

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THE 27TH DAY OF JULY 1998

BEFORE

THE HON'BLE MR. JUSTICE H. RANGAVITTALACHAR

H.R.R.P.NO.1722/1994 C/W 1721/1994 & 1720/1994

IN H.R.R.P. NO.1722/1994

Bibijan

since deceased by her L.Rs.

1. Rahim Khan alias
Babu, Son of the late
Jamal Khan, aged about
36 years.
2. Riyaz Khan, Son of the
late Jamal Khan, Aged
about 30 years.
3. Ayub Khan, Son of the
late Jamal Khan, aged
about 28 years.

All are residing at Papamma
Muniswamy Garden, Masjid
Street, 1st Cross,
Neelasandra, Bangalore-47.

(Amended as per the Order
of the Hon'ble Court
dt.7.11.97)

..PETITIONERS.

..2..

IN H.R.R.P.NO.1721/1994

Abdul Salam
since deceased by L.Rs.

1. Irshad, Son of
the late Abdul Salam,
aged about 27 years.
2. Sajjad, Son of the
late Abdul Salam, aged
about 20 years.

Residing at No.46/1,
Anepalya, 8th Cross,
Audugodi Post,
Gajendranagar,
Bangalore-30.

(Amendment carried out
as per the Court orders
dt.6.11.97)

..PETITIONERS.

IN H.R.R.P. NO.1720/1994

Mahboob Bi, Aged about
60 years, Wife of the
Late Basha Bhai, No.35,
II Portion, Eastern Door,
Gundappa Street,
Neelasandra, Bangalore-
560 047.

..PETITIONER.

(By Sri. S.M. G. Azam & Associates for Petr.
Common in all the petitions)

1. Khamrunnisa, Wife of the
late Zahiruddin.
2. Sirajuddin, Son of the
late Zahiruddin.
3. Shamsuddin, Son of the
late Zahiruddin.
4. Nooruddin, Son of the
late Zahiruddin.

All are residing at No.174/C,
South Street Cross, Neelasandra,
Bangalore-560 047.

....RESPONDENTS.

(Common in all the petitions)

(By Sri. M.L. Dayananda Kumar, Advocate
Common in all the petitions)

* * *

HRRPs are filed u/s 115 of CPC against the
order dated 16.7.1994 passed in Misc.No.10053,
10054/87 & 10052/87 on the file of the Addl.
Judge, Court of Small Causes, Mayo Hall,
Bangalore.

These HRRPs coming on for HEARING this day,
the Court made the following:-

..4..

ORDER

H.R.R.P.NO.1720, 1721 & 1722/1994

These are the tenants petitions against the orders of the learned Judge of the Small Causes dismissing their applications filed before him for setting-aside the exparte order.

The short question that is involved in this case is whether the learned Judge of the Small Causes after having found as a fact that the revision petitioners/tenants were not served with notice of the eviction petitions was justified in dismissing the application solely on the ground that, the eviction orders passed pursuant to the exparte orders have already been executed "This question is no longer resintegra." In view of the decision of this Court in the case of MANICK ENTERPRISES vs HAJI SULAIMAN reported in 1988(2), KLJ, 216 in which it has been held as follows:

"Therefore, the short question which falls for determination in this revision petition is whether that could be a ground for exercising or not exercising discretion vested in the trial court under Order 9 R.13 CPC. Under Order 9 Rule 13, the applicant or petitioner is

required only to show sufficient cause for his absence at the hearing of the case where and when he was required to be present. The Court has to look at that and no other factor in making up its mind while passing an order. That he has been evicted from the premises is no reason to deny him the benefit of setting aside the ex-parte order dismissing the Miscellaneous Application which may be allowed or may not be allowed. When extraneous factors are taken into consideration, then there is improper exercise of jurisdiction and this Court must interfere. Therefore the order impugned in this Revision petition is set-aside and the court below is directed to dispose of the application under O.9 R 13 in accordance with law without reference to what has happened to the ex-parte decree of eviction which has since been executed."

In view of the decision of this Court referred to above, the orders impugned in this petition are set-aside. Consequently the applications filed by the revision petitioners under O.9 R.13 is allowed. The ex-parte eviction orders passed in HRC Nos.10011/87 & 10012/87, 10014/87 are set-aside. The learned Judge of Small Causes is directed to hear and dispose-off the said eviction petitions on merits after giving the revision petitioners an opportunity

to file their objections and decide the case on merits.


It is now submitted that the land-lord is in possession of their respective premises which were in occupation of the respective tenants pursuant to executing the exparte orders.


The landlord shall continue to retain the said possession without altering the nature of the premises and his possession shall be subject to the final orders to be passed by the learned Judge.

sd/-

JUDGE.

Ty by: GM

C by: 

R by: 

Wz

2/11/90