

HONOURABLE SRI JUSTICE S.RAVI KUMAR
CIVIL REVISION PETITION No.3961 OF 2007

Dated 6-2-2015

Between:

Pillarisetty Pradeep.

..Petitioner.

And:

Pinninti Ramaswamy.

..Respondent.

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ORDER:

This revision is against orders of Senior Civil Judge, Machilipatnam dated 22-1-2007 in C.M.A.No.4 of 2002 whereunder, he confirmed the orders of Rent Controller dated 29-4-2002 in R.C.C.No.3 of 2000.

Revision petitioner herein is the landlord and the respondents herein are the legal representatives of original tenant and parties are hereinafter referred to as landlord and tenant for convenience.

Brief facts leading to this revision are as follows:

Landlord filed eviction petition on the ground of willful default and sublease and the trial court dismissed the eviction petition which is confirmed by the appellate court.

Advocate for revision petitioner submitted that trial court mainly dismissed the eviction petition for non-examination of landlord/petitioner which was confirmed by the appellate court. He further submitted that an opportunity may be given to the landlord to examine himself to prove the grounds urged for eviction and no prejudice will be caused to the respondent/tenant because he is continuing with

meager rent of Rs.650/- per month though the prevailing rent as on this day is Rs.2,500/- which is paid by other tenants of the vicinity.

Other side advocate opposed the application and contended that detailed orders were passed by the Rent Controller and that there are no grounds to interfere with the concurrent findings.

Now the point that would arise for my consideration in this revision is whether the order and judgment of the courts below are legal, correct and proper?

POINT:

As seen from the material, the plea of landlord is that tenant committed default in payment of rent from May, 1999 to August, 1999 and that when a notice was issued demanding rent, the tenant paid six months rent in November after receipt of notice and that the same is received without prejudice to the rights of the landlord.

It is specifically pleaded in the petition that tenant committed willful default in payment of rent of November to December, 1999 and this was not accepted by the trial court for the reason that P.W.1 is not the landlord and he is only father of landlord and therefore, the plea of willful default is not accepted.

Now the main request of the landlord is that he should be given an opportunity to examine himself as a witness to prove the default and no prejudice will be caused to the respondent if such an opportunity is given.

On a scrutiny of the material, it appears that trial court and appellate authority mainly disallowed the claim of revision petitioner for non-examination of landlord. As seen from the record, P.W.1 is no other than father of the revision petitioner and according to

his evidence, he is looking after the affairs and in fact, the tenant is also paying rents to him.

As seen from the record, tenant is paying rents at irregular intervals and this aspect is disbelieved on the ground of non-examination of landlord. The other grounds urged by the tenant is that petitioner is not the landlord and there is no jural relationship of tenant and landlord between P.W.1 and respondent and for proving this aspect, examination of petitioner is necessary.

As rightly pointed out by advocate for petitioner that there can not be any prejudice to the respondent/tenant because he will continue in the premises till the disposal of the main case and can continue to pay old rent of Rs.650/-.

Considering this aspect, I feel that the request of the revision petitioner can be considered.

For these reasons, order of the appellate authority dated 22-1-2007 in C.M.A.No.4 of 2002 is set aside and the matter is remitted back to the appellate authority to reconsider the matter by giving an opportunity to the revision petitioner for examining himself as a witness. Appellate authority can as well record the evidence or it can request the Rent Controller to record the same and send it for consideration, but this exercise has to be completed within a period of four months.

Accordingly, this revision is allowed and impugned order dated 22-1-2007 in C.M.A.No.4 of 2002 is set aside directing the appellant authority to decide the appeal after examination of petitioner as a witness. No costs.

As a sequel to the disposal of this revision, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE
S.RAVI KUMAR

Dated 6-2-2015.

Dvs.

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Dvs