

**IN THE HIGH COURT OF TRIPURA**  
**AGARTALA**

**CRP 30 OF 2015**

1. Smt Reba Debbarma,  
daughter of Late Mahendra Kumar Debbarma,  
wife of Hiranmoy Debbarma,  
resident of Old Guest House, Netaji  
Subhash Road, Agartala, P.S. West Agartala,  
District : West Tripura
2. Smt Ivylata Debbarma,  
wife of Sri Kartik Debbarma,  
resident of Old Guest House, Netaji  
Subhash Road, Agartala, P.S. West Agartala,  
District : West Tripura
- both of them are the legal heirs of late Kumar  
Madhusudhan Debbarma, represented by Sri Shyamraj  
Sharma, son of Basudev Sharma, resident of Shibnagar,  
P.O. Agartala College, P.S. East Agartala, District : West  
Tripura, being the constituted power of Attorney of  
petitioner NO. 1 & 2

..... Petitioners

- Vs -

1. Sri Subhash Chandra Shil
2. Sri Rakhal Chandra Shil
3. Sri Maran Chandra Shil
- all are sons of late Harendra Chandra Shil resident of  
Reshambagan , P.O. Resham Bagan, P.S. East Agartala,  
District :West Tripura, being the legal heirs of late Harendra  
Chandra Shil
4. Sri Amarnath Banik,  
son of late Krishnananda Banik,
5. Sri Gopinath Banik,  
son of late Krishnananda Banik,  
both are resident of Shibnagar, Lotus Club Road,  
Agartala, District : West Tripura

.....Respondents

**B E F O R E  
THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the petitioner : Mr. B. Majumder, Advocate

For the respondents : Mr. P. Chakraborty, Advocate

Date of hearing : 29.02.2016

Date of Judgment  
& Order : 31.03.2016

Whether fit for reporting : 

Yes	No
✓	

**JUDGMENT & ORDER**

By this petition under Article 227 of the Constitution of India, the petitioner who filed the petition for eviction of the respondents under Section 12 of the Tripura Buildings (Lease and Rent Control) Act, 1975, in short RCC Act, being RCC 14 of 1987 in the court of the Civil Judge, Junior division, Court no.1, Agartala, West Tripura, hereinafter the RC Court has questioned the judgment and order dated 12.1.2015 delivered by the District Judge, West Tripura, Agartala (the Revisional Authority under the RCC Act) delivered in RCC (Revision) No. 06 of 2013 whereby the challenge as laid against the orders dated 23.09.2013 passed in Misc.(J)129 of 2013 arising from Ex(RCC) 08 of 2013 and in Ex(RCC) 08 of 2013 has been rejected.

2. By the final order dated 27.02.1996 delivered in RCC 14 of 1987, the RC court has observed and directed as under :

**“In the result, the tenant O.Ps are directed to put the land lord petitioners in possession of the premises in question(vacant) after the expiry of 2(two) months from today and directed to pay the arrear rent from 18.8.1972 to up to date with an interest @ 12% p.a. and the cost of the proceedings amounting to Rs.1000/- to the petitioner. Provided that, if the tenant deposit the arrear of rent with interest and cost of the proceeding within a period of 1(one) month, this order will be treated as vacated.”**

3. No appeal against the said order dated 27.02.1996 was preferred by the petitioner . However, the tenant-opposite parties filed an appeal under Section 20 of the RCC Act against the said order and the said appeal was dismissed by affirming the order of the RC court. From the said appellate order, the tenant-opposite parties preferred the revision under Section 22 of the RCC Act against the judgment and order dated 05.08.1997 passed by the appellate court in the RCC Appeal. The said revision was also dismissed being bereft of merit by the judgment and order dated 05.12.2000 . In the said revision being RCC REV 11/1997, the revisional authority by the said judgment has observed as follows :

**“It has also been revealed that said Harendra Chandra Shil sub-let a portion of the proceeding land to another revision petitioner, Krishnananda Banik most illegally. In view of that background, the argument of Ld. Advocate appearing for the present revision petitioners that said Act is not applicable in the instant case cannot be accepted and as such this argument has got no force. In view of the above background, the proceeding land comes within the definition of ‘building’ as defined in the aforesaid Act. No other argument has been**

**put forward by the Ld. Advocate appearing for the present revision petitioners. ”**

[Highlighted for purpose of further reference]

4. It is the admitted position that against the said judgment and order dated 05.12.2000 delivered in RCC Revision 11/1997, the respondents, the tenant-opposite parties, had filed a petition under Article 227 of the Constitution being WP(C)573 of 2001 in the Gauhati High Court, and the said petition was dismissed for non-prosecution by the order dated 04.04.2012. No further action was pursued by the respondents and as such the order passed by the RC court attained its finality. The petitioner herein put the said order in execution despite the fact that the due payment was made in terms of the order dated 27.02.1996 passed in RCC 14 of 1997. The execution-petition was registered as Execution (RCC) 08 of 2013 . One of the respondents namely Gopinath Banik, son of late Krishnananda Banik, filed an objection questioning the executibility of the said order dated 27.02.1996. The said objection being Misc(J)129 of 2013 was allowed by the RC court as the executing court, on observing as under :

**“From the judgment of Case No. RCC (Revision) 11/1997 I find the revisional court dismissed the revision application. Thus I find the order the trial court as passed above is confirmed by the appellate court and neither changed by the appellate court nor modified by the revisional court.**

**In my view, as the above mentioned order of eviction is conditional one and as the admittedly arrears of rent and costs etc. is paid by the petitioner JD, no eviction can be done**

**by this execution proceeding. In my view on payment of money as per above mentioned order of Trial Court the order of eviction is satisfied. Hence, no execution shall lie.**

**As regard the decision relied on by the learned counsel for the O.P. decree holder, I am of the view that the decision reported in AIR 1973 SC 1311 and AIR 1970 SC 792 is relating to interpretation of compromise order, judgment and decree and as to the legality of the same in view of the Rent Control Act and the O.P. decree Holder will get no held of the said judgment.**

**As regards the judgment reported in AIR 1972 SC 1371 I am of the view that the said decision laid down that to find out the true effect of the decree the court can consider pleading as well as proceedings leading to the decree and the circumstances.**

**In my view, in our present case the above referred order of eviction passed by the trial court is very clear and free from ambiguity. Therefore, it is not necessary for this court to go into the pleading and other parts of the judgment. In my view as the RCC court stated that on payment of rent and costs etc the order of eviction shall treated as vacated, the payment of rent and costs makes the order of eviction vacated, for which no execution shall lie."**

5. In view of the order dated 23.09.2013, passed in Misc(J)129 of 2013 by the order dated 23.09.2013, Execution (RCC) 08 of 2013 was rejected observing that the order to be executed was in-executable. Against the order dated 23.09.2013, the petitioner filed the Revision under Section 15 of the RCC Act in the court of the District Judge who functions as the Revisional Authority to exercise the powers under Section 15 of the RCC Act on the ground that by means of merger, the observation made in the judgment and order dated 05.12.2000 delivered in RCC(Rev)11 of 1997, as reproduced and highlighted above, has become part of the final order and as such it has to be read in the final order that Krishnananda Banik is the sub-tenant put up

most illegally and as a result his legal heirs are liable to be evicted from the proceeding land.

6. Mr. B. Majumder, learned counsel for the petitioners to buttress his submission has referred the decision of the apex court in **K.K Chari versus R.M. Sheshadri** reported in **AIR 1973 SC 1311** and contended that even though the adequate evidentiary materials were placed before the RC court, but no finding or direction to evict the sub-tenant has been made in the final order. But by the highlighted portion above, the Revisional court has observed that the tenant Harendra Ch. Shil had sublet a portion of the proceeding premises land to another revisional petitioner, Krishnananda Banik, most illegally. This should be read with the final order of eviction and hence it cannot be held for payment of the arrear rent with interest the final order has turned out to be inexecutable.

7. That inclusion in the final order has been sought to be read having referred decisions of the apex court in **Gojer Brothers(P)Ltd. versus Ratan Lal Singh** reported in **AIR 1974 SC 1380**, **Commissioner of Income-Tax, Bombay versus Amritlal Bhogilal and Co.** reported in **AIR 1958 SC 868** and **Collector of Customs, Calcutta versus East India Commercial Co. Ltd., Calcutta and Others** reported in **AIR 163 SC 1124**. A decision of the Calcutta High Court based on **K.K. Chari versus R.N. Shisadri** in **Satpal Tandon versus**

**Smt. Jyotsna Ghosh** reported in **AIR 1991 Calcutta 228** has also been referred for the purpose of showing that executing court may determine such a question and go beyond the decree and look into the pleadings, to find out whether such a ground did exist when the decree was passed.

8. Mr. P. Chakraborty, learned counsel appearing for the respondents has submitted that the submissions as made by Mr. Majumder, learned counsel appearing for the petitioners are flawed on the face of the records. The decisions as referred are invariably in the context of ambiguity. Mr. Chakraborty, learned counsel for the respondents has pointed out that the petitioner did not file any appeal or revision against the final order that was passed by the RC court. Hence, it cannot be held that the petitioner was aggrieved by any inadequacy of the said order. Having referred to the highlighted part, as observed by the revisional court in the order dated 05.12.2000, Mr. Chakraborty learned counsel has quite emphatically submitted that the mere revelation is not sufficient, there must be a finding for purpose of applying the doctrine of merger. Mr. Chakraborty, learned counsel for the respondents has been in pursuit of defending the impugned judgment stating that there is no infirmity and hence this court can not be called upon to exercise its supervisory jurisdiction.

9. Having regard to the rival contentions and the record as produced, it would be apposite to dwell upon two aspects as projected by the petitioner. According to the petitioner, (i) the executing court can go beyond the final order and reappraise the materials for passing the appropriate order and (ii) by the impugned order the doctrine of merger has been given a go-bye mechanically interpreting the decision of the apex court in **K.K. Chari versus R.N. Shisadri** , else the highlighted observation would have been treated part of the final order and eviction for creating sub-tenant without authority would have carried out.

10. The doctrine of merger is a well delineated doctrine which has been described in **Commissioner of Income Tax, Bombay versus Amritlal Bhogilal and Co.** in the following terms :

**“But the doctrine of merger is not a doctrine of rigid and universal application and it cannot be said that whatever there are two orders, one by the inferior Tribunal and the other by a superior Tribunal, passed in an appeal or revision, there is a fusion or merger of two orders irrespective of the subject-matter of the appellate or revisional order and the scope of the appeal or revision contemplated by the particular statute. In our opinion , the application of the doctrine depends on the nature of the appellate or revisional order in each case and the scope of the statutory provisions conferring the appellate or revisional jurisdiction.”**

This enunciation has been adopted in **Gojer Brothers(P)Ltd. versus Ratan Lal Singh.**

11. In **Collector of Customs, Calcutta versus East India Commercial Co. Ltd. , Calcutta and Others** reported in



**AIR 1963 SC 1124** another passage from **Commissioner of Income Tax, Bombay versus Amritlal Bhogilal and Co.** has been reproduced which reads as under :

**“There can be no doubt that, if an appeal is provided against an order passed by a tribunal, the decision of the appellate authority is the operative decision in law. If the appellate authority modifies or reverses the decision of the tribunal, it is obvious that it is the appellate decision that is effective and can be enforced. In law the position would be just the same even if the appellate decision merely confirms the decision of the tribunal. As a result of the confirmation or affirmance of the decision of the tribunal by the appellate authority by the original decision merges in the appellate decision and it is the appellate decision alone which subsists and is operative and capable of enforcements.”**

12. In view of this exposition of this law relating to merger there cannot be any amount of doubt that the final order dated 27.02.1996 did no more exist, it has merged with the order dated 05.12.2000 delivered in RCC (Revision)11/1997 for its affirmance . But that would not give any edge to the petitioner as there is no finding as to subletting to Krishnanda Banik and hence the executing court has rightly denied to go beyond the decree as stated and it has been correctly held by the executing court that there is no reason at all to look into pleadings or some narrative in the revisional court judgment. As such, **K.K. Chari versus R.N. Shisadri** or **Satpal Tandon versus Jyotsna Ghosh** cannot rescue the petitioner from the final consequence of the order of eviction.

13. Having held so, this court does not find any merit in this petition and accordingly the same is dismissed.

However it is observed that the petitioner shall be entitled to bring about new action on the ground of subletting, if that really exists.

There shall be no order as to costs.

**JUDGE**

*Sabyasachi B*