

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2111 of 2016

ORDER:

This Civil Revision Petition under Section 22 of Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short 'the 1960 Act') is filed by the appellants/petitioners challenging the Order dt. 11.03.2016 in I.A.No.82 of 2016 in R.A.No.74 of 2014 filed under Order 41 Rule 27 of Code of Civil Procedure (for short 'CPC') seeking permission to receive additional evidence by examining Sri P. Maheswhar, as a witness on their behalf, since the same was dismissed by the Appellate Court under the 1960 Act on the ground that the examination in chief of PW.1 was filed and exhibited Ex.R.1 before the Rent Controller, but he was not tendered for cross examination. Therefore, the Rent Controller eschewed the evidence of the said witness.

2. The revision petitioners filed a Petition before Appellate Court under Order 41 Rule 27 of CPC, which deals with receiving of additional evidence in an appeal under Section 38 covered by Rules 27-1 A, AA and BB of CPC and such application has to be heard and decided along with the mail appeal and the Appellate Court shall not decide the petition independently, as held by the Apex Court in catena of decision including ***Union Of India vs Ibrahim Uddin & Anr***^[1], wherein the Apex Court discussed at what stage the additional evidence can be received and finally concluded that such additional evidence petition shall be decided along with the main appeal and decide the issue, subject to following the procedure contemplated under Order 14 Rule 28 CPC, if the Court finds that additional evidence can be received. Contrary to the above principle, the Appellate Court decided the petition independently and passed an order. In ***Malayalam Plantations Ltd. versus State of Kerala and another***^[2] the Apex Court held that it is incumbent on the part of the appellate Court to consider the application under Order 41 Rule 27 CPC at the time of hearing the appeal on merits. It is evident from the law declared by the Apex Court that a Petition under Order 41 Rule 27 CPC cannot be decided independently without hearing the mail appeal. Therefore, the Order passed by the Appellate Court under AP Eviction Act is contrary to the law declared by the Apex Court.

3. Learned counsel for respondent herein opposed this petition on the ground that the same witness was already filed an affidavit under Order 18 Rule 4 of

CPC before the trial Court, but he was not tendered for cross examination by the adversary. In such a case, he cannot be allowed to examine in the appeal and prayed for dismissal of the instant petition.

4. Since the procedure followed by the appellate Court is erroneous and contrary to the law declared by the Apex Court in pronouncing the Order in I.A.No.82 of 2016 in R.A.No.74 of 2014 independently, the Order under challenge is liable to set aside.

5. In the result, this Civil Revision Petition is allowed setting aside the Order dt.11.03.2016 in I.A.No.82 of 2016 in RA No.74 of 2014 on the file of Additional Chief Judge, City Small Causes Court, Hyderabad, While directing the Additional Chief Judge, City Small Causes Court, Hyderabad to consider the application under Order 41 Rule 27 of CPC along with the mail appeal. However, liberty is given to the respondent herein to raise any objection at the time of hearing of Petition under Order 41 Rule 27 CPC along with the main appeal.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 12-08-2016.

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Dt. 12-08-2016

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[\[1\]](#) 2012 (8) SCC 148

[\[2\]](#) 2011 AIR (SC) 559