

**THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY**

**CIVIL REVISION PETITION No.6649 of 2006**

**ORDER:**

This civil revision petition is filed under Section 22 of the A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960 (for short, the Rent Control Act) challenging the orders dated 16.11.2006 in R.A.No.60 of 2005 on the file of the Additional Chief Judge, City Small Causes Court, Hyderabad, whereunder and where by the order dated 20.12.2004 in R.C.No.435 of 2000 on the file of III Additional Rent Controller was confirmed.

2. The parties to this revision petition are referred to as they are arrayed before the trial court, to avoid confusion.

3. The facts leading to filing of the present appeal are briefly as follows: Petitioner is the landlord of a residential premises bearing No.11-6-175 (Block No.A-11) admeasuring 237 square yards equivalent to 2128 square feet consisting of five rooms situated at Ballabdas Building, Nampally, Hyderabad. The petitioner let out the petition schedule premises on 01.09.1994 to the respondent on a monthly rent of Rs.500/- exclusive of electricity and water consumption charges. As per the terms and conditions of the lease, the respondent has to pay the rent on or before 15<sup>th</sup> of every succeeding month. The respondent is always irregular in payment of rent since from the date of commencement of lease, i.e., 01.09.1994. The petitioner filed R.C.No.435 of 2000 on the file of the III Additional Rent Controller, Hyderabad, for eviction of the respondent from the petition schedule premises and the same was allowed on 20.12.2004. The respondent paid rent up to July 2000 and thereafter stopped payment of rent. The respondent committed willful default in payment of rent from August 2000 to October 2000. Hence, the petition.

4. The respondent filed counter denying all the averments made in

the petition except the relationship of landlord and tenant. Till July 2000, the respondent paid rent without any default. Even though the rent has been paid, the petitioner filed R.C.No.435 of 2000 on the file of III Additional Rent Controller for eviction of respondent from the petition schedule property. Earlier, R.C.No.392 of 1999 filed by the petitioner was allowed on 23.10.2000. The respondent filed R.A.No.441 of 2000 on the file of the Chief Judge, City Small Causes Court, Hyderabad challenging the orders in R.C.No.392 of 1999. One Smt.Andalamma directed this respondent to pay rent to her claiming ownership over the petition schedule property. To avoid complications, the respondent-tenant preferred R.C.No.405 of 2000 seeking permission of the Court to deposit the rent amount into Court from August 2000 to March 2001. This respondent deposited the rent amount in R.A.No.441 of 2000. The present petition is not maintainable as Smt.Andalamma is claiming as owner of the petition schedule property. The present petition is hit by Section 11 of CPC. There is no willful negligence on the part of this respondent in payment of rent. Hence, the petition may be dismissed.

5. The trial court framed the following points for consideration:

- (1) Whether the respondent committed default in payment of rent for the month of August, 2000 to October, 2000? and
- (2) To what relief?

6. During the course of enquiry, on behalf of the petitioner P.W.1 was examined and Exs.P1 and P2 were marked. On behalf of the respondent, R.Ws.1 and 2 were examined and Exs.R1 to R5 were marked. Basing on the oral and documentary evidence and other material available on record, the learned Rent Controller arrived at a conclusion that the respondent-tenant committed willful default in payment of rent. Feeling aggrieved by the orders of the learned Rent Controller in R.C.No.435 of 2000, the respondent-tenant filed R.A.No.60 of 2005 on the file of Additional Chief Judge, City Small Causes Court, Hyderabad and the same was dismissed on

16.11.2006. Hence, the unsuccessful petitioner preferred the revision petition.

7. The contention of the learned counsel for the revision petitioner is three fold:

1. The Courts below have not properly considered the recitals of Exs.R1 and R2 which clearly demonstrate that one Andalamma is the owner of the petition schedule property;
2. The finding of the Courts below that the respondent committed willful default in payment of rent is not supported by any evidence, much less legally admissible evidence; and
3. This Court while exercising the revisional jurisdiction under Section 22 of the Rent Control Act can set aside the concurrent findings recorded by the Courts below.

***Per contra***, learned counsel for the petitioner/landlord submitted that the Courts below have considered the recitals of Exs.R1 and R2 in right perspective. He further submitted that the respondent intentionally and willfully committed default in payment of rent from August 2000 to October 2000; therefore, he is not entitled to squat on the petition schedule premises.

8. Now, the points that arise for consideration in this revision petition are:

1. Whether the respondent has committed willful default in payment of rent for a period of three months, i.e. from August 2000 to October 2000?
2. Whether there is any illegality or irregularity in the orders of the Courts below?

**Point Nos.1 and 2:**

9. In order to substantiate the case, the petitioner examined himself as P.W.1 and got marked Exs.P1 and P2. To demolish the case of the petitioner, the respondent examined himself as R.W.1 and got marked Exs.R1 and R2. R.W.2 was examined to prove the recitals of Exs.R1

and R2.

10. The following admitted facts can be culled out from the facts pleaded and proved. The petitioner let out the suit schedule premises to the respondent on monthly rent of Rs.500/- on 01.09.1994. In the counter, the first respondent admitted the said fact. The petitioner filed R.C.No.392 of 1999 on the file of II Additional Rent Controller, Hyderabad for eviction of the respondent and the same was allowed on 23.10.2000. The respondent filed R.A.No.441 of 2000 on the file of the Chief Judge, City Small Causes Court, Hyderabad and the same was allowed on 16.08.2004. The petitioner filed C.R.P.No.1430 of 2005 challenging the orders in R.A.No.441 of 2000 and the same was dismissed by this Court on 25.06.2015.

11. The contention of the learned counsel for the respondent is that the present petition (R.C. No.435 of 2000) is hit by the principle of *res judicata* in view of the order dated 23.10.2000 in R.C. No.392 of 1999. There is no dispute that the parties to both the R.Cs are one and the same. R.C.No.392 of 1999 was filed by the petitioner on the ground that the respondent committed default in payment of rent from April 1999 to June 1999 and he requires the building for his own occupation. R.C. No.435 of 2000 is filed by the petitioner for eviction of the respondent on the ground of willful default in payment of rent from August 2000 to October 2000. The cause of action for filing R.C.No.392 of 1999 is entirely different to the cause of action for filing R.C.No.435 of 2000. Therefore, the principle of *res judicata* is not applicable merely because the parties to the earlier proceedings and the present proceedings are one and the same. The cause of action in both the R.Cs is distinct and separate. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the respondent that R.C.No.435 of 2000 is hit by Section 11 of CPC.

12. Having regard to the facts and circumstances of the case, I have no hesitation to hold that the petitioner established the jural

relationship of landlord and tenant between him and the respondent.

13. In order to succeed the petition filed under Section 10(2)(i) of Rent Control Act, the petitioner has to establish that the tenant committed willful default in payment of rent. The oral testimony of P.W.1 and R.W.1 clearly reveals that the respondent has not paid the rent to the petitioner from August 2000 to October 2000. During pendency of R.C.No.392 of 1999, the respondent filed R.C.No.405 of 2000 seeking permission of the Rent Controller to deposit the rent into Court. After affording reasonable opportunity to both parties, the Rent Controller dismissed R.C.No.405 of 2000 on 20.12.2004. Feeling aggrieved by the orders in R.C.No.405 of 2000, the respondent filed R.A.No.65 of 2005 on the file of the Additional Chief Judge, City Civil Court, Hyderabad and the same was dismissed on 16.11.2006. The respondent filed C.R.P.No.276 of 2007 challenging the orders passed in R.A.No.65 of 2005 and the same was dismissed by this Court on 12.06.2015. The fact remains that the respondent was not permitted to deposit the rents into Court. I am fully agreeing with the findings of the Courts below that the respondent filed R.C. No.405 of 2000 with mala fide intention.

14. The predominant contention of the learned counsel for the respondent is that one Andalamma got issued a notice to one Seethachalam claiming that she is the owner of the petition schedule property; therefore he did not pay the rent. To substantiate the same, the respondent placed much reliance on Exs.R1 and R2. These two documents are marked through R.W.2 by name V.Ramachander. It is not the case of the respondent that the said Andalamma got issued a notice directing him to pay rent to her in respect of the petition schedule property. It is needless to say in order to prove the recitals of the document, either the author of the document or the receiver of the document has to be examined. For the reasons best known to the respondent, he did not choose to examine Andalamma or

Seethachalam to prove the recitals of Exs.R1 and R2. In the cross-examination, R.W.2 in unequivocal terms stated that he has not received notices i.e., Exs.R1 and R2. He further stated that whatever deposited by him pertains to the premises bearing No.11-6-181. He further deposed that he does not know who is the owner of the premises bearing No.11-6-175 i.e., petition schedule property. The testimony of R.W.2 is no way helpful to the respondent to substantiate his stand. Even assuming but not admitting the recitals of Exs.R1 and R2 are true and correct, the said Andamma has not constructed the building in question. Viewed from any angle, the said Andamma cannot be called as the landlord as defined under Section 2(vi) of the Act. If the tenant denies the title of the landlord with an ulterior motive, that itself is a valid ground to evict the tenant. The Courts below have rightly arrived at a conclusion that there is a jural relationship of landlord and tenant between the petitioner and the respondent. The material available on record falls short to establish that the respondent has not deposited the rent under a *bona fide* mistake that the petition schedule property belongs to one Andamma. In all previous proceedings, the respondent admitted that the petitioner is the landlord. The material available on record clearly reveals that the respondent committed default in payment of rent from August 2000 to October 2000 on one ground or the other. In such circumstances, the respondent has to take more care and caution while depositing the rent in time. Except the self-served testimony of R.W.1, there is no other documentary evidence to establish that he paid the rent for three months, i.e., from August 2000 to October 2000 during the pendency of R.A.No.441 of 2000. If really the respondent paid the rent, what prevented him to produce the rent receipt before the Rent Controller. In order to overcome the latches, the possibility of taking this type of stand by the respondent cannot be ruled out completely. On this aspect, the own witness of the respondent has not supported his case. During the pendency of R.C.C. or R.C.A., the respondent has not taken

any steps to deposit the rent for the period from August 2000 to October 2000. The material available on record clinchingly establishes that the respondent committed willful default in payment of rent to the petitioner for a period of three months, i.e. from August 2000 to October 2000. The Courts below concurrently held that the respondent committed willful default in payment of rent to the petitioner for three months. I am fully agreeing with the findings recorded by the courts below so far as willful default committed by the respondent in payment of rent. A person, who committed willful default in payment of rent, is not entitled to squat on the petition schedule premises. Having regard to the facts and circumstances of the case, I am of the considered view that the respondent committed willful default in payment of rent from August 2000 to October 2000. There is no illegality or irregularity in the orders passed by the courts below, which warrants interference of this Court. This revision petition lacks merits and bona fides. Hence, the same is liable to be dismissed. Accordingly, point Nos.1 and 2 are answered against the respondent.

15. Learned counsel for the respondent submitted that the respondent has paid rent up to December, 2015. Learned counsel for the petitioner submitted that the respondent has been paying the agreed rents. Learned counsel for the respondent submitted that the respondent may be permitted to continue in the petition schedule property up to December, 2015. The Courts below have granted two months time to the respondent to vacate the petition schedule premises.

16. Having regard to the facts and circumstances of the case, I am inclined to grant four months time to the respondent to vacate the petition schedule property and hand over the same to the petitioner. If the respondent fails to vacate the petition schedule property on or before 30.11.2015, the petitioner is at liberty to take appropriate steps in accordance with law.

17. With the above observation, the civil revision petition is dismissed confirming the orders passed by the learned Additional Chief Judge, City Small Causes Court, Hyderabad in R.A.No.60 of 2005. As a sequel, miscellaneous petitions, if any, pending in this revision petition shall stand closed.

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**T.SUNIL CHOWDARY, J**

04.08.2015.

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