

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

CIVIL REVISION PETITION No.4389 of 2014

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ORDER:

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This Civil Revision Petition is filed challenging the order

dt.18-09-2014 in I.A.No.371 of 2014 in I.A.No.137 of 2014 in R.C.C.No.34 of 2013 of the Rent Controller-cum-IV Additional Junior Civil Judge, Vijayawada.

2. The petitioner herein is tenant of respondent.

3. The respondent filed the said R.C.C. against petitioner for eviction of petitioner on the ground of willful default in payment of rents, *bonafide* requirement for personal occupation for business of her husband and the petitioner allegedly using the R.C. schedule premises for a purpose other than for which it was leased out.

4. Pending that R.C.C., the respondent filed I.A.No.137 of 2014 under Section 11(4) of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short "the Act") to direct the petitioner to pay arrears of rent and to continue to deposit the future rents into Court to the credit of the R.C.C.

5. The said I.A. was coming for counter of petitioner

and was adjourned on 20-03-2014, 01-04-2014 and 09-04-2014. The petitioner made no representation before the Court below although she engaged an Advocate. She was given opportunity to file her counter by 21-04-2014. On 21-04-2014, she was again absent and there was no representation on her behalf. So, the matter was posted to 02-05-2014 for counter of petitioner in the I.A. on payment of costs of Rs.100/- to respondent.

6. On 02-05-2014 also, the petitioner was called absent and there was no representation on her behalf. Also costs were not paid by her. Therefore, the petitioner was set *exparte* and after hearing the respondent, an order was passed directing the petitioner to deposit arrears of rents of Rs.41,000/- and to continue to deposit future rents into Court to the credit of the R.C.C. pending disposal of the R.C.C. For compliance, the matter was posted to 30-06-2014.

7. On 30-06-2014, the petitioner filed a petition under Section 148 C.P.C., which was allowed subject to compliance with the order by 10-07-2014. On 10-07-2014, there was no representation by petitioner and the petitioner also did not comply with the order for deposit of arrears of rents of Rs.41,000/- and future rents into Court. Therefore, the Court below directed stopping all proceedings and also directed the petitioner to put the

respondent in possession of the R.C. schedule property by issuing delivery warrant. The petitioner, however, obstructed the execution of the delivery warrant on 24-07-2014. So it was returned to the Court below with an endorsement by the Court Officer on the delivery warrant.

8. On 30-07-2014, the petitioner filed I.A.No.371 of 2014 under Rule 8(3) of the Rules framed under the Act to set aside the *exparte* order dt.10-07-2014 passed against the petitioner stating that on 02-05-2014, when the matter was posted for counter, on account of her ill-health, the petitioner could not give instructions to her counsel and due to work in other Courts, her counsel did not represent the matter.

9. The respondent opposed the said application.

10. By order dt.18-09-2014, I.A.No.371 of 2014 was dismissed by the Court below.

11. Challenging the same, this Revision is filed.

12. Pending Revision on 27-02-2015, this Court stayed eviction of petitioner on condition of the petitioner depositing Rs.45,000/- towards arrears of rent within two weeks from that day and on such deposit, respondent was permitted to withdraw the same subject to the final orders passed in the Revision.

13. It is not disputed that subsequent thereto, deposit of Rs.45,000/- was made by petitioner.

14. The learned counsel for petitioner now states that in view of the compliance by petitioner with the order dt.27-02-2015, the *exparte* order dt.10-07-2014 passed against the petitioner be set aside and the petitioner be given an opportunity to file a counter in I.A.No.137 of 2014 and to contest the same.

15. The learned counsel for respondent, on the other hand, contended that the conduct of petitioner did not deserve any indulgence and not just on 02-05-2014 but on previous dates also the petitioner had not appeared either in person or through counsel before the Rent Controller; and therefore, the Revision be dismissed.

16. I have noted the submissions of both sides.

17. According to petitioner, she could not appear on 02-05-2014 and pay costs as she was suffering from ill-health. No doubt on the 3 earlier dates of hearing there was no representation on her behalf. However, her absence on the previous dates cannot be taken into consideration since it was condoned. Since the reason given by petitioner indicates the cause for the absence of petitioner, and since the petitioner had deposited an amount of Rs.45,000/- to the credit of the R.C.C. pursuant

to the order dt.27-02-2015, I am inclined to consider the request of the petitioner favourably.

18. Therefore, the Civil Revision petition is allowed and the order dt.10-07-2014 in R.C.C.No.34 of 2013 of the Rent Controller-cum-

IV Additional Junior Civil Judge, Vijayawada is set aside, and the said R.C.C. is restored to the file of the said Court.

The petitioner shall file counter affidavit in the R.C.C. within a period of three (03) weeks from the date of receipt of a copy of this order; and the Court below shall decide the R.C.C. in accordance with law within a period of four (04) months from the date of receipt of a copy of this order. The petitioner shall also deposit the arrears of rents, if any, till date within a period of four (04) weeks from the date of receipt of a copy of this order and shall continue to deposit the future rents to the credit of R.C.C. till its disposal. In default of compliance, the Civil Revision Petition shall stand dismissed. No costs.

19. As a sequel, miscellaneous petitions pending if any, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 11-09-2015

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