

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

CIVIL REVISION PETITION Nos.4556 and 4640 of 2014

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COMMON ORDER:

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These Civil Revision Petitions are filed challenging the orders passed by the I Additional Rent Controller, Hyderabad refusing to decide E.A.Nos.44 of 2014 and 45 of 2015 filed by petitioners herein to reject the claim petitions made in E.P.Nos.4 of 2014 and 5 of 2014 in R.C.Nos.137 of 2010 and 138 of 2010 respectively on his file.

2. It is not disputed that the Rent Control Cases had been decreed, but the 1st respondent in each of these Revisions had filed claim petition under Order XXI Rule 58 CPC resisting delivery of possession raising certain pleas therein and seeking a declaration that they are absolute owners and possessors of the R.C. schedule premises. The said claim petitions E.A.Nos.38 of 2014 and 40 of 2014 are pending for enquiry.

3. At that stage, the petitioners herein filed E.A.Nos.44 of 2014 and 45 of 2014 to reject the said claim petitions.

4. The Court below dismissed E.A.Nos.44 of 2014 and 45 of 2014 stating that it has to decide the claim petitions

filed by respective

1st respondents on merits after hearing both sides and the contentions raised by both parties would be decided after enquiry and at the threshold, petitioners cannot seek relief of rejection of claim petitions.

5. Challenging the same, these Revisions are filed.

6. The learned counsel for petitioners contended that Order XXI Rule 58 CPC would not apply to Rent Control proceedings, claim petitions themselves are not maintainable and therefore the Court below should have allowed E.A.Nos.44 and 45 of 2014 and dismissed the claim petitions E.A.Nos.38 of 2014 and 40 of 2014.

7. None appears for respondents even though the name of Sri B.Ramesh Kumar is printed in the cause list.

8. Rule 23(7) of the Rules framed under the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Rules, 1961 (for short “the Rules”) states:

“23(7.) If such execution is resisted and obstructed by any person other than the person against whom order of eviction was passed, the Controller may hold a summary enquiry into the facts of the case and if he is satisfied that the resistance or obstruction was without any just cause, and that such resistance or obstruction still continues shall issue a warrant to evict the said person by force and deliver the possession of the building to the person entitled for possession in pursuance of the order of eviction, and if he is satisfied

that the resistance or the obstruction was occasioned by any person other than the person against whom order eviction was passed claiming in good faith to be in the possession of the building on his own account or on account of some person other than the person the against whom order of eviction was passed, he shall make an order disallowing the execution against such person.”

9. No doubt, this Rule has not been quoted by respective

1st respondents and they have placed reliance on Order XXI Rule 58 C.P.C. Merely because a wrong provision of law is quoted, it cannot be said that the applications are not maintainable when they are referable to Rule 23(7) of the Rules.

10. Therefore, the applications filed by respective 1st respondents are *prima facie* are maintainable although whether they are entitled to resist the execution of the decree of eviction passed by the learned Rent Controller or not, would be a matter to be decided by the learned Rent Controller after enquiry and after giving opportunity to both sides to lead evidence.

11. In this view of matter, I do not find any merit in these Revisions and they are accordingly dismissed. No costs.

12. The learned Rent Controller is directed to dispose of the Claim Petitions filed by respective 1st respondents

within a period of three (03) months from the date of receipt of a copy of this order.

13. As a sequel, miscellaneous petitions pending if any, in these Revisions, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 17-08-2015

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