

HONOURABLE SRI JUSTICE S.RAVI KUMAR
CIVIL REVISION PETITION Nos.1430 OF 2005

&

276 OF 2007

Dated 12-6-2015

CIVIL REVISION PETITION No.1430 OF 2005

Between:

Hemendra V.Shah.

..Petitioner.

And:

N.Ramakrishna Rao.

..Respondent.

CIVIL REVISION PETITION No.276 OF 2007.

Between:

N.Ramakrishna Rao.

..Petitioner.

And:

Hemendra V.Shah and another.

..Respondents.

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COMMON ORDER:

These revisions arise out of the dispute between landlord and tenant and they are hereinafter referred to as "landlord and tenant" for

convenience sake.

Landlord filed R.C.No.392 of 1999 seeking relief of eviction on the grounds of willful default, acts of waste and for additional accommodation. Trial court has not accepted the plea of acts of waste and plea of additional accommodation but found that tenant committed willful default and on that ground ordered eviction. Aggrieved by the eviction ordered, tenant preferred appeal to the appellate authority and the Chief Judge, City Small Causes Court, Hyderabad, allowed the appeal by setting aside eviction order passed by the learned Rent Controller, aggrieved by which, landlord preferred C.R.P.No.1430 of 2005.

Tenant filed R.C.No.405 of 2000 seeking permission to deposit rent to the credit of Rent Controller and the learned Rent Controller, Hyderabad, on a consideration of oral and documentary evidence, refused the relief claimed by tenant and dismissed his application. Aggrieved by the same, tenant preferred appeal to the Chief Judge, City Small Causes Court, Hyderabad, in R.A.No.65 of 2005 and the appellate authority, on a reappraisal of entire material, upheld the findings of the Rent Controller and dismissed the appeal. Aggrieved by the same, tenant preferred C.R.P.No.276 of 2007.

Heard both sides.

Advocate for tenant contended that both the Rent Controller and appellate authority dismissed the application of tenant mainly on the ground that tenant failed to file original notice issued to the landlord invoking provisions of Section 9 of Rent Control Act but the original notice was filed in the other case filed by landlord for eviction and therefore, findings of the Rent Controller and appellate authority are not correct. He further submitted that as the tenant was paying the rents regularly and the deposit made by him was recognized, the appellate authority has set aside eviction order passed by the Rent Controller and having recognized the deposit, ought to have permitted the tenant to deposit the rent and therefore, the revision filed by tenant has to be allowed and the revision filed by the landlord has to be dismissed.

On the other hand, advocate for landlord submitted that the evidence on record would clearly disclose that the tenant has not paid rent from April, 1999 onwards and the Rent Controller rightly ordered for eviction but the appellate authority taking the money deposited into account of landlord has held that there is no willful default. He further submitted that the amount deposited into the account of landlord is towards consultancy fee payable to the landlord but not towards rent and therefore, findings of the appellate authority is not correct and the same are liable to be set aside. He further submitted that both Rent

Controller and the appellate authority rightly dismissed the application of tenant as the tenant failed to establish the bonafide doubt as to the ownership of the building and that the revision filed by the tenant has to be dismissed and revision filed by the landlord has to be allowed.

Now the point that would arise for my consideration in these two revisions is whether the order of the Rent Controller and Judgment of the lower appellate authority are legal, correct and proper?

POINT:

As already referred, landlord filed eviction petition seeking eviction of tenant on three grounds and the Rent Controller has not accepted the ground of acts of waste and ground of additional accommodation and ordered eviction only on the ground of willful default. Landlord has not preferred any appeal against findings of the Rent Controller in respect of plea of acts of waste and plea of additional accommodation. According to landlord, tenant took premises on a monthly rent of Rs.500/- in the year 1994 and he was highly irregular in payment of rent from the inception, however, tenant paid rent upto 31st March, 1999 and thereafter, he discontinued payment of rent and thereby, committed willful default.

According to tenant, he never committed any default and as per practice, one of the representative of the landlord used to come and collect rent every month and as the said person did not come for collection of rent for two months, he contacted the landlord on phone and on that, landlord gave his bank account number and asked the tenant to deposit the rent to his account and the tenant has deposited rent from April, 1999 onwards and in spite of knowledge of said deposit, landlord filed the eviction petition only with a view to evict the tenant and lease it out to some other person for higher rent.

Both parties have adduced evidence in support of their respective claims. From the evidence on record, the fact remains that the tenant deposited money into the bank account of the landlord. According to landlord, tenant has to pay consultancy fee to the landlord and the deposit made into the account of landlord is only towards consultancy fee but not towards rent. Admittedly, landlord is a Chartered Accountant and according to him, he is also looking after the accounts of the tenant and in that connection, some fee is due to him. But, there is no evidence on record to show that what was the consultancy fees charged by the landlord and what was the amount due from the tenant. Learned appellate authority, on a thorough scanning of the evidence, held that the contentions of the landlord are not convincing and on that ground, disbelieved his version and as the money is deposited into the account of landlord, he has set aside the order of the Rent Controller. I do not find any wrong

appreciation of evidence by the appellate court. On the other hand, learned appellate judge has rightly reversed the eviction order because for ordering the eviction on the ground of default, there must be cogent and convincing evidence to show that tenant willfully committed default in payment of rent. Here, there is no such willful default, on the contra, the amount was deposited into the account of landlord and for depositing rent into Bank account, convincing explanation was given which is established with cogent evidence.

For these reasons, I am of the view that the appellate authority has not committed any error nor there is any illegality in the findings of the appellate authority to be interfered by this court in exercise of revisional jurisdiction. Therefore, it is held that there are no grounds to interfere with the orders of the appellate authority for reversing the eviction order.

One of the contentions of the tenant is that he received notice issued on behalf of N.Andamma claiming ownership over the schedule premises and therefore, in view of the rival claim, he sought permission for deposit of the rent till dispute in respect of title is decided. Trial court after considering the oral and documentary evidence, held that there is no dispute regarding the jural relationship of landlord and tenant between revision petitioner and first respondent herein and on that ground, dismissed the application which is confirmed by the appellate authority.

Now the main grievance of the tenant is that the application was dismissed for not filing the original notice issued by Andamma and that the said notice was filed in the other connected case.

As seen from the orders of the Rent Controller and the appellate authority, application was not dismissed on the sole ground that notice was not filed, but was dismissed on the ground that revision petitioner herein was paying rent to the first respondent herein and he took the property on lease only from first respondent which was pleaded specifically and as such, there are no bonafides to doubt the ownership of the first respondent herein and on that ground dismissed the application. Trial court while considering the material also observed that the original notice is not filed. So, the objection of the revision petitioner that his application was dismissed on the sole ground of not filing the notice issued on behalf of Andamma is not at all correct.

On a scrutiny of entire material, I am of the view that both the trial court and appellate authority have rightly dismissed the application of tenant and both courts have not committed any illegality or irregularity in refusing the relief claimed by tenant. I do not find any jurisdictional error in the orders of the trial court and appellate court.

For these reasons, I am of the view that both the revisions are devoid of merits.

In view of my foregoing discussion, both the Civil Revision Petitions are dismissed accordingly. No costs.

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

JUSTICE S.RAVI KUMAR

Dated 12-6-2015.

Dvs.

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Dated 12-6-2015

Dvs