

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Civil Revision Petition No.4078 OF 2013

ORDER:

The 6 revision petitioners are no other than the respondents 1 to 6 of R.C.No.343 of 2008, out of them, 4 to 6 are legal representatives of the 1st revision petitioner-Eviction petition 1st respondent out of original three respondents, on the file of the Principal Rent Controller, Hyderabad, maintained in seeking eviction of them by the landlord no other than the revision sole respondent.

2. The present revision is against the concurrent findings of the learned Rent Controller dated 03.06.2011 and that of the appellate Tribunal in R.A.No.173 of 2011, dated 26.07.2013.

3. The factual background from the pleadings covered by the Eviction Petition (R.C.No.343 of 2008) vis-à-vis the counter respectively are the following:-

4. As per the Eviction Petition maintained under Section 10(3)(a) (i) and 10(2) (i) of the Andhra Pradesh Buildings(Lease, Rent & Eviction) Control Act, 1960 (for short, "the Act") in respect of the premises bearing Municipal No.14-2-387/ 2, Ghosha Mahal, Hyderabad that the lease originally commenced on rent of Rs.2,000/- p.m. in the year 1988 under Ex.R.2 lease deed dated 01.12.1988. That was extended from time to time and ultimately by the original of Ex.R.1 lease agreement dated 24.03.2007 with rent of Rs.3,500/- p.m. and the rent payable is for every month by 5th of succeeding month, however after May, 2008 respondents committed willful default and the petitioner who was working in State Bank of Hyderabad, attained superannuation by March, 2008 was requesting since before, to vacate the premises by the end of

June, 2008 but the respondents refused to vacate for repeated requests of the petitioner of his intention to start own business in the premises for his bona fide personal requirement for having no other non-residential accommodation of him to commence the business and that too, when respondents are having alternative accommodation since purchased several premises for their godown and shops for their business and they got shop at 5-5-683 for carrying business with name and style 'Suman plywood' at Ghosha Mahal and the respondents are having godown in the premises Municipal No.14-1-498/ 1 and also 14-1-497/ 3/ 2 at Seetharampet, Hyderabad besides shop at Bakaram Hyderabad and also 'Suman Plywood' business at the premises D.Nos. 1-4-959 and 960 and they are liable to be evicted on the grounds of willful default of payments of rents and for bona fide personal requirements to commence business by the landlord.

5. The counter filed by the respondents 2 and 3 in opposing the Eviction Petition is with the contentions that they paid Rs.12,000/- as security deposit in the year 1988 at the time of commencing of lease on monthly rent of Rs.2,000/- p.m. and in March, 2007 from the fresh lease executed, they paid Rs.1,00,000/- towards security deposit for which the landlord did not pass receipt. The petitioner/ landlord was collecting rents and they have been regularly paying and it is false to allege that they failed to pay the rent from May, 2008 and suspecting the foul play of the petitioner/ landlord, respondents tendered rents by the Money Order dated 04.12.2008 for a period from April,2008 to September, 2008 and again for a period of October, 2008 and November, 2008 that were returned by the landlord and the respondents/tenants sent a notice dated 16.12.2008(Ex.R.20) requiring the petitioner/landlord to furnish the bank account and he sent reply notice dated 23.12.2008(Ex.R.18)

stating he is ready and willing to receive rent and they started paying rent therefrom through Demand Drafts and even those were refused by the petitioner on some occasions. There was no demand by the petitioner to vacate the premises and expressing any idea to start business after his retirement much less any demand from March, 2008 and that too, the petition schedule premises is only in use for godown purposes and not suitable to start any business by the petitioner therein, apart from he has no any experience to do business and no idea to do thereby not furnished any particulars of the business proposed to start and there is no any bona fide requirement and there is no willful default and the petition is mala fide outcome to evict them to snatch away their bread and butter. It is further averred that they are the three brothers being the sons of the 3rd respondent and their father Sri Pushkarlal and out of the three, the eldest one Rajendrakumar(1st respondent since died) his wife Smt. Sumanlatha and two sons Manoj and Vineeth(who are eviction petition respondents 4 to 6) and out of them the premises is occupied by the said Manoj and Vineeth, who intend to separate from the family and one more premises is required thereby to Vineeth even the said premises to continue by Manoj, among the three brothers respondents 1 and 2 by names Surender Kour, and one late Narender Kumar, for Narender Kumar not a party to the eviction petition: Mr. Narender Kumar died leaving his wife by name Asha and her sons Sourav and Gourav and the property at Seetharampet is in their occupation also stated intend to separate and thereby they also require one more premises for their separate livelihood and the 2nd respondent occupied the premises at Ghosha Mahal, which is a godown in nature and for the 2nd respondent got a son by name Sandeep who also intend to separate and Sandeep also requires a separate, premises and the 3rd respondent

Smt. Bhagwandeve w/o late Pushkarlal, father of respondents 1 and 2 conducting business in the schedule property and eaking out their livelihood and there is no alternative accommodation to vacate. It is also their contention that their innovated premises after taken on lease in 1988 by reconstruction and the rent controller has no jurisdiction, hence to dismiss the eviction petition.

6. It is from the said pleadings, in the course of enquiry before the Rent Controller, the sole petitioner was examined as P.W.1 and got marked Ex. P.1 rough sketch plan and P.2 superannuation letter issued by the bank. On behalf of the respondents, the 2nd respondent by name Surender Kumar as R.W.1 and one Pushkarlal as R.W.2 were examined and placed reliance on Exs.R.1 to R.20 of which besides Exs.R.1, R.2 R.18 to R.20 described supra, other are the postal receipts, M.O. receipts, M.O. acknowledgments and return postal cover, as the case may be.

7. It is from the said evidence and after enquiry, the learned Rent Controller in passing eviction order dated 03.06.2011 granting two months time to vacate, observed that;

7(a). The respondents did not adduce any evidence to show they allegedly renovated and re-constructed the premises and the Act thereby has no application after said renovation for a statutory period, to give any credence to such counter contention and so far as the willful default if any concerned, any payment of rents undisputedly the premises taken initially on rent of Rs.2000/- p.m.in 1988 and the rent from March, 2007 was at Rs.3,500/- p.m. and rent payable on every month by 5th of next month. The respondents, according to the petitioner, paid rent up to April and from May,2008 failed to pay. The

respondents' specific contention if there was security deposit originally of Rs.12,000/- of 1988 and of Rs.1,00,000/- in 2007 March concerned, to such claim the Ex.R.1 no way mentions any such security deposit of Rs.1,00,000/-, if true and had there been any little truth, it could have been so mentioned in the lease deed of 2007 if at all paid at or before execution of lease deed or that day. It is highly unbelievable of such version for other reason of even no receipt obtained to say there is any payment as such security deposit of Rs.1,00,000/- by the respondents to the petitioner. No doubt, the petitioner admitted about the receiving of Rs.12,000/- security deposit at the time of entering the lease in the year 1988 under Ex.R.2 dated 01.12.1988 and even as per the expression in *Kranthi Swaroop Machine Tools Pvt.Ltd. Vs. Smt. Kantabai Asawa*¹ the same can be adjusted for the three months rent of Rs.10,500/- for the months of May, June, and July, 2008; then there remains a balance of Rs.1500/- which does not represent fully for the August, 2008 monthly rent of Rs.3,500/- without showing further, payment at balance Rs.2,000/- to it. The R.W.1(R.2) in his cross-examination admitted the facts that they have not paid rent from May, 2008 till date of filing the eviction petition and failed to give any satisfactory explanation for the non-payment of rents regularly. The deposit of rent after filing of the eviction petition, no way takes away the willful default as also held in *Narasaiah Vs. P.Narasimha Reddy*² by the High Court and when R.Ws.1 and 2 admitted that after receipt of summons only they tendered the rent to the petitioner and the R.C.No.343 of 2008 filed was on 16.09.2008 and the rent tendered was by the Money Order dated 04.12.2008 under Ex.R.5, that itself is an indication of the rent not paid since May, 2008 and suffice to say, without any further evidence, from

¹ 1994 SCC 1216

² 1995(1) ALD 851

that Money Order receipt, the willful default of payments of rent even after adjustment of Rs.12,000/- security deposit of 1988 for three months with balance of Rs.1500/- for the default which is willful for the subsequent period as the High Court in Kodangi Sethu Madhava Rao Vs. Chakka Prabhakar Rao³ held failure to pay within 15days, after expiry of the time fixed for payment of monthly rents, can be constituted as willful default for the tenant having statutory liability to pay the rents to the landlord, thereby there is a willful default on the part of the respondents in payment of rent for so holding.

7(b). So far as the bona fide requirement of the petitioner/ landlord concerned, the tribunal observed that the petitioner after superannuation was to retire by December, 2008 and he decided to start business of their own thereafter and demanded to vacate according to his evidence and Ex.P.2 letter clearly establishes the factum of his superannuation to support his plea and when the Apex Court in Raj Kumar Khaitan Vs. Bibi Jubeda Khatoon⁴ held that it is not necessary for the landlord to indicate the precise nature of business which he intends to start and even indicated he need not start same business in the premises after eviction and there is no necessity thereby for the landlord to indicate what business he was proposing to start apart from the tenant cannot dictate terms, but for the landlord having the choice and the landlord when shown a retired bank officer apart from no need of showing his financial capacity in support of his plea of starting business as laid down in Manik Haldar Vs. Pallamraju Lavanya⁵. In fact, he could prove that he received lumpsum benefits of Rs.15,00,000/- of superannuation, about his financial capacity to start new business and

³ 2001(5) ALD 352

⁴ AIR 1995 SCC 576

⁵ (2005) 2 ALD 204,

when Section 10(B)(2) of the Act, enables the landlord, a retired employee of State or Central Government to seek for eviction for his own use since one year before his retirement at any time and when he wants to start business that too being a bank employee and when his pleading clearly and with evidence in support of no other non-residential building for his said purpose, the requirement of the petitioner/ landlord is nothing but bona fide and cannot be attributed mala fide, leave about the respondents to the eviction petition got other alternative accommodations or not since they got several premises and running several shops with the business under the name and style of 'Suman Plywood'.

8. When impugning the same, the tenants maintained the R.A.No.173 of 2011, the learned appellate tribunal observed that:

8(a). On willful default even taken from the expression Kranti swarup supra and another Apex Court's expression in Modern Hotel Gudur Vs. K.Radhakrishnaiah⁶ of the security deposit to adjust towards arrears of rent and to that extent not to consider as willful default from what the P.W.1 in his cross-examination also deposed to that extent as from Rs.12,000/- security deposit even adjusted towards three months rent of May, June and July, 2008 even from remaining balance with him of Rs.1,500/- there is a default for August, 2008 balance payable of Rs.2,000/- by 5th September, 2008 and later even for the further months, the payment after receipt of summons in the eviction petition on the ground also of willful default no way constitutes valid payments as held by the High Court in Narasaiah supra that too when Ex.R.5 M.O. was dated 14.12.2008 and the eviction petition filed on the ground of willful default was dated 16.09.2008 and that can even be basis to hold

⁶ AIR 1989 SC 1510

willful default as also held by the Full Bench of High Court in Vinukonda Venkatramana Vs. Mootha Venkeshwara Rao⁷ coming to what even the Apex Court in Dakaya Vs. Anjani⁸ held that the tenant immediately after receipt of demand notice sends entire amount of rent just before filing of the suit/eviction petition, there is no willful default no way apply to the case on hand, from the facts referred supra are entirely different and thus the expression has no application, equally the expression of the High Court prior to that in C.Satyanarayana Vs. S.Subba Rao⁹ and thus even the Ex.R.20 notice and R.18 reply of December, 2008 were subsequent to filing of the eviction petition on 16.09.2008. Ex.R.2 lease agreement dated 01.12.1988 no doubt shows that in case the lessee commits default in payment of rent for more than two months, the lease deed stands cancelled automatically and lessee shall be liable for eviction without further notice. Said clause, however, does not bar filing of eviction petition for the default in non-payment of rent of every month by the 5th of next month to say the rent of August, 2008 by the 5th September, 2008 not paid despite lease stipulation to hold the same as willful default even by the date of eviction petition filed on 16.09.2008, suffice to say therefrom to uphold the finding of the Rent Controller of there is a willful default.

8(b). Coming to alternative accommodation to secure by tenants and thereby liable to be evicted concerned, there is nothing shown of any alternative accommodation available unoccupied by all the members of the family and the decision in Manoj Kumar Jain Vs. L.Ahuja¹⁰ though holds that it is not necessary to show alternative accommodation should be in the name of a tenant for even in the name of wife of the

⁷ 2001 (6) ALD 27 FB

⁸ AIR 1995 SC 383

⁹ 1992(2)APLJ 540

¹⁰ (2001) 5 ALD 84

tenant is liable to be evicted, it can be said therefrom that they got alternative premises in the name of the family members thereby liable to be evicted though tribunal held otherwise in its finding on issue No.3.

8©. Coming to Bona fide requirement for personal business purposes of the landlord in seeking eviction concerned, as held by the tribunal, the landlord seeks the premises bona fide since attained superannuation and wants to do business in the non-residential premises and his age is no way bar to start business, as held by the High Court in Mohammad Khaja Vs. Mohd. Shoukat¹¹ and what the Apex Court held in Siddalingamma Vs. Mamatha Shenoy¹² and in Duggi Veera Venkata Gopala Satyanarayan Vs. Sakala Veera Raghavaiah¹³ to test the bona fide requirement of the landlord is to prove the need to occupy the premises should be natural, real, sincere and honest and what the High Court held in G.Narayana Vs. G.krishnaji¹⁴ no way applies to the facts herein because, there was any uncertainty of the business proposed to start was for the current motor manufacturing industry or any other like Industry and as per to the expression of the High Court in Manoj Kumar Jain supra, it clearly says not necessary for the landlord to show the previous experience and that too, the landlord is the best judge when wants to start business to give priority to him and compare to that of the tenant to continue in weighing hardship and that too, further when the landlord has no other non-residential accommodation to start with the business and in Rajkumar Khaitan Vs. Hibi Jubaida Khatun¹⁵ it was held by the Apex Court way back that when the landlord claims no other means of livelihood and wants to set up own business in the premises in seeking eviction, he need not indicate precise nature of business which

¹¹ 2002(1) ALD 797 DB

¹² 2001 8 SCC 561

¹³ AIR 1987 SC 406

¹⁴ 1988(2) ALT 118

¹⁵ AIR 1955 SC 576

he intends to start but for clear assertion of the bona fide requirement of the premises to set up business that too, furthermore any nature of business indicated he can change, for that no way bind him to do that business alone after eviction. Thus, when the landlord got means from the superannuation having retirement benefits and with no avocation and being a bank employee and from that experience to start new business, the tribunal is right in ordering eviction.

9. It is impugning the concurrent findings, coming to the revision contentions vis-à-vis the oral submissions of the revision petitioners/ the tenants are that there was no willful default and the Courts below gravely erred in so holding contra and even rent of August, 2008 payable by September, 2008 and when amount paid even immediately after eviction petition summons received and for the Money Orders refused sought for furnishing bank account as mode of payment to take recourse to deposit otherwise and there is also no bona fide requirement and there is no unoccupied available additional accommodation to the tenant and thereby the eviction order with concurrent findings are outcome of perversity and devoid of merits and are liable to be set aside by allowing the revision.

10. Whereas, it is the submission of the learned counsel for the eviction petition respondent/ landlord that the order of the lower Court with concurrent findings is well considered outcome supported by reasons and this revision Court is not the 2nd Court of first appeal to re-appreciate entire facts even to interfere with the concurrent findings on facts, apart from same even otherwise sustains and the revision petition is devoid of merits and is liable to be dismissed.

11. Heard both sides at length on facts and law and perused the material on record from the respective contentions and with reference to the expressions referred by the Courts below and further of those cited in the revision.

12. Coming to the scope of revision, particularly from the Constitution bench expression of the Apex Court in *Hindustan Petroleum Corporation Limited V. Dilbahar Singh*¹⁶ referring to Section 20 of the Kerala Act and Section 25 of the Tamilnadu Act among other Rent Control Act provisions of other State Acts, the wording is almost similar to Section 22 of the State Act which speaks that, the High Court may call for and examine the records relating to any order passed or proceeding taken by the Rent Controller or by the appellate authority for the purpose of satisfying itself as to the legality, regularity or propriety of such order in reference thereto as it thinks fit. Thus what the Apex Court laid down in the expression of *Dilbahar Singh* supra interpreting the three terms 'legality, regularity or propriety' that was also considered by this Court referring to the Constitutional Bench expression in *Thumuguntla Enterprises V. Majeti Venkata Ramakoti Mutyalu*¹⁷ on the scope of law and what was laid down by the Constitution Bench on the power of revision either under Section 22 of the Act or Section 115 of C.P.C or even under Article 227 of the Constitution of India, is limited to decide whether the impugned order is according to law or not but not by re-appreciation of entire facts afresh as a second Court of first appeal. Thus, it is the caution saying it is not a first appellate Court to re-appreciate the facts afresh but for to decide with reference to the relevant facts, the legality, regularity or propriety of the orders impugned in the revision.

¹⁶ (2014)9 SCC 78

¹⁷ 2016(2) ALD 763

13. From the above facts and law including on the scope of revision, no doubt coming to the finding of the lower appellate tribunal of available alternative accommodation to the tenant, the revision petitioners/tenants placed reliance on *Anandi D. Jadhav Vs. Nirmala*¹⁸ a case in Bombay, Rent Control Act, where it was held that sons of tenant owning a building is not a ground to evict the tenant on alternative accommodation of sons for they do not come within the meaning of tenant, but for members of the family of the tenant at best, and for that conclusion the Apex Court referred the earlier expressions in *Ganpath Ram Sharma Vs. Gyabri Devi*¹⁹ and *B.R.Mehta Vs. Alma Devi*²⁰ in saying the onus lies on the landlord to prove available alternative accommodation entitled to occupy by the tenant and it is then only the burden shifts on to the tenant and for that there must be positive plea and proof, and the house allotted to the wife a Government employee by Government cannot be called the husband entitled to reside therein but for if allowed by wife/the allottee. Coming to the other decision in *M.Ravinder Raju Vs. S.Bansilal*²¹ of the High Court referring to earlier expressions, it was held a new building constructed by tenant to accommodate his expanded business is only an additional accommodation but that is not a suitable alternative accommodation to evict on that ground. Thereby no doubt said finding of the appellant tribunal is no way sustainable.

14. However, coming to the bona fide requirement and willful default, the decisions placed reliance mainly on the Apex Court's expression in *Dinesh Kumar Vs. Yusuf Ali*²² what was held so far as the bona fide need of the landlord to carry on business therein concerned,

¹⁸ AIR 2000 SC 1386

¹⁹ AIR 1987 SC 2016

²⁰ (1987) 4 SCC 183

²¹ 2002 supp. (2) ALD 478

²² AIR 2010(SC) 2679

the landlord is undisputedly a best judge of his need and not for the tenant to dictate; however, the need must be real, natural and genuine and cannot be only a pretext to evict the tenant. In fact, the expression is very clear of each case to decide on own facts. In this regard and for that conclusion, the Apex Court referred several of the earlier expressions including those already discussed by the tribunals below. One of the decisions placed reliance shows there must be a specific plea and proof. It is undisputedly coming to the facts, the eviction petition itself speaks the landlord since attains superannuation being a bank employee and with that experience and with the retirement benefits going to start business for his livelihood and he is in bona fide need of the premises for said purpose. There is thus not only a specific plea but also evidence in this regard including from the cross-examination by the respondents in saying and establishing he received more than Rs.15,00,000/- towards retirement benefits with which he intends to start business. He, being worked as bank employee, having the experience in commercial field in dealing with the bank transactions to say he need not exhibit any further experience much less by any experience certificate and law is fairly settled of mere non-mention of the nature of business he proposed to start and non-production of any proof of experience not a bona fide requirement or the same is only a roose to evict the tenant. Once there is a concurrent finding on the bona fide requirements of the landlord therefrom, for this Court while sitting in revision within the limited scope even by relevant facts re-appreciation, there is nothing shown of impropriety, illegality or perversity and/ or devoid of merits of the said concurrent findings and thus there is nothing to interfere with said finding establishing landlords bona fide requirement to start business in ordering eviction.

15. From the facts supra need no repetition or re-appreciation to the relevancy, there is nothing to interfere on the ground of willful default also, as the very lease deed placed reliance by the respondents among respondents 1 and 2 speaks rent of every month to be payable by 5th of next month and even on adjustment of the Rs.12,000/- original security deposit that repays three month's rent of Rs.10,500/- with remaining balance of Rs.15,00/-, even adjusted for three months i.e. May, June and July, 2008 for August, 2008, still Rs.2,000/- payable of August, by the 5th September, 2008 and any condition of non-payment of two months rent continuously cancels the lease and to evict without notice is different from the non-payment, besides specific stipulation constitutes willful default and there is no explanation for non-payment and once that is the conclusion arrived by the concurrent findings supported by reasons, there is also practically nothing to interfere.

16. Further, even taken for arguments sake, the same does not so technically constitute willful default if at all there is a grace period of 15days from one of the expressions relied and by the time of the eviction petition filed on 16.09.2008 it is not even within grace period. The subsequent conduct also relevant as what was paid was not even within 15days grace period. After service of summons only December, 2008, sending by Money Order or the like thereby does not cause willful default as mere default for no explanation not to obey the lease stipulation of due date in payment earlier in vogue. Once from the above, there is a willful default even after filing of the eviction petition and by consideration of that subsequent conduct also as a relevant factor, the said current findings no way unsustainable much less tainted by perversity or default of merits to interfere, much less to set aside reverse.

17. Having regard to the above, there are no grounds to interfere with the concurrent findings of the tribunal below on the two grounds of willful default and bona fide requirements in the order of eviction but for to say for the tenant to search for any alternative accommodation, sufficient period can be given.

18. Accordingly and in the result, while dismissing the revision, time of about nine(9) months is granted to vacate on or before end of July, 2017 subject to payment of the amounts of rents stipulated earlier as damages to use and occupation meantime and in case of failure, to vacate by end of July, 2017, else the landlord can execute and enforce to evict the respondents/ tenants and any persons claiming through them and through due process of law. Consequently, miscellaneous petitions, if any, pending in this revision, shall stand closed. No costs.

Date:21.10.2016
Vvr

Dr. B. SIVA SANKARA RAO, J

