

**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO**

**CIVIL REVISION PETITION No. 319 OF 2014**

**ORDER:**

This Revision is preferred under Section 22 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 by the tenant.

The respondent is the landlord. The demised property is the residential house situate at Kakinada Town. The respondent instituted RCC No. 6 of 2008 before the Rent Controller for eviction of the petitioner herein and for delivery of vacant possession. The petitioner herein was said to be a tenant in a portion of the said building, on a monthly rent of Rs.700/- payable by the 5<sup>th</sup> of every succeeding month. It is the case of the respondent landlord that he was passing on receipts as and when the rent is tendered. However, the petitioner herein is stated to have filed a civil suit, O.S. No. 309 of 1998 on the file of the II Additional Junior Civil Judge's Court at Kakinada against the landlord and his brothers seeking permanent injunction restraining them from interfering with his peaceful possession and enjoyment of the leasehold property. The petitioner has also taken out Execution Petition No. 342 of 2006 in the said suit alleging that the respondent landlord has violated the injunction order passed by the Court. However, the said Execution Petition has been dismissed for default to pursue the same. It is the case of the respondent landlord that he was residing in the first floor of another building situate at Sivalayam Street, Kakinada. It is also the case of the landlord that his 87-year-old mother is residing with him and she is finding it difficult to climb stairs to go to the first floor where he is residing and hence, he wanted the scheduled premises for his personal occupation. In view of the compelling necessity, the landlord requested the petitioner herein to vacate the premises by the end of December 2007. Though he promised to vacate the premises by the end of December, 2007, he failed to do so.

The landlord examined himself as P.W.1 and also marked Exs.A1 to A12. The petitioner herein examined himself as R.W.1 and got marked Exs.B1 and B2 on his behalf.

The learned Rent Controller has dismissed the Petition on the ground that the landlord has not examined his mother, who is said to be an 87-year-old and who is said to be taking treatment from one of the local nursing homes, both as an out-patient and sometimes as an in-patient and that she is facing some difficulty to climb the stairs. The respondent, therefore, preferred an Appeal in R.C.A. No. 8 of 2011 before the Rent Control Appellate Authority-cum-Principal Senior Civil Judge, Kakinada, who, by his order, dated 20.01.2014, allowed the said Appeal and directed the petitioner herein to vacate and deliver vacant possession of the property within two months from the date of the said order. Hence, this Revision.

While entertaining this Revision, on 21.03.2014, stay was granted by this Court. Today, the learned counsel for the petitioner has filed an affidavit of the petitioner undertaking to vacate the premises in question latest by 31.01.2016. The only reason why he sought for time till 31.01.2016 is that the petitioner is residing in the scheduled premises with his bedridden mother and other family members.

The Rent Control Appellate Authority, during the course of his judgment, in paragraph 15, has noted the contradictory approach of the petitioner. The petitioner, in paragraph 8 of the counter-affidavit filed by him before the Rent Controller, has asserted that he does not own any house in and around Kakinada or at any other place, whereas in his cross-examination, he had to admit that he owned a tiled house bearing D.No. 20-10-21, Shaik Sai Street, Kakinada. It was further admitted by the petitioner that the said tiled house consists of five rooms and that he has let it out. The house bearing D.No.20-10-21, which is referred to in Ex.A2, is the same house, which the petitioner herein owns. The petitioner is working as a Technician with

Coramandel Fertilizers Company and he is earning a monthly salary of Rs.18,000/-. Therefore, the appellate Court has found that the hardship pleaded by the petitioner herein is not a genuine one. Further, the plea of the respondent landlord that the scheduled property is a suitable accommodation for him to transact his business and also to attend to the medical needs of his mother, instead of staying at a premises which is nearly five K.Ms. away from the scheduled premises, has been taken into account and consideration. The paramount requirement of the respondent landlord for his personal occupation of the scheduled premises is a genuine one and hence, the plea in that regard of the respondent was upheld.

The approach of the learned Rent Controller was totally erroneous. When the petitioner herein has not denied that the respondent's mother is an 87 year-old woman, living with the respondent and that he was staying in upstairs premises and his mother is finding lot of hardship to take the stairs to go to the first floor and that she is frequently requiring medical attention and sometimes as an in-patient as well, the Rent Controller ought to have allowed the Eviction Petition, instead of dismissing it on the ground that 87 year-old mother has not been examined. I am in complete agreement with the reasoning assigned by the learned Rent Control Appellate Authority. When a fact is not in dispute or in issue, there is no necessity for a party to lead evidence thereon. The *bona fide* requirement of a landlord has to be assessed from the stand point of view of the specific hardship, which the tenant might face if eviction is ordered. Admittedly, the petitioner herein is a tenant of the scheduled premises from the year 1991 onwards. For nearly 20 + years, he continued to be a tenant of the said premises. When the landlord has shown a *bona fide* reason requiring the premises for his occupation, the same is liable to be taken into account and consideration, particularly when the petitioner himself owns a building within Kakinada limits which he has let it out, contrary to his assertion in the counter-affidavit that he does

not own any such premises. For all the aforesaid reasons, I do not find any merit in this Revision and it is accordingly dismissed. No costs.

But however, the prayer made by the petitioner to grant him time till 31.01.2016 for delivering vacant possession is not a reasonable request. Therefore, the petitioner is directed to file an appropriately-worded undertaking before the Court of the Rent Controller, Kakinada undertaking to vacate the scheduled premises latest by 31.08.2015. 30 days' time from today is accorded to the petitioner to file such an undertaking affidavit before the Rent Controller. Failure to execute any such affidavit before the Rent Controller would grant liberty to the respondent to get the decree executed. In case the petitioner files any affidavit before the Rent Controller undertaking to vacate the said premises latest by 31.08.2015, subject to tendering the monthly rent, as usual, and not causing any damage to the property in question or the fixtures thereon, the learned Rent Controller will not allow the decree to be executed till 31.08.2015.

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**NOOTY RAMAMOHANA RAO, J**

19<sup>th</sup> March 2015

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