

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CRP No.3371 of 2002

&

CRP No.1974 of 2008

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Date:13.03.2015

Between:

Osman Gunj Extension Co.Operative
Housing Society Ltd., through
Hon.Secretary Sri Nandlal Vyas,
having office at Premises No.5-2-
200/A/104, Osmangunj, Hyderabad.

... Petitioner.

AND

Smt. Dilawarunnissa Begum and
others.

...Respondents.

The Court made the following :

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COMMON ORDER:
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These two revisions are preferred against common order dated 10-12-1999 in R.A.Nos.432/1995 & 841/1994 on the file of Additional Chief Judge, City Small Causes Court, Hyderabad whereunder, the appeals preferred by landlord are allowed reversing the eviction order of Rent Controller in R.C.Nos.41/1993 & 351/1989 respectively.

2. Revision petitioner is landlord-society and respondents are the legal representatives of original tenant Smt. Dilawarunnissa Begum W/o.Khaja Ali. Parties are hereinafter referred to as Landlord and Tenant for convenience sake.

3. Landlord filed R.C.No.351/1989 seeking eviction of the tenant on the ground that tenant committed wilful default in payment of rents from 01-10-1985 to 31-12-1988, and filed R.C.No.41/1993 contending that tenant committed wilful default in payment of rent from 01-01-1989 to 31-10-1992. Tenant resisted these applications on the ground that landlord offered to sell the property and there was a oral agreement in pursuance of which, tenant paid Rs.18,000/- to the President of Society towards part of sale consideration and she is in possession of the property as part performance under Section 53-A of Transfer of Property Act and denied her liability to pay any rent and that there is no jural relationship of landlord and tenant. It is further contended that there is advance of Rs.6,000/- with the

landlord and if the advance is adjusted towards the rent besides the payment that were made, there is no default.

On these contentions, Rent Controller examined two witnesses and marked 18 documents on behalf of landlord and examined one witness on behalf of tenant and on a over all consideration of oral and documentary evidence held that there is jural relationship of landlord and tenant between the parties and disbelieved the oral agreement and held that tenant committed default in payment of rent and ordered eviction by granting three months time. Aggrieved by the orders of the Rent Controller, tenant preferred appeals separately and by a common order dated 10-12-1999, the Appellate Authority allowed the appeals and observed that if deposit amount is adjusted towards rent besides payments that were made, there is no default and holding so the eviction order is set aside. Now the landlord, challenging the orders of the Appellate Authority, preferred these two revisions.

4. Heard both sides.

5. Advocate for revision petitioner submitted that the Appellate Authority failed to advert to the pleadings of tenant, which clearly indicate that she denied the relationship of landlord and tenant and set up title in herself and having disbelieved the oral agreement ought to have ordered for eviction holding that the denial of title by the tenant was malafide which is a clear ground for eviction. It is further submitted that the claim of adjustment cannot defeat the ground of wilful default even otherwise, if the deposit amount is adjusted towards rent payable, there is still balance, which clearly prove default in payment of rent, which has to be treated as wilful. It is submitted that the total months covered by both the cases i.e., from 01-10-1985 to 31-12-1988 and 01-01-1989 to 31-10-1992 comes to 84 months and admitted monthly rent of Rs.80/- is multiplied with 84 months, it comes to Rs.6,720/- and the advance was only Rs.6,000/-

and even if the payments made are considered, still there is balance of Rs.320/- and therefore, the same would amount to wilful default. It is further submitted that learned Rent Controller rightly appreciated the evidence on record, but the Appellate Authority, on presumptions and surmises, interfered with a well considered order and the orders of the Appellate Authority is contrary to the material on record, therefore, liable to be set aside. It is further submitted that the tenant made only one payment of Rs.400/- on 28-11-1988 under Ex.P11 and there is still balance. On the other hand, Advocate for respondent-tenant submitted that Appellate Authority has rightly appreciated evidence and came to a right conclusion and that there are no grounds to interfere with the orders of the Appellate Authority. It is further submitted that besides Ex.P11, there are other payments under Exs.P12, P17 & P18, which would cover the period concerned in the two Rent Control Cases. He submitted that if those payments are taken, there is absolutely no default much less wilful default and that the Rent Controller has not considered the payments under Exs.P12, P17 & P18. It is further submitted that even R.W.1 categorically deposed about these payments, which are not rebutted by the landlord. He submitted that after due adjustments of the payments and advance, there is still amount lying with the landlord and therefore, the eviction order is rightly set aside by the Appellate Authority and there are no grounds to interfere with the same.

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

7 . **Point:-** Though the jural relationship of landlord and tenant is disputed, now the fact remains that both trial Court and the Appellate Authority concurrently held that there is relationship of landlord and tenant and that finding is not questioned by the tenant. There is no dispute with regard to the period of default claimed in both the

petitions i.e., from 01-10-1985 to 31-10-1992 for a total period of 84 months. This entire 84 months is split up into two spells, the first R.C is for 38 months and the second R.C is for a spell of 46 months. There is no dispute with regard to quantum of rent, which is Rs.80/- per month. Now the main contention of the landlord is that even if the advance amount lying with the landlord is adjusted towards rent payable for 84 months, still there is balance payable, therefore, it is default and tenant is liable to be evicted. The learned Advocate for revision petitioner argued vehemently supporting the order of the Rent Controller, who ordered for eviction. Landlord contended that there was only one payment, which is under Ex.P11 relating to the period covered by two Rent Control Cases, whereas the tenant contended that there are other payments under Exs.P12, P17, P18 besides Ex.P11.

8. I have perused the record. As seen from the record, as per Ex.P11 an amount of Rs.400/- received on 28-11-1988, which is remitted on 30-11-1988, but the carbon copy of the receipt dated 01-11-1988 shows payment of Rs.3,380/- only. Ex.P12 receipt dated 01-12-1988 is for Rs.3,060/-, Ex.P17 receipt is for Rs.2,500/-, Ex.P18 receipt is for Rs.2,580/-. It is the duty of the landlord to explain about these amounts, which reflected in the receipts books maintained by the landlord-revision petitioner. When we calculate the total months covered by both the R.Cs, the period commenced on 01-10-1985 and ended by 31-10-1992. So as rightly pointed out by Advocate for tenant, all these payments under Exs.P11, P12, P17 & P18 are for the period covered in the two Rent Control Cases. It is not the case of landlord that these payments were not made, on the other hand, all these documents are the printed receipts issued by landlord and if these payments are taken, as rightly pointed out by Advocate for tenant, there is still amounts lying with the landlord, after adjusting the rent payable for 84 months. Learned Appellate Authority by considering these aspects and also following decision of Apex Court

in **MODERN HOTEL, GUDUR REPRESENTED BY M.N. NARAYAN vs. K. RADHAKRISHNAIAH**, wherein the Hon'ble Supreme Court observed that when landlord holding advance amount on tenants account, tenant cannot be termed as defaulter. Considering the above principle, appellate authority reversed the findings of the Rent Controller. On a perusal of Exs.P6 to P12, P17 & P18, I am of the view that the Appellate Authority has rightly considered the material on record and came to a right conclusion and there is no illegality or irregularity in the findings of Appellate Authority to warrant interference by this Court.

9. For these reasons, I am of the view that both the revisions are devoid of merits and liable to be dismissed.

10. Accordingly, both the revisions are dismissed as devoid of merits.

11. As a sequel, miscellaneous petitions, if any, pending in these Civil Revision Petitions, shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:13.03.2015

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