THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

C.R.P.NOs.3188 of 2002, 203 of 2003, and 1197 of 2003

COMMON ORDER:

1 Aggrieved by the order dated 20.03.2002, passed in RCA No.15 of 1999 on the file of the Appellate Authority under the Rent Control Act-cum-Principal Senior Civil Judge, Rajahmundry wherein and whereby the order, dated 19.03.1999 passed in RCC No.45 of 1993 on the file of the Rent Controller-cum-Principal Junior Civil Judge, Rajahmundry was confirmed, the tenant filed CRP No.3188 of 2002.

2 Aggrieved by the order dated 20.03.2002, passed in RCA No.11 of 1999 on the file of the Appellate Authority under the Rent Control Act-cum-Principal Senior Civil Judge, Rajahmundry wherein and whereby the order, dated 19.03.1999 passed in RCC No.45 of 1993 on the file of the Rent Controller-cum-Principal Junior Civil Judge, Rajahmundry was confirmed, the landlord filed CRP No.203 of 2003.

3 Aggrieved by the order dated 20.03.2002, passed in RCA No.10 of 1999 on the file of the Appellate Authority under the Rent Control Act-cum-Principal Senior Civil Judge, Rajahmundry wherein and whereby the order, dated 19.03.1999 passed in RCC No.104 of 1992 on the file of the Rent Controller-cum-Principal Junior Civil Judge, Rajahmundry was confirmed, the landlord filed CRP No.1197 of 2003.

4 Since the parties to all these revision petitions are one and the same and as the point involved in all the revision petitions is also almost one and the same, I am inclined to dispose of all these revision petitions by this common order.

5 For the sake of convenience and in order to avoid confusion,

the parties will hereinafter be referred as they are arrayed in CRP No.203 of 2003, which arose out of the order passed in RCC No.45 of 1993.

6 The facts leading to filing of the present revisions are briefly as follows:

7 The petitioner is the absolute owner of the building bearing D.No.29-1-18/2 of Korlammapeta, Devi Chowk centre, Rajahmundry. Second respondent is the proprietrex of the first respondent - colour lab. Originally, the husband of the second respondent had taken the petition schedule property on lease on a monthly rent of Rs.500/- from the petitioner with effect from 25.08.1995. The respondent agreed to pay the rent by first day of every succeeding month. The lease is month to month and is an oral lease. The respondent agreed to vacate the premises in the month of August 1990 without any prior notice. The respondent paid advance of Rs.5,000/- which should be refunded at the time of vacating the premises without any interest. The petition schedule property was constructed in the year 1953. The respondent failed to pay rent from October 1989 till date and without the permission of the petitioner, the respondents made alterations to the building and thereby did acts of waste. Therefore, the petitioner filed RCC No.13 of 1992 on the file of the Rent Controller. The husband of the second respondent forged and fabricated documents and filed number of cases against the petitioner. The respondent set up a plea that the agreed rent is Rs.220/- p.m. which is blatantly falsehood. The petitioner never executed any letter or agreement in favour of the 2nd respondent or the husband of the 2nd respondent. The respondent also filed RCC No.104 of 1992 under Section 8 of the Andhra Pradesh Buildings (Lease, Rent &

Eviction) Control Act, 1960 seeking permission to deposit the rent at the rate of Rs.220/- p.m. The petition schedule premises is situated in Devi Chowk of Rajahmundry, which is a prime and commercial locality. The respondent has taken a premises which is situated on the western side of the petition schedule property on a monthly rent of Rs.1,500/- from one K.P. Sunder Rao. The portion let out by the petitioner is larger than that of the western side portion which the respondent has taken from the said Sunder Rao. The rent prevailing in the vicinity at present for the similar extent of non-residential premises will be a minimum of Rs.2,000/- p.m. Hence the petition.

8 The respondent filed counter denying the various averments made in the petition except the relationship of landlord and tenant, inter alia, contending that the petitioner executed a registered lease deed on 18.02.1987 in favour of the respondent on a monthly rent of Rs.220/- for a period of five years, which is renewable at the option of the lessee for a further period of five years. The respondents have exercised their option by extending the lease for a further period of five years from 1992. The petitioner is not entitled to seek enhancement of the rent without expiry of the extended period of lease of five years. The document executed by the petitioner is binding on him. The petition schedule property will not fetch Rs.2,000/- p.m. as contended by the petitioner. There are no bonafides in the petition and the rent that is being paid is just and reasonable. Hence the petition may be dismissed.

9 In RCC No.104 of 1992 which was filed by the respondent, under Section 8 of the Rent Control Act, seeking permission to deposit the rent at the rate of Rs.220/- p.m, the petitioner has filed counter opposing the petition. The pleas as set out in RCC No.45

of 1993 are almost identical to the pleas taken up by the parties in RCC No.104 of 1992.

10 In RCC No.45 of 1993 on behalf of the petitioner P.Ws.1 to 3 were examined and on behalf of the respondent R.W.1 was examined. No documentary evidence was adduced on behalf of both parties. In RCC No.104 of 1992 on behalf of the petitioner / tenant P.W.1 was examined and Exs.A.1 to A.8 were marked. On behalf of the respondent / landlord, R.W.1 was examined. But no documentary evidence was adduced on his behalf.

11 The Rent Controller after appraising the oral and documentary evidence available on record, arrived at a conclusion that the petition schedule property may fetch rent of Rs.500/-p.m. and allowed the RCC No.45 of 1993 in part. The Rent Controller allowed the RCC No.104 of 1992 also permitting the respondent/tenant to deposit the rent before it at the rate of Rs.220/- p.m.

12 Feeling aggrieved by the orders dated 19.03.1999 passed by the Rent Controller in RCC No.45 of 1993, the landlord filed RCA No.11 of 1999 and the tenant filed RCA No.15 of 1999 on the file of the Appellate Authority under the Rent Control Act – cum – Principal Senior Civil Judge, Rajahmundry and Feeling aggrieved by the orders passed in RCC No.104 of 1992 by the Rent Controller under which the respondent was permitted to deposit an amount of Rs.220/- p.m. before it, the petitioner filed RCA No.10 of 1999.

13 During the pendency of RCA No.15 of 1999, the respondent/tenant filed I.A.No.184 of 2002 to receive and mark some documents which was allowed and Exs.B.1 and B.2 were

marked on behalf of the respondent / tenant in RCC No.104 of 1992. The appellate authority under the Rent Control Act on re-appreciating the oral and documentary evidence, dismissed all the appeals. Hence the present revision petitions.

14 The learned counsel for the petitioner / landlord submitted that the Courts below erred in allowing RCC No.104 of 1992 and RCA No.10 of 1999 by fixing the fair rent as Rs.500/- p.m. He further submitted that the Courts below failed to appreciate the oral evidence of P.Ws.2 and 3 in right perspective and fixed the fair rent as Rs.500/- p.m. instead of Rs.2,000/- p.m. He further submitted that the Courts below failed to consider that the petition schedule property is situated in prime locality which is heart of Rajahmundry town. He further submitted that both the courts below failed to consider that in the same locality similar type of premises is fetching Rs.3,000/- p.m. He further submitted that the courts below failed to consider the fact that the respondent has been paying rent of Rs.1,500/- p.m. to the premises which is situated on the Western side of the petition schedule property.

15 *Per* contra, the learned counsel for the respondent / tenant submitted that both the courts below have committed grave error while fixing the fair rent as Rs.500/- p.m. He further submitted that the petitioner is not entitled to fair rent till completion of the extended period of five years which is ending by 1997. He further submitted that the courts below have rightly considered the oral and documentary evidence and allowed RCC No.104 of 1992.

16 Basing on the rival contentions, the points that arise for consideration in these revisions are:

a. *Whether the rent controller as well as the appellate authority committed error while fixing the fair rent as Rs.500/- p.m.?*

b. *Whether the rent controller as well as the appellate authority committed error by permitting the respondent / tenant to deposit an amount of Rs.220/- p.m. after fixing the fair rent at Rs.500/- p.m.*

c. *Whether there is any illegality or irregularity in the orders under challenge, which warrants interference of this Court?*

POINT NOs.1 & 2:

17 These two points are intertwined with each other and hence I am inclined to address these two points simultaneously in order to avoid recapitulation of facts and evidence.

18 There is no dispute with regard to the jural relationship of landlord and tenant between the petitioner and the respondents. Petitioner is the owner of the petition schedule premises bearing D.No.29-1-18/2 of Korlammapeta, Devi Chowk centre, Rajahmundry which was constructed in the year 1953. The petitioner let out the petition schedule property to the respondent to carry on the business of colour lab. As per the contention of the landlord, the oral lease is from month to month on a monthly rent of Rs.500/-and that the rent period commenced from 25.08.1985. The contention of the respondent / tenant is that the landlord let out the petition schedule property to it under a lease deed dated 18.02.1987 for a period of five years on a monthly rent of Rs.220/- .

19 The petitioner and the 2nd respondent are the competent persons to speak about the nature of lease as well as duration of the tenancy. To substantiate the case, the petitioner / landlord examined himself as P.W.1 but no documentary evidence was let in. To demolish the case of the petitioner, the husband of the 2nd respondent / tenant examined himself as R.W.1 and got marked Exs.B.1 and B.2. Of course, the tenant has taken a specific plea

in the counter that the petitioner executed a lease deed in its favour on 18.02.1987 for a period of five years. The petitioner did not file reply to the counter denying this particular aspect. Mere failure on the part of the landlord to file a reply by itself would not automatically amount to proof of the stand taken by the respondent / tenant. In the chief examination P.W.1 stated that the lease between him and the respondent is an oral lease and it is month to month. For better appreciation of the rival contentions, it is not out of place to extract the relevant portion of cross examination of P.W.1, which reads thus: **"I gave evidence in RCC No.13 of 1992 as P.W.1. The evidence given in RCC No.13 of 1992 by me are true facts. On 18.02.1987 I executed a registered lease deed in favour of the first respondent"**. The petitioner himself admitted the stand taken by the respondent so far as the execution of lease deed dated 18.02.1987. The oral testimony of P.W.1 and R.W.1 coupled with Ex.B.1 clearly reveals that the petitioner executed a lease deed on 18.02.1987 in favour of the respondent. Therefore, the stand of the petitioner that the oral lease between him and the respondent is month to month has no legs to stand.

20 As per the pleadings in the petition and the oral testimony of P.W.1, the respondent has agreed to pay rent of Rs.500/- p.m. on the first day of every succeeding month. The respondent has taken a specific plea that the agreed rent is only Rs.220/- p.m. and not Rs.500/- p.m as pleaded by the petitioner. The possibility of distortion of facts by P.W.1 and R.W.1 being parties to the proceedings cannot be ruled out completely since they are claiming one against another being at loggerheads. As per the terms and conditions of Ex.B.1 lease agreement, the monthly rent is only Rs.220/-. The petitioner, having admitted the execution of Ex.B.1, is not entitled to take plea contrary to the recitals of it. On

appraising oral and documentary evidence available on record, the Courts below concurrently held that the monthly rent to the petition schedule property is Rs.220/-. Taking into consideration the oral and documentary evidence let in by the parties, this Court has no other option except to sail with the concurrent findings recorded by both the courts below so far as the monthly rent is concerned.

21 The contention of the petitioner is that the petition schedule property is situated in Devi Chowk centre, Rajahmundry town. As per the testimony of P.W.1, the petition schedule property is situated in prime business locality. The total extent of the petition schedule property is 92 sq. yards. As per the testimony of P.W.1, the petition schedule property may fetch rent of Rs.3,000/- p.m. As per the testimony of R.W.1, Rs.220/- is just and reasonable rent to the petition schedule property. To substantiate the stand of the petitioner, he mainly relied on the oral testimony of P.Ws.2 and 3. P.W.2 is the close friend of P.W.1 and P.W.3 is the previous tenant of the petition schedule property and present tenant of the petitioner in respect of some other premises. I have carefully scanned the testimony of P.Ws.2 and 3. The oral testimony of P.W.2 clearly reveals that the respondents are paying rent of Rs.500/- and that the petition schedule property may not fetch Rs.2,000/- p.m. towards rent. As seen from the testimony of P.W.3, he vacated the petition schedule property in the year 1985 and he paid rent of Rs.300/- p.m to the petitioner during that period. It is an admitted fact that the respondent paid an amount of Rs.5,000/- to the petitioner towards advance, which will not carry interest. The testimony of P.W.3 clearly reveals that he has not paid any advance money to the petitioner. In view of payment of advance amount of Rs.5,000/- by the respondent to the petitioner, the petitioner might have let out the premises to the

respondent on a monthly rent of Rs.220/- As per the testimony of P.W.3, after vacating the petition schedule property, he has been carrying on his business in another premises which also belongs to the petitioner on payment of monthly rent of Rs.500/-.

21 It is the case of the petitioner that the respondent has taken premises with similar extent and features from one K.P.Sunder Rao and paying rent of Rs.1,500/- p.m. As per the testimony of P.W.2 also, the respondent is paying rent of Rs.1,500/- p.m. to the said Sunder Rao. The petitioner did not file any document to prove that the petition schedule property is almost identical or similar in all aspects to that of said Sunder Rao. As seen from the testimony of P.Ws.2 and 3, the said Sunder Rao is none other than the own brother of the petitioner. Of course, he is no more. The family members of the said Sunder Rao are the competent persons to speak whether the respondent is paying monthly rent of Rs.1,500/- or not. It is not the case of the petitioner that he has not been maintaining cordial relationship with the family members of his brother. For the reasons best known to the petitioner, he did not choose to examine one of the family members of his brother in order to substantiate the stand taken by him. Undoubtedly, non-examination of family members of said Sunder Rao casts a cloud on the stand taken by the petitioner. The fact remains that the petition schedule property is situated in prime locality of Rajahmundry town. As observed earlier, the petitioner might have let out the petition schedule property to the respondent in view of payment of advance amount of Rs.5,000/-.

22 The contention of the respondent is that the petition is not maintainable before expiry of extended period of lease of five years. As per the recitals of Ex.B.1, the original tenancy period

comes to an end by 17.02.1992. There is a clause in Ex.B.1 that the lessee is entitled to renew the tenancy for a further period of five years. A perusal of Ex.B.2 legal notice got issued by the respondent clearly reveals that the respondent has exercised the option by extending the lease period for a further period of five years. The petition was filed in the year 1993, just after expiry of the initial period of five years. There is no stipulation in Ex.B.1 debarring or prohibiting the landlord – petitioner to claim enhancement of rent till completion of the further period of five years. The petitioner has agreed to let out the premises to the respondent for a period of five years on a monthly rent of Rs.220/-. After expiry of initial period of tenancy automatically the landlord is entitled to seek enhancement of rent. If the respondent is allowed to continue in the petition schedule property with the monthly rent of Rs.220/- p.m. certainly, it would cause hardship and financial loss to the petitioner. The contention of the respondent that the Rent Control Court has no jurisdiction to entertain the petition is not legally sustainable in view of filing of RCC No.104 of 1992 by the respondent seeking the relief under Section 8 of the Act. On one hand, the respondent wants to take advantage of the provisions of the Act and on the other hand, is, depriving the petitioner to take aid of the provisions of the Act in order to protect his legitimate right. The material available on record clinchingly establishes that the petition schedule property will not fetch a rent of Rs.2,000/- p.m. as on the date of filing of the petition. The Courts below have considered the oral and documentary evidence in right perspective and arrived at a conclusion that the petition schedule property will fetch rent not more than Rs.500/- p.m. The findings recorded by the courts below are based on evidence much less legally admissible evidence. I am fully agreeing with

the findings recorded by the courts below so far as fixation of fair rent is concerned.

23 The learned counsel for the respondent submitted that the Rent Control Court has no jurisdiction whatsoever to enhance the rent by 20% on existing rent once in three years. It is a common knowledge that the rental value of the premises depends upon numerous factors such as location of premises, transportation facility, the nature of business carried on by neighbouring shop owners etc. As observed earlier, the petition schedule property is situated in prime locality in Rajahmundry town. If the enhancement of rent by 20% on existing rent for every three years cause financial burden to the respondent, he is at liberty to vacate the premises. The respondent has been enjoying the petition schedule property since 1987. If the respondent is allowed to continue in the petition schedule property on a monthly rent of Rs.500/- without 20% enhancement for every three years, certainly, it would cause untold hardship and financial loss to the petitioner. No doubt, the very object of the Rent Control Act is to safeguard the interest of the tenant. But it does not mean that the Court cannot give due weight to the legitimate grievance put forth by the landlord. The principle of fairness applies equally to the tenant as well as the landlord. The Courts below might have taken into consideration all these aspects while enhancing the rent by 20% on the existing rent for every three years. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the respondent that Courts below erred on this aspect.

24 In the light of the foregoing discussion, I am of the considered view that there is no illegality or irregularity in the orders passed by the Courts below warranting interference of this

Court. There are no grounds much less valid grounds to interfere with the orders passed by the Courts below so far as the findings with regard to fixation of fair rent.

POINT No.3:

25 The respondent filed RCC No.104 of 1992 under Section 8 of the Rent Control Act to permit him to deposit the agreed rent of Rs.220/- in the Court. The Rent Control Court allowed both the petitions viz., petition for fixation of fair rent at Rs.500/- p.m as well as the other petition permitting the respondent to deposit the agreed rent of Rs.220/- in the Court. The appeals filed by both parties were dismissed by the appellate authority. The Rent Control Court fixed the fair rent at Rs.500/- p.m. with effect from the date of filing of the petition and further directed the respondent to enhance the rent by 20% on the existing rent once in three years, with effect from June 1996. The orders passed by the Rent Control Court were confirmed in appeal by the appellate authority. The appellate authority, while dismissing the appeal filed by the respondent / tenant and dismissing the appeal filed by the petitioner / landlord, questioning the fair rent, ought to have directed the respondent to deposit the rent as fixed by the Rent Controller at the rate of Rs.500/- p.m with 20% enhancement for every three years. The appellate Court committed error for not directing the respondent to deposit the rent in terms of the order and decree passed by the Rent Controller in RCC No.45 of 1993. Having regard to the facts and circumstances of the case, I am inclined to allow CRP No.1197 of 2003 with a direction to the respondent to deposit rent in the Court at the rate of Rs.500/- p.m from the date of filing of the petition, by enhancing 20% for every three years on the existing rent i.e. Rs.500/- p.m., commencing

from June 1996 onwards.

26 In the result, CRP Nos.3188 of 2002 and 203 of 2003 are dismissed. CRP No.1197 of 2003 is allowed in part directing the respondent to deposit rent in the Court at the rate of Rs.500/- p.m from the date of filing of the petition, by enhancing 20% for every three years on the existing rent i.e. Rs.500/- p.m. commencing from June 1996 onwards. However, it is made clear that if the respondent did not pay the rents as directed, the petitioner is at liberty to take appropriate steps for recovery of the same, if he is so advised. No order as to costs. As a sequel, miscellaneous petitions, if any pending in all these CRPs, shall stand closed.

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T. SUNIL CHOWDARY, J.

Date:04-09-2015

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