

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

C.R.P.No.4133 of 2015

ORDER:

Heard Sri B.Vijayasen Reddy, learned counsel for the petitioner. None appears for the respondent.

2. This Revision Petition is filed under Section 22 of the AP Buildings (Lease, Rent and Eviction) Control, Act, 1960 (for short 'the Act') challenging the order dt.01-06-2015 in R.A.No.280 of 2011 of the Chief Judge, City Small Causes Court, Hyderabad confirming the order dt.29-09-2011 in R.C.No.35 of 2008 of the II Additional Rent Controller, City Small Causes Court, Hyderabad.

3. The petitioner herein is the tenant of the respondent.

4. The respondent filed the said R.C. for eviction of the petitioner from the R.C. schedule premises, which is a non-residential premises, on the ground that the petitioner had committed willful default in payment of rents from August, 2000 till the date of filing of the R.C. and also on the ground that he requires it *bonafidely* for setting up automobile spare parts business therein.

5. The respondent contended that although the rent payable by the petitioner was Rs.1100/- per month, since the petitioner was not paying rents from July

2000, he was compelled to file O.S.No.5699 of 2001 on the file of the XV Junior Civil Judge, City Civil Court, Hyderabad for eviction of the petitioner; the said suit was dismissed on 06-12-2003 observing that the rent of the premises is only Rs.650/- per month; he filed an appeal A.S.No.153 of 2004 before the XII Additional Chief Judge, City Civil Court, Hyderabad (F.T.C.) and the appeal was also dismissed on 15-02-2007; that since the petitioner had committed willful default in payment of rent from August 2000 till date, and since the petitioner had not deposited rents also and no intimation under Rule 5 of the AP Buildings (Lease, Rent and Eviction) Rules, 1961 was issued to the respondent, the petitioner is liable to be evicted on the ground of willful default in payment of rent.

6. He further contended that he is not well educated and since there was no possibility of his getting employment, and since he had knowledge in automobile spare parts and intended to start such a business, he *bonafidely* requires the R.C. schedule property for the said purpose.

7. Counter affidavit was filed by the petitioner opposing this application on both grounds. Petitioner contended that he is not a willful defaulter and that the respondent himself filed I.A.No.1625 of 2001 in O.S.No.5699 of 2001 seeking direction from the Court to the petitioner to deposit the rent amount from 01-10-2001

@ Rs.2,500/- per month. The said I.A. was contested and disposed of on 03-06-2002 tentatively directing the petitioner to deposit Rs.1100/- per month from October 2001 into Court, while permitting the respondent to withdraw only Rs.650/- per month, till date of disposal of the suit; that he complied with the said order; and even after the appeal was disposed of, he was remitting the monthly rent from January 2008 every month through money orders; and therefore he cannot be considered to be a person committing willful default in payment of rent. He also claimed that a sum of Rs.25,000/- was given as a security deposit to the respondent at the time of creation of the tenancy and on this ground also, he cannot be termed as a "willful defaulter".

8. Coming to the plea of *bonafide* requirement raised by the respondent, the petitioner disputed the same and stated that the respondent in his petition had lied to the Court by mentioning his occupation 'nil', that the respondent was always doing business since he became a major and he was carrying on business under the name and style of M/s.K.R.Motors at Telephone Colony, Kothapet, Hyderabad. He contended that the said plea is not a bonafide plea; that in the ground floor of the R.C. schedule premises, there are two mulgies one of which is the R.C. schedule mulgi, but the other mulgi is lying vacant and even though in the said mulgi, there is a small drinking water sump, it can always be used by the

respondent for commercial purpose.

9. Before the Rent Controller, the respondent examined himself and marked Exs.P-1 to P-5. The petitioner examined his brother as R.W.1 and marked Exs.R-1 to R-3.

10. By order dt.29-09-2011, the Rent Controller allowed the R.C. The Rent Controller held that deposits made by the petitioner during the pendency of O.S.No.5699 of 2001 and A.S.No.153 of 2004 indicated that he deposited rents only up to November 2006 and for the subsequent period, although the petitioner claims that he had sent money through money orders, no evidence in this regard has been adduced. It therefore held that the petitioner failed to prove that he deposited rents from December 2006 to December 2007. It also relied on the evidence of the brother of the petitioner as R.W.1 that he did not know how much amount was deposited towards rent. It rejected the plea of the respondent that Rule 5 of the Rules framed under the Act is attracted on the ground that the deposit was not directed in a proceeding under the Rent Control Act and it was directed to be made in a civil suit. It also rejected the plea raised by the petitioner about the deposit of Rs.25,000/- allegedly made by him with the respondent on the ground that no evidence in support of this plea was adduced.

11. As regards the plea of *bona fide* requirement

raised by the respondent, the Rent Controller adverted to the plea of the respondent that he is not well educated and held that he is having knowledge in automobile spare parts business and that the R.C. schedule premises is suitable for such business because it is in the ground floor and residence of the respondent is in the first floor of the same premises. It also referred to Ex.P-4, Service Certificate, issued by the employer of M/s.S.R.Motors in favour of the respondent on

25-08-2009 which indicated that he was working in the said business dealing with spare parts from 2002 to 2006 on a monthly salary of Rs.2,000/- per month and that it was located at Dilsukhnagar. It further held that it is not for the petitioner to direct the respondent to do business in the adjacent mulgi and that the respondent is the best judge of the requirement as to suitability of premises for commencing his business and has a complete freedom in the matter. It also drew an adverse inference against the petitioner for not entering into the witness box.

12. Challenging this order, the petitioner filed R.A.No.280 of 2011 before the appellate authority under the Act-cum-Chief Judge, City Small Causes Court, Hyderabad. The appellate authority also confirmed the findings of the Rent Controller.

13. Challenging the same, this Revision Petition is filed.

14. Learned counsel for the petitioner contended that since there is a deposit of Rs.1100/- per month (pursuant to the order dt.03-06-2002 in I.A.No.1625 of 2001 in O.S.No.5699 of 2001 filed by the petitioner) of which the respondent was allowed to withdraw Rs.650/- per month pending the suit, although the said suit was dismissed on 06-02-2003 and the same was confirmed in Appeal on 15-02-2007, the amount of Rs.450/- deposited by the petitioner in excess of the admitted rent of Rs.650/- till December 2006 has to be taken into account and petitioner cannot be held to be a willful defaulter in payment of rents. He contended that there was no intention on the part of the petitioner not to pay rents to the respondent since the petitioner has admittedly complied with the deposit of sum of Rs.1100/- per month pending O.S.No.5699 of 2001 and A.S.No.153 of 2004. He further contended that since the respondent had alleged that there is a willful default from August 2000 to December 2007, and since admittedly rents up to November 2006 have been shown to have been received by the respondent, in any event, the plea of willful default should have been rejected by the Rent Controller and the appellate authority. He also contended that the plea of *bonafide* requirement raised by the respondent could not have been accepted by the Court below on the basis of the evidence adduced by the respondent.

15. It is no doubt true that the respondent had filed O.S.No.5699 of 2001 for eviction of the petitioner and for arrears of rent and in that suit, in I.A.No.1625 of 2001, on 03-06-2002, there was a direction to the petitioner to deposit rents @ Rs.1100/- per month to the credit of the suit while permitting the respondent to withdraw Rs.650/- per month. Ultimately, the suit was dismissed on 06-12-2003 and the judgment in the suit was confirmed on 15-02-2007 in A.S.No.153 of 2004 on the ground that the Civil Court had no jurisdiction to entertain the suit.

16. Since the petitioner has been able to prove that he deposited rents up to November 2006 to the credit of O.S.No.5699 of 2001 as evidenced by Exs.R-2 and R-3, learned counsel for the petitioner is correct in his contention that at least for the period from August 2000 to November 2006, petitioner is not a willful defaulter in payment of rent. But both the Rent Controller as well as appellate authority have referred to the plea of the petitioner that for the subsequent period, he remitted the monthly rent by money orders and have held that there is no evidence of receipt of the said money order by the respondent and so they held that he committed willful default in payment of rent for the period December 2006 to December 2007.

17. The plea now sought to be canvassed by the learned counsel for the petitioner that the excess of

Rs.450/- which the petitioner had deposited to the credit of O.S.No.5699 of 2001 pursuant to the order dt.03-06-2002 in I.A.No.1625 of 2001 has to be treated as a deposit for the benefit of the respondent was in fact not raised in the counter filed by petitioner in the R.C.

18. Be that as it may, even though the said deposit has been made at the instance of the respondent only, the respondent was not allowed to have access to the excess sum of Rs.450/- beyond the sum of Rs.650/- per month deposited by the petitioner to the credit of the said suit. It is also not the case of the petitioner that subsequent to the dismissal of A.S.No.153 of 2004 on 15-02-2007, the respondent was permitted to withdraw the excess amount of Rs.450/- per month deposited pursuant to the order in I.A.No.1625 of 2001. Once the respondent has no access to this excess amount of Rs.450/- per month deposited by the petitioner during the pendency of O.S.No.5699 of 2001, it cannot be said that there is no willful default in payment of rents for the period December 2006 to December 2007. Unlike a security deposit given by a tenant at the commencement of tenancy which is mandated by law to be adjusted towards the rents, a deposit to the credit of a suit even if such a suit is filed by the landlord stands on a different footing particularly when the land lord is not allowed to access the entire amount deposited by the tenant. It cannot be equated to a security deposit given by a tenant to a landlord.

Therefore, I do not accept the contention of the learned counsel for the petitioner that the excess amount of Rs.450/- per month, which the respondent was not allowed to withdraw, deposited beyond Rs.650/- per month, can be treated as an advance rent payment to be adjusted towards the rent for the defaulted period. I am therefore of the opinion that both the Courts below were correct in holding that there is a willful default in payment of rents by the petitioner for the period December 2006 to December 2007.

19. Coming to the plea of *bonafide* requirement of the premises, the respondent had not only pleaded but also stated in the witness box that he is residing in the floor above R.C. schedule premises, and that since he is not well educated and he has no chance of getting employment. He stated that he has some experience in doing business in automobile spare parts (being an employee of M/s.S.R.Motors, at Dilsukhnagar, Hyderabad). Since the petitioner has not entered the witness box to dispute these contentions, and since the plea of the petitioner that the respondent is the owner of M/s.K.R.Motors at Telephone Colony, Kothapet, Hyderabad has also not been proved, the findings of both the Rent Controller and appellate authority that the respondent *bonafidely* requires the R.C. schedule premises cannot be said to be not based on record or perverse.

20. In this view of the matter, I do not find any merit in the Civil Revision Petition and the same is accordingly dismissed. The petitioner is granted time up to 30-04-2016 to vacate the R.C. schedule premises subject to the condition of the petitioner filing an undertaking within four weeks from the date of receipt of a copy of this order before the Rent Controller that he would vacate the said premises by the said date and also subject to the petitioner paying the arrears of rent up to today and the rents which fall due henceforth till 30-04-2016 on the 7th of every succeeding month. In default of compliance of either of the above conditions, the respondent shall be entitled to evict the petitioner from the R.C. schedule premises, forthwith. The respondent is entitled to withdraw the amounts deposited by petitioner without furnishing any security. No costs.

21. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 09-10-2015

Note:

Issue C.C. in ten days.

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