

*** THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**
+ Civil Revision Petition No.1692 of 2015

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% Dated 03-07-2015

Smt.Moortha Appikondamma @ Shyamala
W/o.late Chantibabu

.... Petitioner

Vs.

\$ Kuppili Govinda Rao S/o.late Rama Rao

.... Respondent

! Counsel for the petitioner: Sri A.Ramakrishna

^ Counsel for respondent: Sri G.Rama Gopal

<GIST:

> HEAD NOTE:

? Citations:

¹ 1963(1) An.W.R. 141

² 1966(1) An.W.R. 122

³ 1999(6) ALD 301

⁴ 1974 (1) APLJ 294

⁵ 1978 (1) APLJ 164

⁶ 1975 (Vol.34) ALT 220

⁷ (1982) 2 APLJ 9 (SN)

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

CIVIL REVISION PETITION 1692 OF 2015

ORDER:

_____ This revision, under Section 22 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 ("the Act" for brevity), is preferred against the order passed by the appellate Court for Rent Control Cases, Visakhapatnam, in R.C.A.No.12 of 2013 dated 16.02.2015. The petitioner herein is the appellant in R.C.A.No.12 of 2013. He preferred the appeal under Section 20(2) of the Act against the order passed by the Rent Controller-cum-IV Additional Junior Civil Judge, Visakhapatnam in I.A.No.322 of 2012 in R.C.C.No.54 of 2011.

The respondent herein filed I.A. No.322 of 2012 in RCC No.54 of 2011 before the Rent Controller, Visakhapatnam, under Section 11(4) of the Act to direct the petitioner herein to pay arrears of rent. Before the Rent Controller, the respondent herein contended that he was the landlord, and the revision petitioner-the tenant; he had purchased the building from the revision petitioner and her mother; at her request, he let out the ground floor portion for three months on a monthly rent of Rs.2,000/-; the revision petitioner paid rent for three months promptly; despite his request she did not vacate the premises; on the other hand, she filed O.S. No.1394 of 2012, which was dismissed for default on 03.07.2012; and the revision petitioner had to pay rent, at Rs.2,000/- per month, from September, 2010 onwards.

The petitioner herein filed her counter thereto contending that the respondent was not the owner of the building; it was she who was its owner, as the respondent had to pay her Rs.1,50,000/- towards balance sale consideration; when the respondent tried to evict her from the premises forcibly, she had filed O.S. No.1394 of 2012 which was dismissed for default; she had filed a petition under Order 9 Rule 9 CPC; without paying the balance sale consideration, the respondent had filed the present petition to harass her; and the petition was liable to be dismissed.

In his order, in I.A.No.322 of 2012 in R.C.C.No.54 of 2011 dated 22.11.2012, the Rent Controller held that it was an admitted fact that the petition schedule property had been sold by sale deed dated 24.06.2010; the revision petitioner did not deny its execution; it was her case that the respondent had to pay her Rs.1,50,000/- towards balance sale consideration which she could agitate in O.S. No.1394 of 2010; Ex.P-2 was the certified copy of the property tax book, Ex.P-3 the certified copy of the house tax receipts, and Ex.P-4 the certified copy of the electricity bills standing in the name of the respondent; these documents, *prima facie*, showed the respondent's title over the petition schedule property; the name of the respondent was mutated in the Municipal records; the revision petitioner did not file any objections to such mutation, and grant of electrical connection; the respondent had established his *prima facie* title

over the property; the revision petitioner's claim, for payment of balance sale consideration, was not germane for consideration in this petition; as the petitioner had executed the sale deed in his favour, the respondent was presumed to be the landlord; the petitioner claimed that she was residing in the petition schedule property; her occupation should be deemed to be as a tenant, as she had no right and title over the petition schedule property; mere denial of title, or the relationship of landlord and tenant, was not sufficient, unless there was evidence to substantiate her claim; she did not adduce any oral or documentary evidence in support of her contention in the counter; she had also not denied the quantum of rent or the arrears of rent; and she should, therefore, pay arrears of rent. The Rent Controller allowed the petition, directing the revision petitioner to pay arrears of rent from September, 2010 onwards at Rs.2,000/- per month; and to pay rent each month into the Court on or before the 10th of every succeeding month.

In its order, in R.C.A.No.12 of 2013 dated 16.02.2015, the appellate tribunal held that the documentary evidence on record showed that the respondent had got his name mutated in the records, and had been paying property tax; there was no material on record to show that the revision petitioner had filed any suit for recovery of the balance sale consideration; this aspect would be gone into later, while appreciating the evidence; the respondent had, *prima facie*, established his title to the schedule property as on the date of filing of the petition before the Rent Controller; the revision petitioner had filed a suit for injunction in O.S. No.1394 of 2010; the question whether the sale consideration was paid or not, and whether her possession was in accordance with law or not, were matters to be gone into while appreciating evidence; the respondent had contended that the finding given by the Rent Controller, in summary proceedings, held good even if the jural relationship of landlord and tenant was denied; any direction given by the Rent Controller, exercising power under Section 11 of the Act, must be complied with before questioning the legality of the said order; the revision petitioner had to first comply with the order by depositing the rent into the Court; she could put forth her contentions

thereafter; she could not straightaway make an application questioning the legality of the order; she should have, at least, deposited the rents before hearing of the appeal commenced; she did not make any such attempt; the appeal itself was not maintainable; the Rent Controller had, rightly, ordered deposit of rent; and he saw no reason to interfere with the order passed by the Rent Controller as the said order did not suffer from any infirmity.

Sri A.Rama Krishna, learned counsel for the petitioner, would submit that, as the petitioner had disputed the jural relationship of landlord and tenant, the appellate tribunal should have enquired therein before directing payment of arrears of rent; its failure to do so justified the petitioner invoking the revisional jurisdiction of this Court under Section 22 of the Act; and, even otherwise, the appellate court lacked jurisdiction to dismiss the appeal merely on the ground that arrears of rent had not been paid. He also put forth his submissions on the merits of the order of the Rent Controller, and relied on **Nathmal Sumerimal & Co. v. Kunala Purnachandra Rao**^[1] and **Kunta Hari Rao v. Yelukur Subba Lakshmamma**^[2].

On the other hand Sri G.Rama Gopal, learned counsel for the respondent, would submit that Section 11 of the Act requires the tenant to deposit arrears of rent before the appellate tribunal can entertain the appeal; as the Rent Controller has held that the petitioner herein is the tenant of the premises, the appellate tribunal could not have enquired into this question without the petitioner depositing the arrears of rent; as the petitioner had failed to deposit the arrears of rent, the appellate tribunal had rightly dismissed the appeal; and, consequent thereto, the Rent Controller had, subsequently, directed the petitioner herein to put the respondent in possession of the subject premises. Learned Counsel would rely on **S. Sathaiah v. B. Rajamani**^[3].

Section 11 of the Andhra Pradesh (Lease, Rent and Eviction) Control Act, 1960 (for brevity, 'the Act') relates to payment of, or deposit of, rent during the pendency of proceedings for eviction. Section 11 (1) of the Act provides that no tenant, against whom an application for eviction has

been made by a landlord under Section 10, shall be entitled to contest the application before the Controller under that Section, or to prefer any appeal under Section 20 against any order made by the Controller on the application, unless he has paid to the landlord or has deposited with the Controller or the appellate authority, as the case may be, all arrears of rent due in respect of the building upto the date of payment or deposit, and continues to pay or deposit any rent which may subsequently become due in respect of the building, until termination of the proceedings before the Controller or the appellate authority, as the case may be. Under Section 11 (4), if any tenant fails to pay or deposit the rent, the Controller or the appellate authority, as the case may be, shall, unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building.

As noted hereinabove the Rent Controller, in the exercise of the powers conferred on him under Section 11(4) of the Act, had, by his order in I.A.No.322 of 2012 in R.C.C.No.54 of 2011 dated 22.11.2012, directed the petitioner herein to pay the respondent arrears of rent at Rs.2000/- per month from September, 2010 onwards; and to deposit the monthly rent in Court on or before the 10th of every succeeding month. It is against this order that the petitioner carried the matter in appeal, which the appellate authority refused to entertain as the petitioner had failed to pay or deposit the rent as directed by the Rent Controller in I.A.No.322 of 2012 in R.C.C.No.54 of 2011 dated 22.11.2012.

It is useful to note the judicial pronouncements on the scope of Sections 11(1) & (4) of the Act. While examining the question whether deposit of arrears of rent is a condition precedent for entertaining the appeal and whether, for non-compliance therewith, the appeal is liable to be summarily dismissed, this Court in **Nathmal Sumerimal & Co.**¹ held that a certain degree of latitude is shown to the tenant on his failure to pay or deposit the rent at the time of filing the appeal; in case the tenant is able to show sufficient cause for non-payment, the Court is given jurisdiction to grant time for payment or deposit; and stopping of all further proceedings, as laid down in Section 11(4), does not amount to dismissal of the appeal.

After considered the earlier judgment in **Nathmal Sumerimal & Co.**¹ this Court in **Kunta Hari Rao**² held that it cannot be said that, merely because the relationship of landlord and tenant continues to be in dispute before the appellate court, the appellate court can never give a direction under Section 11 of the Act; the effect of agreeing with such a contention is that, in all cases where the relationship of landlord and tenant is disputed, Section 11 would at no stage apply, because that relationship would continue to be disputed by the tenant until a final stage is reached under the Act; in such a case, at no stage of the proceedings, either the Rent Controller or the Appellate Authority would be in a position to pass any order under Section 11 of the Act although it is or can be found by the Rent Controller that the jural relationship existed between the parties, and the tenant is in arrears; the whole purpose of Section 11 would thus be defeated; the intention of the legislature is to apply Section 11 not merely to cases where the jural relationship is admitted; it also applies to cases where it is disputed, but on enquiry it is found that the jural relationship of landlord and tenant exists between the parties; the purpose of Section 11 is to minimise the hardship which the Act causes to the landlord; by inserting Section 11 in the Act, the legislature clearly intended to give protection to the tenants provided they paid the rent due to the landlord, and continue to pay till the disputes are settled; Section 11 applies not only to a case where tenancy is admitted, but also to a case where tenancy is disputed; while the appellate Court is competent to give a direction to the tenant to deposit arrears of rent, it was not competent to dismiss the appeal on failure of the tenant to deposit the rent; and, instead, the appellate authority should have given a direction to the tenant to put the landlord in possession under Section 11(4), after stopping all further proceedings.

In **Khursheed Sehedur v. Waheed Ali**^[4], a Division Bench of this Court held that, for the purpose of passing an order under Section 11, the appellate authority can depend upon the enquiry which the Rent Controller had made, and had given a finding that the jural relationship of landlord and tenant exists; the tenant is precluded from even preferring the appeal unless he pays the arrears of rent or deposits the same in the appellate

Court; in an appeal by the tenant, another full fledged enquiry into the jural relationship need not be held before an order under Section 11 is passed; and the tenant should deposit the amount, as directed by the appellate authority, if he wants his appeal to be heard. While allowing the revision petition, the Division Bench gave the tenant 15 days time to deposit the amount as per the direction of the appellate authority, and directed that, if the tenant deposited the said amount with the appellate authority, his appeal may be heard and disposed of in accordance with law; and, if he failed to so deposit, it was open to the appellate authority to pass such orders, under Section 11, as it deemed proper.

While examining the contention that the appellate authority was wrong in directing the petitioner to deposit the arrears of rent, even before deciding the question raised by him with regards denial of the title of the respondent over the building, a Division Bench of this Court, in **Tulsi Bai v. Gulab Kanzar Bai**^[5], held that Section 20 of the Act, which gives a right of appeal against an order passed by the Rent Controller, gives jurisdiction to the appellate authority to entertain the appeal; this is subject to what is provided in Section 11 (1) of the Act that no tenant can prefer an appeal under Section 20 of the Act against an order of eviction unless he has paid the landlord, or has deposited with the appellate authority, all the arrears of rent in respect of the building; payment of rent is a condition precedent for entertaining an appeal; a tenant, who wants to prefer an appeal against an order of eviction, must necessarily deposit or pay the arrears of rent before the appellate authority can entertain the appeal; it cannot be held that the appellate authority would have no jurisdiction to make any order till the question of jural relationship of landlord and tenant is decided by it, because the finding given by the Rent Controller holds good till the appeal is disposed of by the appellate authority; and it ceases to hold good only if that finding is set aside by the appellate authority when the appeal is disposed of.

In **Ramulu v. Govt. of A.P.**^[6], a Division Bench of this Court held that Section 11 makes it obligatory on the part of a tenant to pay arrears of rent if he chooses to prefer an appeal under Section 20; payment of arrears

of rent is a condition precedent for exercising the right to prefer an appeal; the right to prefer an appeal is made subject to the condition imposed under Section 11(1); and it is not necessary, when Section 11 itself provides for payment of arrears of rent by a tenant, that Section 20 should again provide that a tenant shall not be entitled to prefer an appeal unless he deposits the arrears of rent due, or found to be payable by the Rent Controller. In **Visakhapatnam Women's College Society v. Sri Ramakrishna Deo**^[7], this Court held that the provisions of the Rent Control Act are mandatory, and there cannot be any relaxation whatsoever; Section 11(1) & 11(4) of the Rent Control Act obligate the tenant to pay the arrears of rent; and, on the failure to pay the rent, the appeal itself is not maintainable.

In **S. Sathaiah**³, it was contended before this Court that the petitioner had denied the tenancy, and had set up title as a co-owner; in this fact situation, the petitioner need not pay the rent; the requirement to deposit the rent, before preferring the appeal, is not absolute; and the petitioner can show sufficient cause for non-deposit of rents. After taking note of the observations in **Khursheed Shedur**⁴; **Tulsi Bai**⁵; and **Vishakapatnam Women's College Society**⁷, this Court held that payment of rent is a condition precedent for entertaining the appeal; the appellate Court was justified in not numbering the appeal unless and until the rent was deposited; in a case where the jural relationship of landlord and tenant is denied, the finding given by the Rent Controller holds good; deposit of arrears of rent, as determined by the Rent Controller, was indispensable; and it could not be said that the appellate Court had committed any illegality or impropriety in rejecting the appeal in limini. Having regard to the facts and circumstances of the case, this Court considered it fit to grant time to the petitioners to deposit the rents making it clear that, in the event of the failure of the petitioners to deposit the arrears of rent, the order, rejecting the appeal, would stand and steps could be taken for eviction.

It is evident from the law declared, in the aforesaid judgments, that the appellate tribunal, at the stage of entertaining an appeal and in

requiring the appellant-tenant to deposit arrears of rent, would not cause an enquiry into the finding recorded by the Rent Controller that the jural relationship of landlord and tenant exists; the appellate tribunal would depend upon the finding of the Rent Controller that the jural relationship of landlord and tenant exists; before passing an order under Section 11 of the Act, the appellate tribunal need not conduct another full-fledged enquiry into the jural relationship of landlord and tenant; no tenant can prefer an appeal under Section 20 of the Act unless he has paid the landlord, or has deposited in Court, the entire arrears of rent; payment of rent is a condition precedent for entertaining an appeal; Section 11 makes it obligatory for the tenant to pay arrears of rent if he chooses to prefer an appeal under Section 20 of the Act; and the appeal itself would not be maintainable, unless and until the tenant pays the arrears of rent, or deposits it into Court.

The petitioner herein has not paid the arrears of rent as directed by the Rent Controller and, consequently, the appellate tribunal has refused to entertain the appeal. I see no reason to examine the contentions, urged on behalf of the petitioner, on merits as payment of arrears of rent is a condition precedent for an appeal to be entertained under the Act. As the appellate tribunal has refused to entertain the appeal solely on the ground that the petitioner had failed to pay the arrears of rent, it would be wholly inappropriate for this Court to examine the contentions urged on merits as these are matters for the appellate tribunal to decide, on compliance by the petitioner of the requirement of Section 11 of the Act of paying the entire arrears of rent. The order of the appellate tribunal, to the extent it held that an appeal would not lie till the arrears of rent are paid, does not suffer from any infirmity necessitating interference by this Court. However, as similar directions were passed by the Division bench in **Khursheed Sehedur**⁴ and this Court in **S. Sathaiah**³, the petitioner is granted three weeks time from today to deposit the arrears of rent upto date and, on such deposit, the appeal shall be heard by the appellate tribunal, and be disposed of in accordance with law. In case the petitioner fails to deposit the entire arrears of rent within the time stipulated hereinabove, the Rent Controller may proceed and take steps for her eviction, from the subject premises, in accordance with law.

The Civil Revision Petition is disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. However, in the circumstances, without costs.

(RAMESH RANGANATHAN, J)

Date:03-7-2015.

Note:
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[\[1\]](#) 1963(1) An.W.R. 141
[\[2\]](#) 1966(1) An.W.R. 122
[\[3\]](#) 1999(6) ALD 301
[\[4\]](#) 1974 (1) APLJ 294
[\[5\]](#) 1978 (1) APLJ 164
[\[6\]](#) 1975 (Vol.34) ALT 220
[\[7\]](#) (1982) 2 APLJ 9 (SN)