

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.1548 of 2016

ORDER:

The revision petitioner was the sole respondent-tenant to R.C.C. No.256 of 2010 maintained against him by the revision-1st respondent under Section 10(2)(1) of the Andhra Pradesh Buildings (Lease, Rent & Eviction) Control Act, 1960 (for short, the Act) on the ground of there is wilful default in payment of the agreed rents of Rs.2,000/- per month from May, 2008. The eviction petition filed was in July, 2010 showing there are arrears of 27 months due.

2. The averments in the eviction petition show that the petitioner is the owner of the premises by virtue of registered gift settlement deed dated 16.01.2008 in registration No.98 of 2008 executed in his favour by Badri Vishal Rathi and five others for the premises bearing No.55-7-531 and for other mulgies and the respondent-tenant of the premises at Begum Bazar entered the lease with effect from 01.01.1988 with the original owner, Mr.Ramdev Rathi originally on the rent of Rs.480/- per month and the rent later was enhanced to Rs.2,000/- per month which has to be paid on or before Rs.5,000/- of each month by 5th of each commencing month and to obtain receipt and having paid upto April, 2008 through money order or otherwise later failed to pay despite demands by wilfully committing default and is thus liable to be evicted.

3. The counter filed by the respondent in opposing the eviction petition is with contest that the eviction petition is outcome of suppression of true facts and with concocted version and petitioner is not entitled to the relief of eviction, that it was

HUF property of Mohanlal Shankarlal and he did not show the same as such and thereby the respondent is not admitting ownership of the petitioner and the earlier landlords did not even inform the respondent about transfer of ownership to the petitioner by alleged gift settlement and said document no way shows jural relationship, the gift deed mentions obtaining possession of property by the donee by referring the donee was put in possession. However, it is the eviction petition filed against the respondent for not in possession and the tenancy was in fact commenced in the year, 1979 with an understanding to increase 10% of rent for every four years and giving of prior notice if at all to seek eviction, the petitioner entered the scene only in the year, 2008 and later disappeared and now claims the lease as if commenced on monthly rent of Rs.2,000/- with effect from 01.01.1988, though present rent is only Rs.1,070/- per month said lease deed dated 01.01.1988 itself was for 11 months and later there was no fresh lease deed. It is also contended that the allegation of rent payable every month commencing before 5th is not correct and after expiry of lease period of 11 months from 1988 January, it was oral and the earlier landlords were receiving rents as per their convenience and there was no any stipulation of time to pay rent but for their coming and collecting and the petitioner never informed about his acquiring of right over the mulgi muchless by gift and even the legal heirs of earlier landlord never informed and it is only on knowing by the respondent-proprietory concern about the Transfer of Property, the respondent-proprietor concerned, remitted the rents of January to April, 2008 through money orders which the petitioner received without protest at

Rs.1,070/- per month and the rents of May to November, 2008 sent money orders were returned refused and thereby it is false to allege that the respondent deliberately and intentionally failed to pay rents from May, 2008 till June, 2010 for 27 months at Rs.2,000/- per month. The respondent having suspected foul play on the part of the petitioner, tendered again said rents from May, 2008 to August, 2010 at Rs.1,070/- per month by different money orders that were also returned as addressee left and it is in those facts the eviction petition filed without any default or wilful default by misleading and concocting the facts mischievously and without even any notice and on receipt of summons in the Rent Control Case, the respondent offered and tendered total Rs.29,960/- at Rs.1,070/- per month from May, 2008 to August, 2010 on the first date of hearing of the Rent Control Case on 13.09.2010 that was received by the counsel for the eviction petitioner and passed receipt without protest and later also received by said counsel rents for September and October on 09.11.2010 and for November on 14.12.2010 without protest. It is averred that the petition is filed against a wrong entity and trying to evict the respondent from the petition schedule premises without basis and the eviction petition thereby liable to be dismissed.

4) It is from the pleadings, in the course of enquiry before the Rent Controller, P.W-1, Ajay Kumar on behalf of the Dharampal Garg was examined and Exs.P-1 to P-6 which includes General Power of Attorney, lease deed dated 01.01.1988 and returned money orders were marked and on behalf of the sole respondent entity Bharat Electrical Agency, Bharat T.Shah claimed not as

partner but as proprietor of it was examined as R.W.1 and Exs.R-1 to R-40 were marked.

5. It is from said evidence and after hearing, by order dated 25.06.2002, the learned Rent Controller passed eviction order granting two months' time to the respondent to vacate the schedule premises. When impugning the same, said tenant filed R.A. No.159 of 2012 referring as proprietary concern showing the landlord as 1st respondent and by impleading one P.Krishnalal Dawasaz, a registered firm represented by its Managing Partner P.Rajender Kumar who was impleaded in the appeal R.A. No.159 of 2012 as per orders in I.A. No.177 of 2015 dated 10.09.2015, the learned appellate Tribunal after hearing dismissed the appeal by confirming the eviction order supra. It is impugning the same, said tenant filed the present revision showing R.A. No.159 of 2012 respondents 1 and 2 as revision respondents.

6) The contentions in the grounds of revision mainly are that the findings of the Rent Controller and the lower appellate Tribunal are erroneous, illusionary and contrary to the pleadings and evidence and against the settled propositions and also in ignorance of the fact of no denial of title either in the pleadings or evidence to say any malafide denial which is nothing but on assumptions and surmises, which are the unwarranted conclusions by misleading of the evidence, particularly the cross-examination of P.W-1 which destroys the petition claim itself from any ambiguous admission in the cross-examination from reading as a whole and for nothing even to support the petition claim from cross-examination of R.W-1 and the Courts below should have seen that the 2nd respondent

was impleaded as a subsequent purchaser and said alleged gift in favour of the 1st respondent and sale deed from him in favour of the 2nd respondent are subject matter of challenge in the partition suit O.S. No.470 of 2015 filed by Smt.Kamaladevi and thereby sought for setting aside said impugned findings of the Courts below and to allow the revision dismissing the eviction petition. The learned counsel for the revision petitioner reiterated the same and the learned counsel for the revision respondents supported the eviction order passed by the Rent Controller and ultimate result of the appellate Tribunal but for impugning the correctness of one of the reversal findings.

7) Heard at length and perused the material on record of the revision petition from the respective contentions with reference to facts and law.

8) Coming to the scope of revision, particularly from the constitutional bench expression of the Apex Court in ***Hindustan Petroleum Corporation Limited V. Dilbahar Singh***¹ 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 and thus what the Constitutional bench laid down in the expression of ***Dilbahar***

¹ (2014)9 SCC 78

Singh supra interpreting the three terms 'legality, regularity or propriety' that was also considered by this Court referring to the Constitutional Bench on expression in **Thumuguntla Enterprises V. Majeti Venkata Ramakoti Mutyalu**² 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 now 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.

9) The pleadings to decide the revision lis no way requires repetition from what are detailed supra but for the evidence on record with reference to the pleadings for appreciation within the scope of revision.

9(a). P.W-1, Ajay Kumar Bhati, the petitioner to the eviction petition deposed that on behalf of Sri Dharampal Garg to the eviction petition deposed that he is the special power of attorney holder of the eviction petitioner/landlord of the mulgi in question bearing door No.15-7-531 of Begum Bazar, Hyderabad, which he got by registered gift settlement deed 98/2008 dated 16.01.2008, said to have been executed by Badri Vishak Rathi and five others for the mulgi and other mulgies. Though it referred about filing of copy of the gift settlement deed, there is nothing reflected from the

² 2016(2) ALD 763

memo of evidence. No doubt, the G.P.A marked as Ex.P-1 is dated 15.12.2010 executed by the petitioner in favour of P.W-1 and the eviction petition filed was before that on 28.07.2010. No doubt, copy of gift settlement deed supra was even filed as one of the list of documents with the eviction petition, appended to the list of what documents filed. What P.W-1 deposed in his chief affidavit being the power of attorney holder subsequent to the filing of eviction petition in support of the eviction petition averments that the respondent-tenant under Ex.P-6 lease deed dated 01.01.1988 of the lease obtained from original owner Mr.Ramdev Rathi originally paying rent at Rs.480/- per month that was gradually increased to Rs.2,000/- per month for the schedule mulgi and as per the terms of the lease deed rent payable is in advance after commencement of the month by 5th of each month and to obtain receipts and respondent sent rents of January, February, March and April, 2008 that was later received under protest and the respondent deliberately and intentionally later failed to pay the rents from May, 2008 till filing of eviction petition for 27 months a total of Rs.54,000/- and he is thereby wilful and chronic defaulter, liable to be evicted and his contention of rent is only Rs.1,070/- per month and by denying title of the landlord/malafide and baseless and the allegation of deposit with the original landlord is untrue.

9(b). In fact, the law is fairly settled that a G.P.A holder cannot depose the facts which are within the personal knowledge of the principal unless he specifically speaks those facts which are known to him. Importantly Ex.A-6 lease is not with the petitioner but with Ramdev Rathi, the original owner, the so called donor to

the petitioner. In this context, it is now crucial to mention from the counter of respondent though in the initial paras stated that the gift settlement deed discloses no valid ownership for the suit property is the HUF of M/s.Mohanlal Sankarlal, father of Ramdev Rathi, the landlord of Ex.A-6 lease deed, there is no attornment in favour of the petitioner of the leasehold rights and there is no jural relationship. It is mentioned in para No.8 of the counter in particular, that Ex.A-6 lease deed was for 11 months and that the lease period expired and later the oral lease continues and the landlord was receiving rents as per convenience and that the petitioner if acquired said mulgi never informed the same to the respondent, so also the landlords' legal heirs and on coming to know by the respondent-tenant about the transfer of the entire property to the petitioner, he remitted the rents for January to April, 2008 through money orders and the petitioner received the same without protest of the rent at Rs.1,070/- per month and later only for the rents of May to November, 2008 when sent, same was refused.

9©. No doubt that itself admits the eviction petitioner's ownership of the property in sending the amount of January to April, 2008 by money orders on his came to know; Thus, there is no any specific denial of title of the landlord by the tenant muchless of the gift deed. Once, there is no denial of the gift settlement, even otherwise a compulsory attestable document, proof of execution is by atleast examination of one attestor, same is not required even from the wording of Section 68 of the Indian Evidence Act, for no specific denial; however P.W.1 is one of the attestors of the gift deed as he deposed in the cross-examination.

In this background, coming back to evidence, the evidence refers to the copy of the gift settlement deed as relied upon but however not specifically exhibited by referring in the memo of evidence by the Rent Controller. The cross-examination of P.W-1 from the above background by the respondent reads that the petitioner is uncle of the P.W-1, G.P.A holder and it is by courtesy and not by blood relationship and the G.P.A executed is subsequent to the filing of the eviction petition and he knows the facts as even he accompanied the petitioner in cause filing the eviction petition, though said fact is not mentioned in the eviction petition, he does not know whether respondent is proprietary concern or partnership firm, but he knows the same only as proprietary concern after the G.P.A execution.

9(d). He deposed that petitioner is residing at Delhi, where he is carrying business and he does not remember the date or who stood as witnesses to the Ex.P-1, G.P.A but himself and the petitioner visited a Notary for its execution though he does not remember who prepared and where it was executed as petitioner looked after everything. He admitted that in Ex.P-1 though subsequent to the eviction petition, there was no reference of R.C.C filed and denied the suggestion of it was executed earlier and date changed.

9(e). He deposed that M/s.Mohanlal Shankarlal, a HUF firm was owner of the properties who let out to the respondent in the beginning and the gift deed in favour of the petitioner is subsequently on 16.01.2008 and copy of it already filed in Court, where there is no reference of respondent in possession as tenant

but for saying possession delivered to the petitioner by the donors and he is the attester of said gift deed and denied that he is the interested witness. He deposed that pursuant to the gift deed no notice given informing about the gift, to the respondent by the petitioner, but for orally informed the respondent, he deposed that by the year, 1988 he was aged only 15 years and there was no notice issued by the petitioner to the respondent regarding arrears of rent and quantum of rent, but for oral demands/requests.

9(f). He deposed that respondent agreed to pay Rs.2,000/- per month but he sent money order only at the rate of Rs.1,070/- and petitioner used to come in a gap of 3 to 6 months from Delhi. He deposed that members of M/s.Mohanlal Shankarlal HUF executed the gift in favour of the petitioner and he was informed the same orally though in the eviction petition, it was not made mention. He denied the suggestion of there was no information of the gift from the petitioner to the respondent. He categorically deposed that 10 days after the execution of the gift deed, petitioner informed the respondent about the gift and change of ownership with a demand to pay rents to him thereafter, though there is no record to that affect or to say rent is Rs.2,000/- per month by then.

9(g). He deposed that petitioner protested to the rents sent at Rs.1,070/- per month and he got information for the same though there was no endorsement on the acknowledgement passed of the money order received writing the protest. The petitioner demanded rents for January, 2008 onwards in March, 2008 and did not later request for the months of May to August, 2008. However, it is the

duty of the respondent-tenant to pay rent every month and the earlier landlord did not inform about any deposit of Rs.10,000/- by respondent as security for no such deposit. He denied the suggestion of he has no personal knowledge regarding the tenancy terms between earlier landlord and the respondent-tenant.

9(h). He deposed that the respondent paid the rents on the first date of hearing at Rs.1,070/- per month from may, 2008 to August, 2010 to the counsel for the petitioner who received under protest and it was later respondent paying the rents to the counsel at Rs.1,070/- per month though the rent is Rs.2,000/- per month. He deposed that the original rent was Rs.480/- per month with 10% increase for every four years and gradually it is increased lastly for Rs.2,000/- per month by the time of the gift deed dated 16.01.2008, though he cannot say how it arrived to Rs.2,000/- per month.

9(i). Even taken the same what the respondent claims original rent at Rs.480/- per month commenced in the year 1979, as per para No.7 of the counter, then it comes by January, 2008, 12 times increase at each 10% at Rs.480/- per month, and even no way correlates to Rs.1,070/- per month to believe such a version of him even. Leave it as it is, once even from Ex.A-6 originally with original landlord from what the transfer by gift statutorily attorn the lease by acceptance of gift not in dispute though physical delivery not criterion to validate the gift, when from terms of Ex.A.6 lease deed, the tenant has to obey in payment of rent by 5th of each month on its commencement in advance every month as mentioned in clause (3) of said lease deed as per the evidence on

record, the sending of 4 months amount in April, 2008 and the later not even regular payments every month by money order or otherwise, consolidatedly at his choice for more than one month at a time and the ultimate payment only after appearance from summons to the eviction petition, to the advocate received on protest and by then already when eviction petition filed for the wilful default, a subsequent acceptance is not a waiver of the accrued cause of action availed and thereby also, it constitutes wilful default from that evidence on record of what P.W-1 cross-examined by respondent with reference to the material on record though P.W-1 has no personal knowledge of some of facts..

9(j). No doubt, P.W-1 deposed that he does not know the earlier practice but respondent used to pay rent irregularly. He deposed that if necessary, he cause examine the earlier landlord. In fact for the earlier practice if at all when it is contrary to the terms of Ex.P-6 lease brought on record, it is for the tenant to establish anything contra to the recitals therein of payment every month on commencement in advance by 5th without default to construe otherwise as a default.

9(k). From this background, coming to the evidence of R.W-1, what he deposed is what is discussed supra of the lease commenced in 1979 on monthly rent of Rs.480/- at the beginning and it was agreed to enhance at 10% thereon for every four years and there was a subsequent written lease dated 01.01.1988 between original landlord and he being the tenant, mentioning Rs.480/- per month rent and it was for 11 months period of lease and later, the tenancy continued orally after expiry of the period of

11 months, with same terms of 10% increase for every four years by continuing the practice and thereby by 2008 it is Rs.1,070/- per month but not Rs.2,000/- per month. As referred supra, it no way correlates even said version to Rs.1,070/- per month; It is for the tenant to correlate if at all to show how it is Rs.1,070/- even the landlord specifically pleads the rent at Rs.2,000/- per month. The tenant did not even cause examined the earlier landlord, muchless filed any receipt passed by the earlier landlord to support his said version as to what was the rent as on 1st December, 2007 and as on the date of gift deed dated 16.01.2008.

9(l). Undisputedly, even from that para No.4 of the chief affidavit, the tenant on came to know about the gift settlement in favour of the petitioner by the original owners' family, remitted the rents from January, 2008 to April, 2008 at Rs.1,070/- per month. He did not explain why he remitted four months at a time even it came to know about the transfer and why he did not pay every month regularly as usual to pay as per the lease deed of 1988 Ex.P-6, by 5th of every month on commencement in advance. There is no explanation for it. Even to say subsequent to April, 2008 what he remitted is for all the period up to November, 2008 at a time and not even every month for not a case quarterly, half yearly or early rent payable but monthly rent payable. Thus it is very clear that the tenant's version is untrue and unfair and there is no explanation for the wilful default by such lumpsum payments for several months even to say the first one is condonable for January to April, 2008 lump sum payment on came to know. The subsequent conduct itself is very clear from own showing not even remitting monthly that too not a case of by hand accepted for

January to April, 2008 four months' rent; leave about the landlords version of what was received was on protest. For the subsequent non-acceptance, the tenant not even issued any notice requesting for the money orders returned to inform the bank account to remit or to take recourse to Section 8 of the Act. Same is nothing but substantiating the evidence in support of wilful default as undisputedly of the arrears from May, 2008 is paid only after service of summons in the Rent Control Case after appearance to the Advocate for the petitioner in August, 2010 for about 27 months that too at Rs.1,070/- per month which no way correlates to the tenant's version.

9(m). Once, these are the facts even from the chief-examination of R.W-1 that correlates to the evidence of P.W-1 saying there is a wilful default. Leave about the respondent is a partnership or proprietary concern with the two versions including from the cross-examination dated 25.04.2012 of originally a partnership firm and later made a proprietary concern and there is no record filed in this regard and there is no intimation even muchless after April, 2007 of such a change by dissolution of partnership the question of continuation with that name, a proprietary concern does not arise, but for independent establishing and that too when partnership firm is different from proprietary concern and there is no showing of in the dissolution the leasehold rights fell to the share of one of the partners to continue with proprietary concern name, it is also one of the violation of tenancy terms, though that was not taken as a ground to discuss anything further.

9(n). In the cross-examination also the respondent admitted that not only the petition schedule mulgi, but also the adjacent shops owned by the petitioner and to whom to his knowledge the tenants were paying rents and one of the tenant also vacated and handed over one of the shops to the petitioner and with regard to one more shop eviction petition is pending and one Shankar informed the same and except the petitioner, there is no other claim by anybody as landlord to the petition schedule property and other shops supra. He deposed that there is no mention of collecting Rs.10,000/- in Ex.R-1 of the year 2005 in saying that erstwhile landlord when required amount, he paid and he did not issue notice demanding for the return of the amount nor to adjust as advance rent to deduct. He paid according to him the same by cheque and he did not obtain receipt and there was no pleading to that affect.

9(o). He categorically deposed that as property was transferred in favour of the petitioner by the original owners, petitioner accepted the rents from January to April, 2008 but for later he returned the money orders for which he did not issue any notice to inform the bank account to remit the rents. Though he deposed that he got receipts to show upto January, 1988 he paid rents to the original owner M/s.Mohanlal Shankarlal HUF, he did not file any such receipts in Court in proof of the so called payments till December, 2007 from 1979 or 1988 under Ex.P-6 lease. Again the respondent/R.W.1 deposed saying there was no practice to pass receipts by the original landlords and he did not mention the same in the counter. He categorically deposed that petitioner is his landlord. He deposed that after May, 2008, it is

only after receiving of the eviction petition summons, he remitted the rents by money order on 03.09.2010 for May to August, 2010 rents returned under Exs.R-24 to R-37 and thereby said amount paid to advocate for the petitioner, after appearance in the Rent Control Case only on 13.09.2010. He verified the Photostat copy of the gift deed dated 16.01.2008 in favour of the petitioner as donee and therefrom deposed that pursuant to which the petitioner is the landlord of him for the mulgi in question.

9(p). Thus, it is suffice to say there is wilful default in payment of rent though there is no basis to say there is denial of title of landlord. Thereby what the Rent Controller found of denial of title in answering point No.2 is not correct but for the finding on point No.3 of wilful default.

9(q). From that, coming to the appellate Tribunal's finding on denial of title is malafide concerned, same is not correct and so far as no wilful default finding of the appellate Tribunal on point No.2 concerned also same is not correct. In view of the same from the legality and proprietary and correctness of the said findings required consideration which is even the scope of the revision under Section 22 of the Act and from the expression of the Constitution Bench of the Apex Court in **Dilbahar Singh** supra, the revision is answered holding that the reversal finding of the appellate Tribunal of the wilful default finding of the Tribunal is unsustainable and the Tribunal's finding is liable to be confirmed by setting aside the appellate Tribunal's finding for there is no wilful default though so far as denial of title concerned, the appellate Tribunal finding of same is made out equally

unsustainable to set aside. However, from the wilful default that constitutes a ground for eviction, the ultimate result of the appellate Tribunal on one or other ground supporting the result of the tenancy Tribunal, sustains in the revision to hold that there is a wilful default committed by the tenant to make liable for eviction. No doubt, in the appeal/revision, even there are no cross objections, correctness of findings can be impugned to support the ultimate result for one or other grounds by respondent without cross-objections.

9®. The expression of this Court in **Hyderabad Polymers Private Limited V. B.Rajani**³ though said proposition not in dispute of eviction of tenant can be on the ground of denial of title not bonafide, here the facts on hand no way makes out such a ground as discussed supra and what the appellate Tribunal held as if made out is no way sustainable as concluded supra.

10) Accordingly and in the result, the revision is allowed by setting aside the findings of the lower Appellate Tribunal in R.A.No.159 of 2012 and by holding that there is a wilful default in payment of rents by the respondent-tenant and accordingly the revision respondent-tenant is directed to hand over possession of the schedule premises within nine(9) months from the date of this order, subject to payment of amount every month at Rs.2,000/- towards damages for use and occupation in the meantime while continuing in possession by virtue of this order for nine months maximum period. Failing which, the landlord 1st respondent and his vendee 2nd respondent of the eviction petition are entitled to

³ 1994(1) ALT 518

execute and recover possession of the premises with expenses incurred in execution. There shall be no order as to costs in the revision. Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

17.10.2016
Ksh/vvr

