**HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO**

**Civil Revision Petition No.3491 of 2015**

**Date: 04-12-2015**

Between:

N. Balakrishna

.... Petitioner

AND

Mukundial Khiraiya

.... Respondent

**HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO**

**Civil Revision Petition No.3491 of 2015**

**ORDER:**

The respondent herein is the landlord and the petitioner herein is the tenant. The respondent filed R.C.No.38 of 2007 on the file of II Additional Rent Controller, City Small Causes Court, Hyderabad, seeking eviction of the petitioner herein from the petition schedule property (mulgi) bearing No.15-6-603 admeasuring 150 Sft. situated at Siddiamber Bazar, Hyderabad. The said petition was allowed by the learned Rent Controller by the order dated 12-12-2013 against which the petitioner herein preferred R.A.No.16 of 2014 before the learned Additional Chief Judge, City Small Causes Court, Hyderabad. The lower appellate Tribunal dismissed the appeal by confirming the order passed by the learned Rent Controller by order dated 06-07-2015 and the petitioner herein was directed to vacate and handover the possession of the property within two months from the date of judgment. Challenging the same, the present Civil Revision Petition is filed.

Originally, the eviction petition was filed on the ground of bonafide requirement, subletting the premises and the ground of wilful default was added by way of amendment. It was filed with the allegation that the premises was let out to the petitioner herein in the year 1983 for the purpose of doing business and the present monthly rent on the date of filing of the petitioner is Rs.1010/-. The petitioner was inducted as tenant by the elder brother of the respondent, who was managing the property. The respondent herein and his elder brother were the joint owners of the property. Later on, the property was partitioned and the suit mulgi fell to the share of the respondent herein by virtue of a compromise recorded in the suit for partition. The respondent was doing business and dealing in plasticware since last 30 years and he had a grown up graduated unemployed son. Since he was not having any other premises to provide for the business requirement of his son, it was felt necessary that the schedule property along with adjacent shop was required for the son of the petitioner for his requirement. The respondent himself wanted to expand his business, which requires more accommodation. It was alleged by the respondent that the petitioner was irregular in payment and deposit of rents from January, 2007 to September, 2007 and further since April, 2010 @ Rs.1010/- per month. It was further alleged that the petitioner sublet the premises to one Gokul Singh, who was carrying on business in the said property. The respondent issued a notice on 17-08-2006 to the petitioner calling upon him to vacate the petition schedule property, but no reply was issued.

The said allegations were denied by the petitioner herein by filing a counter stating that he has been an old tenant staying in the premises since decades and doing business and earning his livelihood. He is not having any other alternate accommodation. He is having very large family who are solely dependent on the business being carried on in the petition schedule premises. He is having large network throughout India and the address where he has been doing business is well known to his customers and if he is evicted, serious prejudice would be caused to him. It is further stated that he was very prompt in payment of rents and he had been maintaining the shop in perfect condition. He filed additional counter in response to the amendment made to the petition by the respondent herein adding the ground of wilful default stating that he deposited all the rents in R.C.No.410 of 2006 to the knowledge of the respondent herein. He has been continuously depositing the rent and the respondent has been withdrawing the same. Though he sent Money Order to the petitioner, it was refused by the petitioner. Thereafter, he sent legal notice intimating payment of rent, but he avoided to receive the same. Challenging the orders passed in R.C.No.410 of 2006, the respondent filed R.A.No.385 of 2010 on the file of Chief Judge, City Small Causes Court, Hyderabad and the said appeal was dismissed on technicalities. Aggrieved by the same, the petitioner filed C.R.P.No.3098 of 2012 and the same is pending for disposal. The respondent got possession of another mulgi bearing No.15-6-602 in R.C.No.37 of 2007. He denied the allegation of subletting the premises to Gokul Singh.

The learned Rent Controller framed the following issues for consideration.

1) Whether the petitioner requires the petition schedule premises under bonafide personal requirement for commencing business by his son?

2) Whether the respondent has sublet the petition schedule premises to third parties?

3) Whether the respondent committed wilful default in payment of monthly rents from January, 2007 to September, 2007?

4) To what relief?”

The respondent herein who was the petitioner, examined himself as PW.1 and his son was examined as PW.2. Exs.P.1 to P.28 were marked. The petitioner herein as a respondent in the proceedings examined himself as RW.1 and marked Exs.R.1 to R.5.

The learned Rent Controller held that the respondent herein suppressed the fact of occupation of other non-residential mulgi, particularly the mulgi bearing No.15-6-602 and in view of the same, the respondent was not entitled for eviction of the petitioner on the ground of bonafide requirement. Coming to the wilful default, the learned Rent Controller gave a finding that the petitioner herein was not depositing the rents in time for the months from January, 2007 to September, 2007 and further since April, 2010 @ Rs.1010/- per month and was irregular in payment of rents, and hence, he is liable to be evicted on the ground of wilful default. With regard to the ground of subletting, the learned Rent Controller opined that the respondent herein was able to establish the ground of subletting.

The Appellate Court confirmed the said two findings recorded on wilful default and subletting and accordingly, confirmed the order of eviction. Nothing is shown to this Court challenging the said findings of fact.

Learned counsel for the petitioner submits that in view of increase of rent by virtue of fixation of fair rent in R.C.No.378 of 2012, the learned Rent Controller lost the jurisdiction to decide the petition filed by the respondent herein for eviction of the petitioner. He relied on a Division Bench Judgment of this Court in **Bulchand and Company, Hyderabad v. Khamrunnisa Begum and others[1].**

In the said decision, a suit for declaration was filed under the provisions of the Transfer of Property Act in respect of two mulgies at Abids, Hyderabad. The rent for two mulgies was at Rs.1300/-. It was contended that the leases for the two mulgies are separate and the rent was Rs.650/- per month for each of them. This Court framed an issue with regard to the application of the provisions of the Rent Control Act to the said premises and whether the Civil Court was lacking jurisdiction. It also framed an issue with regard to the point whether the tenancy in respect of both the mulgies was separate or a composite one. Those issues were considered together and held that even though two mulgies were involved, the lease was composite and held those points against the tenants. After deciding the issues, an observation was made by the Division Bench by holding that when fair rent was determined under Section 4 of the Act exceeding the amounts stipulated for bringing the premises under the Rent Control Act, the provisions of the Act ceases to apply. The said observation is being taken aid by the learned counsel for the petitioner.

Learned counsel for the respondent submits that he filed a petition under Section 4 of the Rent Control Act for fixation of fair rent in October, 2012 and the initial rent of Rs.1010/- per month was increased to Rs.11,250/- by order dated 23-10-2013 in R.C.No.378 of 2012. The said order was challenged by the petitioner-tenant by filing R.A.No.219 of 2013 and the appeal was disposed of on 06-07-2015 confirming the fixation of fair rent. In view of increase of fair rent to Rs.11,250/- per month, the petitioner herein filed I.A.No.155 of 2013 in R.C.No.38 of 2007 seeking amendment of the counter by adding the ground of lack of jurisdiction and the said I.A. was dismissed by the learned Rent Controller and no appeal was preferred and the said order had become final. Even in the grounds of appeal preferred in R.A.No.16 of 2014 against the said order in R.C.No.38 of 2007, the petitioner herein had not raised the ground of lack of jurisdiction in the grounds of appeal. However, after a period of seven months, he filed I.A.No.153 of 2014 in the appeal raising the ground of lack of jurisdiction and the same was dismissed by the Appellate Court on 19-11-2014. Challenging the said order, the petitioner preferred C.R.P.No.1188 of 2015 and the same was dismissed for non-prosecution on 13-11-2015.

The learned counsel for the respondent relied on a decision reported in **Mohammadiya & Co. and others v. C. Uma and others**[2]**,** wherein it was held that it is settled position of law that the value of the subject matter at the time of institution of the case determines the jurisdiction of the forum and not its subsequent increase in the value, unless the statute either expressly or by necessary implication takes away the jurisdiction of the Courts to decide the pending cases, and accordingly, held that by fixation of fair rent exceeding the ceiling limit under the Rent Control Act during the pendency of the rent control proceedings for eviction, the jurisdiction of the Rent Controller is not ousted.

In the said case, the eviction was sought on the basis of agreed rent of Rs.1010/- per month within the pecuniary jurisdiction of the Rent Control Act and when the upper limit of pecuniary jurisdiction of the Rent Controller is limited to Rs.3,500/- per month in the areas covered by Municipal Corporations under the provisions of the A.P. Buildings (Lease, Rent and Eviction) Control (Amendment) Act, 2005. It was contended before this Court that the fair rent fixed by the Rent Controller subsequently relates back to the date of application and when the fair rent exceeds the pecuniary limit of the jurisdiction of the Rent Controller, the Rent Controller looses the jurisdiction. The learned single Judge, relied on a decision of another learned single Judge in C.R.P.No.5025 of 2009 dated 21-07-2010 the judgment of the Supreme Court and also of the Larger Bench of this Court in **Ramvilas Bajaj v. Ashok Kumar and another**[3], and held as follows:

> "…….In **Ramvilas Bajaj (**2007(4) ALT 348 (L.B.)**,** the majority of the Larger Bench, speaking through me, while dealing with the question whether increase in the pecuniary jurisdiction of the Rent Controller under Section 32(c) of the Act had effect on the cases pending on the date of its coming into force, deduced five principles. In the present context, principles (iii) and (iv) thereof are relevant, which are as follows:
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> "(i) ….
> (ii) ….
> (iii) Right to forum is a vested right and it becomes vested when the proceedings are initiated in the Tribunal or the Court of first instance and unless the Legislation has by express words or by necessary implication indicated in clear terms (otherwise), the vested right will continue irrespective of change of jurisdiction of different Tribunals/Courts (Shri Dhadi Sahu–1993 AIR SCW 3578, R.Sharadamma–(1996) 8 SCC 388).

(iv) Right of the parties are crystallized on the date of the institution of the suit and subsequent amendment would not affect the pending proceedings unless the amending Act either expressly or by necessary implication gives retrospective effect to the amended provision (Atmaram Mittal–AIR 1988 S.C. 2031)."

In **Sai Kirana General Stores, Secunderabad Vs. B. Sai Anand Prasad** (2004 (1) ALD 296)**,** a learned single Judge of this Court had an occasion to consider whether the Rent Controller had jurisdiction to fix fair rent in excess of his pecuniary jurisdiction. The learned Judge has reiterated the legal principles while making a copious reference to the case law.

The following extract from the Judgment in **Kanda Lingaiah Vs. P. Nirmala Devi** (2002 (6) ALD 590) is very apt in the present context:

"It is well settled principle that the rights of the parties crystallizes on the date of the institution of the suit and even the rent enhanced and the building becomes older than ten years the rights will continue to be available until the suit is disposed of or adjudicated. Once rights crystallize the adjudication must be in accordance with law. In the instant case, the rent was only Rs.1,000/- as on the date of filing of the R.C. and the landlady enhanced the rent subsequent to the filing of the R.C. without prejudice to her rights with regard to the eviction petition and, therefore, it cannot be said that the Rent Controller has no jurisdiction."

From the firmly established principles in the Judgments referred to above, it should be taken as settled law that it is the value of the subject matter at the time of institution of the case that determines the jurisdiction of the forum and not its subsequent increase in the value, albeit in some cases, as the present one, with retrospective effect unless the statute either expressly or by necessary implication takes away the jurisdiction of the Courts to decide the pending cases. Otherwise, the parties will be groping in uncertainty. While taking the present case itself as an illustration, even though the landlady has filed the application for fixation of fair rent, neither she nor the Rent Controller knew till the case was adjudicated whether the fair rent will be fixed in excess of the pecuniary limit of the Rent Controller or not. If the Rent Controller's jurisdiction is to be determined on the future act, then that would become a purely speculative

> litigation, in the sense, if the fixation of fair rent is below Rs.3500/- per month, the eviction petition would fall within the Rent Controller's jurisdiction and if the fair rent so fixed is more than Rs.3500/- per month, the landlady will be non-suited before the Rent Controller. The law never envisages such an uncertainty and fluctuating fortunes of the litigants….."

In the light of the above decisions, the point raised by the learned counsel for the petitioner does not survive and is accordingly rejected. Now, both the Courts concurrently held in favour of the respondents and in view of the concurrent finding of fact, this Court does not interfere with the same in the absence of any material to come to a different conclusion.

The Civil Revision Petition is, accordingly, dismissed. However, the petitioner-tenant is given six months time to vacate the premises, which shall be done on or before 30-05-2016. No costs.

**A. RAMALINGESWARA RAO, J**

Date: 04-12-2015

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[1] 2013 (5) ALD 223 (DB)

[2] 2012 (3) ALD 155

[3] 2007 (4) ALD 137 (LB)