

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL REVISION PETITION No.356 of 2013

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Date:09.03.2015

Between:

A. Narsing Shah

... Petitioner.

AND

A. Jaganath Shah.

...Respondent.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL REVISION PETITION No.356 of 2013

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ORDER:

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This revision is preferred against order dated 26-11-2012 in R.A.No.91/2011 on the file of Additional Chief Judge, City Small Causes Court, Hyderabad whereunder order dated 28-12-2010 in R.C.No.269/2006 is confirmed.

2. The revision petitioner is tenant of a non-residential building and respondent herein is landlord. Landlord filed R.C.No.269/2006 for eviction and the tenant resisted the claim of landlord. The parties are hereinafter referred to as

petitioner and respondent as arrayed in R.C.No.269/2006 for better understanding. Hereinafter petitioner means landlord and respondent means tenant.

3. Petitioner filed eviction petition against the respondent on three grounds namely; wilful default, acts of waste and bonafide requirement. Respondent resisted the claim firstly on the ground that there is no relationship of landlord and tenant, secondly, as per the lease contract, the lease period is up to April 2026 and the plea of bonafide requirement is not correct, therefore, no grounds to evict him. Rent Controller, on appreciation of pleadings of both parties with reference to oral and documentary evidence, not accepted the plea of wilful default and plea of acts of waste, but accepted the plea of bonafide requirement and ordered eviction on that ground. Aggrieved by the order passed by the Rent Controller, respondent preferred appeal to the Appellate Authority and the Appellate Authority, on a reappraisal of the evidence, confirmed the orders of the Rent Controller, but added additional ground of eviction under Section 10-C (c) of the Act on the ground of senior citizenship. Aggrieved by the same, tenant preferred the present revision.

4. Heard both sides.

5. Learned Senior Counsel for the revision petitioner vehemently argued that there is no jural relationship of

landlord and tenant between the parties, therefore, the Rent Controller and Appellate Authority have no jurisdiction.

He further submitted even if assumed that there is relationship of landlord and tenant, the eviction order is not maintainable in view of Section 10 (3) (d) of Rent Control Act as the lease period would expire in April 2026. He further contended that the bonafide requirement is not established and mere desire cannot be treated as bonafide requirement and both the Courts committed error in ordering eviction. He further contended that invoking Section 10-C (c) of the Rent Control Act by the Appellate Authority is not at all correct, because this provision cannot have a retrospective effect and the age as existed on the date of eviction petition should only be considered, but not as on the date of passing of the order and that the Appellate Authority travelled beyond jurisdiction by extending the provisions under Section 10-C (c) to the petitioner-landlord. It is further submitted that on behalf of the respondent/tenant that without returning the advance, landlord cannot seek for eviction and it is a bar under Section 7 of the Act and therefore, the eviction order passed against the tenant is not legal and correct. Learned Senior Counsel cited some rulings in support of his submissions on each point and I wish to refer them if so required while considering the material on record. On the other hand, learned Advocate for petitioner-landlord submitted that in a revision, this Court cannot reassess the factual findings and it can only examine whether the order under challenge is passed without jurisdiction and whether

Courts below have committed any illegality. He submitted that both the Courts, on appreciation of evidence, found that requirement of landlord is bonafide one and that there are no grounds to interfere with such concurrent finding. He further submitted that the objection of the tenant is not at all tenable and that there are no grounds to interfere with the findings of the trial Court and Appellate Authority.

6. Now the point that would arise for my consideration in this revision is whether orders of the Courts below are legal, proper and correct?

7. **Point:-** Petitioner is owner of premises bearing No.4-2-206, admeasuring 405 square feet, which is a shop at Badichowdi, Sultan Bazar. According to petitioner, he let out the said shop to respondent on a monthly rent of Rs.200/- payable in advance on or before 5th of each month and that the respondent has to bear the electricity and municipal charges and the respondent paid rents up to December-2004 and thereafter, wilfully withheld rents from January-2005. It is also contended that the respondent demolished intervening wall between the rented shop and his own shop and thereby, caused acts of waste. It is further contended that the petitioner require this shop for starting business by himself and his sons and petitioner urged that his sons are doing business in a rented premises by paying Rs.2,000/- as rent and the present premises is required to continue the business of his sons and therefore, the shop is required for

their personal use. Respondent disputed the allegations and contended that there is no wilful default in payment of rent as the landlord refused to receive the rents, he gave a notice on 14-09-2005 asking the petitioner to furnish the Bank Account to deposit the rent and a pay order for Rs.1,600/- was enclosed to the said letter and the landlord encashed the same prior to filing of the eviction petition. It is further contended that the respondent is elder brother of the petitioner and at the time of lease itself, petitioner himself removed the intervening wall to lay iron beam attaching the roof and therefore, the allegation of acts of waste is not correct. He further contended that on 02-04-2001, there was an agreement between them for continuing the lease for a period of 25 years and that the respondent paid Rs.10,00,000/- in cash as interest free refundable deposit and also gave two kilograms of gold jewellery worth of Rs.12,00,000/- and these items are in deposit and that the petitioner has no right to evict him. It is further contended that the bonafide requirement is only a created one only to evict the respondent. He contended that this shop was originally given to one Adi Bhaskar on rent and he was evicted from the premises on the ground of personal requirement as per the orders in the Rent Control Case, which was upheld by the Supreme Court, but after obtaining possession of the shop from the previous tenant in the year 1999, petitioner without commencing any business leased out the same to the respondent, therefore, the bonafide requirement is not a correct one.

8. The first ground contended by the respondent/tenant is that there is no relationship of landlord and tenant. This objection is raised before both the Courts and both the Courts on a scrutiny of the evidence, particularly the suggestions put to the landlord-P.W.1 and the admissions of the tenant discarded this objection. I have verified the evidence and relevant material and on a scrutiny of the same, the objection of the tenant with regard to relationship between the petitioner and respondent cannot be accepted. The tenant contended that he is only a licensee, but from the very evidence, it is clear that he paid rent through notice and demanded the petitioner to furnish Bank Account for deposit of rent. He further pleaded that the lease period was extended for 25 years from 02-04-2001, so these aspects would falsify the contention of the tenant with regard to jural relationship of landlord and tenant, therefore, the contention of the revision petitioner on this aspect is negated.

9. The other contention of the tenant is that on 02-04-2001, there was an agreement between the parties according to which, the lease period fixed was for 25 years and that he paid Rs.10,00,000/- advance besides two kilograms of gold jewellery worth Rs.12,00,000/- and that two documents are executed on that day, which are Exs.R1 & R2. Both the Courts, after elaborate discussion of the evidence of both parties, have not accepted these two documents and disbelieved the plea of tenant as to the

extension of lease by 25 years. Even according to tenant, the rent for the premises is only Rs.200/- and for such a building paying Rs.10,00,000/- is unbelievable, because even if bank interest is calculated on this Rs.10,00,000/-, it will work out minimum Rs.5,000/- even if this amount is taken, it is 25 times of the rent paid as on the date of alleged agreement. Added to this, the tenant contended that gold jewellery worth of Rs.12,00,000/- was also given as advance. Both the Courts, on appreciation of evidence, disbelieved this Exs.R1 & R2 and in my view, both the Courts have rightly discarded them, because such a version is quite unnatural and unbelievable. Learned Senior Counsel placed reliance on some Supreme Court decisions reported in **Nanakram v. Kundalrai**^[1], **Murlidhar Agarwal and another vs. State of U.P and others**^[2] & **Nutan Kumar and others vs. Additional District Judge and others**^[3] in support of plea of advance under Exs.R1 & R2 and contended that the findings of the Courts below have to be held as perverse, but these rulings have no way relevant, when the very plea of paying advance of Rs.10,00,000/- and gold jewellery worth of Rs.12,00,000/- for a small shop fetching Rs.200/- as rent is held as highly improbable and unbelievable, that too and particularly when the relationship between the parties is very close and they are own brothers.

10. The next contention of the Advocate for tenant is that the requirement of the landlord is not bonafide one and it is

only a cause created to evict the tenant. Learned counsel submitted in **Madan Lal Puri vs. Sain Dass Berry**^[4], which was followed in **Abdul Raheem by G.P.A., Mohd. Phizroze Ali vs. M/s.Srinivasa Dyeing Works, Vijayawada**^[5], a Constitution Bench held that bonafide requirement is a mixed question of fact and law. He submitted that in

K. Urmila and others vs. Ram Kumar Verma^[6], Hon'ble Supreme Court held that question of bonafide requirement should be decided on a consideration of entire case.

He submitted in **Hasmat Rai and another v. Raghunath Prasad**^[7], it was held that need must exist not only at the time of suit, but exist at the time of appellate decree. He further submitted that in **Ram Das vs. Ishwar Chander and others**^[8], it was held that need of the landlord should be genuine and honest conceived in good faith and that the Court must consider it as reasonable to gratify the need.

He submitted that in **Dinesh Kumar vs. Yusuf Ali**^[9], it was held bonafide requirement should be real and genuine, but not a pretext to evict the tenant. He submitted that the same is the observation in **Kunji Bai G. Chugani vs. Fashions, Secunderabad**^[10]. He submitted that in all the above decisions, the main principle formulated is that personal requirement must be a genuine need and cannot be a pretext to evict the tenant. He submitted that in this case, evidence would show that it is only desire of the landlord, but

not a real and genuine need. Learned Senior Counsel mainly contended that though previous tenant was evicted on the same ground of bonafide requirement of doing business in the shop, the landlord has not used that premises for his business, on the other hand, it was let out to this respondent (tenant) and therefore, the present petition is also not bonafide one. In reply to this submission, learned counsel for the petitioner landlord submitted as per the provisions of Rent Control Act, after taking the premises from the tenant on the ground of bonafide requirement, if it is not put to such use, the evicted tenant has every right to claim redelivery and if the premises is not used for the personal business of petitioner or his sons, the respondent-tenant can definitely invoke such provision, therefore, the objection of the tenant is not tenable. I do find some force in the submission of the counsel for the petitioner-landlord and the tenant can definitely invoke that provision for redelivery if the premises is not used for the purpose for which it was taken.

11. The principle laid down in all the above referred decisions that the need of the landlord shall be bonafide one and it cannot be a ground to evict the tenant is not in dispute. Both trial Court and appellate Court, on examination of evidence on record, found that the need of landlord is bonafide one and he require the premises for his personal use for the business of his sons. Now it is clear from the evidence that his sons are doing business in a rented shop by paying monthly rent of Rs.2,000/- and whereas, this

premises is fetching only Rs.200/-. So it is quite common that such a person will be desirous of doing business in his own premises particularly, when the rent payable by him is 10 times more than the rent i.e., being fetched and his own building. So the requirement of landlord-petitioner is bonafide one and both the Courts have rightly accepted it and I do not find any wrong appreciation of evidence or wrong exercise of jurisdiction by the Rent Controller and Appellate Authority, therefore, the objection of the tenant on this ground is also not tenable.

12. Now the last objection of the tenant is that the Appellate Authority has invoked Section 10 C (c) of the Act and the same is without jurisdiction. Learned Senior Counsel for tenant submitted that this provision under Section 10-C (c) of the Act came into force from 28-05-2005 and the R.C., for eviction was filed on 21-06-2006 on which, date the age of the petitioner was shown as 63 years.

He submitted that the petitioner has not invoked this provision, because he is not 65 years as on the date of filing, but the Appellate Authority strangely invoked this provision also. He submitted that as per the decisions of Hon'ble Supreme Court in **Dejapada Das and another vs. Union of India and others**^[11] & **Nand Kishore Marwah and others**^[12], it is held that the rights existed on the date of the suit should alone be considered. He submitted that when the petitioner, who had no right to invoke this provision on

the date of filing of the suit, he has no *locus standi* to get the relief under the said provision. He further submitted that the petitioner has not claimed this ground by way of amendment even after attaining the age of 65 years during pendency of the R.C, therefore, the relief granted by the Appellate Authority invoking this provision is incorrect. As seen from the record, the R.C., is disposed of on 28-12-2010 by which date, the petitioner attained the age of 65 years, but he has not claimed the benefits of this provision by way of any amendment, but the Appellate Authority, without any request from the landlord, invoked this provision also which as rightly pointed out by the learned counsel for the tenant is beyond the scope of enquiry. The scope of appeal is to verify whether the findings of the Rent Controller were correct or not and when there is no claim from the party, unilaterally granting relief, which is not claimed, would amount to passing an order without jurisdiction, therefore, to that extent, the order of the Appellate Authority has to be set aside.

13. In the result, the revision is dismissed confirming the eviction ordered on the ground of bonafide requirement both by the Rent Controller and Appellate Authority, but the ground of eviction ordered by the Appellate Authority invoking Section 10-C (c) is set aside and the tenant is granted two months time to vacate the premises. No costs.

14. As a sequel, miscellaneous petitions, if any pending in

this revision, shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:09.03.2015

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[\[1\]](#) AIR 1986 SUPREME COURT 1194
[\[2\]](#) AIR 1974 SUPREME COURT 1924
[\[3\]](#) AIR 2002 SUPREME COURT 3456
[\[4\]](#) AIR 1973 SUPREME COURT 585
[\[5\]](#) 1993 (1) ALT 232
[\[6\]](#) AIR 1998 SUPREME COURT 1188
[\[7\]](#) AIR 1981 SUPREME COURT 1711
[\[8\]](#) AIR 1998 SUPREME COURT 1422 (1)
[\[9\]](#) AIR 2010 SUPREME COURT 2679
[\[10\]](#) 2012 (3) ALD 132
[\[11\]](#) AIR 1980 SUPREME COURT 2031
[\[12\]](#) AIR 1987 SUPREME COURT 2284