THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION Nos.1440 AND 1442 OF 2009

COMMON ORDER:

The former revision petition is filed by the appellant – tenant in R.A.No.268 of 2007 on the file of Chief Judge, City Small Causes Court, Hyderabad, aggrieved over the judgment, dated 11.02.2009, rendered in the said appeal, whereby and whereunder, the appellate Court, while dismissing the appeal, preferred by the tenant against the order, dated 01.11.2007, passed in R.C.No.165 of 2006 on the file of Principal Rent Controller, Secunderabad, fixing the fair rent for the petition schedule premises at Rs.5,000/- per month, fixed the fair rent to the petition schedule premises at Rs.10,650/- per month, in view of the orders passed in R.A.No.264 of 2007 on the file of very same appellate Court.

2. The latter revision petition is also filed by the tenant, who is respondent in R.A.No.264 of 2007 on the file of very same appellate Court, challenging the judgment, dated 11.02.2009, rendered in the said appeal, whereby and whereunder, the appellate Court, while allowing the appeal, preferred by the landlords against the order, dated 01.11.2007, passed in R.C.No.165 of 2006 on the file of Principal Rent Controller, Secunderabad, fixed the fair rent to the petition schedule premises at Rs.10,650/- per month.

3. Thus, both the revision petitions, though, arise out of two Rent Appeals, but, the two Rent Appeals were directed against one

and the same order passed by the Principal Rent Controller, Secunderabad.

4. The facts that are necessary for disposal of these two revision petitions are that the mother of the respondents – landlords leased the petition schedule premises to the petitioner – tenant under a registered lease deed, dated 26.10.1992, for a period of nine years with monthly rent at Rs.600/-, excluding electricity consumption and water charges, for a period of three years and with a further condition that there shall be hike in rent by 20% for a period of three years thereafter, and 30% for the last three years. The lease expired by 31.10.2001. Thereafter, no fresh lease deed was executed between the parties. It is not in dispute that the mother of the respondents – landlords died on 24.12.1995. Further, certain other details are also narrated by the appellate Court touching the amounts paid by the petitioner – tenant to the respondents – landlords with relevant details, but it is not necessary now to elaborate them put forth by both the parties. It would suffice, if what was contended before the appellate Court and the findings recorded by it are examined, so as to ascertain whether the fair rent enhanced by the appellate Court from Rs.5,000/- per month to Rs.10,650/- per month can be sustained.

5. The appellate Court, initially, placed reliance on a decision of this Court in **Suresh Gir v. K. Sahadev**[1], in relation to the criterion

[1] 1998 (1) ALD 25

for determination of fair rent and held that it is the duty of the Court to take into consideration various prevailing circumstances, particularly, the use of the building to which it is to be put and the rents that have been fetched by the other buildings for the similar purpose in the same locality, while fixing the fair rent, as the statute does not prescribe any criterion for fixation of fair rent.

6. The appellate Court, having noted that the landlords have already filed R.C.No.211 of 2002 for eviction of the tenant, and, in fact, gave evidence therein also, placed reliance on the decisions of the Honourable Supreme Court in a case under Bombay Rents, Hotel and Lodging House Rates Control Act and **Rattan Arya v. State of Tamil Nadu and others**[2], and then taking into consideration the plinth area as 150 Square Feet, since the same remained unchallenged, as the landlords have not cross examined RW.2 on that aspect, though, they claimed the plinth area as 230 Square Feet, and certain other circumstances, culling out from the oral evidence let in by both the parties, and comparing with the contemporary lines, on which the judgment under challenge therein was rendered, opined that the area in which the petition schedule premises is situated being the locality of commercial importance and, therefore, would fetch rent not less than Rs.70/- per month per Square Feet, calculated at that rate, but, however, for 150 Square Feet only, and arrived at Rs.10,650/- towards monthly rent and accordingly, allowed the appeal filed by the

[2] AIR 1986 SC 1444

respondents – landlords, while dismissing the appeal filed by the petitioner – tenant.

7. The aforesaid orders are under challenge in the instant revision petitions by the tenant on the main ground that the appellate Court erred in fixing the fair rent at Rs.10,650/- per month, without properly applying the principles for determination of fair rent, and that there are certain other infirmities in the judgments rendered by the appellate Court and therefore, sought to set aside the same.

8. Heard Sri P. Venugopal, learned counsel for the petitioner, and Sri S. Ganesh Rao, learned counsel for the respondents.

9. Thus, both the revision petitions are filed by the tenant challenging the fixation of fair rent at Rs.10,650/-, by dismissing R.A.No.268 of 2007 filed by him and allowing R.A.No.264 of 2007 filed by the respondents – landlords.

10. The finding recorded by the appellate Court that, though, the landlords have not produced any substantial evidence to prove the prevailing rent on the date of filing of the petition, but the Courts are not precluded from taking judicial notice of enormous manifold increase of rents throughout the country, particularly, in urban areas, cannot be faulted, as it is based on the legal principle in **Rattan Arya's case (supra 2)**. The appellate Court, no doubt, also relied on the decision of the Honourable Supreme Court in a case under

Bombay Rents, Hotel and Lodging House Rates Control Act, noting that in order to provide fair wage to the salaried employees, the Government provides for payment of dearness and other allowances from time to time, but the said principle lost sight of while providing for increase in the standard rent. The increase made even in 1987 by the amendment is not adequate, fair and just and the provisions continue to be arbitrary in contemporary context.

11. Turning to certain factors that gain importance in the present context are that the scheduled premises is located in a developed area even 30 years back and is in the heart of Hyderabad City. It is no doubt true, the construction is old, but the amenity of electricity has been provided by the landlords. No doubt, the learned counsel for petitioner contended that no sanitary facilities were made available, but that cannot be a ground to stick to the rent that was originally fixed under the agreement, more particularly, when the period mentioned in the rental deed got determined long back. Therefore, the exercise done by the appellate Court in arriving at Rs.70/- per Square Feet per month would be reasonable and calculating at the said rate for 150 Square Feet, though, the respondents contended that the area is in an extent of 230 Square Feet, fixation of fair rent at Rs.10,650/- per month, as against the fair rent at Rs.5,000/- per month fixed by the Rent Controller is well reasoned and does not suffer from any legal infirmity. Both the revision petitions preferred by the tenant are devoid of merit.

12. Accordingly, both the revision petitions are dismissed. Miscellaneous Petitions, if any, pending in these revision petitions, shall stand closed. There shall be no order as to costs.

A. SHANKAR NARAYANA, J

September 27, 2016.
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