

HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

C.R.P. No.3813 of 2015

ORDER:

The revision petitioner is the tenant of the premises bearing assessment No.2429A (old), 25283 (new) of the building first floor bearing Door No.9-37-1A of Tamminakonadalu street, Kothapet, Vijayawada that belongs to the revision respondent. The revision respondent filed R.C. No.36 of 2012 for eviction of the tenant alleging that the monthly rent of the premises is Rs.2,500/- per month from September, 2011, there is willful default in payment of the rents, the premises is required for personal occupation bonafide as additional accommodation and the respondent-tenant got alternative accommodation of Government quarters. It was on contest, the Tribunal by order dated 12.07.2013 allowed the application directing the tenant to vacate and deliver vacant possession within 60 days therefrom.

2. The eviction petition averments in nutshell were besides committing willful default by non-payment of rents, the respondent was promising to vacate by December, 2011 for the demands to vacate from her getting police quarters and failed to comply and the tenant instead of vacating filed

suit for permanent injunction in O.S No.140 of 2011 falsely alleging that the rent as if only Rs.2,000/- per month and taking advantage of the position of the tenant as woman constable, she was threatening the petitioner for the demands to vacate to implicate in criminal cases and having received the demand notice to vacate in March, 2012 failed to vacate and the petitioner/land lord is in need for personal occupation also.

3. The tenant/ respondent to the eviction petition filed counter saying, originally she was inducted on rent at Rs.1,500/- per month besides Rs.100/- for use of the motor electrical charges and paid advance of Rs.10,000/- and it was agreed to continue for five years without enhancement, she spent Rs.10,000/- for repairs to the building, the landlady demanded for enhancement at Rs.2,000/- per month from June, 2011 and she is paying so with electrical charges of Rs.100/- to the motor in use. The landlady having received rents till November, 2011 failed to receive for December, 2011 when offered on 05.01.2012, with a protest to pay by enhancement of rent at Rs.3,000/- per month and from the refusal to accede, cause issued legal notice in March, 2012 with false claim as if the tenant is avoiding payment of rents which made to send bankers cheque on 09.04.2012 for Rs.8,400/- and having received

the cover, returned the bankers cheque and the respondent-tenant through her advocate, sent by money order of Rs.4,975/- and Rs.5,000/- for December, 2011 to April, 2012 that was also refused from which the tenant filed R.C. No.47 of 2012 under Section 8(5) of the Act and another application seeking permission to deposit till disposal of the main case for eviction and she has been depositing accordingly and the eviction petition is filed with an ill motive though there is no default or any bonafide requirement.

4. It is pursuant to the pleadings, four points were formulated on the grounds of willful default, bonafide requirement, tenant securing alternative accommodation and entitlement to eviction or not.

5. In the course of enquiry, three witnesses, on behalf of the petitioner/land lady, were examined and the respondent herself examined as R.W-1 and Exs.A-1 to A-3 and Exs.B-1 to B-10 respectively were marked.

6. The Rent Controller held from said evidence and after hearing both sides that there is no willful default as the amounts sent were returned, notices exchanged and under Section 8(5) of the Act, application was filed and the amounts are depositing. Coming to the tenant's having

alternative accommodation, it was observed that there is no pleading in the main petition on that ground. So far as personal occupation as additional accommodation of the landlady is concerned, it was observed that evidence of P.W-1 corroborated from that of P.Ws 2 and 3 and there is no cross-examination worth to disprove the evidence of them and the respondent R.W-1, in her cross-examination also admitted that she was allotted the Government quarters, but did not take, being police constable and she is having the option of alternative accommodation, however, residing in the schedule property though denied the landlady got only the schedule property and no other immovable property in Vijayawada. There are no particulars to say the landlady got any other immovable property apart from the factum of a tenant cannot dictate terms to the landlady but for the landlady to choose which is convenient and law is clear of the actual needs of landlady may change from time to time for same is not static and there is no any relative hardship of the tenant raised muchless to consider in outweighing the requirement of the landlady to that of tenant and vice versa, even all the daughters of the landlady married and sons are claimed living at distant place and to start business even of the son there are no particulars of type of business mentioned and what the landlady asked is

for additional accommodation and not the premises for sons' business even and the same is proved from the evidence thereby.

7. Impugning said findings of the Rent Controller, when the R.C.C.M.A No.9 of 2014 filed by the tenant against the landlady, the same was ended in dismissal vide appeal judgment dated 10.08.2015 directing to vacate within one month from the date of appeal order and the findings of the lower appellate Tribunal in this regard were that there is willful default also besides requirement of additional accommodation.

8. In this regard, what the appellate Tribunal observed is that Ex.B-3 is the notice dated 13.03.2012 and Ex.B-4 is the reply dated 09.04.2012 with Ex.B-5 bankers cheque of even date and Ex.B-6 is the acknowledgement, Ex.B-7 is the rejoinder notice dated 13.04.2012 and the bankers cheque returned and the same encashed and sent by money order dated 18.05.2012 under Ex.B-9 the two money orders refused and application to deposit filed in I.A. No.340 of 2012 covered by Ex.B-9 and R.W-1 the tenant deposed as constable working in I Town Police Station and Police Department allotted quarter to her and she did not take the same. It is after filing of the eviction petition only, the

tenant filed R.C.C. No.47 of 2012 to deposit, though the rent payable is for every month without default and the bankers cheque was dated 09.04.2012 towards rents of December, 2011 to March, 2012 of four months at a time, suffice to say there is a default which is willful apart from the Tribunal rightly find on other aspects of even the tenant having accommodation alternatively of Government quarter allotted not occupied and the landlady in need of additional accommodation and thereby the lower Court's order is confirmed not only on the ground of additional accommodation, personal requirement of landlady but also for willful default and tenant having alternative accommodation and failed to vacate. It is impugning the same, the present revision is filed.

9. The contentions in the grounds of revision vis-à-vis the oral submissions are that the landlady in seeking eviction, did not specifically plead bonafide requirement muchless proved the same even as additional accommodation and the eviction petition filed is with no basis, but with vengeance from the disputes and from the civil suit filed for injunction against the landlady by the tenant and the landlady in her evidence deposed of her children are all independently settled with own houses and her husband is no more and she is lonely residing in the

ground floor and the first floor premises is under lease, thereby no way requires to the claim of additional accommodation and there is no willful default for she did not accept the rents tendered of December, 2011 in January, 2012 onwards which made her to send by bankers cheque and from it's return by money orders and thereby the revision is to be allowed setting aside the concurrent findings of the Courts below.

10. Whereas it is the contention of the learned counsel for the landlady that the concurrent findings of the Courts below no way requires interference, for this Court while sitting in revision within its limited scope as laid down in *Hindustan Petroleum Corporation Limited V. Dilbahar Singh*¹ for no perversity or unsustainability of the finding muchless contrary to law and hence to dismiss the revision.

11. Heard both sides at length with reference to provisions and propositions and perused the material on record.

12. The scope of revision as laid down by the Apex Court in the expression supra is not like a reappréciation of facts by first appellate Court, but for to go through the facts to decide any legality, regularity or propriety of the order of

¹ (2014)9 SCC 78

the lower appellate Court. In this regard Section 22 of the Act reads as follows:

“Section 22- Revision: (1) The High Court may, at any time, on the application of any aggrieved party, call for and examine the records relating to any order passed or proceeding taken under this Act by the Controller in execution under Section 15 or by the appellate authority on appeal under Section 20, for the purpose of satisfying itself as to the legality, regularity or of propriety of such order in reference thereto as it thinks fit.

13. Now, coming to the undisputed facts, both parties adduced evidence in the eviction petition on three counts as to willful default or not, bonafide requirement of additional accommodation or not and tenant having alternative accommodation and failed to vacate or not.

14. The other point now raised for the first time in revision though not in the grounds but orally in the course of hearing is with reference to Section 10(4)(i) of the Act which shows no order of eviction shall be passed of a residential building where landlady not occupying a residential or non-residential building in the city, town or village in requiring for own occupation or having more than one building requires another building for own occupation of additional accommodation and in case of non-residential building not occupying any such building etc. In fact, that is not the plea of the police constable services are essential services and

even taken as such, she got Government allotted quarter. Thereby that claim, for the first time in revision apart from no way sustainable, is not even available to consider that too as per Section 10(2)(v) of the Act, tenant secured alternative building or ceased to occupy building without reasonable cause for four months is also a ground for seeking eviction. The tenant admitted that Government already allotted quarters and there is no any reasonable cause explained by her for not occupying the same. That itself is a ground to evict, thereby even her job is considered as one of the essential services, from said alternative accommodation, for no more justification to squat on the premises.

15. Apart from it, when the landlady stated that she wants the first floor also for her son to start business and for their staying in the first floor, what is required is not for commercial purpose of the residential accommodation, but for residential additional accommodation for the son. No doubt, in such a case, the hardship which to be outweighed among the tenant to continue or for the additional accommodation of the landlord to evict, there is no evidence from the tenant in this regard of she suffers any undue hardship that too when she secured alternative Government accommodation undisputedly as also rightly pointed out by the Courts below.

16. In this regard even leave about willful default is proved or not, from mere default is not a willful default and from even taken of the finding of any payment of the December, 2011 rent from so called refusal to accept immediately by sending through money order and for refusal in asking to state, the mode of payment atleast by furnishing bank account and from non-furnishing to file the application as one of the considerations from the material on record, when the lower appellate Court comes to that conclusion though not by the rent controller; the scope of interference in revision besides limited even taken the same does not tantamount to willful default from mere default, the other grounds when established as referred supra, there is nothing for this Court to set aside the order of eviction passed by the Courts below, on any of the grounds.

17. Accordingly and in the result, the revision is dismissed, however by granting six months time from today to the tenant to vacate, failing which the landlady is entitled to enforce and execute and with liability of the tenant to pay as damages towards use and occupation, the same amount of rent already fixed. There shall be no order as to costs.

18. Pending miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

17.10.2016
ksh

