

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL REVISION PETITION No.4244 of 2014

ORDER:

This revision is preferred against order dated 18.09.2014 in I.A.No.33 of 2012 in O.R.C.M.A.No.2 of 2011 on the file of the Principal Junior Civil Judge, Srikakulam.

2. Brief facts leading to this revision are as follows:

Petitioners herein are tenants, who preferred Rent Control Appeal before the Principal Senior Civil Judge-cum-appellate

Authority under Rent Control Act, challenging the order of eviction passed by the Rent Controller and in the appeal, they filed a petition for appointment of Commissioner to conduct local inspection and file a report and that petition was dismissed by the appellate Court. Aggrieved by the same, present revision is preferred.

3. Heard arguments.

4. I have perused the material papers. As seen from the record, petitioners herein earlier preferred Civil Revision Petition No.1892 of 2012 against dismissal of Advocate Commissioner petition and this Court while disposing of the revision gave liberty to petitioners herein to file fresh petition before the Senior Civil Judge, Srikakulam for appointment of Advocate Commissioner and directed the Court below to consider that petition on merits and dispose of it as early as possible and in

pursuance of that order, I.A.No.33 of 2012 is filed.

5. Advocate for petitioners submitted that the Rent Controller ordered eviction on the ground that petitioners have committed acts of waste, but in fact, there is no such acts of waste and it was the act done by municipality for road widening and to prove the same, local inspection by Advocate Commissioner is necessary and for that reason, petitioners filed I.A.No.33 of 2012, but, the appellate Court erroneously dismissed the said petition on the ground that Advocate Commissioner cannot be appointed to collect evidence, therefore, the order of the lower Court is to be set aside.

6. On the other hand, advocate for respondent-landlord submitted that trial Court rightly dismissed the petition because at appeal stage, it is not open to petitioners to ask the Court for appointment of Advocate Commissioner to note down the present physical features and that respondent herein pleaded acts of waste in the year 2002 and the present physical features are no way relevant for determination of the appeal.

6. Now the point that would arises for my consideration in this revision is:

Whether the order in I.A.No.33 of 2012 in O.R.C.M.A.No.2 of 2011, dated 18.09.2014, of the Principal Junior Civil Judge, Srikakulam, is legal, proper and correct?

POINT :

7. As seen from the material, revision petitioners

herein preferred appeal against order in R.C.C.No.1 of 2007, in which Rent Controller ordered their eviction. Admittedly, during the pendency of R.C.C., petitioners have not asked for appointment of Commissioner for noting down physical features of schedule property nor they obtained any photographs to show the features of the building as on that day. Now the only contention raised before the appellate Court is, since this Court has permitted petitioners to seek for appointment of Commissioner, they are entitled for such relief. But, as seen from the order of this Court, only liberty is given to petitioners to file a fresh petition for appointment of Advocate Commissioner and on such filing, lower Court i.e., lower appellate authority was directed to consider that application on merits. But as seen from the affidavit filed in support of the petition, for appointment of Advocate Commissioner except mentioning that petitioners earlier filed I.A.No.41 of 2011 for appointment of Advocate Commissioner to conduct local inspection, no specific reasons or separate reasons are given seeking such appointment and relevancy of such report for determination of disputes in the appeal. Learned appellate Judge has elaborately discussed each and every aspect including contentions raised by both parties and observed that petitioners have not assigned any reasons in the affidavit as to why they are seeking appointment of Commissioner or how the physical

features as on today are relevant for the purpose of determination of the dispute in the appeal. On a scrutiny of the material and the order, dated 18.09.2014, I am of the considered view that Principal Senior Civil Judge, Srikakulam, i.e., the appellate Authority under Rent Control Act, has rightly appreciated facts and law and I do not find any in correct findings or any illegality in the order of the lower Court. Further, as rightly observed, the present petition would amount to collection of evidence, which is not permissible under law, particularly when petitioners have not taken any steps during trial of rent Control Case. For these reasons, I am of the view that revision is devoid of merits and there are no grounds to interfere with the findings of the lower Court.

8. Accordingly, revision is dismissed as devoid of merits. No costs.

9. Miscellaneous Petitions, if any, shall stand dismissed.

S. RAVI KUMAR, J

13th February 2015.

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