

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.5331 of 2011

ORDER :

This Revision is filed challenging the order dt.16.11.2011 in R.C.C.M.A.No.37 of 2011 on the file of Principal Senior Civil Judge-cum-Appellate Authority under the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, Vijayawada.

2. The petitioners herein had filed R.C.C.No.93 of 2002 on the file of Rent Controller-cum-II Additional Junior Civil Judge, Vijayawada for eviction of respondent on the ground of willful default in payment of rents. In the said R.C.C., the petitioner filed I.A.No.1067 of 2008 under Section 11 (4) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (hereinafter referred to as, 'the Act') seeking a direction to respondent to deposit the arrears of rent from September, 2000 onwards.

3. The said I.A. was allowed on 24.07.2009 directing respondent to pay arrears of rent from September, 2000 at the rate of Rs.350/- per month till 24.07.2009, which include arrears of rent of Rs.33,600/- claimed by petitioner, within one month from the date of the order; or else, the next step as per Section 11 (4) of the Act would be taken.

4. The respondent deposited only Rs.33,600/-, but not the amount of monthly rent of Rs.350/- per month for period subsequent to the order dt.24.07.2009

5. This was brought to the notice of the Rent Controller.

6. A docket order dt.23.11.2009 was passed by it granting more time to pay the amount not deposited by respondent.

7. This was questioned in CRP.No.5695 of 2009 by the petitioner. On contest, the said Revision was allowed on 15.04.2011. This Court held that the petitioner's contention under Section 11 of the Act (that no tenant against whom an application for eviction was made shall be entitled to contest the application before the Rent Controller unless he has paid to the landlord or deposits with the Rent Controller all the arrears of rent due in respect of the building up to the date of payment or deposit and continues to deposit any rent which may subsequently become due), has to be accepted; that the respondent's payment of the rent of Rs.33,600/- itself is not sufficient and he was bound to continue to pay Rs.350/- per month for the subsequent months also from 24.07.2009; that in the absence of payment of the said amount, the Rent Controller is bound to stop all proceedings and make an order directing the respondent

to put the petitioner in possession of the building in view of the mandate in Section 11 (4) of the Act; that the Rent Controller had no discretion to extend the time for payment of amounts of rent after 27.04.2009 on the failure of the respondent to show sufficient cause to the contrary; and such extension of time granted by the Rent Controller, cannot be sustained.

8. After this order was passed on 15.04.2011, the Rent Controller took note of the order in CRP.No.5695 of 2009 and directed the respondent to put the petitioner in possession of the premises in question within ten (10) days from the date of its order.

9. Challenging the order of the Rent Controller dt.15.06.2011, the respondent filed R.C.C.M.A.No.37 of 2011 before the Principal Senior Civil Judge-cum-Appellate Authority under the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, Vijayawada.

10. In the meantime, the respondent had also filed Review C.M.P.No.2920 of 2011 in C.R.P.No.5695 of 2009 before this Court under Order 47 Rule 1 CPC seeking Review of the order passed on 15.04.2011 in CRP.No.5695 of 2009. The said review petition was dismissed on 15.07.2011 holding that in view of the order of the court below directing eviction of respondent and the filing of the appeal by respondent, no cause survives for

review of the order passed by it.

11. By order dt.16.11.2011 the appellate authority allowed R.C.C.M.A.No.37 of 2011 rejecting the contention of petitioner that the appeal itself is not maintainable under Section 20, since the impugned order was passed as a consequence to the order 15.04.2011 in CRP.No.5695 of 2009. It further went into the issue of existence of relationship of landlady and tenant between petitioner and respondent and held that there is no landlord-tenant relationship between the parties. It further held that neither the Rent Controller nor the appellate authority had any jurisdiction to try the case.

12. Challenging the same, the present Revision is filed by petitioner.

13. Sri P. Venu Gopal, Senior Advocate representing Sri A.V. Sivaiah, counsel for petitioner contended that in the order dt.15.04.2011 in CRP.No.5695 of 2009, this Court directed the Rent Controller to stop all proceedings, and to make an order directing the respondent to put the petitioner in possession of the subject building; that the review petition seeking review of the said order had been dismissed; and that when the Rent Controller acted to implement the said order in CRP.No.5695 of 2009, it is not open for the appellate authority under the Act to entertain the appeal,

and allow it by giving a finding that there is no landlord and tenant relationship between the petitioner and the respondent. He also contended that this act on the part of the appellate authority amounts to great impropriety and it would amount to the appellate authority sitting in appeal over the order dt.15.04.2011 passed by this Court in CRP.No.5695 of 2009.

14. On the other hand, the counsel for respondent contended that there is no error in the order passed by the appellate authority in R.C.C.M.A.No.37 of 2011, inasmuch as, the order dt.15.04.2011 in CRP.No.5695 of 2009 was obtained by petitioner by playing fraud on the court. He alleged that in fact, even the balance amount, which the High Court had found as not paid, was in fact received by petitioner and this fact was suppressed by petitioner when the CRP was disposed of; that the review petition seeking review of the order in CRP.No.5695 of 2009 is still pending; and that in certain other civil litigation between the parties, a finding was given in favour of respondent that he is not a tenant of petitioner, and therefore the Revision be dismissed.

15. I have noted the submissions of both sides.

16. From the facts narrated above it is clear that a finding has been recorded in CRP.No.5695 of 2009 by this Court in its order dt.15.04.2011 that the respondent

had failed to comply with the order passed in I.A.No.1067 of 2008 on 24.07.2009 under Section 11 (1) warranting stopping of all proceedings before the Rent Controller under Section 11(4) of the Act. It had therefore directed the Rent Controller to direct the respondent to put the petitioner in possession of the R.C. Schedule property in view of the mandate under Section 11 (4) of the Act.

17. The counsel for petitioner has placed before me the order dt.15.07.2011 in Review C.M.P.No.2920 of 2011 in CRP.No.5695 of 2009 dismissing the Review Petition filed by respondent. Therefore, the contention of counsel for respondent that the Review Petition filed by respondent is still pending on the file of this Court is not correct, and it appears that the counsel for respondent has not been correctly instructed in this regard by respondent.

18. In view of the dismissal of Review C.M.P.No.2920 of 2011, the order in CRP.No.5695 of 2009 has attained finality as there was no challenge to it in the Supreme Court of India by respondent.

19. In view of the said order in the Revision, I am of the considered opinion that the Rent Controller had rightly passed order on 15.06.2011 directing the respondent to put petitioner in possession of the R.C. Schedule property.

20. It may be that the respondent had questioned the

same in R.C.C.M.A.No.37 of 2011 filed under Section 20 of the Act before the appellate authority under the Act, and technically, may be the appeal is maintainable. But the appellate authority cannot sit in appeal over the order dt.15.04.2011 passed by this Court in CRP.No.5695 of 2009, go into the merits and the contentions raised by respondent as to the existence of relationship of landlord-tenant between petitioner and respondent, and take a contrary view in the matter. In my considered opinion, the action of appellate authority under the Act in taking such a view would be an act of judicial impropriety and cannot be countenanced. The appellate authority under the Act cannot give a go-by to the order dt.15.04.2011 passed by this Court in CRP.No.5695 of 2009, and is bound to act in conformity with it.

21. In this view of the matter, I am of the opinion that the order dt.16.11.2011 passed in R.C.C.M.A.No.37 of 2011 by the Principal Senior Civil Judge-cum-Appellate Authority under the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, Vijayawada, is unsustainable. It is accordingly set aside. The Civil Revision Petition is allowed and the respondent is directed to forthwith put the petitioner in possession of R.C. schedule property which is subject matter of R.C.C.No.93 of 2002 before the Rent Controller-cum-II Additional Junior Civil Judge, Vijayawada. No order as to

costs.

22. As a sequel, miscellaneous petitions pending, if any, in this Revision shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 04-08-2015

Ndr/*