

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.329 of 2014

ORDER:

The revision petitioner is the tenant of shop No.2. It is one of the two facing main road out of the 8 mulgies for remaining are to a side. Impugning the concurrent findings of the Tribunals below, ordering eviction of the tenant for bonafide business purpose of the landlords, he maintained the revision. It is part of the building bearing Door No.37-2-2, with site Market Street, Kakinada. The revision respondents 1 to 6 are the landlords, no other than wife and children of late Peruri Simhadri, original owner.

2) The revision respondents as landlords filed the eviction petition against the revision petitioner-tenant in R.C.C. No.13 of 2010 on the file of the Rent Controller-cum-Principal Junior Civil Judge, Kakinada under Section 10(3)(iii)(a) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short, 'the Act') for the purpose of carrying business as a bonafide requirement and with averments also of wilful default. The averments in the Rent Control Case, on behalf of the petitioners for eviction of the respondent-tenant in brief are that the respondent, during the life time of the 1st petitioner's husband by name Simhadri, took the shop No.2 on lease on monthly rent of Rs.900/- per month payable by 5th of every succeeding month by obtaining receipt and it was for a period of two years with effect from 04.12.1999 and even thereafter, he continues on condition of enhancement of rent of 10% and there was advance payment of Rs.30,000/- at the time of commencement of lease returnable as and when vacated. It is also the averment that the tenant obtained signatures of 1st petitioner and her late husband

Simhadri on blank papers as a token of the advance paid supra and took the premises for gold business and in December, 2001, the rent was enhanced from Rs.900/- to Rs.990/- per month and having so paid upto December, 2002, which is subsequent to death of Simhadri in the year 2001, having promised to pay rent at Rs.1,115/- per month, failed to pay and committed default in payment of rents after December, 2002. It is also averred that for the request to adjust, out of the advance amount towards the rents payable, it was adjusted and upto November, 2003 rents were paid for what is due after adjustment at Rs.1,050/- per month and after December, 2003 committed wilful and continuous default, despite demands, and having closed the shop for about six months in the year 2003 by kept in lock and key and left the place without knowing whereabouts and his wife even given a complaint to trace him and it is only in August, 2004, he appeared and started opening the shop, when petitioners demanded to pay the arrears and vacate, he replied arrogantly saying he neither vacates nor pays the arrears and threatened to use blank papers signatures of the 1st petitioner and her husband with him to make a false claim including by police report. The petitioners with no go, issued legal notice on 24.09.2004 demanding to pay the arrears and to vacate and he gave reply dated 06.10.2004 with false allegations. The schedule property is in the market street in the commercial locality and fetches not less than Rs.5,000/- per month rent, if let out to others and O.S. No.1829 of 2004 filed by the petitioners, pursuant to the quit notice for eviction and for recovery of rents from December, 2003 at Rs.1,050/- per month and thereafter for damages for use and occupation from suit date at Rs.3,000/- per month with interest that was ended in dismissal which is subject matter of the landlords appeal in A.S. No.321 of 2009, impugning the

said finding of suit won't lie but for R.C.C of rent below Rs.3,000/- per month, and the respondent-tenant filed R.C.C. No.3 of 2005 under Section 8 of the Act to deposit rents claiming monthly rent at Rs.900/- per month only and impugning the said allowing on 31.08.2009 the landlords preferred R.C.A. No.13 of 2009. Undisputedly the A.S.No.321 of 2009 and R.C.A.No.13 of 2009 went against the landlords later.

3) It is in the factual background, the eviction Rent Control Case was filed on said grounds of bonafide requirement for business purposes of the landlords' family and for wilful default in payment of rent. The eviction petition averments show monthly rent of Rs.1,050/- and the respondent-tenant's claim show the rent is only of Rs.900/- per month. Undisputedly the building of the landlords consisting of residential and non-residential and the shop in question is a non-residential for non-residential purpose of the tenants in use. The pleadings and evidence on bonafide requirement are that the 1st petitioner with the assistance of petitioners 2 to 5 doing retail business and also gold polishing works in the space leading to the residential portion and they do not have possession of any other shop remains out of their own of the eight shops for those are in the occupation of several tenants and so far as the premises which is shop No.2 sought for eviction concerned, as it is facing market street and is most suitable for the business purposes of the landlords/petitioners which they are doing the business now in the passage leading to their house of the building in the space and thereby demanding to vacate.

4) The pleadings and evidence of the respondent-tenant in opposing the two fold claim for wilful default and bonafide

requirement concerned is with the contest that Rs.30,000/- paid as advance while entering the premises as tenant in December, 1999 to refund while vacating and he is doing business as goldsmith by running Dharma Khata and the husband of 1st petitioner and father of other petitioners to let out the premises was collecting rent and electrical charges together of Rs.950/- per month which he was paying without default and there was no practice of his passing receipts and for the notice dated 20.09.2004, he cause issued reply with true facts on 06.10.2004 and resisted the claim in the suit in O.S. No.1829 of 2004 for eviction and arrears of rent with reply notice contest, therefrom ended in dismissal on 31.08.2009 on merits which is subject matter of A.S. No.321 of 2009 and he was paying rents and for their non-accepting depositing from the permission obtained in R.C.C. No.2 of 2005 under Section 8 of the Act since allowed which is subject matter of the landlords appeal in R.C.A. No.13 of 2009 also pending. Their endeavour is to evict to let out for higher rent, if possible, and not for any arrears of rent or bonafide requirement of business purposes as sought. It is also his contest and evidence that the first shop to the southern side of the shop in his occupation used to be under the tenancy of one Venkateswara Rao and he vacated the same and now it is lying vacant if at all to occupy for the proposed business and in order to harass him they were even dumping waste and garbage opposite to his tenancy shop. The landlords' business is oil mill and they are doing retail business from their house, where they are staying and the alleged polishing gold ornaments work which they never did. If he is allowed to be vacated, even to be put to undue hardship for no other avocation or alternataive accommodation that too when paying rents regularly without any default, apart from the advance amount to be refunded

which they independent to grab and sought for dismissal of the eviction petition saying no bonafides in the petition.

5) Before the Rent Controller, the 2nd petitioner to the R.C.C was examined as P.W-1 and Exs.A-1 to A-6 viz., 5 HP motor mill licence fees paid to Kakinada Municipality (Ex.A-1 to A-4) during 1994 and 2010 and bunch of three photos of the shop with C.D and notice in I.A. No.240 of 2005 in R.C.C. 3 of 2005 were marked. On behalf of the tenant-respondent to the R.C.C besides himself as R.W-1 Venkateswara Rao, the so called another tenant of shop No.1 said to have been vacated or evicted was examined as R.W-2 and Exs.B-1 to B-9 marked which are C.C of decree and judgment in A.S. No.11 of 2010, order and decree in R.C.A. No.13 of 2009, receipt issued by three town police dated 01.06.2000, four photos with C.D, C.C of ledger in R.C. No.3 of 2005, order/judgment and respective decrees in R.C.C No.3 of 2005 and O.S. No.1829 of 2004.

6) It is from said pleadings and evidence supra and after hearing both sides by order dated 02.11.2012, the Rent Controller allowed the eviction petition directing the tenant to vacate within four months therefrom, else to execute and recovery possession through process of law. The findings in support of said conclusion of the Rent Controller were that in O.S. No.1829 of 2004 dismissed and confirmed by appeal judgment in A.S. No.11 of 2010, there was a finding of no wilful default in payment of rents by disbelieving the rental enhancements that operates as res-judicata for the parties interse, though it no way comes in the way to the bonafide requirement for the business purposes of the landlords and coming to said bonafide requirement for their business purposes in seeking eviction, undisputedly shop Nos.1 and 2 are facing main road, out of

the eight shops which are under lease to different tenants that belong to the landlords, as per the tenant, R.W-1, including from his evidence, the petitioners are running oil extracting business in their house portion for the past 25 years and they have no other non-residential portion in possession for running their business besides 2nd petitioner wants to run gold polishing business in the premises by eviction and even among Exs.A-6 and B-4 photos showing the topography of the property, which show the petitioners are selling oil on a temporary buddy set up at the Eastern side towards the main road, the shop No.2 to say they want the premises for running their business conveniently for the coconut oil extracting and sale business, which they got undisputedly and thereby they are entitled to seek eviction for the bonafide requirements, that too, when the landlords have the right to choose suitable premises and it is not for the tenant to dictate terms and even R.W-1 admitted that shop No.1 which used to be under the tenancy of R.W-2 Venkateswara Rao is in the occupation of Shiva and Babji and if at all there was any bonafide requirement for their business purposes of any shop they could have been occupied said shop No.1 is no doubt the contention which shows they let out instead of occupying after R.W-2 vacated to Shiva and Babji. However, from the settled law that it is for the landlords to choose and not for the tenant to dictate, when they want to shop No.2; thereby they are entitled to evict the respondent-tenant for said bonafide requirement. The tenant maintained R.C.A. No.1 of 2013 impugning said order of the Rent Controller and the appellate Tribunal vide order dated 19.12.2013 confirmed the findings of the Rent Controller of the premises required bonafide for the landlords to vacate from the shop No.2.

7) The findings of the appellate Tribunal in nutshell, in so far as the bonafide requirement are that as per Section 10(3)(iii) in case of a non-residential building, if the landlord is not occupying any other non-residential building in the city, town or village concerned; he is entitled to evict the tenant if he requires for the purpose of business which he is carrying, if it is more convenient for said purpose or for bonafide commencement of business. Coming to the evidence of R.W-1 even the shop No.1 that was lying vacant for a long time that is abutting to the petition schedule shop No.2 for both facing main road they could have been occupied the same and that too when the evidence show the petitioners are running oil extracting business in portion of their residential building for the last 25 years and it is not the requirement to establish oil extracting mill with motor in the shop. Further, when the law is clear of the landlord is the person having choice to select the premises which is convenient for their business purpose or occupation and not for the tenant to dictate terms and when the evidence shows other shops as on date existing in occupation of different tenants and when the evidence show the premises in question which is shop No.2 is more convenient for the purposes of the landlords, it is within the purview of bonafide requirement and thereby there are no grounds to interfere with the eviction order passed by the Rent Controller.

8) The contentions in the grounds of revision vis-a-vis the oral submissions of the learned counsel for the tenant-revision petitioner are that the concurrent findings of the Tribunals below are perverse, devoid of merits, unsustainable and by ill-appreciation of the fact and law and only based on surmises and assumptions without basis to order eviction despite a case for dismissal of the claim for not a

bonafide outcome but for to evict and to let out for higher rent if possible and to avoid payment of the advance amount lying with them and they did not approach the Court with clean hands having come with a false claim that was not properly considered and thereby the concurrent findings which are devoid of merits are liable to be set aside by dismissing the Rent Control Case and the appeal confirmed findings respectively.

9) Whereas, it is the contention of the learned counsel for the respondents/landlords to the revision that for this Court while sitting in the revision within the limited scope as laid down of the Constitution bench expression of the Apex Court in ***Hindustan Petroleum Corporation Limited V. Dilbahar Singh***¹ for no irregularity or impropriety or illegality in the findings of the Rent Controller confirmed by the first appellate Court, for this Court is not a second Court of first appeal for re-appreciation of fact; but for to go into the facts for the limited purposes within the above scope of revision jurisdiction, the revision is liable to be dismissed.

10) Heard at length on facts and law within the scope of revision jurisdiction and perused the material on record.

11) Undisputedly, there is no any cross-objections against the concurrent finding so far as no wilful default in payment of rents concerned. Now, coming to the concurrent findings on the bonafide requirement concerned, there are out of the eight shops belong to the revision respondents/landlords only two shops are facing road which are shop No.1 and shop No.2 and of which the shop No.2 is in the leasehold of the revision petitioner-tenant. For other six shops are

¹ (2014)9 SCC 78

facing to a lane towards the side and not facing main road and in the occupation of different tenants. The landlord to select what is more convenient for bonafide requirements is the settled law, though the motive behind it if any has to be considered in deciding the selection is bonafide or not even tenant has no right to dictate terms, is entitled to place on record the motive behind eviction sought. Though it was therefrom sought in selecting the shop No.2 in seeking eviction of the tenant-revision petitioner, when his evidence on record right from the counter plea also by cause examination of R.W-2 from the earlier tenant of shop No.1 that he vacated and it was for some time lying vacant and unoccupied by the landlord. There is nothing to say the shop vacated by R.W-2 which is shop No.1 how long before the eviction petition filed in the case on hand by R.C.C. No.3 of 2005 or the earlier suit for eviction O.S. No.1829 of 2004, after so called quit notice dated 20.09.2004, lying vacant before let out to others. Once, it was long before, if at all and even by then they did not think of occupying for own use to develop the business in sale of coconut and other oil extracting from their running it at any part of the residential premises oil extracting mill in coconut gingili etc., and from the evidence of P.W-2/2nd petitioner, he was doing polishing business of ornaments by sitting near to shop No.2 in the space meant as passage for ingress and egress to their house and oil mill and once later they thought of same is convenient for improving their said business purposes and even undisputedly it is a temporary bunk erected near the shop No.2 facing road, where they are selling the extracted oils and oil cake etc., from their mill, there is a genuine bonafide requirement by the time of eviction petition filed and same subsists even now from the above. When once such is the case by the time of eviction petition filed for the said bonafide requirement,

the shop No.1 not available vacant but for earlier, if any, once let out and undisputedly tenants are in occupation with names Shiva and Babji even by the time eviction petition filed, it cannot be made a ground to say it was even lying vacant for some time not occupied and thereby there is no bonafide requirement for said business purposes to seek eviction of the premises under tenancy of the revision petitioner, that too when the landlord out of the two shops in choice selected to seek eviction of one of the shops among the eight shops of two facing road and even earlier shop No.1 vacated and for some time lying vacant, later was let out and occupied by tenants from their say of the shop No.2 is more convenient, for this Court while sitting in revision against said concurrent findings, there is nothing to interfere but for to say from the evidence on record establishes the tenant is getting on his livelihood from the only avocation of the polishing works and Dharma Kata running as a source of livelihood for the past several years with established identity from the place and difficult to secure immediate alternative suitable accommodation and adjust by diverting customers to the new place, this Court feels it just to grant twelve months time from now, in the mean time for the tenant to search an alternative accommodation and to vacate and to pay towards damages for use and occupation from now onwards by confirming the order of eviction, however, by postponing for twelve months and in case of his failure to vacate by 15th October, 2017, the landlords are at liberty to execute and enforce the eviction order in R.C.C. No.13 of 2010 confirmed in R.C.A. No.1 of 2013 and also by this revision order but for postponing of possession to enable the tenant to have the alternative accommodation mean time.

12) With the above observations, the revision is disposed off, while confirming the order dated 02.11.2012 in R.C.C. No.13 of 2010 confirmed by order dated 19.12.2013 in R.C.A. No.1 of 2013 on the file of the Rent Control Appellate Authority-cum-Principal Senior Civil Judge, Kakinada, however by granting time to vacate till 15th October 2017, subject to payment of use and occupation charges at Rs.1,500/- per month. There shall be no order as to costs.

13) Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

17.10.2016

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