Rent Control Appellate Authority, Thalassery, in Rent Control Appeal No. 193 of 1991 on August 3, 1991, In Civil Revision Petition No. 2147 of 1992, filed by the appellants herein before the High Court of Kerala at Ernakulam, against the said order of the Appellate Authority, it was held that the earlier order of the Appellate Authority holding that Section 15 of the Act does not

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A bar the eviction proceedings against the appellants, had become final and cannot be re-agitated afresh. However, the High Court also recorded the finding that Section 15 of the Act did not bar the subsequent eviction petition. In that view of the matter. The Civil Revision Petition was dismissed by the High Court on July 6, 2002. That order of the High Court is appealed against before this Court, by special leave.

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Mr. P.P. Rao, learned senior counsel appearing for the appellants, contends that the order passed by the Appellate authority holding that the eviction petition was maintainable and that Section 15 of the Act was not a bar, does not operate as *res judicata*. In support of his contention, the learned senior counsel relies upon a judgment of this Court in *Satyadhyan Ghosal & Ors. v. Smt. Deorajin Debi & Anr.*, [1960] 3 SCR 590.

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We have perused that Judgment. It is laid down therein that an interlocutory order which did not terminate the proceedings and which had not been appealed against either because no appeal lay or even though an appeal lay, an appeal was not taken, could be challenged in an appeal from the final decree or order. It was observed that interlocutory judgments which have the force of a decree must be distinguished from other interlocutory judgments which are a step towards the decision of the dispute between the parties by ways of a decree or a final order. In that case, the question of applicability of Section 28 of the original Thika Tenancy act, 1949 was held to be interlocutory in nature, falling in the latter category.

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We may add that Section 105 of the Code of Civil Procedure, 1908 specifically provides that any error, defect or irregularity in any order affecting the decision of the case may be set forth as a ground of objection in the memorandum of appeal which may be preferred against the original decree, orders in the nature of amendment of pleadings; late admission of documents at a later stage, admission of additional evidence and the like are orders interlocutory in nature which can be challenged by raising a ground of objection in the memorandum of appeal which may be preferred against the original decree. Sub-section (2) of Section 105 of C.P.C. deals with an order of remand and provides that notwithstanding the provisions of sub-section (1), where any party aggrieved by an order of remand from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness. Here what is sought to be re-agitated is not really the order of remand but the order deciding a germane issue which was allowed to become final at an earlier stage of the same suit. The principle of *res judicata*

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applies as between two stages in the same litigation so that if an issue has been decided at an earlier stage against a party it cannot be allowed to be re-agitated by him at a subsequent stage in the same suit or proceedings. This position is laid down in *Hope Plantations Ltd. v. Taluk Land Board, Peermade & Anr.*, [1999] 5 SCC 590, to which one of us (Syed Shah Mohammed Quadri, J.) was a party.

In the light of the above discussion we hold that as the question whether Section 15 of the Act bars the present eviction petition, was decided against the appellants by the Appellate Authority at the earlier stage of suit and it was allowed to become final, it is not open to the appellants to re-agitate the same at the subsequent stage of the suit. In this view of the matter, we do not find any illegality in the order under appeal to warrant any interference.

Mr. P.P. Rao, learned senior counsel, however, submits that as the appellants have been in occupation of the rented building since 1959, reasonable time to vacate the premises may be granted to them. On the facts and in the circumstances of case. We grant time to the appellants, to hand over vacant possession of the petition schedule building, till the end of April 2003 on condition of furnishing usual undertaking by them within four weeks from today.

Subject to the above observations, the civil appeal is dismissed, but without any order as to costs.

R.P.

Appeal dismissed.