

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL REVISION PETITION No.6553 of 2012

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Date:06.03.2015

Between:

Chandanala Nagaiah (died)

..... Petitioners.

AND

Valupadasu Raju

.....Respondent.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL REVISION PETITION No.6553 of 2012

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ORDER:

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This revision is preferred against order dated 02-11-2012 in E.A.No.54/2011 in E.P.No.322/2011 on the file of Junior Civil Judge, Warangal.

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

The revision petitioner herein is plaintiff and respondent herein is defendant in O.S.No.1321/1999. The said suit filed by tenant for injunction against landlord not to interfere with

his peaceful possession and enjoyment and that suit ended in a compromise before Lok Adalat and a compromise decree is passed in terms of compromise. The defendant-landlord filed E.P.No.322/2011 for execution of one of the terms of the compromise decree, which contemplate eviction of the tenant and Executing Court ordered for delivery of possession as per the compromise terms and the tenant filed application in the said E.P invoking Section 47 of CPC contending that the rights and liabilities between the parties are governed by the provisions of A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960 (hereinafter referred to Act, 1960) and the tenant shall not be evicted except under the provisions of Sections 10 or 12 or 13 of the said Act, 1960 and that the Executing Court has no power to order delivery of possession. Landlord resisted the said E.A.No.54/2011, contending that restitution prayed by tenant is not legal and that the delivery of possession is purely in accordance with compromise decree passed by the Lok Adalat and that the petition under Section 47 of CPC is not maintainable. The trial Court, on a consideration of contentions & rival contentions and the decisions relied on by both parties, held that there is no error in ordering delivery of possession and the same is in accordance with the execution of the compromise decree and that the tenant is not entitled for redelivery or any other reliefs claimed in the petition and holding so dismissed the petition filed under Section 47 of CPC. Now aggrieved by the dismissal of the

petition, tenant preferred present revision.

3. Heard arguments.

4. Now the point that would arise for my consideration in this revision is whether the order of the Court below is legal, proper and correct?

5. **Point:-**There is no dispute with regard to relationship between the parties. There is also no dispute with regard to terms of compromise according to which, the revision petitioner has agreed to vacate the premises by 31-07-2010 and the said promise was not fulfilled. Now the main grievance of the revision petitioner is that as per the terms of the compromise, if the tenant has not vacated the premises as agreed, the landlord has to proceed under due process of law, which means he has to file eviction petition invoking the provisions of Rent Control Act and that the compromise term has no force of execution and the Executing Court has committed error and its order is without jurisdiction. On the other hand, it is the contention of the respondent-landlord that due process of law means only execution of the compromise decree and that the same is availed and the Executing Court as rightly ordered for delivery of possession and in fact delivery is also recorded, therefore, the objection is not tenable and tenant is not entitled for redelivery.

6. Before advertng to contentions and rival contentions of

both parties, I feel it is necessary to verify the relevant clause in the compromise decree in order to appreciate the contentions of both parties. In the compromise decree, the relevant clause under clause No.2 is as follows:-

“The rent of the total lease premises (old & new) is Rs.665/- p.m. The period of lease is ten years from the date of 01-08-2000. After the expiry of the lease period of ten years, the plaintiff would vacate and deliver vacant possession of the suit premises to the defendant-landlord unless the lease period is further extended by both the parties in writing with fresh conditions and terms. Otherwise the landlord is at liberty to evict the tenant under due process of law.”

7. From a plain reading of the above clause, it is clear that the revision petitioner herein agreed to vacate and deliver vacant possession of the suit premises to the respondent, after expiry of lease period, if the lease is not further extended by both parties in writing with fresh conditions and terms. Admittedly, lease period is not extended, after the expiry of the lease period commenced from 01-08-2000. It is also not in dispute that the lease period is expired by the end of July 2010. According to revision petitioner, the above referred term, which is part of compromise decree is not executable as the revision petitioner is protected by the provisions of Rent Control Act. According to revision petitioner, eviction under due process of law means, liberty is given to the landlord to evict the tenant by filing Execution Petition. Counsel for revision petitioner placed reliance on decision of Hon'ble Supreme Court reported in **B. V.**

Patankar and others vs. C.G. Sastry^[1] and decision of Hon'ble Supreme Court reported in **Bibekananda Bhowal (dead) by L.Rs vs. Satindra Mohan Deb (dead) by L.Rs**^[2]. In both the decisions, the principle laid down is that the tenant has to be protected as per the provisions of Rent Control Act and execution proceedings in terms of the compromise decree cannot be availed. In answer to these two decisions, the respondent/landlord relied on three Supreme Court decisions and one decision of this Court.

8. In **LAKSHMI NARAYANAN vs. S.S. PANDYAN**^[3], Hon'ble Supreme Court held that in a case where parties compromise after the decree in a case has been passed, the effect of the compromise on the executability of the decree depends upon the intention of the parties, which is a mixed question of law and fact and has to be determined by the executing Court on an application under Section 47 CPC on interpretation of the decree and the compromise in the light of the facts and circumstances of each case. If on such determination it is gathered that the intention of the parties is to extinguish the decree and either the decree-holder or the judgment-debtor got the compromise recorded under Rule 2 of Order 21 CPC by the Court whose duty it is to execute the decree, the execution of the decree cannot be proceeded with by the executing court. But if the intention of the parties is to keep the decree alive and to give effect to it in the

manner agreed upon between the parties in the compromise, the decree will be given effect to accordingly or executed as it is depending upon whether the compromise is recorded by the court as aforementioned or not.

9. In **KAMLABAI AND OTHERS vs. MANGILAL DULICHAND MANTRI**^[4], Hon'ble Supreme Court held that when eviction decree based on surrender of lease by tenant not challenged on ground of being in contravention of statutory provisions, the same challenge cannot be taken subsequently in execution proceedings.

10. In **P.T. THOMAS vs. THOMAS JOB**^[5], Hon'ble Supreme Court held that a judgment by consent is as effective an estoppel between the parties and the Court's attempt should be to give life and enforceability to compromise award and not to defeat it on technical grounds.

11. In **Dilshad Hussain and others vs. Alloju Mallikarjun Rao**^[6], wherein this Court in a similar set of facts held as follows:

"It is also a matter of record that the suit filed by the respondent, for eviction of the petitioners, ended in a compromise, through the medium of Lok Adalat. The lease, which was in force up to 01-01-2004 was extended till 31-12-2006 with enhanced rents and with the expiry of that period, the petitioners were under obligation to vacate the premises. Failure thereof, would naturally, give rise to a right to the respondent to seek execution of the award."

12. Learned trial Judge distinguished the decisions relied on by the revision petitioner and the decision of this Court in **Dilshad Hussain's Case (6 Supra)** held that the above referred term can be executed and that the objection of the revision petitioner is not tenable. As already referred above, the main objection of the revision petitioner is that the term due process of law means that the landlord has to file an eviction petition under the provisions of Rent Control Act. But in view of the principle lay down by the Hon'ble Supreme Court in **P. T. Thomas's Case (5 Supra)** and **Kamala Bai and others' Case (4 Supra)**, the said objection of the revision petitioner is not at all tenable. When the revision petitioner agreed to vacate the premises by a particular date and when that particular term is not challenged by the revision petitioner on the ground that it is in contravention of provisions of Rent Control Act he is estopped from contending that clause of the compromise decree is not executable. If the clause relating to eviction is read as a whole, there cannot be any ambiguity as to the intention of the parties that the revision petitioner agreed to deliver possession, after the expiry of the lease period and if it is contravened, liberty was given to the landlord to proceed in accordance with law, which means to execute that term, therefore, the objection of the revision petitioner that the Executing Court has no power and it acted beyond the jurisdiction cannot be accepted. On a security of the

material, I am of the considered view that the trial Judge has rightly appreciated the facts and law and there is no illegality or irregularity or wrong exercise of jurisdiction to warrant interference by this Court, therefore, it is held that there are no grounds to interfere with the orders of the trial Court and the revision is liable to be dismissed as devoid of merits.

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

14. As a sequel, miscellaneous petitions, if any, pending in this revision, shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:06.03.2015

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[\[1\]](#) AIR 1961 Supreme Court 272

[\[2\]](#) 1996 Supreme Court 1985

[\[3\]](#) (2000) 7 SUPREME COURT CASES 240

[\[4\]](#) (1987) 4 Supreme Court Cases 585

[\[5\]](#) (2005) 6 Supreme Court Cases 478

[\[6\]](#) 2008 (3) ALD 515