HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Civil Revision Petition Nos.3172 of 2008, 1723 of 2009
and
2014 of 2015

COMMON ORDER:

C.R.P.No.3172 of 2008 and 1723 of 2009

Aggrieved by the common order dated 02.06.2008 passed by the Additional Chief Judge, City Small Causes Court, Hyderabad in R.A.No.36 of 2006 along with cross objections in I.A.No.377 of 2006 while dismissing the R.A.No.36 of 2006 filed by the appellant-tenant-(M/s Liberty Dresses rep.by partner Mansukhklal) and allowing the cross-objections of the landlord-M/s Nagari Shankar Rao in I.A.No.377 of 2006 fixing the fair rent above the sum that what was fixed by the Rent Controller vide order dated 31.12.2005 in R.C.No.190 of 2003 of the landlord, the CRP No.3172 of 2008 is preferred by the tenant supra and the CRP No.1723 of 2009 is preferred by the Landlord supra. Apart from the above, the CRP No.2014 of 2015 is filed by the Landlord supra.

2. The contentions in the grounds of the revision of the tenant are that both the Courts below erred in appreciating the facts of the case and legal position and arrived an erroneous conclusion in enhancing rent from Rs.1,000/- to Rs.5,000/- p.m. by the Rent Controller and that even to Rs.14,004/-p.m. by the appellate Tribunal without there being any basis. Both the Courts below ought to have taken into consideration that except Sub Section (1) of Section 4 of the Act, all other Sub Sections having

been struck down by this Court in Suresh Gir Vs. K.Ahadev[1], as the very mechanism for working of Section 4 of the Act, has been rendered without any criteria, thereby the same is liable to be declared as such; that both the Courts below failed to appreciate that originally the very jurisdiction of the Rent Controller was restricted to buildings whose monthly rent did not exceed Rs.1,000/- and after amendment it was enhanced to Rs.3,500/- but the Rent Controller and the appellate tribunal took away the statutory protection available to the petitioner-tenant herein by exceeding its pecuniary limits of jurisdiction. The enhancement of the rent by the Courts below, would amounting to exempting the petition schedule premises from the purview of the Act, hence the power of fixation of rent, therefore cannot be exercised by the Courts below in such a manner so as to exclude the building from the purview of the Act when it is obvious that the intention of the Landlord is only to evict the tenant by adopting such tactics. Both the Courts below have failed to consider that admittedly the petition schedule premises is a very old building and the first floor has been constructed by the tenant himself with the permission of the erstwhile Landlady but admittedly the landlord has not made any repairs or alterations and also not made any further improvements to the petition schedule premises. In spite of the said position, the Court below have proceeded to enhance the rent and especially the Appellate Court has fixed the rate at Rs.12/- per sft. with there is no basis for the same. Both the courts below

[1] 1997(6) ALT page 436

have failed to consider the admissions of the landlord in this respect. Both the Courts below failed to consider the evidence of respondent's witnesses who are tenants of similar accommodations and old construction in the same locality and whereas both the Courts below have erred in only taking into consideration the evidence on record showing rents subsisting for RCC Buildings. That, Ex.A.1 to A.4 filed by the landlord have not been proved by examining the executants thereof and hence arriving the rate of rent basing on those by the Courts below is erroneous. The Appellate Court has erred in accepting Exs.A.1 to A.4 on the ground that they are certified copies of public documents and hence wrongfully proceeded to consider them as proof of prevailing rate of rent. The Appellate Court ought to have considered that judicial notice cannot be a substitute for proof of facts, which the landlord has to prove by independent evidence. Both the Courts below especially the Appellate Court has given undue importance to the statement of R.W.1 that his annual turnover is Rs.15 lakhs to Rs.16 lakhs. In fact, the annual turnover does not indicate the profit i.e. income earned by the petitioner/Tenant and taking the said amount as one of the criteria for deciding the fair rent is erroneous. In fact, both the Courts below ought to have considered the nature of construction of the building, the age of the building and also the fact that the landlord has admittedly not carried out any repairs/improvement to the property. The appellate Court failed to consider the plea on the part of the tenant that the petition having been filed only against the firm is not maintainable in view of the decision reported in AIR 1984 SC 1570, Hence, to set aside the order in R.A.No.36 of 2006 impugned herein.

3. On the contrary, the contentions in the grounds of the revision of the landlord are that, the Appellate Court failed to consider oral and documentary evidence on record in fixing the fair rent of Rs.14004/- p.m. instead of Rs.25,000/- p.m. as claimed, though deposed by the P.Ws.1 to 4 tenants of the same commercial locality of Sultan Bazar, Hyderabad in proof of it. The Appellate Court failed to consider that Exs.A.1 to A.4 are the registered lease deeds executed by different landlords and their lessees except Ex.A.1 which is in respect of property at Badi Chowdi, Sultan Bazar, and as we see from the Ex.A.1, the rent is Rs.60/- p.m. per sft.; that works out to Rs.33,030/- and on applying the same to the suit property it works out to Rs.20,217/- p.m. for Groundfloor and Rs.22,646/- p.m. for First Floor. Similarly Ex.A.2 lease deed dated 01.02.2000, the rent is fixed at Rs.30,000/-p.m. for two years and from 01.08.2002 to 31.01.2005 at Rs.33,000/- p.m. and from 01.02.2005 to 31.07.2007, at Rs.36,300/- p.m. for the area of the Mulgi about 221 sft. on the groundfloor and 221 sft. on the first floor and the rate per sft. works out to Rs.67.87 paise. The Ex.A.3, the property is situated at Sultan Bazar, Badichowdi, Hyderabad and the area is 529 sft. on a rent of Rs.15,000/- p.m. from 01.06.2002 with enhancement of 10% every year and the rate per sft. works out to Rs.28.36. Ex.A.4 is lease deed 30.11.2002 and the premises is situated at Badichowdi near Sultan Bazaar,

Hyderabad which is roughly 1 to 1.5 furlongs from the petition schedule property in the area of about 280 sft. and the rent of the Mulgi from 01.12.2002 is Rs.7,001/- which works out to Rs.25/- per sft. As per clause 11 of the said document, the tenant paid Rs.10.00 lakhs as security deposit, which is interest free. If the security deposit amount is not paid, the rent would have been Rs.50/- per sft. The Court below has failed to consider that the P.W.3 was summoned and he was confronted with Ex.A.2 lease agreement entered by him with his tenant from which document, the rent per month works out to more than Rs.25,000/- p.m. The Courts below ought to have fixed the rent more than at Rs.25,000/- p.m., hence, to allow the revision by enhancing accordingly in the fixation of fair rent by setting aside the common order, dt.02.06.2008 in the cross-objections I.A.No.377 of 2006 in R.A.No.36 of 2006 and dismissing the revision of the tenant supra.

4. <u>C.R.P.No.2014 of 2015</u>

impugning order dated 19.12.2014 in I.A.No.268 of 2010 in O.S.No.1263 of 2008 on the file of the learned IX Additional Senior Civil Judge, (FTC) CTC, Hyderabad, filed under Section 10 of the Civil Procedure Code(for short, 'the CPC'), by the defendants for grant of stay of all further proceedings in the suit pending disposal of CRP No.3172 of 2008 supra, for the trial Court allowed the petition by staying suit proceedings as prayed for, the respondent/plaintiff in said I.A.No.268 of 2010, preferred the present revision with the grounds in the petition that the Court below is erred in exercising jurisdiction under Section 10 CPC, to stay the proceedings pending before it and also failed to consider that Section 10 application can be filed in a suit where the matter in issue is also directly and substantially in issue in the previous instituted suit between the parties under which they or any of them claim litigating under the same title. The Court below has failed to consider that the defendants have not fulfilled any of the conditions laid down under Section 10 CPC, to grant stay in the present case. The Court has no jurisdiction to grant stay in view of the pendency of the proceedings before the High Court. The Court below has failed to consider for applicability of Section 10 CPC is whether on a final decision being reached in the previous instituted suit, as such decision would operate as *res judicata* in the subsequent suit. The Court below failed to appreciate that the relief sought in the suit and in the pending CRP before the High Court is totally arising out of two different jurisdictions. The Rent Controller is not a Court but a special tribunal under the provisions of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short, "the Act"). The Court below failed to consider that the Rent Control Court is not subordinate to the Civil Court, further, the Rent Control proceedings cannot be termed as a Civil Court proceedings to apply Section 10 CPC and further failed to consider that to exercise section 10 CPC, the Rent Control Court cannot be treated as a civil Court and as such, the application of Section 10 CPC, is not maintainable. The Court below has failed to consider that the Rent Control Court under the Rent Control Act is a Court and provisions of Section 5 of the Limitation Act are applicable to a limited extent, having failed to consider the law is laid down in Binodlal Sagarmal, Hyderabad Vs. Prem Prakash Gupta[2] of the Rent Controller can stay its own proceedings under Section 10 C.P.C. Even while application of Section 10, it is before the trial has commenced and once the trial has been commenced, Section 10 application cannot be filed before the Court. The Court has observed in the order a judgment cited by the learned counsel for the petitioners/defendants in P.V.Setty Vs. B.S.Giridhar without citing in which year the said judgment was reported. Based on the observation made by the Court, the Court has stated that a suit for ejectment was filed and meanwhile an application for fair rent was filed before the Rent Controller for fixation of fair rent. The Court below has observed that if the suit proceeds it will result in eviction, the application for fixation of fair rent becomes infructuous. The said facts of the case cannot be said to be a ratio for the purpose of present revision before the Court. The Court below has failed to consider that the matter was pending since 2008. If really the respondents were aggrieved, they could have filed application at the initial stage itself. As such, the present application in I.A.No.268 of 2010 filed u/sec.10 CPC, is not maintainable, thereby the order passed by the Court is legally infirm and contrary to law and the same can be set aside by allowing the revision.

05. Heard from the respective contentions and rival contentions supra in the three revisions for common disposal.

---

[2] (2003) 5 ALD page 222

06. Whereas, the learned counsel for the respective parties reiterated their contentions in support of the respective revisions of one and contra to it by the other and perused the material on record.

07. So far as the CRP No.2014 of 2015 is concerned, it is impugning the order dated 19.12.2014 in I.A.No.268 of 2010 in O.S.No.1263 of 2008 as referred supra, which is a suit for eviction filed by the landlord against the tenant by mentioning the rent payable and the liability for eviction and from its showing, it is not falling within the jurisdiction of the Rent Controller from rent claim. Prima facie when plaint allegations are basis to determine jurisdiction and it shows the civil Court got jurisdiction and not the Rent Control Court and that too when fair rent application already determined before the Courts below, there is nothing to keep the suit under stay from proceeding with even by invoking Section 10 of the CPC, apart from questioning of its applicability from the pendency of the revisions petitions impugning the lower appellate Court's orders against the orders of the Rent Controller covered by appeal cross objections supra and as such the stay order is liable to be vacated on its face and accordingly vacated so as to proceed with by the trial Court on own merits as the suit is of the year 2008 and the stay application filed is in December 2014, and the appeal cross-objections before the lower appellate Court even disposed of by common order dated 02.06.2008 and thereby once the Rent Controller fixed fair rent at Rs.5,000/- p.m. from appeal and cross-objections, the tribunal even enhanced the same to

Rs.14,500/- p.m. and what the jurisdiction of the Rent Controller where its rent to a maximum of Rs.3,500/- from Rs.1,000/- from the amended provision under the Act originally, even to any stretch of imagination, it cannot be said the fair rent could be fixed below Rs.3,500/- p.m. Accordingly, it is just to allow the revision.

08. Coming to the two revisions (CRP Nos. 3172 of 2008 and 1723 of 2009) against the common order dated 02.06.2008 of the lower appellate tribunal in the appeal and cross-objections referred supra, where the common construction made or improvements made with the permission of the original landlord by the tenant including of the alleged first floor even taken as true, that no way deprives the landlord to get fair rent for not a case of what is the amount incurred not even reimbursed and not even a case of without reimbursement, there was an undertaking to give at concessional rate, much less to say any such undertaking even in writing to rely, apart from the same is not even the defence in the counter before the Rent Controller to the fair rent application.

09. So far as the claim of non-providing of any amenities concerned, the provisions of the Act, 1960 itself gives scope to seek for providing of amenities through the Rent Controller if at all those provisions are applicable and here from the suit pending and fair rent already fixed before the Rent Controller of Rs.5,000/- p.m. and enhanced by the appellate tribunal of Rs.14,004/- p.m., the question of approaching Rent Controller even does not arise practically.

10. Coming to the fair rent even from the grounds of revision of the tenant, the criteria is in fact as per the provisions of the Act and other guidelines from the expressions in this regard, the nature of the construction, age of the building and its location on the plinth area with appurtenant site to the building by area. So far as the location concerned, the evidence on record of P.Ws. 1 to 4 the neighbouring tenants or landlords of the locality, as the case may be, and Exs.A.1 to A.4, the registered lease executed between the landlords and tenants of the area of the locality and the same shown therefrom within the commercial area. Once the rents are ranging from Rs.25000/-p.m. or Rs.68,000/-p.m. of the built up area of the respective mulgies, even taken some or more amenities and subsequent constructions, what the appellate Court taken therefrom in fixing the fair rents at Rs.12 per sft. in arriving the amount of Rs.14,004/- p.m. no way requires interference by this court while sitting in revision even from such criteria and even by taken the present leasehold premises is age old one and what the rent Controller fixed of Rs.3,500/- when there is no basis and the appellate Court which got the right of re-appreciation of the entire material on record of the facts and came to the conclusion supported by reasons and well considered, merely because some other view also possible, is not a ground for this Court within the limited scope to sit against in revision much less to reduce the said rent of Rs.14,004/- fixed by the Appellate tribunal, apart from not even any material that could be considered in favour of the landlord for the claim of any enhancement therefrom. Even what is

contended by the P.W.3, in the cross-examination, was the tenant of the demised premises stated vacated the premises thereby what he was paying under Ex.A.2, the agreed rent of Rs.30,000/- p.m. cannot be given credence even taken of any value for the submission of same is to some extent high side, there, as can be seen from the grounds of appeal of the landlord, with reference to the original rent thereunder covered by the lease deed Ex.A.2 dated 01.02.2000 was Rs.30,000/- p.m. for two years later from 01.08.2002 till January, 2002 Rs.33,000/- p.m. and from 01.02.2005 till 31.07.2007 at Rs.36,300/- p.m. and for the mulgi of 221 sft. on ground floor 221 sft. on first floor and it works out to Rs.67.87 paise per sft. and in the case on hand what the appellate tribunal fixed is Rs.12/- per sft for Rs.14,004/-.

11. Accordingly and in the result:-

a) The CRP No.2014 of 2015 is allowed by setting aside the order in I.A.No.268 of 2010 dated 17.12.2014 in O.S.No.1263 of 2008 however without prejudice to the contest of both parties to decide the suit on own merits.

b) The other two revisions viz; CRP No.3172 of 2008 and 1723 of 2009 are dismissed. No costs.

c). Consequently, pending miscellaneous petitions, if any, in these three revisions shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:02.09.2016
Vvr