

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CRP No.6362 of 2003

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Date:12.08.2016

Between:

Smt Vijaya Penna (died per LR's) and others.

... Petitioners.

AND

Mohd. Mohinuddin and another.

... Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

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JUDGMENT:

This revision is preferred against order dated 01-08-2002 in R.A.No.217/1998 on the file of Additional Chief Judge, City Small Causes Court, Hyderabad whereunder order dated 31-12-1997 in R.C.No.551/1995 on the file of XIV Assistant Judge-cum-II Additional Rent Controller, Hyderabad was confirmed.

2. Sole petitioner herein died and her legal representatives were brought on record as petitioners 2 & 3. First petitioner herein is land lady, first respondent herein is tenant and second respondent is alleged sub tenant. First petitioner herein filed R.C.No.551/1995 seeking eviction of tenant on the grounds of willful default, sublease, use of premises for the purpose other than leased out. Tenant

resisted the relief of eviction and the Rent Controller, on a consideration of oral and documentary evidence of both parties, recorded findings that land lady failed to make out grounds for eviction and dismissed the eviction petition. Aggrieved by the dismissal of the eviction petition, land lady preferred appeal to the Appellate Authority and the Additional Chief Judge, City Small Causes Court, Hyderabad, who is the Appellate Authority, confirmed the findings of the Rent Controller and dismissed the appeal. Aggrieved by which present revision is preferred.

3. Heard both sides.

4. Advocate for revision petitioners submitted that the Tribunal erred in dismissing the eviction petition though there is evidence on record to show that tenant committed default of payment of rent at least for six months from January 1995 to June 1995. He further submitted that the Tribunal also erred in disbelieving the sub lease in spite of evidence that property was sub let to second respondent herein and erroneously recorded a finding that second respondent herein is only a worker under the tenant. He further submitted that Tribunal failed to consider the fact that license stands in the name of second respondent, which clearly prove that premises was sub let to second respondent. He further submitted that Tribunal has not properly appreciated evidence on record and the findings of the Tribunal have to be treated as perverse and the Appellate Authority simply confirmed the findings without considering the various grounds that are raised.

5. On the other hand, Advocate for first respondent-tenant submitted that both Rent Controller and Appellate Authority elaborately discussed every aspect with reference to evidence on

record and recorded a correct finding and there are absolutely no grounds to interfere with the concurrent findings in a revision. He submitted that the material on record would clinchingly show that tenant has not committed any willful default and second respondent herein is only a servant under first respondent and these aspects were rightly considered by both the Rent Controller and Appellate Authority and there is no jurisdictional error to interfere. It is further submitted that both Rent Controller and Appellate Authority recorded findings based on sound reasoning and that there are no grounds to interfere.

6. Now the point that would arise for my consideration in this revision is whether the order of the Court below is legal, proper and correct?

7. **Point:-** According to first petitioner, first respondent paid rents up to December 1994 and thereafter committed default. Admittedly, eviction petition was filed in September 1995 and in the pleadings, no specific period is shown for the default alleged to have been committed by the first respondent herein. Land lady was examined as P.W.1 and her son was examined as P.W.2. Land lady deposed in her evidence that first respondent herein was paying rents regularly, but he discontinued since about three years. This witness was examined in August 1997 if three years period is calculated, it revert back to August 1994, which is contrary to pleading. On the other hand, the tenant who was examined as R.W.1 got marked a note book as Ex.R3, the entries of which disclose that the rents for the months of December 1994 and February 1995 were paid to the mother of the petitioner. It is also clear from record that one Karnam Prasad was collecting the rents on behalf of land lady and the said person was not examined though it is specifically contended that

rents are paid to him. It is also clear from evidence that when the land lady or Karanam Prasad were not receiving the rents, the tenant filed R.C.No.595/1995 under Section 8 of the Rent Control Act seeking permission to deposit the rents from January 1995 onwards and that the Rent Controller accorded permission and the rents were being deposited to the credit of that R.C.No.595/1995. Considering these aspects, Rent Controller recorded a finding that there is no willful default in payment of rents and thereby, negated the plea of land lady. The same was confirmed by the Appellate Authority on a reappraisal of evidence. On a scrutiny of evidence, I do not find any wrong in the approach of Rent Controller and the Appellate Authority in discarding plea of willful default. Though it is contended that the findings of the Rent Controller are perverse, there is no material to substantiate the said submission. Both Rent Controller and Appellate Authority have elaborately discussed evidence of both parties and recorded a finding that there is no willful default. I do not find any wrong in the findings of the Rent Controller and the appellate authority so far as willful default is concerned.

8. The other ground on which land lady sought for eviction of the tenant is that the premises was sub let to the second respondent. It is the specific case of land lady that the premises was let out on a monthly rent of Rs.450/- which was subsequently raised to Rs.600/- but the tenant sub let the premises to R2 for Rs.1,000/- and he is enjoying margin amount. An Advocate Commissioner was appointed on request of land lady to find out whether the property was sub let and R2 was doing business in the premises in his own name. Considering the Commissioner's report and evidence of both parties, Rent Controller recorded a finding that R2 is only a worker under R1 and there is no material to show that he is carrying on business in the

schedule premises and accordingly disbelieved the plea of sub lease. This was confirmed by the Appellate Authority. Both Rent Controller and Appellate Authority have elaborately discussed this plea also, with reference to case law and ultimately decided that R2 is not a sub tenant and recorded a finding that land lady failed to establish that R1 sub let the premises to R2. I do not find any wrong in the findings of the Courts below. On the other hand, both Rent Controller and Appellate Authority have come to a right conclusion basing on the evidence.

9. The other ground raised in the eviction petition is that premises was let out for running general stores but contrary to that, a printing press is being run by R2. This point was inter connected with the plea of sub lease and by considering the same evidence, the Rent Controller and Appellate Authority have not accepted this plea also. As these two are inter connected and when the sub lease is not accepted, this ground was also rightly negatived and I do not find any wrong in the findings of the Rent Controller and the Appellate Authority.

10. On a scrutiny of the entire material, I am of the considered view that there are absolutely no grounds to interfere with the findings of the Rent Controller and Appellate Authority.

The revisional powers of this Court under Section 22 of A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960 are very limited and on a scrutiny of the material, I am of the view that there are absolutely no grounds to exercise the powers under Section 22 of the Act.

11. For these reasons, I am of the view that revision is devoid of merits and liable to be dismissed.

12. Accordingly, revision is dismissed and as a sequel,

miscellaneous petitions, if any, pending in these revisions, shall stand dismissed. No costs.

JUSTICE S. RAVI KUMAR

Date:12.08.2016

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