

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

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CIVIL REVISION PETITION No. 1948 of 2015

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ORDER:

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Assailing the order dated 13.02.2015 passed in C.F.No.83 of 2015 on the file of the Principal Junior Civil Judge, Karimnagar, wherein and whereunder an application filed under Section 10 (2) (i) and 10 (3) (a) (i) of the Andhra Pradesh Building (Lease, Rent and Eviction) Control Act, 1960 (for short "the Act"), seeking eviction of the respondent therein is rejected at the threshold, the present Revision is filed under Article 227 of the Constitution of India.

For the sake of convenience, the parties will hereinafter be referred to as arrayed before the trial Court.

The facts which led to filing of the Civil Revision Petition are as under:

The petitioner claiming himself to be the absolute owner of property bearing No.3-4-71 admeasuring 153.11 square yards, situated at Sawaharan street, Shaikankotla, Karimnagar Town and District, filed O.S.No.84 of 2000 before the court of Senior Civil Judge at Karimnagar, against the respondent seeking declaration of title and recovery of possession. After contest the said suit was decreed on 28.07.2006. Aggrieved by the said judgment and decree, the respondent preferred A.S.No.53 of 2006 on the file of the II Additional District Judge, Karimnagar. The said appeal was allowed in part confirming the relief of declaration of title. Insofar as the recovery of possession, the said appeal was dismissed on a premise that the father of the respondent was a tenant of the father of the petitioner's vendor and as such the suit for recovery of possession is not maintainable. Holding so, the Court observed that the remedy for the petitioner lies for taking possession of the property from the

respondent by process of law i.e. by lawfully evicting him. Challenging the same, the respondent/defendant preferred a second appeal before this Court vide S.A.No.402 of 2010 and the same is pending. It is to be noted that there was no interim order was passed by this Court while admitting the second appeal though S.A.M.P.No.2392 of 2013 seeking interim injunction was filed. In view of the observations made by the lower appellate Court, the petitioner herein preferred C.F.No.83 of 2015 under Sections 10 (2) (i) and 10 (3) (a) (i) of the Act, seeking eviction of the respondent from the schedule property. The said application was returned as premature on the ground that the issue of tenancy is “Res Sub Judice” in terms of Section 10 of C.P.C. Challenging the same the present Civil Revision Petition is filed.

Learned counsel for the petitioner mainly submits that the ground on which the said application was returned is illegal and improper. He submits that since there is no stay in the second appeal filed before this Court, the argument that the issue regarding tenancy is “res subjudice” cannot be a ground to return the application filed under Section 10 of the Act pursuant to the orders passed in the appeal.

Per contra the learned counsel for the respondent would submit that the revision under Article 227 of the Constitution of India is not maintainable since only an appeal would lie against an order passed in a proceedings initiated under Section 10 of the Act.

Therefore, the points that would arise for consideration are:-

1. Whether an appeal would lie against the order passed in an application under Section 10 of the Act and whether the revision under Article 227 of the Constitution of India can be maintained before this Court.
2. If a revision is maintainable before this Court, whether the pendency of second appeal before this Court

would be a bar for entertaining rent control proceedings.

Before proceeding further it is to be noted that the proceedings initiated under Section 10 of the Rent Control Act seeking eviction of tenants pursuant to an observation made by the lower Appellate Court in A.S.No.53 of 2006 on the file of the II Additional District Judge, Karimnagar, was returned on the ground that the issue involved is res subjudice and the proceedings initiated are premature. Challenging the said order the revision is filed before this Court.

In order to appreciate the issue involved, it would be necessary to refer to few authorities on the subject to decide as to the forum which can address the grievance of the petitioner against an order passed in proceedings initiated under Section 10 of the Act.

In ***Gandham Satyanarayana v. Sirangam Satyanarayana Murthy*** this Court dealt with the issue as to the maintainability of the revision. The main argument that was advanced in the said case was that since there is no provision in the Act or the rules made thereunder which can be said to be parallel to Order 6 Rule 17 of C.P.C., the rent controller was not competent to grant any permission to amend the petition. Dealing with Section 4 of C.P.C. vis-à-vis the provisions of the Rent Control Act, the Court held as under:

“A reading of this Section would indicate that when anything in the Civil Procedure Code, is in conflict with anything in the special or local law or with any special jurisdiction or power conferred, or any special form of procedure prescribed by or under any other law, in the absence of any specific provision to the contrary, the Code will not prevail so as to override such inconsistent provisions. It is necessarily implied that when there is no such conflict the Code will apply. This is based on the principle that the special law prevails over the general law. It must be remembered that the Civil Procedure Code, or any analogous law being an adjective law is not primarily intended to create new rights or to take away existing rights. It mainly regulates the procedure in Courts. If the Act and the Rules made thereunder, in other words, the special law or the local law which prescribed a particular procedure, is silent on any

specific procedure, it must necessarily follow that the relevant provisions of the Civil Procedure Code, would be applied to such a case as it cannot be said that such an application would be inconsistent with the special or local law.”

In ***Sadhana Lodh v. National Insurance Co. Ltd., and another*** a three Judge Bench of the Apex Court held that the right of appeal is a statutory right and where the law provides remedy by filing an appeal on limited grounds, the grounds of challenge cannot be enlarged by filing a petition under Articles 226/227 of the Constitution on the premise that the insurer has limited grounds available for challenging the award given by the Tribunal.

In ***Chaganlal (died) Sardarilal and others v. Narasing Pershad*** a Bench of this Court held as under:

“The wording of Section 20 of the Act is not so very specific. It only says that any person aggrieved by the order passed by the Rent Controller. From the decision of the Apex Court in ***Central Bank of India Ltd. V. Gokul Chand***, which is binding on us, it follows that it is not every order of the Rent Controller that would become appealable, nor would it mean that only final orders passed by the Rent Controller are appellable and not interlocutory orders. The test is whether it is an order affecting any rights or liabilities of the parties. Only such orders that affect the rights and liabilities of the parties would become appealable and not all interlocutory orders, which amount only to steps taken towards the final adjudication and for assisting the parties in the prosecution of their cases in the pending proceedings, thus regulating the procedure and not affecting any right or liability”

Though the counsel for the petitioner relied upon various other judgments namely ***Smt. Ganga Bai v. Vijay Kumar and others***, ***Achutananda Baidya v. Prafulla Kumar Gayen and others*** and ***Indian Bank v. Maharashtra State Cooperative Marketing Federation Limited***, the same in my view may not apply to the case on hand. In ***Smt. Gangubai case (3 supra)*** the Apex Court distinguished the right of suit and right of appeal. In ***Achutananda Baidya case (4 supra)*** the issue relates to whether a High Court can interfere with finding of fact arrived at by subordinate Court if not based on any evidence or based on manifest misreading of the

evidence. Similarly in ***Indian Bank case (5 supra)*** the Apex Court dealt with the bar under Section 10 of C.P.C. to proceed with the trial of a subsequently instituted suit.

Section 20 of the Rent Control Act states that any person aggrieved by an order passed by the controller may, within thirty days, from the date of such order prefer an appeal in writing to the Chief Judge, Small Causes Court in the cities of Hyderabad and Secunderabad and elsewhere to the Subordinate Judge, or if there are more than one Subordinate Judge, to the Principal Subordinate Judge having original jurisdiction over the area aforesaid. In computing the said period of thirty days, the time taken to obtain a certified copy of the order appealed against shall be excluded.

Section 15 of the Rent Control Act which deal with execution of orders, which reads as under:

“15. Execution of orders: Every order made under Section 10, Section 12, Section 13 or Section 14 and every order passed on appeal under Section 20 or on revision under Section 22 and every order as to costs under Section 21 shall be executed by the Controller:

Provided that an order passed in execution under this section shall not be subject to an appeal, but shall be subject to revision under Section 22 of the Act.”

Section 22 of the Act which deal with the power of revision, reads as under:

22. Revision:

(1) The High Court may, at any time, on the application of any aggrieved party, call for and examine the records relating to any order passed or proceeding taken under this Act by the Controller in execution under Section 15 or by the appellate authority on appeal under Section 20, for the purpose of satisfying itself as to the legality, regularity or of propriety of such order or proceeding, and may pass such order in reference thereto as it thinks fit.

(2) The costs of and incident to all proceedings, before the High Court under sub-section 91) shall be in its discretion.”

In the instant case, an application made under Section 10 of the

Act seeking eviction came to be returned at the threshold itself. It is not the case of either party that the present application is filed seeking execution of an order made under Section 10 of the Act. It is a case where an application made for eviction was returned on the ground that it is premature. Returning the application filed under Section 10 of the Act as premature does not amount to rejecting the case/application on merits. It has only deferred the process of entertaining the proceedings initiated under Section 10 of the Act on the ground that the second appeal filed against an order passed by the lower appellate Court is pending before this Court. When any order passed affects the rights of the parties, an appeal may lie under Section 20 of the Act in view of the bench judgment of this Court in Chaganlal case (3 supra), but situation on hand is different.

From a reading of the order under challenge, it is clear that the petitioner is provided with an opportunity to renew his request at an appropriate time. The impugned order has not estopped the petitioner from initiating proceedings under Section 10 of the Act forever. Therefore, it cannot be said that the rights of the parties are substantially affected. A bench of this Court in Chaganlal case (3 supra) held that an appeal under Section 20 of the Act would lie only if substantial rights or liabilities of the parties are affected though the word used in Section 20 of the Act read as if an appeal would lie against an every order passed by the rent controller.

Though the learned counsel for the respondent tried to impress upon the Court by referring to the judgment of the Apex Court in **Sadhana Lodh (2 supra)** to show that where the statute provides remedy by filing an appeal, the grounds of challenge cannot be enlarged by filing a petition under Articles 226 and 227 of the Constitution, but in view of the findings arrived at and having regard to the Division Bench judgment of this Court, I am of the view that only a revision would lie before the High Court. Then the question would be whether the petitioner has to invoke Article 227 of the Constitution or Section 115 of C.P.C. for preferring the revision before this Court. If the proceedings initiated under Section 10 of the Act were dismissed at

the threshold on merits or dismissed on any other ground leading to finality of the proceedings before the said Court, definitely an appeal would lie. In the instant case, the order under challenge does not determine the final rights of the parties but it only defers entertaining an application made under Section 10 of the Act, in view of the pendency of the second appeal before this Court. Therefore, in my view, a revision under Article 227 of the Constitution is not maintainable.

The next question that falls for consideration is whether pendency of the second appeal is a bar for initiating proceedings under Section 10 of the Act seeking eviction. It is to be noted that though an application seeking injunction was filed along with the second appeal before this Court, but no orders are passed either suspending the order of the lower appellate Court or the observations made in the appeal. Hence, pendency of the second appeal by itself may not prevent the petitioner from proceeding further. Viewed from either angle, this Court is of the view that the order under challenge needs to be set-aside.

Accordingly the Civil Revision Petition is allowed. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

01.10.2015

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