

HON'BLE SRI JUSTICE R. SUBHASH REDDY

CIVIL REVISION PETITION No.3440 of 2015

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ORDER:

This Civil Revision Petition is filed by the tenant under Section 22 of the Andhra Pradesh Buildings (Lease, Rent & Eviction) Control Act, 1960 (for short "the Act") aggrieved by the order of eviction dated 29.11.2012 passed in R.C.No.212 of 2010 by the II Additional Rent Controller, City Small Causes Court, Hyderabad, as confirmed by the Additional Chief Judge, City Small Causes Court, Hyderabad, by judgment dated 02.07.2015 passed in R.A.No.6 of 2013.

2. The respondent herein is the landlord of the petition schedule premises bearing Municipal No.12-1-486/B/2/1, situated at Kishannagar, Asifnagar, Hyderabad. It is his case that by virtue of family partition, the said property fell to his share; originally his mother has inducted the petitioner herein as tenant in the year 2007 to run business, on monthly rent of Rs.1,050/- and after partition is effected by registered partition deed, further agreement was entered into between the petitioner and respondent on 10.01.2009 in which the petitioner has agreed the monthly rent of Rs.1,050/-. It is the allegation of the respondent herein that since the inception of tenancy, petitioner was irregular in payment of rents and was in the

habit of paying rents once in an year, i.e. from January, 2007 to December, 2007 he paid rents on 20.12.2007 and for the period from January, 2008 to October, 2008 he paid rents on 10.11.2008. It is further his allegation that after execution of the rental agreement, petitioner herein totally neglected in paying rents from the month of November, 2008 till the date of filing of the eviction petition in the month of May, 2010, as such, the petitioner herein has defaulted in paying rents and in toto rent due from the petitioner herein is Rs.19,950/-. It is further pleaded by the respondent herein that petitioner herein has constructed *pial* without his consent and the petition schedule premises is required by his son for starting *kirana* store. Further, accepting that there is rental deposit of Rs.5,000/- , it is pleaded that in spite of his demand to vacate the petition schedule premises, petitioner herein has not vacated and as such he filed R.C.No.212 of 2010 on the file of the II Additional Rent Controller, City Small Causes Court, Hyderabad.

3. A detailed counter-affidavit is filed by the petitioner herein in the R.C., denying the various allegations made by the respondent. It is mainly the case of the petitioner that though he was paying rents regularly, mother of the petitioner was not in the habit of issuing receipts regularly. It is pleaded that he has constructed *pial*, as his shop is below ground level, with the permission of the respondent. The petitioner denied the plea of bona fide

requirement made by the respondent.

4. Before the primary tribunal, on behalf of the respondent herein, he himself was examined as P.W.1 and his son was examined as P.W.2, besides marking Exs.P.1 to P.10 on his behalf. Petitioner herein was examined as R.W.1, apart from examining R.W.2 besides marking Exs.R.1 to R.3

5. The primary tribunal, having considered the oral and documentary evidence on record, ordered eviction of the petitioner herein, by order dated 29.11.2012, by recording a finding that the petitioner has wilfully defaulted in paying rents and he has constructed *pial* in front of the petition schedule premises without the consent of the petitioner and further recording a finding that the petition schedule premises is required for bona fide purpose, i.e. to start *kirana* store.

6. As against the same, the petitioner herein carried the matter in appeal before the Additional Chief Judge, City Small Causes Court, Hyderabad vide R.A.No.6 of 2013. The appellate tribunal, while reversing the findings with regard to unauthorized construction of *pial* and also the ground of bona fide requirement urged by the respondent herein, confirmed the eviction on the ground of wilful default and dismissed the appeal by judgment dated 02.07.2015.

7. Heard the learned counsel for the parties and perused the material on record.

8. It is submitted by Sri T. Srikanth Reddy, learned counsel for the petitioner herein that though there is no valid and acceptable evidence on record, the appellate tribunal has confirmed the order of eviction on the ground of wilful default. It is further submitted that the mother of the respondent herein was receiving rents regularly but was in the habit of issuing receipts once a year, as such, it cannot be said that the petitioner is a wilful defaulter.

9. On the other hand, it is submitted by Sri Damodar Mundra, learned counsel for the respondent-caveator that the petitioner herein was irregular in paying rents from the inception of tenancy and having made false plea that he has sent rents through money order, he failed to produce any evidence. It is further submitted that having regard to the concurrent findings of fact on the ground of wilful default in payment of rents, no grounds exist to interfere with the same in this petition.

10. To prove the default on behalf of the petitioner herein in paying rents, apart from oral evidence, respondent has got marked Exs.P.2 and P.3. According to the respondent, Exs.P.2 and P.3 are the receipts of token of rent received by his mother. It is the specific case of the petitioner herein that he was paying rents regularly even for the period from January, 2009 to March,

2010 and the respondent has not issued any receipts. In such an event, there is no reason for not filing petition under Section 8(2) of the Act. Further, it is to be noticed that the petitioner himself has filed suit in O.S.No.2312 of 2010 and obtained perpetual injunction orders. Although it is the case of the petitioner that he sent rents to the respondent by way of money order for the defaulted period, he has not produced any evidence in proof of sending money orders or acknowledgment from the respondent. In view of the irregular payments made by the petitioner vide Exs.P.2 and P.3 and in the absence of filing any other documentary evidence, the primary and appellate tribunals have recorded findings of wilful default in payment of rents by the petitioner and the same is in consonance with the evidence on record. In view of the same, no case is made out for interference in this Civil Revision Petition.

11. However, as it is pleaded that petitioner is doing business in the petition schedule premises and is in occupation from the last several years, petitioner is granted four months from today to vacate the petition schedule premises, subject to his filing undertaking before the Registry of this Court, within a period of two weeks from the date of receipt of this order, to the effect that he will vacate the petition schedule premises within the time stipulated above and serving copy o the same on the

other side. Needless to observe that the petitioner shall pay off arrears of rent if any and continue to pay rents till he vacates the petition schedule premises.

12. The Civil Revision Petition is dismissed with the aforesaid directions. No order as to costs.

As a sequel, miscellaneous petitions if any pending in the Civil Revision Petition stand closed.

R. SUBHASH REDDY, J

23rd September, 2015
MRR