

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.292 of 2010

ORDER:

This Revision is filed challenging the order dt.15-09-2008 in R.A.No.186 of 2005 of the Additional Chief Judge, City Small Causes Court, Hyderabad reversing the order dt.13-07-2005 in R.C.No.25 of 2003 of the III Additional Rent Controller, Hyderabad.

2. Petitioner herein is the landlord of premises bearing No. 15-9-493 situated Mahboobgunj, Hyderabad.

3. Respondent is tenant of the said shop. The tenancy is oral tenancy. According to petitioner, respondent had agreed to pay the monthly rent of Rs.692/- exclusive of electricity and other charges on or before 5th of every successive month.

4. Alleging that there is willful default in payment of rents for the period September, 2002 to November, 2002, the petitioner sought for eviction of respondent invoking Section 10(2)(i) of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short, "the Act").

5. The respondent-tenant filed counter denying the said allegation. He contended that the petitioner used to send his clerk to the shop of respondent every month for collection of rents since 30 years prior to the filing of the Eviction Petition and that petitioner

collected rent for August, 2002 on 05-09-2002 through his clerk Mallikarjun and receipt was signed by one Ramnivasji. The respondent contended that petitioner stopped sending his clerk thereafter for collection of rent and even though respondent's son requested the petitioner to send his clerk for collection of rent from September, 2002 on telephone, none was sent. He stated that he was under a *bona fide* impression that the rent collector would come and collect rent from respondent and therefore he did not pay the rent and there is no willful or intentional default. He further contended that the RCC schedule shop and another shop bearing No.15-9-491 owned by one Hari Prasad Gopi Kishan was also taken by him on lease; that the said person and the petitioner were cousins; that they had a common clerk by name Ramnivasji, who along with Mallikarjun came every month for collection of rent, that Ramnivasji used to sign the rent receipts and Mallikarjun used to handover the same after collecting rents from the respondent. He contended that Mallikarjun told to the son of respondent that he would not collect rents from respondent from September, 2002 onwards and that the petitioner was appointing another clerk for collecting rents from respondent. Believing this version, respondent's son requested the petitioner to send his clerk for collection of rent, but the petitioner did not send any clerk for collection of rents. He also stated that he sent a sum of Rs.3,460/- through Money Order, but the petitioner refused to receive it and he later sent a Demand Draft by a letter dt.11-02-2003, which was received by petitioner. He also filed a petition seeking permission for

depositing of rents, and it was allowed with a direction to deposit the monthly rents from February, 2003.

6. Petitioner examined P.W.1 and marked Exs.P-1 to P-4. Respondent examined R.Ws.1 and 2 and marked Exs.R-1 to R-71.

7. After considering the evidence on record, the trial Court directed eviction of respondent accepting the plea of petitioner that there was a willful default in payment of rent. It held that respondent did not examine any other tenant who is in occupation of other premises belonging to petitioner in the same building to prove the fact that rent was being collected at the premises only either by Ramnivasji or by Mallikarjun on behalf of petitioner and that non-examination of the other tenants is fatal. It held that the respondent should have taken steps such as sending the rent by way of Money Order or requesting the petitioner to furnish his bank account number to pay the rents when he came to know that the clerk of the petitioner would not come to him to collect rents on being informed by Mallikarjun. It also held that respondent did not make any attempt to meet the petitioner personally and tender the rent or sending his clerk to pay the rent. It also held that respondent failed to show that Mallikarjun was bringing rent receipts signed by Ramnivasji bearing the date 5th of every month only even though the receipts were given on different dates.

8. Challenging this order, respondent filed R.A.No.186 of 2005 before the Additional Chief Judge, City Small Causes Court, Hyderabad, who is the appellate Authority under the Act.

9. The Appellate Authority reversed the findings of the Rent Controller. It noted that the petitioner did not examine himself but only examined G.P.A. Holder of the petitioner as P.W.1. It held that P.W.1 admitted that he had knowledge about the collection of rents by Ramnivasji and that Ramnivasji used to sign on receipts after collecting rents; PW1 he admitted that there is no mention in the petition that the tenant used to pay rents at the office premises of the landlord; and Exs.R-41 to R-55 were receipts were issued by Ramnivasji to respondent. It held that since the petitioner had not contended that the tenant used to come and pay rents at the office of the landlord and the evidence showed that Ramnivasji was signing the receipts, and since Ramnivasji was not examined and counter-foil receipts of Exs.R-47 and R-74 filed by respondent showing that Mallikarjun is an employee of petitioner were not filed by petitioner, the version of respondent is acceptable and version of landlord is unacceptable.

10. Challenging the same, this Revision is filed.

11. Learned counsel for petitioner contended that the appellate authority under the Act ought not to have reversed the decision of the Rent Controller. He contended that rents for the period from

01-09-2002 to 31-01-2003 had been sent by the tenant by way of Money Order on 31-01-2003 and a Demand Draft was also sent through letter dt.11-02-2003 by him under Ex.R-2 and this establishes willful default on the part of the tenant. He contended that it is the duty of the tenant to see that the rents were paid to the landlord in time, failing which the tenant ought to have followed the procedure prescribed under the Act by depositing rents into Court, and that the appellate authority erred in coming to the conclusion that there was a practice of sending a clerk by the landlord to the tenant for collection of rents. He contended that there was willful default on the part of the tenant, that non-examination of the landlord is not fatal to the case in view of the admitted default in payment of rent for the period mentioned above, and that the appellate authority ought to have considered the evidence of P.W.1, the G.P.A. Holder of the landlord and the documentary evidence and ought to have dismissed the appeal.

12. The learned counsel for respondent supported the order passed by the appellate authority and contended that cogent reasons were given by it to reverse the decision of Rent Controller.

13. I have noted the contentions of both sides.

14. The petition for eviction was filed by the petitioner for eviction of the respondent-tenant on the ground that the latter

committed willful default in payment of rents for the period from 01-09-2002 to 30-11-2002.

15. The respondent took a plea that he had paid the rents for the month of August, 2002 on 05-09-2002 and there was a practice of the petitioner sending his clerk to the shop of the respondent every month for collection of rent since 30 years. He contended that the rent for the month of August, 2002 was collected by the petitioner through his clerk Mallikarjun and a receipt signed by one Ramnivasji was given to him at the respondent's shop; that the petitioner later stopped sending his clerk for collection of rent; when the respondent's son requested the petitioner to send his clerk for collection of rents from September, 2002 onwards on phone, the petitioner did not send anybody; that the respondent was under a *bona fide* impression that a rent collector would come and collect the rents as promised by the petitioner; and therefore he did not pay the rent and he cannot be said to have committed any willful default.

16. The petitioner did not enter the witness-box and no reason is assigned by him for this. He examined his G.P.A. Holder/Personal Manager as P.W.1. Though he pleaded that the respondent used to pay the rent at the office premises of the petitioner and the petitioner's Accountant Ramnivasji used to pass receipt, such a plea is not raised in the Eviction Petition by the petitioner. Ramnivasji is also not examined by the petitioner. Though learned counsel for petitioner contended that Ramnivasji passed away prior to the filing of the

R.C.C., no evidence in that regard is placed on record. P.W.1 admitted that he had knowledge about collection of rents by Ramnivasji and issuance of receipts by him. He further admitted that receipts under Exs.R-41 to R-55 were issued by Ramnivasji and Exs.R-8 and R-12 bear the same date.

17. R.Ws.1 and 2 deposed in support of their plea in the counter-affidavit filed before the Rent Controller.

18. Thus the evidence on record clearly establishes that rent receipts were being issued by Ramnivasji after collecting rents from the respondent. Ex.R-47 and Ex.R-74 both show that Mallikarjun is also an employee of the landlord. The evidence of P.W.1 that no person by name Mallikarjun is employed by the petitioner and Exs.R-47 and R-74 were fabricated documents cannot be accepted since counter-foils of those rent receipts were not filed, though available with the petitioner, to disprove that Mallikarjun was not his employee or that he did not issue them. The appellate Court rightly disbelieved this contention of the petitioner since the rent receipts were printed ones and had serial numbers in sequential order.

19. When the respondent specifically pleaded that clerk of petitioner by name Mallikarjun used to come and collect rents and Ramnivasji used to issue receipts, the petitioner ought to have examined himself or Ramnivasji or Mallikarjun to rebut this evidence.

20. Since there is not even a plea that the respondent used to go to the petitioner's office and pay rents to the petitioner, it has to be inferred that the petitioner was sending Mallikarjun to collect rents and was sending receipts through Ramnivasji.

21. This practice had gone on for a very long time as can be seen from the documentary evidence produced by the respondent. Therefore the respondent obviously expected the petitioner to send someone to collect the rents for the period from September, 2002 to November, 2002. R.W.1 deposed that Mallikarjun came to the leased premises in October, 2002 and declined to collect rent from the respondent from the RCC schedule premises for September, 2002 on the ground that another clerk of the petitioner would come and collect it. He stated in cross-examination that when he offered the rent for the month of September, 2002 in October, 2002 to Ramnivasji, he informed that the petitioner would appoint different persons to collect the rents. The Rent Controller, in my opinion, erred in rejecting this evidence of R.W.1 on the ground that he did not furnish the date on which he offered the rent to Ramnivasji, particularly when Ramnivasji and the petitioner were not examined as witnesses.

22. In **Chordia Automobiles v. S. Moosa**¹, the Supreme Court dealt with the concept of "wilful default" and explained:

" 8. Wilful default means an act consciously or deliberately done with open defiance and intent not to pay the rent. In the present case the amount of rent defaulted firstly is on account of the fact that the

¹ (2000) 3 SCC 282

agent of the landlord did not come to collect the rent for some reason. Further, notice of default contained the disputed rent. This fact coupled with the fact that eviction suit was filed before maturing a case of wilful default in terms of the explanation to the proviso of Section 10(2). The dispute of rent admittedly was genuine. Further, we find the conduct of the appellant throughout in the past being not of a defaulter or irregular payer of rent. Thus, all these circumstances cumulatively come to only one conclusion that the appellant cannot be held to be a wilful defaulter.

9. In S. Sundaram Pillai v. V.R. Pattabiraman² this Court had occasion to consider the word “wilful default” under Section 10(2) of the aforesaid Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 which is reproduced below: (SCC pp. 605-06, paras 21-26)

“21. Before, however, going into this question further, let us find out the real meaning and content of the word ‘wilful’ or the words ‘wilful default’. In the book A Dictionary of Law by L.B. Curzon, at p. 361 the words ‘wilful’ and ‘wilful default’ have been defined thus:

‘Wilful’ — deliberate conduct of a person who is a free agent, knows that he is doing and intends to do what he is doing.

‘Wilful default’ — Either a consciousness of negligence or breach of duty, or a recklessness in the performance of a duty.

22. In other words, ‘wilful default’ would mean a deliberate and intentional default knowing full well the legal consequences thereof.” (emphasis supplied)

23. In the present case also, if the above test is applied, it cannot be said that the failure of the respondent to pay the rents for the period from September, 2002 to November, 2002 amounts to willful default when according to him, the petitioner did not send his rent collector/clerk to collect the rents.

24. Therefore I am of the view that the appellate authority correctly appreciated the evidence on record and reversed the decision

² (1985) 1 SCC 591

of the Rent Controller and that the view of the appellate authority does not warrant any interference in the exercise of revisional jurisdiction by this Court.

25. I therefore do not find any merit in the Revision and it is accordingly dismissed. No costs.

26. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 18-11-2016

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