

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.2938 of 2015

ORDER:

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This Civil Revision Petition under Section 22 of the A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960 by the petitioner/appellant is directed against the order dated 07.07.2015 of the learned Chief Judge, City Small Causes Court, Hyderabad passed in I.A.no.34 of 2015 in R.A.No.14 of 2015 filed under Section 20(2) of the said Act seeking to stay the operation of the order dated 28.10.2014 passed in R.C.no.293 of 2006 by the learned II Additional Rent Controller, Hyderabad.

2. I have heard the submissions of the learned senior counsel appearing for the petitioner/appellant (tenant) and the learned counsel for the respondent. The parties shall hereinafter be referred to as the petitioner and the respondent as they are arrayed in this revision, for convenience and clarity.

3. The introductory facts, which are necessary to be stated as a prelude to this order, in brief, are as follows:

Having been aggrieved of the eviction order passed by the learned II Additional Rent Controller, the petitioner had preferred a rent appeal in R.A.no.14 of 2015 on the file of the learned Chief Judge, City Small Causes Court, Hyderabad. In that appeal, the petitioner had filed I.A.no.34 of 2015 requesting to grant stay of operation of the order passed by the Rent Controller pending final disposal of the appeal. While granting orders of stay, the learned Chief Judge imposed certain conditions in regard to deposit of rental dues. The operative portion of the order of the learned Chief Judge, which is impugned in this revision, reads as under:

“Interim stay granted till 30-7-2015 subject to deposit of all rental dues to the credit of R.A on or before 30-7-2015. Failure, if any, on the part of the petitioner to comply the condition mentioned above on or before 30.7.2015 disentitles him from getting any relief in this interlocutory application and the stay

granted by this Court automatically stands vacated.”

[Reproduced verbatim]

Aggrieved of the condition imposed by the Court below, while granting the stay orders, the petitioner had preferred the present revision.

4. The case of the petitioner and the submissions made on its behalf are as follows:

The petitioner obtained the schedule property on rent from Mustafa Meraj Khan and was paying rents to her. An amount of Rs.7,500/- was deposited as security for the six room tenement. Subsequent to the death of the said Mustafa Meraj Khan in June 1985, her husband Mohammed Afzal Khan had collected rents from the petitioner in respect of the schedule premises. At his request made in 1995, the petitioner had surrendered three rooms from out of the schedule premises and had retained three rooms. Afzal Khan had also given an affidavit in the form of declaration evidencing the said fact. After the death of Afzal Khan, rents from June 1997 onwards were being collected by the brother of the respondent herein, by name, Basith Ahmed Khan as landlord. He had collected rents from the petitioner till April 1999, but, had refused to receive the subsequent rents. Hence, the revision petitioner had filed R.C.No.569 of 1999 on the file of the learned IV Additional Rent Controller, Hyderabad and is regularly depositing the rents to the credit of the said case. Having received the notice in the said rent control case, Basith Ahmed Khan had engaged a counsel to enter appearance. The counsel engaged by him had only filed a memo; but, did not file his vakalat subsequently. Therefore, he was set *ex parte*. The respondent herein had filed I.A.no.183 of 2000 in R.C.No.569 of 1999 requesting for her impleadment alleging that she has become the owner of the schedule premises; and that she is a proper and necessary party. By order dated 15.03.2000, the said petition was dismissed *inter alia* holding that she has failed to mention in her pleadings that she is a landlord and that she had only claimed that she is the owner of the property and that the ownership of the property can only be decided in a civil suit. The said order passed in I.A.no.183 of 2000 filed by the respondent for her impleadment in the above

said RC has become final. The petitioner is continuing to deposit the rents regularly to the credit of the said RC and sending copies of rent challans by registered post with acknowledgment due to the respondent in the said RC. With a *mala fide* intention, the respondent herein having got issued a notice in September 2003 asking the petitioner to vacate the schedule premises had filed the aforementioned eviction case in R.C.no.293 of 2006 on the file of the learned II Additional Rent Controller, Hyderabad on the grounds of willful default in payment of rents, bona fide requirement and the tenant securing alternate accommodation. The petitioner having given a reply to the notice of the respondent, resisted the rent control case. However, on merits, the RC for eviction was allowed by the learned II Additional Rent Controller on the grounds of willful default in payment of rents and the tenant securing alternate accommodation. Therefore, the petitioner had filed the aforementioned appeal in R.A.No.14 of 2015 on the file of the learned Chief Judge, City Small Causes Court, Hyderabad. The brother of the respondent- Basith Ahmed Khan had filed a cheque petition in R.C.No.569 of 1999 and had withdrawn a sum of Rs.50,100/- by virtue of the orders passed in I.A.no.438 of 2004 dated 28.02.2005 and the said amount was paid to him by cheque dated 05.04.2005 by the Court. There is no tenant and landlord relationship between the petitioner and the respondent herein, as per the provisions of the Rent Control Act. She had never collected rents in respect of the schedule premises from this petitioner. Hence, while granting stay in the Rent Appeal, the Court below ought not to have imposed a condition directing to deposit all the rental dues to the credit of the appeal on or before 30.07.2015 and ought not to have observed that on failure to deposit the entire arrears, the stay granted by the Court stands vacated. Since there is a dispute with regard to payment of rents and the person entitled to receive the rents and the said aspects have to be adjudicated in the Rent Appeal pending on the file of the learned Chief Judge, the directions in the orders, which are impugned in the revision are unsustainable and are improper. Since the petitioner is depositing the rents to the credit of the R.C.No.569 of 1999, the finding of the learned II Additional Rent Controller that he is a wilful defaulter in payment of rents is also unsustainable. The said finding is under challenge in the rent

appeal. The jural relationship is also the subject matter of appeal. Till the said question is decided, a direction to deposit the rents to the credit of the rent appeal should not have been given by the Court below. The learned II Additional Rent Controller had erroneously observed that the amount deposited to the credit of the R.C.No.569 of 1999 should have been withdrawn and deposited to the credit of the Rent Appeal. The Court below ought to have seen that the said deposited amount was also withdrawn by the brother of the respondent by filing an application for grant of a cheque in his favour. The Court below ought to have seen that the respondent can only prove her title and ownership but, she cannot seek eviction of the petitioner herein as there is no jural relationship and as she had never collected rents from the petitioner at anytime. The order impugned is tainted with unreasonableness; and if it is sustained, it may lead to miscarriage of justice. Hence, the order impugned may be set aside insofar as it related to the direction to deposit the rental dues into Court.

5. On the other hand, the learned counsel for the respondent would submit as follows:

The revision petition is not maintainable. The petitioner had suppressed the facts. The learned II Additional Rent Controller had recorded a finding in the eviction orders in RC No.293 of 2006 that the petitioner having learnt about the title of the petitioner over the schedule property had failed to tender rents to the petitioner and had not taken steps to deposit rents favouring the respondent and hence, the learned Rent Controller had termed the respondent as a willful defaulter. The Rent Controller had also recorded a finding that the deposit of rents to the credit of R.C.No.569 of 1999 is not sufficient to overcome the default ground as the petitioner knew about the ownership of the respondent over the schedule property. The tenancy of the petitioner was duly attorned under exhibit P11 letter. Further, sufficient evidence, which was brought on record in regard to attornment, was adverted to in the orders passed by the learned II Additional Rent Controller. Since the eviction was ordered also on the ground of willful default, the petitioner is required to deposit the rents relating to the period of default into Court; and,

unless such deposit is made, the Rent Appeal cannot be entertained by the learned Chief Judge. The provision of Section 11 provides that no tenant against whom an application for eviction has been made by a landlord under Section 10 shall be entitled to contest the application before the Controller under that Section or to prefer any appeal under Section 20 against any order made by the Controller on the application, unless he has paid to the landlord or has deposited with the Controller or the appellate authority, as the case may be, all arrears of rent due in respect of the building upto the date of payment or deposit, and continues to pay or deposit any rent which may subsequently become due in respect of the building, until termination of the proceedings before the Controller or the appellate authority, as the case may be. If any tenant fails to pay or deposit the rent, the Controller or the appellate authority, as the case may be, shall, unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building. The deposit of arrears of rent is a condition precedent for entertainment of an appeal under the Rent Control Act. Hence, the order passed by the learned Chief Judge does not suffer from any factual or legal infirmities and does not call for any interference.

6. While mentioning the pleadings, all the sequence of events are already stated supra, in detail. The learned counsel for the petitioner/tenant while reiterating the case of the petitioner urged the following grounds while assailing the order impugned: "There is no jural relationship between the petitioner/tenant and the respondent herein. The respondent had never collected rents at any time from the petitioner. The brother of the respondent by name Basit Ali Khan had collected rents from the petitioner up to April, 1999. On his refusal to collect further rents subsequently, the petitioner had filed R.C.C.No.569 of 1999 on the file of the learned IV Additional Rent Controller, Hyderabad against the said brother of the respondent. That case was allowed *ex parte*. The petitioner is depositing rents to the credit of that RC. Indeed, the brother of the respondent had filed a cheque petition in I.A.No.438 of 2004 in the said RCC and had withdrawn Rs.50,100/-, which

was deposited towards rents by the petitioner. The respondent herein had filed I.A.no.183 of 2000 in R.C.No.569 of 1999 requesting for her impleadment. That petition was dismissed for the reason that she had failed to state that she is the landlady and that she had only claimed to be the owner of the property. The said order has become final. Hence, the order impugned is unsustainable. Unless the core issue is adjudicated in the rent appeal, no order directing the petitioner to deposit the alleged rental arrears could have been passed. The finding that the petitioner is a willful defaulter is also under challenge in the rent appeal.”

7. Be it noted that while allowing the RCC 293 of 2006 for eviction filed by the respondent against the petitioner, the learned II Additional Rent Controller had recorded a finding that the petitioner is a willful defaulter in payment of rents; and the eviction order was passed on that ground also. Aggrieved of the eviction order passed in R.C.C.No.293 of 2006, the petitioner had preferred R.A.No.14 of 2015 before the learned Chief Judge, City Small Causes Court, Hyderabad. In the said appeal, when the petitioner filed I.A.No.34 of 2015 and had sought stay of operation of the eviction order passed by the learned II Additional Rent Controller, the learned Chief Judge while granting stay imposed a condition in regard to deposit of all the rental arrears to the credit of the Rent Appeal on or before 30.07.2015. Now, it is to be examined as to ‘whether or not the condition imposed is sustainable under facts and in law’.

8. No doubt, as rightly contended by the learned senior counsel appearing for the petitioner, the question as to whether there is attornment of tenancy is to be adjudicated in the Rent Appeal. The further questions in regard to payment of rent and the person entitled to receive the rents are also to be adjudicated in the appeal. It is also true that the question with regard to existence of relationship of landlady and tenant between the respondent and the petitioner herein is the subject matter of the appeal. And all the above and other questions have to be decided in the Rent Appeal. Nevertheless, it is true that in a rent control matter, the question of title to the property though not

germane, may have to be examined incidentally, but cannot be decided finally.

9. In the light of the contentions of the parties and the facts of the case, it is necessary to refer to Section 11 of the Rent Control Act, which reads as follows:

“11. Payment or deposit of rent during the pendency of proceedings for eviction:- (1) No tenant against whom an application for eviction has been made by a landlord under Section 10, shall be entitled to contest the application before the Controller under that Section or to prefer any appeal under Section 20 against any order made by the Controller on the application, unless he has paid to the landlord or deposits with the Controller or the appellate authority, as the case may be, all arrears of rent due in respect of the building up to the date of payment or deposit and continues to pay or deposit any rent which may subsequently become due in respect of the building, until the termination of the proceedings before the Controller or the appellate authority, as the case may be.

(2) The deposit of rent under sub-section (1) shall be made within the time and in the manner prescribed.

(3) Where there is any dispute as to the amount of rent to be paid or deposited under sub-section (1), the Controller or the appellate authority, as the case may be, shall on application made to him either by the tenant or by the landlord, and after making such inquiry as he deems necessary, determine summarily the rent to be so paid or deposited.

(4) if any tenant fails to pay or to deposit the rent as aforesaid, the Controller or the appellate authority, as the case may be, shall, unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building.

(5) The amount deposited under sub-section (1) may, subject to such conditions as may be prescribed, be withdrawn by the landlord on application made by him in that behalf to the Controller or the appellate authority, as the case may be.”

10. Under Section 11(4), if any tenant fails to pay or deposit rents, the learned Controller or the appellate authority, as the case may be, unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building. As already noted, the learned appellate authority/Chief Judge, in

exercise of powers conferred on her under Section 11(4) of the Act, had, by her order in I.A.No.34 of 2015 in R.A.No.14 of 2015 had directed the petitioner herein to deposit the rental arrears to the credit of the Rent Appeal on or before 30.07.2015 and had granted stay till that date, subject to the deposit of the rental arrears. In the case on hand the following facts emerge for consideration: “There is an order of the learned II Additional Rent Controller against the petitioner. Though the said order is assailed in the Rent Appeal, the law ordains that such appeal shall not be entertained unless the rental arrears are deposited or paid. The deposit of rental arrears as per the orders of the II Additional Rent Controller is a condition precedent for entertaining and proceeding with the hearing of the rent appeal (RA). In the case on hand, the petitioner had not paid the rents to the respondent herein. The petitioner is depositing the rents to the credit of the RCC to which the respondent is not a party.”

11. In Kunta Hari Rao v. Yelukur Subba Lakshamma [1966 (1) An.W.R 122], this Court has considered the earlier judgment in **Nathmal Sumerimal & Company v. Kunala Purnachandra Rao** [1963 (1) An.W.R 141] and had held as follows:

“It cannot be said that, merely because the relationship of landlord and tenant continues to be in dispute before the appellate court, the appellate Court can never give a direction under Section 11 of the Act; the effect of agreeing with such a contention is that, in all cases where the relationship of landlord and tenant is disputed, Section 11 would at no stage apply, because that relationship would continue to be disputed by the tenant until a final stage is reached under the Act; in such a case, at no stage of the proceedings, either the Rent Controller or the Appellate Authority would be in a position to pass any order under Section 11 of the Act although it is or can be found by the Rent Controller that the jural relationship existed between the parties, and the tenant is in arrears; the whole purpose of Section 11 would thus be defeated; the intention of the legislature is to apply Section 11 not merely to cases where the jural relationship is admitted; it also applies to cases where it is disputed, but on enquiry it is found that the jural relationship of landlord and tenant exists between the parties; the purpose of Section 11 is to minimize the hardship which the Act causes to the landlord; by inserting Section 11

in the Act, the legislature clearly intended to give protection to the tenants provided they paid the rent due to the landlord, and continue to pay till the disputes are settled; Section 11 applies not only to a case where tenancy is admitted, but also to a case where tenancy is disputed; while the appellate Court is competent to give a direction to the tenant to deposit arrears of rent, it was not competent to dismiss the appeal on failure of the tenant to deposit the rent; and, instead, the appellate authority should have given a direction to the tenant to put the landlord in possession under Section 11(4), after stopping all further proceedings.”

12. This Court in the decision in **Smt. Moortha Appikondamma @ Shyamala v. Kuppli Govinda Rao**^[1] having referred to a catena of decisions including the above referred two decisions and the decisions in **Kursheed Sehedur v. Waheed Ali**^[2], **Tulsi Bai v. Gulab Kanzar Bai**^[3] and **Ramulu v. Government of AP**^[4] all rendered by Division Benches had finally held as under:

“It is evident from the law declared, in the aforesaid judgments, that the appellate tribunal, at the stage of entertaining an appeal and in requiring the appellant-tenant to deposit arrears of rent, would not cause an enquiry into the finding recorded by the Rent Controller that the jural relationship of landlord and tenant exists; the appellate tribunal would depend upon the finding of the Rent Controller that the jural relationship of landlord and tenant exists; before passing an order under Section 11 of the Act, the appellate tribunal need not conduct another full-fledged enquiry into the jural relationship of landlord and tenant; no tenant can prefer an appeal under Section 20 of the Act unless he has paid the landlord, or has deposited in Court, the entire arrears of rent; payment of rent is a condition precedent for entertaining an appeal; section 11 makes it obligatory for the tenant to pay arrears of rent if he chooses to prefer an appeal under Section 20 of the Act; and the appeal itself would not be maintainable, unless and until the tenant pays the arrears of rent, or deposits it into Court.”

In this cited decision this court had also held as follows:

In **Ramulu v. Govt. of A.P. 1975 (Vol.34) ALT 220**, a Division Bench of this Court held that Section 11 makes it obligatory on

the part of a tenant to pay arrears of rent if he chooses to prefer an appeal under Section 20; payment of arrears of rent is a condition precedent for exercising the right to prefer an appeal; the right to prefer an appeal is made subject to the condition imposed under Section 11(1); and it is not necessary, when Section 11 itself provides for payment of arrears of rent by a tenant, that Section 20 should again provide that a tenant shall not be entitled to prefer an appeal unless he deposits the arrears of rent due, or found to be payable by the Rent Controller. In *Visakhapatnam Women's College Society v. Sri Ramakrishna Deo* (1982) 2 APLJ 9 (SN), this Court held that the provisions of the Rent Control Act are mandatory, and there cannot be any relaxation whatsoever; Section 11(1) & 11(4) of the Rent Control Act obligate the tenant to pay the arrears of rent; and, on the failure to pay the rent, the appeal itself is not maintainable.

In *S. Sathaia v. B. Rajamani*: 1999(6) ALD 301, it was contended before this Court that the petitioner had denied the tenancy, and had set up title as a co-owner; in this fact situation, the petitioner need not pay the rent; the requirement to deposit the rent, before preferring the appeal, is not absolute; and the petitioner can show sufficient cause for non-deposit of rents. After taking note of the observations in *Khursheed Shedur* 1974 (1) APLJ 294; *Tulsi Bai* 1978 (1) APLJ 164; and *Visakhapatnam Women's College Society* (1982) 2 APLJ 9 (SN), this Court held that payment of rent is a condition precedent for entertaining the appeal; the appellate Court was justified in not numbering the appeal unless and until the rent was deposited; in a case where the jural relationship of landlord and tenant is denied, the finding given by the Rent Controller holds good; deposit of arrears of rent, as determined by the Rent Controller, was indispensable; and it could not be said that the appellate Court had committed any illegality or impropriety in rejecting the appeal in limine.

In view of the facts of the case and the settled legal position, this Court is of the well-considered view that the order impugned in the revision petition does not suffer from any infirmities calling for interference.

13. In the result, the Civil Revision Petition is dismissed. However, the petitioner is granted time till 30th June, 2016 to deposit the entire arrears of rent due in respect of the schedule premises. He shall continue to pay the rents, which may successively fall due in respect of the schedule premises or

deposit to the credit of the Rent Appeal until the termination of the proceedings before the learned Appellate Authority.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SEETHARAMA MURTI, J

19th April, 2016
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[\[1\]](#) [C.R.P.No.1692 of 2015 dated 03.07.2015] [2015 (5) ALD 313]

[\[2\]](#) 1974 (1) APLJ 294

[\[3\]](#) 1978 (1) ALT 164

[\[4\]](#) 1975 (Vol.34) ALT 220