

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO. 3716 OF 2016

ORDER:

This Revision under Section 22 of A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960, (for short "the Act") is filed by the petitioner/appellant, who was unsuccessful before the Rent Controller in R.C.C.No. 152 of 2010 on the file of II Additional Rent Controller, City Small Causes Court, Hyderabad and appellant in R.A.No. 20 of 2013 on the file of Additional Chief Judge, City Small Causes Court, Hyderabad, whereby the tenant was ordered to vacate the premises on the ground of willful default in payment of rent from March 2008 to April 2010 at the rate of Rs. 1,200/- per moth.

2. It is the case of the petitioner before the trial Court that M.A. Raheem was the owner of the schedule property bearing No. 17-1-211/E/1, situated at Crida Road, Santoshnagar, Hyderabad, which consists of residential house and three mulgies. The respondent obtained one mulgi in North eastern side admeasuring 9 feet x 12.9 feet i.e., 114.75 s.ft forming part of H.No. 17-1-211/E/1, on monthly rent of Rs. 1,000/- initially, under rental deed dated 5.6.2005 and later it was enhanced to Rs. 1,200/-, which is agreed to be paid on or before 5th of every month and accordingly, the tenant/revision petitioner paid rent as per the agreed rate till March, 2008 and thereafter committed willful default in payment of rent for 26 months at the rate of Rs. 1,200/- and it comes to Rs. 31,200/-.

3. The petitioner before the Rent Controller raised several other contentions i.e., ceased to occupy the premises for more than 20 months, bonafide requirement and committing acts of nuisance, but the trial Court believed two grounds and ordered eviction of tenant on the ground of willful default and acts of nuisance. The appellate Court disbelieved the acts of nuisance while confirming the order of eviction on the ground of willful default.

4. The respondent though admitted jural relationship between himself and landlord M.A. Raheem, quantum of rent agreed to be paid while pleading that he used to pay rent every month to M.A.Raheem during his life time and thereafter, he paid rent to PW-2, 8th petitioner before the Rent Controller at the rate of Rs.1200/- per month and used to obtain a signature in the note book maintained by him (Ex. R1) and thus did commit no default much less willful default and prayed for dismissal. The Rent Controller did not accept the contention regarding payment of rent for the period from March 2008 to April 2010 and ordered eviction on this ground also. The appellate Court affirmed the same, despite, opinion of handwriting expert on Ex. R1, and also marked the report of expert by consent, however, concluded that mere proof of signature under the entry dated 9.12.2009 is not sufficient since the revision petitioner/tenant failed to prove payment of rent for the other period prior to 9.12.2009 and after 9.12.2009 and ordered eviction.

5. Heard Sri S. Subba Reddy, leaned counsel appearing for tenant/ revision petitioner and Sri K. V. Subba Reddy, learned counsel appearing for respondents 1 to 6.

6. At the time of hearing, Sri S. Subba Reddy, counsel appearing for revision petitioner/tenant submits that the plea of revision petitioner/tenant is that he was paying rent to PW-2 by obtaining signature in the note book Ex. R1 evidencing payment of rent for the alleged period of default and the opinion of expert clinchingly proved that the signature of PW-2 is tallying on one endorsement dated 9.12.2009 with the standard signature of PW-2. On the strength of it, the Court can draw a presumption that the entries made in Ex. R1 are suffice to prove that the revision petitioner/tenant paid rent for the alleged default period and that mere non-payment is not sufficient to construe the default as willful and it must be conscious and deliberate. In the absence of any finding that the default is intentional, willful and deliberate, the tenant cannot be evicted and prayed this Court to allow the revision petition by setting aside the concurrent findings recorded by both the Rent Controller and Appellate Authority under Section 20 of the Act.

7. Per contra, Sri K. V. Subba Reddy, counsel appearing for respondents supported the order in all respects while drawing attention of this Court to certain observations made at page No. 8 of the order passed by the Rent Controller regarding payment of rent to the wife of M. A. Raheem after the death of M.A. Raheem to contend that the revision petitioner never pleaded that he was paying rent to PW-2, the 8th petitioner before the Rent Controller and therefore, non-payment of rent for the period from March 2008 to April 2010 is willful default and that the trial

Court and appellate Court have rightly ordered eviction of revision petitioner.

8. Considering rival contentions of both and also after perusing the material available on record, the point that arises for consideration is:

“Whether the revision petitioner/tenant herein paid rent for the months from March 2008 to April 2010 and proof of signature in the entry dated 9.12.2009 is sufficient to conclude that the revision petitioner/tenant paid the rent for the entire period, if so, the order passed by the appellate authority be set aside?”

In Re Point:

9. The basis for claiming eviction of the tenant is willful default in payment of rent for the months from March 2008 to April 2010 at the rate of Rs. 1200/- per month. It is pleaded in the petition that there was agreement of tenancy dated 5.6.2005 for 11 months at the rate of Rs. 1,000/- per month later no rent agreement was entered into but agreed for payment of rent at enhanced rate of Rs. 1,200/- per month. The quantum of rent is not disputed but pleaded payment of rent during life time of M.A.Raheem and after his death to petitioner No.8, used to obtain signature in the note book maintained by him, marked as Ex. R1. PW-2 in her evidence specifically denied the receipt of rent for the months from March 2008 to April 2010 i.e., default period, while denying signature on Ex. R1 including the signature in the entry dated 9.12.2009. Therefore, petition was filed before the appellate Court to refer the document to a handwriting expert to decide whether the signatures appearing under various entries under Ex. R1 with that of signature of PW-2 along with standard signatures obtained. After examination, the expert gave opinion that the signature under the entry dated 9.12.2009 is tallying with the standard signature of PW-2 while expressing his inability to identify and to compare the other signatures in Ex. R1 with that of standard signature of PW-2. The ordinary procedure for marking the report is to examine an expert after affording an opportunity to cross-examine the witness with regard to the opinion, more particularly, the signature under the entry dated 9.12.2009. Obviously, the appellate authority in contravention of the procedure for marking a document and marked the same as Ex.C-1 without examining the expert as a witness before the appellate authority and in fact in appeal the evidence cannot be received unless the Court satisfied that there exists conditions to receive additional evidence, on application to receive additional evidence. Therefore, receiving an expert report as additional evidence even without any application for receiving additional evidence is erroneous and an error apparent on the face of record, if that is excluded from consideration, the signature under entry dated 9.12.2009 cannot be accepted as that of the signature of PW-2, even if it is accepted the signature as that of signature of PW-2, there is absolutely no evidence in support of payment of rent for the period prior to 9.12.2009 and after 9.12.2009.

10. When the tenant admitted his obligation to pay rent for every month as agreed, in the absence of any agreement at least the tenant shall pay or tender rent before succeeding month. But the revision petitioner/tenant failed to prove payment of rent atleast by the end of succeeding month from March 2008 to April 2010 and such non-payment of amount is conscious, intentional or deliberate, which amounts to willful default. Therefore, the Rent Controller and the Appellate Court rightly concluded that the revision petitioner/tenant though aware of his duty to pay rent as per the terms of agreement or atleast before the end of succeeding month, failed to pay rent to the landlord for the said period commencing from March 2008 till April 2010. In those circumstances, by exercising power under Section 22 of the Act, it is difficult for this Court to hold that the revision petitioner/tenant paid rent for the said period.

11. The jurisdiction of this Court under Section 22 of the Act is to test the propriety and legality of the order under challenge by re-appreciating entire evidence. Even after re-appraisal of entire evidence, absolutely there is no evidence to establish that the revision petitioner/tenant paid rent for the said period. Therefore, I find no illegality in the findings recorded by the trial Court under Section 10(3)(iii)(b) of the Act while ordering eviction of revision petitioner/tenant on the ground of willful default. Hence, the order passed by the trial Court as confirmed by the appellate Court on the ground of willful default is hereby confirmed while dismissing the revision petition granting six months time to vacate and deliver the vacant possession to the landlord subject to deposit of arrears of rent and continue to deposit the rent on or before 5th of every month for six months or till vacating the premises as directed by this Court. In the event of failure to deposit the rent for any month, the petitioner is at liberty to file an execution petition for delivery of vacant possession. There shall be no order as to costs. As a sequel thereto, miscellaneous

petitions, pending if any, shall stand closed.

Date: 22.08.2016
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JUSTICE M.SATYANARAYANA MURTHY