

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P.M.P.No.5511 of 2016

In/and

Civil Revision Petition No.135 OF 2011

ORDER:

This revision is preferred by the landlady(petitioner in RCC No.9 of 2008 and respondent in RCCMA No.48 of 2010) against the orders dated 22.12.2010 of the appellate tribunal in RCCMA No.48 of 2010 for reversing the eviction order dated 31.05.2010 in RCC No.9 of 2008 passed by the Rent Controller, against the respondent/tenant.

2. The revision petitioner maintained the eviction petition in R.C.C.No.9 of 2008 under Sections 10(2)(i)(ii)(iv) and 10(3) (A) (i)(b) of the Act (for short, 'the Act') against the revision respondent/tenant seeking to direct the respondent/tenant to vacate and deliver the vacant possession of the petition schedule tenanted portion to her.

3. The factual background necessary to mention are that the landlady is the owner of the building bearing D.No.11-52-3 situated in Gudivadavari street, Vijayawada. The respondent is a non-residential tenant in the southern portion, consisting of one room which is in question, of the ground floor of the building supra, was given on lease to respondent on monthly rent of Rs.1,250/- p.m. starting tenancy month to month. The landlady purchased the same from the legal heirs of late Laxmanaswamy of Vijayawada under the registered sale deed dated 21.07.2007 and subsequently demanded the tenant to vacate to occupy the same for her personal occupation to get her husband being unemployed to do business and the respondent not only not vacated for the requirement but also failed to pay despite knowing of dutybound to pay the rents regularly and committed willful default and she issued legal notice Ex.A.1 dated 12.01.2007 showing the rents due for 5 months

of Rs.6,250/- and the respondent issued reply with false averments on 25.10.2007 under Ex.A.2 for which the petitioner issued rejoinder dated 19.11.2007 under Ex.A.3 and there is further reply of respondent with false averments dated 06.12.2007 Ex.A.4. It is further averred that the respondent filed injunction suit against the other tenant and the vendor of the landlady and is trying to commit various acts of wastage and damages to impair the value and utility of the leased premises and guilty of committing nuisance to other occupants of the building unheeding and thereby liable to be evicted on the said grounds.

4. It is the counter of the respondent/tenant by denying said averments in saying she took the schedule premises on lease from one Grandhi Lakshmana Swamy supra on a rent of Rs.100/- p.m. and was regularly paying rents and after demise of said Lakshmanaswamy, his eldest son Ramakoti collected rents and on demand of said Ramakoti and his brother Bala Krishna, the security deposit was enhanced to Rs.6,000/- and they issued a receipt dated 19.11.1994 for the said deposit. She was paying rents regularly to them and the security deposit refundable and the same was not returned by Ramakoti and Balakrishna, and with a consent and promise of reimbursement therefrom the respondent/tenant spent Rs.50,000/- for innovating the tenanted shop for fixation of shutter and wall between the tenements in the place of zink sheets but that is not even reimbursed to her.

5. It is the contention by the respondent/tenant that she is doing cloth business and her husband is managing business and looking after the affairs and the original landlord received the rent till May, 2007 and the respondent tendered rent of Rs.1,250/- of July, 2007 to the legal heirs of Laxmanaswamy but they did not receive postponing and the rent of month of June, 2007 sent by her by Money Order on 25.07.2007 which

they refused. The petitioner later issued Ex.A.1 legal notice dated 12.10.2010 alleging that she purchased the property and adjacent portion from said legal heirs of Laxmanaswamy and even the respondent tendered rents to the petitioner who was postponing to receive. The respondent also issued reply to petitioner's notice, and also sent rents through her husband and also through B.V.R.Mohana Rao and Sri S.Praveen Kumar, on 22.11.2007 that was even refused by the petitioner and again through them sent the rents on 15.12.2007 that was also refused by the petitioner and petitioner in fact, demanded the enhancement of monthly rent for which the respondent did not agree and she bore grudge. The daughter of petitioner is a co-tenant of respondent and they have to share the electrical charges and though the respondent paid her share, the petitioner with malafide intention disconnected electricity supply to the schedule premises for which she filed RCC No.14 of 2008 for restoration of amenities and the petitioner cause restored the electrical supply only after receiving Court notice and later on 20.02.2008 provided separate electricity connection to the premises and the petitioner and her daughter resorted to illegal methods to evict the respondent which make the respondent to file the suit for eviction. It is further averred that she sent rents till 29.02.2008 of Rs.9000/- to 10,000/- by Pay Order dated 09.02.2008 along with the letter which petitioner received but refused to receive the subsequent rents when tendered by the respondent through Pay Order dated 04.04.2008 for a period from 01.03.2008 to 30.04.2008 with registered letter on even date 04.04.2008 having acknowledged the contents sent receipt and on 31.05.2008 respondent remitted Rs.1,250/- by crossed Demand Draft dated 30.05.2008 to the petitioner who received but failed to pass receipt and on 03.06.2008 respondent remitted rent of for

the months of June and July of 2008 and again on 06.09.2008 sent a Demand Draft dated 05.09.2008 for the rent towards August and September, 2008 and on 07.11.2008 sent Demand Draft dated 05.11.2008 towards rent for October and November, 2008, thereby the respondent is regular in payment of rent and the petitioner with oblique motive for some period failed to receive rents and there is no willful default and the demand for personal occupation is a ruse and thus sought for dismissal of the eviction petition.

6. From the above pleadings, during the course of enquiry, the petitioner was examined as P.W.1 and Ex.A.1 to A.6 supra including A.6, office copy of caveat petition marked and respondent was examined as R.W.1 and cause examined R.W.2 M.V.Gurunadharao and R.W.3 B.V.R.Mohan Rao, and got marked Exs.B.1 to B.4 viz; office copy of notice with Photostat copy of Demand Draft, receipt dated 19.11.2009, office copy of letter dated 05.11.2009 and postal receipt.

7. From said evidence and after hearing both sides, the learned Rent Controller held that there is no requirement of notice before filing eviction petition under the Act and the Apex Court held in *Dakaya Vs. Anjani*¹ observed that service of notice in the eviction petition itself is a notice of demand and the rents for default period are once paid therefrom, the ground vanishes to say the tenant was not interested in making willful default for unless it is a willful default, mere default is not a ground for eviction and similar view was expressed referring to it by the High Court in *Mohanlal Vs. Smt. Shajiya Sultana*². It is proved from the evidence that prior to the filing of the eviction petition, the landlady issued notice to the respondent under Ex.A.1 dated 12.10.2007

¹ AIR 1995 SC 383

² 2008 (1) ALT 6666

and the respondent/tenant having received went to the extent of denying the ownership of the petitioner in the Ex.A.2 reply saying the petitioner is not entitled to demand her to vacate or for payment of rents from 21.07.2007 and she is not liable to pay arrears of rent to petitioner from 21.07.2007. Be that as it may, it is before receiving notice/ summons in the eviction petition and after filing of the eviction petition, the respondents sent rents due from 22.11.2007 to 29.02.2008 of Rs.9,210/- through Pay Order dated 09.02.2008 along with covering letter Ex.B.1 and R.W.2 husband of R.W.1 deposed in his cross-examination that they did not choose to file petition under Section 8(5) of the Act, by depositing rents when the petitioner really refused to receive rents and even the evidence itself of R.W.3 claimed as alleged mediator for tendering or offering rents by respondent through her husband and one Mohan Rao and Praveen Kumar is clear that he is an introduced witness for he does not know what is rent even due and could not say which month rent they went and offered to pay in November, 2007 for saying the petitioner refused to receive and the very Ex.A.2 reply of the respondent to the petitioner Ex.A.1 notice, denying the petitioner's right of ownership over the schedule premises and not liable to pay rent to the petitioner as demanded itself, is a willful default and the decisions placed reliance thereby have no application as there is a willful default. Regarding her claim of spending of Rs.50,000/- in renovating the premises from the alleged promise by legal representatives of the original landlord late Laxman swamy, there is no evidence, so also of Rs.6,000/- so called security deposit lying with the erstwhile and original landlord, to seek for any adjustment. Coming to the bona fide requirement of landlady for her husband's starting of business, being unemployee, no doubt it was not stated which business

they want to commence and with what experience and with what capacity and means. In this regard, the Apex Court in T.Sivasubramanyam Vs. Kannath Pujari³ held that when a landlady desires premises, the requirement must be showed as bona fide in her petition. In view of the above, the Rent Controller, held that the petitioner failed to set out said bona fide requirement of starting business by her husband however for the willful default, the tenant is liable to be evicted in granting two months time to vacate vide order dated 31.05.2010.

8. When the tenant impugned the same, the lower appellate tribunal in RCCMA No.48 of 2010 by its order dated 22.12.2010 reversed the said findings and held that the petitioner/landlady purchased the schedule premises from the original landlord on 21.07.2007 that is not in dispute so also the factum of subsequently informed to the respondent/tenant about the said purchase in directing to pay the rents to her, the tenant along with the Demand Draft for Rs.9,210/- under Ex.B.1 on 10.02.2008 sent the rents and the RCC No.9 of 2008 filed was only in the year 2008. The evidence of R.Ws. 1 to 3 show that when they went to the premises of the petitioner/landlady in January, 2008, she demanded to enhance rent at Rs.2,500/- p.m. and they agreed to enhance only Rs.1,600/- p.m. and there was disconnection of the power supply from which the tenant filed R.C.C.No.14 of 2008 in February, 2008 for restoration of the amenities and when the evidence shows the rents offered were refused to receive, in the factual background and from the disputes and rents paid till July, 2009 even after filing of eviction petition, it can be said there is no willful default to pass any order of eviction and thereby the eviction order is unsustainable.

³ AIR 1999 SC 3190

9. The grounds of revision by the landlady impugning the said reversal order of the lower appellate Tribunal as unsustainable is that there is a willful default in payment of rent despite the notice and reply and subsequent payments will not cure, as rightly concluded by the Rent Controller by referring to several expressions and there is no basis for the lower appellate tribunal to reverse the finding much less to come to a different conclusion but for on surmises and re-appreciation of evidence and thereby sought for allowing the revision, setting aside the reversal order of the lower appellate Court by restoring the eviction order of the tribunal.

10. With the revision petition, the landlady filed the petition vide CRPMP No.5511 of 2016 to receive additional documents viz; petition and counter in R.C.C.No.9 of 2008 which are the eviction petition and counter; copy of representation, copies of legal notices and copy of sale deed respectively. The petition and counter are not new documents for receiving as additional evidence since it is based on the said petition for eviction and counter, evidence let in before the Rent Controller and the legal notice and reply of 12.10.2007, 27.10.2007 and 06.12.2007 were already exhibited as Exs.A.1 to A.5 in the evidence of the parties referred supra thereby said documents no way requires to receive as additional evidence. In so far as the copy of the sale deed dated 06.02.2013 executed in favour of Mamidi Venkata Gurunatha Rao and Mamidi Subbarao, sons of M.Laxminarayana, by Chinnam Chalamaiiah S/o Ramachandra Rao, it is for a business shop within the boundaries covered by area of Vijayawada, Gudivada street with Municipal ward No.(old)2/ 206, (new)2/ 208, D.No.11-52-82, Block No.2, TS No.291, 320 sq.yards, plinth area about 10yards and the eviction petition schedule as referred supra is D.No.11-52-82.

11. It is showing therefrom R.W.2 husband of tenant, R.W.1 by name M.N.Gurunadharao and his brother by name M.Subbarao were the joint purchasers of said shop in the year 2013. It, in fact, no way helpful much less to improve the case of the eviction petitioner for same is not a ground of plea or evidence of tenant got alternative accommodation and thereby liable to be evicted, that too, it is her husband along with the husband's brother jointly purchased that shop even the same showing that too only in the year 2013. Thus there are no grounds at this stage to receive that document as additional evidence much less to receive to permit both the parties to prove the same or to introduce any new evidence for a new ground pursuant thereto. Thereby the additional evidence receiving application for the reasons supra is dismissed.

12. Heard and perused the material on record from the respective contentions in the revision petition.

13. Coming to the scope of revision, particularly from the Constitution Bench expression of the Apex Court in *Hindustan Petroleum Corporation Limited V. Dilbahar Singh*⁴ referring to Section 20 of the Kerala Act and Section 25 of the Tamilnadu Act among other Rent Control Act provisions of other State Acts, the wording is almost similar to Section 22 of the State Act which speaks that, the High Court may call for and examine the records relating to any order passed or proceeding taken by the Rent Controller or by the appellate authority for the purpose of satisfying itself as to the legality, regularity or propriety of such order in reference thereto as it thinks fit. Thus what the Apex Court laid down in the expression of *Dilbahar Singh* supra interpreting the three terms 'legality, regularity or propriety' that was

⁴ (2014)9 SCC 78

also considered by this Court referring to the Constitution Bench expression in *Thumuguntla Enterprises V. Majeti Venkata Ramakoti Mutyalu*⁵ on the scope of law and what was laid down by the Constitution Bench on the power of revision either under Section 22 of the Act or Section 115 of C.P.C or even under Article 227 of the Constitution of India, is limited to decide whether the impugned order is according to law or not but not by re-appreciation of entire facts afresh as a second Court of first appeal. Thus, it is the caution saying it is not a first appellate Court to re-appreciate the facts afresh but for to decide with reference to the relevant facts, the legality, regularity or propriety of the orders impugned in the revision.

14. From the above, coming to the present case the fact that the landlady purchased the property from the original landlord Laxmanswamy under registered sale deed dated 21.07.2007, though initially disputed, later not in dispute, even said document not exhibited. The tribunal therefrom also rightly held that any advance deposit paid by the tenant as per the claim much less of Rs.6,000/- to the original landlord, vendor of the petitioner/landlady to seek for any adjustment of the same out of rents payable at Rs.1250/- per month there is no basis or proof; leave about what were the rents paid by the tenant prior to the registered sale deed dated 21.07.2007 to the original landlord Laxmanaswamy or his sons Ramakoti and Balakoti and any of them. The crux here in the eviction petition is covered to consider is on the two grounds i.e. bona fide requirement for the starting of business by the husband of the petitioner who was shown with no avocation, in the premises under the occupation of the respondent/tenant and for willful default, for other grounds not made out including as to any

⁵ 2016(2) ALD 763

nuisance and inconvenience including to the neighbours or causing any acts or wastage or damage much less by reducing utility and value of the same.

15. In this regard, even taken for arguments sake that the respondent/tenant has no knowledge about the said sale in favour of the petitioner by the original landlord on 21.07.2007, the respondent cannot dispute the same at least from receipt of Ex.A.1 legal notice dated 12.10.2007 which is addressed to the respondent/tenant M.Adilakshmi W/o M.V.Gurunatha Rao and Smt. Amara Sri Bhagyalakshmi W/o A.Radhakrishna Murthy, showing the petitioner Devathi Venkata Naga Suseela, W/o Singaiah, purchased the premises under registered sale deed No.6594/2007 dated 21.07.2007 from the legal heirs of the late Laxmanswamy who are owners of the premises and thereby called upon the respondent/tenant and the co-tenant Bhagyalaxmi of the leasehold premises present one and abutting one respectively viz; 11-52-3 and 11-52-4 to pay the rents including the arrears and also in future by virtue of the purchase being the landlady to her without any default, else to take action. Once such is the case and there is a registered sale deed mentioned and even the tenant got any doubt, she could have sought for copy of the sale deed, as there is a statutory attornment of leasehold rights of the tenancy, to seek for eviction of the tenant for any willful default in payment of arrears or for any bonafide requirement etc. The reply given by the respondent/tenant dated 27.10.2007 speaks particularly from paragraph-1 of alleged purchase in denial and at para-2 saying not liable to pay arrears of rents from 21.07.2007, by the alleged sale deed as vendee not entitled to claim to pay the arrears or to continue to pay any rents. There is a mention of Grandhi Seetaravamma and her son Balakrishna agreed to sell a part of the property for

Rs.5,00,000/- and there was an oral agreement of sale and she paid Rs.1,00,000/- as advance on 09.05.2007 and agreed to pay balance within three months and pursuant to which demanded the said vendees to perform their contract which they were postponing and said vendors instead of performing, entered into contract for sale with the petitioner and the sale transaction is an illegal act and she filed O.S.No.624 of 2007 for specific performance of the contract for sale against them with a petition for permanent injunction not to evict forcibly and there was an interim injunction order against them and it is while so, the sale transaction entered by the petitioner from the legal heirs of Laxamsawamy and the notice 2nd party is no other than the daughter of the petitioner, also aware of the said suit proceedings etc.

16. Even from the said reply notice, it is not a possessory sale agreement for oral and non-possessory, and there is no merger of tenancy into contract for sale, much less to the protection of doctrine of part performance, even not to pay the rents. The alleged oral sale agreement set up was dated 09.05.2007 and the alleged suit filed for specific performance was in O.S.No.624 of 2007. In fact, even after the legal notice dated 12.10.2007, there is nothing stated rents paid till October, 2007, there is besides denial of the right of demanding for payment of rent and passing of any title under the sale deed and entitlement to claim any right of ownership over the premises much less to demand the rents. Nothing more is required to say there is a willful default as rightly concluded by the Rent Controller and there is no basis for the learned appellate tribunal to reverse the said finding when the above facts are very crystal clear with proof.

17. Having regard to the above, the reversal finding of the lower appellate tribunal per se is unsustainable and it requires restoration of

the findings of the rent controller of there is a willful default and subsequent payment after eviction petition filed in the factual scenario, no way construe mere default but a willful default for non-payment even after said legal notice dated 12.10.2007.

18. Apart from the above, there is also bona fide requirement from the premises sought by the landlady though not same mentioned in the Ex.A.1 notice, for her husband's starting of business and nature of business proposed need not be mentioned but for bona fides, in the purpose sought and there is nothing to show any mala fides though there is a litigation before the filing of the eviction petition from the facts supra that itself per se cannot be construed as mala fide to attribute in filing eviction petition without bona fide requirement. Once landlady purchased the property in 2007 that itself shows the means and capacity to secure means to the business proposed to be established by the husband of the landlady in the premises to question. It is for the landlady to seek for suitable accommodation among different tenants any one at the choice and not for the tenant to dictate terms. The mere facts of the abutting premises in the tenancy of the daughter of the petitioner and no eviction petition filed against her is not a ground to refuse the bona fide requirement sought by the husband of landlady for starting of the business in the premises apart from the willful default as discussed supra. The expression of the Apex Court in *Atmaram Vs. Shakuntala Rani*⁶ also supports said conclusion.

19. Having regard to the above and in the result, the petition in CRPMP No.5511 of 2016 is dismissed and the revision is allowed by setting aside the order of the lower appellate Court in RCCMA No.48 of 2010 and by confirming the order of the Rent Controller in RCC No.9 of

⁶ (2005) (7) SCC 211

2008. Time for vacating the premises granted is nine months to enable the tenant to secure any suitable and alternative accommodation meantime and by paying meantime same amount of rent towards damages for use and occupation and in case of failure to vacate within the time stipulated supra, the landlady can execute and recover through due process of law.

20. Consequently, pending miscellaneous petitions, if any, shall stand closed.

Date:21.10.2016



Dr. B. SIVA SANKARA RAO, J