

HON'BLE SMT JUSTICE ANIS

CIVIL REVISION PETITION No.1861 OF 2009

ORDER:

The Civil Revision Petition under Section 22 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short, 'the Rent Control Act'), is directed against the judgment, dated 15.09.2008, passed in R.A.No.326 of 2006 on the file of the learned Chief Judge, City Small Causes Court, Hyderabad, whereunder and whereby the order dated 14.09.2006 rendered in R.C.No.390 of 2002 on the file of the learned II Additional Rent Controller, Hyderabad was set aside.

2. The revision petitioners are the petitioners and the respondents are also the respondents before the Rent Controller. For better appreciation of facts, the parties are hereinafter will be referred to, as they are arrayed before the Rent Controller.

3. The petitioners filed the Rent Control case under Section 10(2)(i) of the Rent Control Act praying the Court for eviction of the respondents from the petition schedule premises bearing No.16-2-705/10/G situated at Andhra Colony, Malakpet, Hyderabad.

4. According to the petitioners, the first respondent is a tenant in the above said premises on a monthly rent of Rs.700/-. The respondent had taken the said premises on lease for running a Tiffin centre from the father of the petitioners in the year 1992 and to that effect, a lease deed was executed in between them. The duration of the lease was eleven months. Thereafter, the lease was extended from time to time on mutual consent in between the

landlord and tenant on the same terms and conditions. The existing rent is Rs.800/- per month. The monthly rent is payable on or before 5th of every English calendar month. After the death of the father of the petitioners, the respondent paid the rent to the petitioners upto October, 2001 and from November, 2001 onwards, he stopped paying rents. Thus, the respondent committed willful default in payment of rents from November, 2001 to August, 2002 for ten months in spite of repeated demands made by the petitioners. Further, the respondent closed her business by locking the premises. As the respondent committed willful default, the petitioners got issued a legal notice to the respondent calling upon her to vacate the leased premises and deliver the vacant physical possession of the property within one month from the date of receipt of the notice. In spite of receiving the legal notice, the respondent neither paid the rents due nor reply the same. Therefore, the petitioners filed the present petition seeking eviction of the respondent from the petition schedule property on the ground of willful default.

5. During pendency of the petition, the first respondent died and her legal representatives were brought on record as respondents 2 to 4 as per orders dated 04.02.2005 in I.A.No.256 of 2004.

6. The respondents 2 and 3 remained ex parte before the Rent Controller.

7. The respondent No.4 filed counter denying all the allegations made in the petition and admitted that during the lifetime of their mother, she was tenant in respect of the demised premises. It is further stated that the tenancy is oral and agreed rent is Rs.800/- per month. During her lifetime, the first respondent was running a small tiffin centre in the petition mulgi and used to pay the rents

regularly due to the landlord. Prior to the death of the father of the petitioners, one of his sons by name Mr. Ashok Kumar i.e. 4th petitioner used to collect the rents from the deceased first respondent. After the death of the father of the petitioners, the disputes were cropped up between the brothers and none of the petitioners came to collect the rents as usual practice after November, 2001. Subsequently, on receipt of the legal notice, the first respondent made all the payments including the arrears of rents till that date and thereafter used to send money orders every month till her demise. The respondents 2 and 3 are not residing with the respondent No.4 and on the death of the first respondent, the fourth respondent has been running the said hotel for her livelihood. After the death of the first respondent, the fourth respondent approached the petitioners to tender the rents, but the petitioners declined to receive the rents. The respondent No.4 is ready and willing to pay or deposit the arrears of rents from the date of death of the first respondent to till date and also undertakes to pay the future rents regularly pending litigation. The fourth respondent further stated that she is an illiterate lady and she is not aware of the duties and liabilities cast upon them by the Rent Control Act, as such it cannot be said that there is a willful default on their part. The petitioners, who are well aware of the things, failed to collect the rents and allowed to accumulate the rents for the demised premises, and finally prayed the Court to dismiss the petition.

8. Basing on the pleadings, the learned II Additional Rent Controller framed one point and to substantiate the case, PW1 was examined on behalf of the petitioners and got marked Exs.A.1 to A.5. The respondent No.4 was examined as RW1 and no

documentary evidence got adduced on her behalf.

9. The trial Court, after considering the oral and documentary evidence, held that the respondents committed willful default in payment of rent for ten months before filing of the eviction petition, and allowed the petition directing the respondents to vacate and handover the vacant possession of the petition schedule property to the petitioners within two months from the date of the order i.e. 14th September, 2006.

10. Aggrieved by the order passed by the trial Court, the respondent No.4 filed appeal in R.A.No.326 of 2006 on the file of the learned Chief Judge, City Small Causes Court, Hyderabad. The lower appellate Court, after considering the evidence on record, allowed the appeal and held that there is no willful default committed by the appellants and also held that the petitioners cannot maintain the petition to evict the respondents as they have no ownership rights over the property.

11. Aggrieved by the judgment of the lower appellate Court, the petitioners filed the present revision petition on the ground that the lower appellate Court passed orders without any jurisdiction; that the respondent/tenant at no point of time disputed the landlord and tenant relationship; that the only contention raised by the tenant was that they have not committed any willful default in payment of rents, but stated that the petitioner No.4 used to collect the rents on behalf of his father late K.Babaiah and after his demise, they failed to receive the rents; that the respondents did not commit any default is not correct and from November, 2001 onwards the tenants failed to pay the rents to the petitioners, thus they have committed willful default in payment of rents; that the Rent Controller after considering the oral and documentary evidence,

rightly passed the eviction order and the same has to be confirmed; that the lower appellate Court without any jurisdiction and without framing any issue regarding landlord and tenant relationship passed the order stating that there is a dispute regarding the ownership of the demised premises, and finally prayed the Court to allow the revision by relying upon the following case-laws:

1. *Kollipara Venkat Rao Vs. Moturi Lakshmi Sulochana and another* ^[1];
2. *Vinukonda Venkata Ramana Vs. Mootha Venkateswara Rao and another* ^[2]; and
3. *Arnavaz Rustom Printer Mumbai and another Vs. N.D.Thadani and another* ^[3].

12. Notices on the respondents were served, but no one represented on behalf of the respondents.

13. Now, the points for consideration are –

1. Whether there was willful default on the part of the respondent/tenant in paying the rents to the tenanted premises?
2. Whether there is any dispute regarding the ownership of the demised premises?
3. Whether the revision petitioners are entitled for eviction of the respondent from the demised premises?

14. **Points:**

A perusal of the oral and documentary evidence, the first respondent has been the tenant to the demised premises and the father of the petitioners by name K.Babaiah, who is no more, was

the landlord. The petition schedule property is a mulgi bearing No.16-2-705/10/G situated at Andhra Colony, Malakpet, Hyderabad. The father of the petitioners by name late K.Babaiah gave the mulgi on lease to the first respondent by executing the Lease deed dated 01.11.1992 under Ex.A.1. Originally, the rent was fixed at Rs.700/- per month and thereafter it was enhanced to Rs.800/- per month. The first respondent has taken the premises for running the Tiffin centre and used to pay the rents to the father of the petitioners. It is an admitted fact that the father of the petitioners died on 19.08.2001 and the first respondent also died during pendency of the rent control case. The respondents 2 to 4 were brought on record as legal representatives of the first respondent. The respondents 2 and 3 remained ex parte and the respondent No.4 alone contested the petition before the Rent Controller.

15. According to the petitioners, the first respondent paid the rents upto October, 2001 and from the month of November, 2001 onwards, she stopped paying rents to the petitioners, as such they got issued a legal notice under Ex.A.2, which was received by the first respondent under Ex.A.3. After receiving the legal notice, the first respondent gave a reply on 12.09.2002 and remitted the arrears of the amount through a banker's cheque. In the counter filed by the first respondent as well fourth respondent, they never disputed about the ownership of the petitioners over the demised premises. Even the lower appellate Court, without framing any issue or point, held that there is a dispute regarding the ownership rights over the demised premises. It is no doubt that PW1 in his Cross-examination admitted that his father gifted the property to his sister by name Urmila. Admittedly, there is no ownership dispute between the children of K.Babaiah. Therefore, the finding

of the first appellate Court that the petitioners will not have subsisting right over the property, cannot be accepted.

16. Coming to the plea raised by the revision petitioner that the respondent had committed willful default in payment of rents from November, 2001 onwards, admittedly, after the respondent/tenant committed default in payment of rents, the petitioners got issued a legal notice on 22.07.2002 and the same was received by the first respondent under Ex.A.3 acknowledgement. After receiving the said notice, she gave a reply on 11.09.2002 and remitted the arrears of rent. The said rents were sent through banker's cheque for a period from November, 2001 to August, 2002. RW1 in the cross-examination admitted that she has not paid the rents from August, 2002. This shows that the respondent No.4 is not in the habit of paying the rents to the petitioners regularly. Further, the respondents/tenants also have not taken any steps to deposit the rents into the Court. Thus, the conduct of the respondents/tenants reveals that they are not regular in payment of rents. Further, the respondents have not produced any documentary evidence to show that they have paid the rents to the petitioners regularly and they have not committed any willful default. Therefore, the finding of the lower appellate Court that the respondents are not willful defaulters, cannot be accepted. On the other hand, the Rent Controller rightly held that the respondents committed default in paying the rents to the petitioners. Thus, the petitioners proved that the respondents committed willful default in payment of rents to the petitioners. Therefore, the Rent Controller rightly ordered eviction of the respondents from the demised premises.

17. Accordingly, the Civil Revision Petition is allowed, setting aside the judgment, dated 15.09.2008, passed in R.A.No.326 of

2006 on the file of the learned Chief Judge, City Small Causes Court, Hyderabad while confirming the order dated 14.09.2006 rendered in R.C.No.390 of 2002 on the file of the learned II Additional Rent Controller, Hyderabad. The respondents are directed to vacate and handover the vacant possession of the petition schedule premises to the petitioners within one (1) month from the date of this order. No order as to costs.

18. As a sequel thereto, miscellaneous petitions, if any pending shall stand closed.

JUSTICE ANIS

Date: 02.09.2016

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THE HON'BLE SMT. JUSTICE ANIS

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[\[1\]](#) 2002(1) ALD 590

[\[2\]](#) 2001(6) ALD 27 (FB)

[\[3\]](#) 2001(4) ALD 652