

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.4187 of 2011

ORDER :

This Revision is filed under Section 22 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 [hereinafter referred to as, 'the Act'], challenging the order dt.17.08.2011 in R.A.No.76 of 2008 on the file of Chief Judge, City Small Causes Court, Hyderabad, confirming the order dt.29.02.2008 in R.C.No.395 of 2006 on the file of Principal Rent Controller – cum – 12th Junior Civil Judge, Hyderabad.

2. The 1st petitioner herein is the tenant of 1st respondent who was the owner of the subject premises which is a non-residential premises.

3. Alleging that 1st petitioner committed willful default in payment of rents for the period from June, 2006 to August, 2006 and also pleading that he *bona fidely* requires the premises in order to commence his business in stationery and general items, the 1st respondent filed R.C.No.395 of 2006. He also pleaded that he is a Senior Citizen and also a retired government employee and the 1st petitioner should be evicted from the subject premises invoking Section 10-B of the Act.

4. Counter-affidavit was filed by 1st petitioner

opposing the said application and denying that they have committed willful default in payment of rents to 1st respondent. It was also denied that the requirement of 1st respondent of the subject premises for doing his business is bona fide. It was also denied that 1st respondent was a Senior Citizen or a retired government employee.

5. Before the Rent Controller, the 1st respondent examined PWs.1 and 2 and marked Ex.P.1. The 1st petitioner examined himself as RW.1 and marked Exs.R.1 to R.5.

6. By order dt.29.02.2008, the Rent Controller directed eviction of 1st petitioner from the schedule premises, both on the ground that he committed willful default in payments of rents and also on the ground that 1st respondent *bona fidely* requires the R.C. Schedule premises to commence his business. He further held that 1st petitioner cannot dictate to 1st respondent to start his business in a different place. He held that 1st respondent has established that he has experience in stationery business and he is a retired employee and his evidence is corroborated by the evidence of PW.2, and since the 1st respondent was also a Senior Citizen, the 1st petitioner should vacate and handover vacant possession of the R.C. Schedule premises.

7. Challenging the same, the 1st petitioner filed R.A.No.76 of 2008 before the Chief Judge, City Small Causes Court, Hyderabad, who is the appellate authority under the Act.

8. Pending appeal, the 1st respondent died and his legal representatives were brought on record in the appeal. After they came on record, the legal representatives of deceased 1st respondent filed I.A.No.722 of 2009 seeking amendment of the R.C. setting up their own personal requirement of the R.C. Schedule premises. It was further contended that 2nd petitioner, being a widow of 1st respondent, under Section 10-C of the Act, she is entitled to immediate possession of the property.

9. After contest, the said application was allowed and the said plea was allowed to be incorporated in the R.C.

10. In the appellate court, the respondents examined PW.3 and marked Exs.P.2 to P.4. PW.3 is none other than the son of the deceased-1st respondent and he reiterated in his evidence that the premises in question is *bona fidely* required by respondents. He also pleaded that he lost his job after the death of his father and he needs to do business to support his family.

11. By order dt.17.08.2011, the Court below dismissed the appeal accepting the case of respondents about the *bona fide* requirement of the premises. It however set aside the order of the trial court, insofar as the plea of willful default is concerned, and held in favour of petitioner. It also accepted the plea of respondents that since the 2nd respondent is a widow she is entitled for immediate possession of the R.C. Schedule premises.

12. Challenging the same, the present Revision is filed.

13. Pending Revision, the 1st petitioner died and his legal representatives have been impleaded as petitioner nos.2 to 6 and respondent nos.9 to 11. With the permission of the Court, notices to respondent nos.9 to 11 were taken by Desk-to-Desk Courier (DTDC) but no acknowledgment of service was received, and therefore, the CRP.MP.No.7585 of 2011 was ordered on 03.08.2015.

14. Heard Sri S Balchand, counsel for petitioner nos.1 to 6; Sri A.M. Qureshi, counsel for respondent nos. 2 to 8; and Sri K. Anup Kumar, counsel for 10th respondent.

15. The counsel for petitioners sought to canvass the correctness of several findings of the lower appellate court and also questioned the power of the appellate authority

under the Act to allow the amendment to the R.C.; that the amendment to the R.C. made in the appeal is at the instance of legal representatives of 1st respondent; that the 1st respondent had several other premises available; and he only proceeded against the subject premises, which is not permissible.

16. The fact remains that the 1st respondent had died pending appeal and his widow and children were impleaded in the appeal. The R.C. was filed on the ground of willful default in payment of rents and *bona fide* requirement of the premises by the deceased 1st respondent. No doubt, the Rent Controller had held in favour of 1st respondent on the issue of willful default and also on the issue of *bona fide* requirement, but the appellate authority had reversed the finding of the Rent Controller on the issue of willful default. Therefore, there remained only the ground of *bona fide* requirement of premises as a ground for consideration in the appeal. But once the 1st respondent died, his *bona fide* requirement would not survive and therefore the respondent nos.2 to 8 were entitled to seek amendment of the R.C., raising the plea of their own *bona fide* requirement in addition to taking a plea under Section 10-C of the Act. No exception can be taken to the order passed by the appellate authority allowing the said R.C. and permitting the respondent nos.2 to 8 to raise the said plea.

17. Since the 2nd respondent is the widow of 1st respondent she is entitled to take recourse to Section 10-C of the Act which entitles her to seek to recovery of immediate possession of the R.C. Schedule premises, either for her use or for the use of member of her family. The only restriction is that such a plea can be raised by her only in respect of one non-residential premises.

18. In the absence of any material placed by petitioners to show that the 2nd respondent had made a claim under Section 10-C in respect of some other premises belonging to 1st respondent, the order of eviction of petitioners (on the ground that 2nd respondent is a widow entitled to recovery of possession under Section 10-C of the Act) is not liable to be interfered with. It is also not necessary to go into the other contentions on merits which are sought to be raised by the counsel for petitioners. Therefore, I do not find any merit in the Revision and it is accordingly dismissed.

19. Since it is stated by counsel for both sides that petitioners have been tenants in the subject premises for more than three decades, in the facts and circumstances of the case, the petitioners are granted six (06) months' time from today to vacate the premises which is subject matter of R.C.No.395 of 2006 subject to petitioners filing an undertaking to this effect within four (04) weeks from to-

day before the Principal Rent Controller – cum – 12th Junior Civil Judge, Hyderabad and stating also therein that they shall continue to pay the rents in respect of the R.C. Schedule premises till they handover of vacant and peaceful possession to respondent nos.2 to 8.

20. Accordingly, the Civil Revision Petition is dismissed, granting time to petitioners for the above period subject to the above conditions. No order as to costs.

21. As a sequel, miscellaneous petitions pending, if any, in this Revision shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 07.08.2015

Ndr/*