

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

C.R.P.Nos. 195 of 2015, 278 of 2011 & 396 of 2011

COMMON ORDER:

Heard Sri M.Basith Ali Yavar, learned counsel for the petitioner and Sri Ali Farooque, learned counsel for the respondents.

2. These three Revision Petitions arise between the same parties in respect of the same premises. Therefore, they are being decided together.
3. The petitioner in these three Revision Petitions is the tenant of the respondents. The lease commenced in the year 1997 and initial rent was Rs.1300/- per month exclusive of water and electricity charges.
4. The respondents filed R.C.No.86 of 2007 for eviction of the petitioner on the grounds:
 - a) That the petitioner committed willful default in payment of rents from December 2006 to February 2007 and that the rent payable at that time was Rs.1900/- per month;
 - b) For causing damage to the suit schedule premises and
 - c) For personal requirement of the respondent Nos.1 and 2 on the ground that the wife of 1st respondent was suffering from ill health, that they are residing in the first floor of the R.C. schedule premises, that it had become difficult for them to go upstairs for each and every requirement, and hence they intend to shift to ground floor which is more convenient to them.
5. By order dt.21-11-2008, the said R.C. was allowed only on the ground of *bona fide* personal requirement of the respondents. The plea of willful default as well as plea of damage to the premises were both rejected by the Rent

Controller.

6. Challenging the same, R.A.No.22 of 2009 was filed by the petitioner herein before the Chief Judge, City Small Causes Court, Hyderabad insofar as the ground of personal requirement was held against him is concerned, while the respondents filed R.A.No.37 of 2009 insofar as the Rent Controller had not accepted the ground of willful default pleaded by them.
7. By order dt.28-12-2010, R.A.No.22 of 2009 filed by the petitioner was dismissed and R.A.No.37 of 2009 filed by the respondents was allowed partly accepting the plea of willful default.
8. Challenging the same, C.R.P.Nos.396 of 2011 and 278 of 2011 were filed by the petitioner/tenant.
9. Alleging that there is a subsequent default from August 2009 to May 2011, the respondents filed R.C.No.231 of 2011 for eviction of the petitioner. On 30-08-2013, R.C.No.231 of 2011 was allowed.
10. Challenging the same, the petitioner filed R.A.No.197 of 2013 before the Chief Judge, City Small Causes Court, Hyderabad. The said appeal was dismissed on 03-11-2014.
11. Questioning the same, C.R.P.No.195 of 2015 was filed by the petitioner/tenant.
12. There is no dispute that a sum of Rs.34,200/- representing the monthly rent from August 2009 to December 2010 was deposited by the petitioner to the credit of R.A.No.22 of 2009 at the time when it was pending before the Chief Judge, City Civil

Court, Hyderabad. This deposit was made by the petitioner in view of threat of eviction by the respondents invoking Section 11 of the AP Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short, the Act').

13. In fact, it appears that I.A.No.697 of 2009 was filed in R.A.No.22 of 2009 stating that from August 2009, the respondents had refused to receive the rents and that the petitioner be permitted to deposit the rent for August and September 2009 @ Rs.1900/- per month amounting to Rs.3,800/- to the credit of the appeal and also future monthly rents. It is not disputed by both sides that this application was not decided by the Chief Judge, City Small Causes Court, Hyderabad and that it was posted along with the appeal.
14. Rule 5 of the AP Buildings (Lease, Rent and Eviction) Control Rules, 1961 mandates that a tenant, desirous of depositing the rent not only under Section 8 (5) or Section 9, but also Section 11 of the Act, shall deposit the same, if the building concerned is in the city of Hyderabad, in the State Bank of Hyderabad, after obtaining permission for the deposit of the rent from the Controller; the challan accompanying the deposit of the rent shall be in triplicate and specify the name and address of the tenant, the name and the address of the landlord and the rent at which and the period for which the rent was deposited apart from description of the building in respect of which the rent is deposited. The challan should also mention the circumstances under which the rent is deposited and indicate the specified head of account. Sub Rule (3) of Rule 5 provides that one copy of the challan for deposit of the rent with the State Bank of Hyderabad Controller office shall be delivered, after endorsing

thereon the receipt of the amount, to the office of the Rent Controller or the appellate authority as the case may be. Sub Rule (4) of Rule 5 directs that on delivering one copy of the challan, the Controller or the appellate authority, as the case may be, shall acknowledge its receipt on the back of the challan retained by the tenant and take necessary action for the service of the notice of deposit on the landlord within seven days of the delivery thereof. It also specifies that notice of deposit shall be served on the landlord in one of the modes specified in Rule 16 of the Rules.

15. There is no dispute that in the present case, the above procedure has not been followed.

16. A Full Bench of this Court, in a judgment reported in **Mohammed Izhar Ali s. Smt. Olive Founseca (died) per L.Rs.**, held that a tenant, who opts to deposit rent in the office of Rent Controller by invoking Section 8 of the Rent Control Act, has to mandatorily comply with procedure prescribed for such deposit under Rule 5 of the Rent Control Rules; and non-compliance makes the tenant a willful defaulter. The Rule therein would equally apply to a tenant like the petitioner who opts to make deposit of rent before the Appellate Authority invoking Section 11 of the Act.

17. In this view of the matter, I am of the opinion that the petitioner can be said to have committed willful default in payment of rent for the period August 2009 to December 2010 and is therefore liable to be evicted in the R.C. schedule premises.

18. In R.A.No.197 of 2013, the appellate authority held that the deposit of Rs.34,200/- by the petitioner by a bank challan bearing No.188032 dt.22-02-2010 was towards rent from July 2009 to December 2010 i.e. for a period of 18 months only and that from January 2011 to May 2011 there is no deposit of rents.
19. Having regard to the non-compliance with Rule 5 as set out above and having regard to the findings of the Rent Controller and the appellate authority in R.C.No.231 of 2011 and R.A.No.197 of 2013, I am of the opinion that the orders passed in R.C.No.231 of 2011 and R.A.No.197 of 2013 directing eviction of the petitioner from the R.C. schedule premises are not liable to be interfered with.
20. Therefore, C.R.P.No.195 of 2015 is dismissed granting two months' time to the petitioner from today to vacate the R.C. schedule premises. The period is so fixed also having regard to Section 10C (1) (c) of the Act, which in fact requires that if a landlord in excess of 65 years of age, seeks eviction of a tenant, the Court should direct immediate eviction. This is however subject to the petitioner filing an undertaking before the Rent controller within a period of two weeks from the date of receipt of a copy of this order that he would vacate the R.C.Schedule premises in R.C.No.231 of 2011 within two months from today and also subject to the petitioner depositing the arrears of rent within a period of four weeks from the date of receipt of a copy this order to credit of R.C.No.231 of 2011 and continuing to pay the rent without default till he vacates the premises. On such deposit, the respondent is entitled to withdraw the same without furnishing any security.

21. Having regard to the orders passed in C.R.P.No.195 of 2015, I do not deem it necessary to discuss or decide C.R.P.Nos.396 of 2011 and 278 of 2011. Therefore those Civil Revision Petitions are dismissed as infructuous. No costs.
22. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 28-09-2015

Note:

Issue C.C. in a week.

B/o.

kvr