

**HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO**

**CIVIL REVISION PETITION No.4793 OF 2011**

**ORDER:**

The revision has arisen out of rent controller-appellate authority's conformation order of rent controller for eviction of the tenant on the ground of willful default. The revision petitioner is thus the unsuccessful tenant as respondent in RCC No.46 of 2006.

It is the second round of litigation, after the earlier civil suit filed after quit notice issued under Section 106 of the Transfer of Property Act, 1882 (for short, 'TP Act') was ended in dismissal mainly on the point of jurisdiction holding the relationship of the landlord and the tenant not covered by the TP Act but governed by the provisions of Andhra Pradesh Building (Lease, Rent and Eviction) Control Act, 1960 (for short, 'Rent Control Act').

3. It was therefrom under Section 10 of the Rent Control Act was filed. No doubt from perusal of the prayer in the rent control case it did not specifically state as to for bonafide requirement or from willful default the eviction was sought, however reading of the eviction petition with prayer it is clear that solely on the ground of willful default the eviction petition was filed. The tenant contended in opposing the eviction petition that there is no willful default and the rent was paying and accepting.

4. In fact, after the evidence covered by the petitioner as P.W.1 and the respondent as R.W.1 with reference to Exs.A.1 to A.5 and Exs.B.1 to B.5 respectively, the Rent Controller, vide order dated 23.03.2009, allowed the RCC with costs, directing the respondent/tenant to vacate the schedule premises within two months by putting landlord into possession, on said ground of willful default.

5. The unsuccessful respondent/ tenant maintained the RCA

No.6 of 2009 that was also dismissed, confirming the eviction order passed by the Rent Controller with costs by appeal order dated 11.08.2011.

6. It is impugning the concurrent finding, the unsuccessful respondent/ tenant before the two forums supra, maintained the present revision.

7. The main contention of the tenant is that the landlord after issuing notice allegedly under Section 106 TP Act and went unsuccessful in the civil suit for want of jurisdiction inherently having maintained the RCC for eviction on the ground of willful default, however before filing the eviction petition accepted the rent and thereby there is a waiver, needless according to the revision petitioner even before filing of the civil suit pursuant to the notice and reply.

8. The counsel for the revision petitioner placed reliance on the Judgment of the Apex Court reported in **Dakaya Alias Dakaiah v. Anjani**<sup>[1]</sup> mainly at paragraphs 5 and 7 of the Judgment, wherein it was held referring to earlier expression in **S. Sundaram Pillai etc., v. V.R. Pattabiraman**<sup>[2]</sup> in saying Section 10 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 is *pari materia* to Section 10 of A.P. Rent Act, but for the difference to claim as willful default, two months' notice shall be given despite failed to pay rent and in this case even there is no such rider and therefore from the said beneficial purpose of the Rent Control Act to protect eviction of the tenant, if the payment has been made before institution of the suit, the cause of action for instituting of the suit will vanish, that as the tenant already sent the Bank Draft covering the entire default, there was also no occasion for the Rent Controller to direct deposit of arrears within the stipulated period and thereby held the High Court and the Rent Controller went wrong in not appreciating this fact in ordering eviction on the ground of willful default

9. A reading of paragraph 7 of *Dakaiah supra* is very clear in saying further that the tenant- appellant is carrying on business in the disputed premises and the order of eviction cannot but affect his interest seriously and it appears to us that whether willful or not, the fact remains that the tenant committed default in payment of rent for several months for which the landlady, stated to be poor and helpless widow, has suffered considerable prejudice. It, therefore, held that it will be consonant to equity and justice if the interference with the impugned order of eviction is made in the appeal with a direction to the tenant to pay fair and reasonable rent to which the tenant-appellant is ready and willing. Considering the facts and circumstances of the case, the Apex Court set aside the three courts findings of eviction with further directions.

10. A perusal of **Dakaiah's** case referred to *supra* clearly thereby shows finding therein is confining to the facts of that case and not laid down any principle, but for referred to **Sundaram Pillai** before arriving the factual findings. Even in **Sundaram Pillai**, it was not concluded by giving eviction order but for categorically stated there is willful default or not to consider from the peculiar facts of each case.

11. Whereas it is the contention of the counsel for the revision respondent/ landlord being the successful party before the two courts below that the two courts below having arrived the concurrent finding, more particularly, of the Rent Controller by appreciation of the facts and law having fresh in mind with opportunity of recording the evidence, and confirmed by the appellate court for this Court to sit in revision there is nothing to interfere. It is also the submission that the revision powers are very limited and not with any powers of the second appellate court, but for considering the illegality or not and thereby sought for dismissal by placed reliance upon the expression of the Constitutional Bench of the Apex Court in **Hindustan Petroleum Corporation Limited v. Dilbahar Singh**<sup>[3]</sup>.

12. Heard both sides at length and perused the material on record in deciding the revision *lis supra* as to whether there is willful default from conduct of tenant and even if so there is any waiver of such right of claim for eviction from the conduct of the landlord.

13. It is important before appreciation of the facts of the case on hand in deciding above point for consideration, the principle laid down by the Constitutional Bench of the Apex Court in **HPCL** referred to *supra*, particularly, from paragraph 43 that the consideration or examination in the rent control matters for interference with the concurrent finding of the Tribunal and the first appellate Tribunal, is limited for the High Court and the consideration or examination of the evidence by the High Court in revisional jurisdiction is confined to find out that finding of facts recorded by the court/ authority below is according to law and does not suffer from any error of law. A finding of fact recorded by court/ authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciation or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where

the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.

14. Having regard to the above, the power of revision for this Court including under Article 227 of the Constitution of India is very limited and it is not a fact finding Court but for to decide whether the impugned order is according to law or not.

15. Having kept in mind the limitation on revision powers of this Court, coming to the facts from the pleadings and evidence on record, the evidence of the petitioner, P.W.1 – MVRK Mutyalu, in his cross-examination dated 18.12.2007 reads that:

“It is not true to say that respondent has not committed default in payment of rent. It is not true to say that as per my directions respondent is depositing rent regularly into my bank account. Again witness on one occasion without my knowledge the respondent deposited Rs.21,000/- only. Subsequently he is sending through counsel and I am receiving the same. I have not received the rent towards arrears of rent. Even date I have not given any reply notice to respondent alleging that I have not adjusted said amount towards arrears of rent. It is not true to say that respondent is not liable to pay damages as he is depositing monthly rent into my account or I receiving rent by way of Demand Draft. It is not true to say that Section 106 notice under provision of transfer of property act has no application to present proceedings. It is not true to say that I have not filed petition in accordance with the provisions of Rent Control Act. It is not true to say that as respondent is depositing rent into my account he is not liable for eviction as he is protected tenant.”

16. The evidence of R.W.1 in his cross-examination dated 16.04.2008 reads that:

“It is true that we used to pay rent by way of D.D. or cheque from the beginning. It is true that I have to pay rent every month. It is not true to say that the admitted rent is Rs.1700/- P.M. only but not Rs.1750/- P.M. we are maintaining accounts in respect of taking of rent. I cannot verify rate of rent prior to Rs.1750/- unless I verify

the records. I do not remember whether we pay the rents every month regularly from 01.04.2004 to 31.03.2005, but we paid rents as they are having documentary proof to that effect....

It is not true to say that the petitioner did not request orally to deposit the rent at a time, for year. It is not true to say that the rent was not enhanced from Rs.1700/- to Rs.1750/- and lease period was extended up to 31.03.2020.

The further cross-examination on 06.11.2008 that previously I used to pay rents by way of cheque and D.D. the Statement of account reveals the account number of petitioner if he realized the cheque amount. It is true that I sent a D.D. for Rs.10,500/- towards rent for the period from 01.04.2006 to 30.09.2006 for 6 months rent at the rate of Rs.1750/- per month through D.D. dated 29.05.2006 vide its number 114255. Likewise, I also sent a D.D. for Rs.10,500/- towards 6 months rent from 01.10.2006 to 31.03.2007. The date of said deed is 30.10.2006 vide it's number 15223. Again I also sent another D.D. for rs.10,500/- towards 6 months rent from 01.04.2007 to 30.09.2007 through D.D. dated 08.06.2007 vide D.D. No.128079. I have no proof at present to show that I sent D.D. for the period 01.10.2007 to 31.10.2008..... It is true that I paid Rs.21,000/- at a time in the account of the petitioner i.e. towards one year rent. It is not true to suggest that knowing the account number of the petitioner I deposited the amount of Rs.21,000/- and that the petitioner never allowed me to deposit one year rent at a time. The D.D. sent by me towards rent was returned but I cannot say the amount period of rent and D.D. number. Presently I cannot say the date of return. It was returned about one month back. I do not know the reason for which the said D.D. was returned. I have not present the said D.D. to the petitioner with an intention to deposit the same into Court. But I did not file any petition to deposit the said rent in court. I have not obtained permission from the court to deposit pay the rents once in six months. It is not true to suggest that there is willful default committed by me to pay the rents for the period from 01.10.2007 to 31.10.2008 for 13 months.

17. It is from the same the Rent Controller held there is default even by subsequent conduct, leave about earlier default. Even the appellate authority in RCA particularly in paragraphs 17 and 18 observed as follows:

“ 17..... it is clear that the respondent paid the rent by receipt/ acknowledgment. The petitioner has come before the court with specific case that the respondent has not paid rent from 01.04.2004 onwards till issue of notice dated 20.03.2005. Admittedly, even as per reply notice Ex.A.2, rent was not paid during that period by the date of issuing of notice. It is not known since how long the respondent is in occupation of the premises, but, the fact remains that the plea of the petitioner/ landlord that the initially rent was Rs.1300/- per month and subsequently, it was enhanced to Rs.1,700/- per month and the tenancy is month to month and the

respondent was obtaining receipts as and when the rent is paid is proved. After issuance of notice under Ex.A.1 the petitioner filed a suit for eviction. As already observed, it was dismissed on the point of jurisdiction and subsequently, the petitioner filed the present petition based on the same cause of action. It appears that even after filing of this petition, though, the respondent paid the rents, he is very irregular in payment of rent and that was rightly held by the Rent Controller that the payment of rent is very irregular. The fact that the tenant paid rent after filing of the petition is no excuse to resist the eviction. The plea of the respondent/ tenant that the landlord accepted the rent and therefore, waived his right is devoid of any merits.

18. As rightly held by the Rent Controller the petitioner has received the rent on protest and there is no waiver of his right. Even otherwise, in view of the strained relationship and after issuing notice payment of rent without the knowledge of the petitioner by deposit of the rent in the bank account does not amount to waiver. As rightly pointed out by the learned counsel for the petitioner and as observed by the Rent Controller, there is no evidence to show that the respondent approached the petitioner asking for the bank account. Admittedly, the respondent has not issued any notice demanding the petitioner to furnish bank account nor he filed any petition before the Rent Controller seeking permission to deposit the rent. It may be true that the Respondent/ tenant is paying rent after filing of the petition. But, it was rightly held by the Controller, the petitioner has received the rent on protest. Under no circumstances, there is no waiver of his right of eviction. Admittedly, the petitioner filed his suit and after it is dismissed on technical grounds, he perused the eviction by filing the present petition and at that state of affairs, it cannot be imagined that the landlord has waived by receipt of rent deposit in the bank account of the petitioner without his knowledge and it does not amount to waiver. There is no law that the Rent deposited in the account of the landlord should be sent back by withdrawing the same to prove his contention that he has not received the rent nor there is a procedure known to law that it must be received under protest. It is the right of every landlord to receive rent and even he is entitled to receive arrears of rent even without prejudice to his right for eviction. When the rent was paid after notice that too without the knowledge of the landlord, it cannot be said that the petitioner has waived.”

18. From the above, for this Court while sitting in revision, within the limited scope from **HPCL** referred to supra, the decision in Sudaram Pillai referred in **Dakaiah supra** is distinct to the present facts, for there rent was accepted voluntarily, whereas herein the amount was remitted to the account of the landlord not even by giving prior notice and it cannot be said by such remitting, it is a voluntary acceptance much less as a waiver. It is not only from that, but also

from the subsequent conduct in setting up an untrue oral agreement for payment of rents only once in a year, that is not even adopted but for remitting, as and when he likes intermittently, firstly in one year by D.D. supra and later thrice for 6 months not even at the beginning, but in the middle that it is showing the conduct of willful default of the tenant and thereby for this court while sitting in revision there is nothing to say any illegality to interfere with the concurrent finding of the both the courts below.

19. Accordingly, and in the result, the revision is dismissed, however time for vacating the premises fixed is (3) months from today, failing which the landlord as Decree holder can execute and recover possession by vacating the defaulted tenant from the demised premises. There is no order as to costs.

20. Miscellaneous petitions, if any, pending in this revision shall stand closed.

---

**Dr. B. SIVA SANKARA RAO, J**

05.02.2016  
BV

Note: LR copy to be marked – yes/no

---

[\[1\]](#) 1996 AIR (SC) 383

[\[2\]](#) (1985) 2 SCR 643

[\[3\]](#) (2014) 9 SCC 78