

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No.5534 of 2011

ORDER

This Civil Revision Petition, under Section 22 of the Andhra Pradesh Buildings (Lease, Rent & Eviction) Control Act, 1960 ('the Act of 1960', for brevity) by the unsuccessful respondent/Judgment Debtor, is directed against the orders dated 14.07.2011 of the learned I Additional Rent Controller-cum-XIII Junior Civil Judge, Hyderabad, passed in E.A.No.44 of 2010 in an un-registered E.P. Sr. No. 1980 of 2010 in R.C.No.575 of 1996 filed by the petitioners/decree-holders under Rule 23(1) of the Andhra Pradesh Buildings (Lease, Rent & Eviction) Rules, 1961 ('the Rules', for brevity) requesting to condone the delay of 847 days in filing the Execution Petition.

I have heard the submissions of the learned counsel for the revision petitioner/judgment debtor (hereinafter, 'judgment debtor') and the learned counsel for the 3rd respondent/decree-holder (hereinafter 'decree-holder'). The 1st respondent herein died. The other respondents herein are stated to be not necessary parties. I have perused the material record.

The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows:-

The 1st decree-holder (since died) filed the aforementioned rent control case for eviction against the judgment debtor/revision petitioner herein and others. On merits, the learned I Additional Rent Controller allowed RC 575 of 1996 and granted two months time to the tenants to vacate and hand over vacant possession of the schedule premises to the decree holders. The appeal in R.C.A.No.398 of 2001 filed by the Judgment debtor and others against the said orders of the learned I Additional Rent Controller was dismissed by the learned Chief Judge, City Small Causes

Court, Hyderabad, granting three months time to the tenants, including the judgment debtor/revision petitioner to deliver vacant possession of the schedule premises. The said order has become final. Thereafter, execution petition in E.P. Sr. No. 1980 of 2010 was filed for obtaining vacant possession of the schedule premises from the said tenants. However, as the execution petition was not filed within the time allowed under law, an execution application in E.A.No.44 of 2010 was filed for condonation of the said delay. The judgment debtor/revision petitioner resisted the said application. On merits and by the orders impugned in this revision petition, the learned I Additional Rent Controller, Hyderabad, allowed the said execution application and condoned the delay subject to payment of costs of Rs.800/- . Aggrieved of the said order, the revision petitioner, who is one of the judgment debtors, filed this revision.

At the hearing, the learned counsel for the judgment debtor would contend as follows:-

The execution petition is filed beyond the time allowed under law for execution of the decree and order of eviction. The decree-holders have no *locus standi* to file the execution petition beyond the time allowed under law. The execution petition is not maintainable. The delay of 847 days is a long and abnormal delay. The explanation offered for the delay by the decree holder, 3rd respondent herein, is unbelievable and untenable. The contention that she could not come over to Hyderabad for years together to seek eviction could not be accepted as a sufficient ground for condonation of delay. Her further contentions that she had entered into an agreement of sale with possession –cum –general power of attorney dated 17.06.2010 with one Afzal Hussain Quadri to look after the affairs with regard to the schedule premises and take steps to file the execution petition and that the said general power of attorney holder, having come

to know of the eviction orders passed by the appellate authority, had taken steps are all false and invented allegations. The delay is due to wilful and wanton reasons and the contentions in the affidavit filed in support of the petition for condonation of delay are invented by the GPA holder of the 3rd decree-holder, Mrs. Rekha Jain. If such a long delay of 847 days is condoned, the revision petitioner/judgment debtor would suffer serious loss.

Per contra, the learned counsel for the 3rd respondent/decree-holder would contend as follows:-

The 1st decree holder, original landlady, died. Her legal representatives were brought on record. Amongst her legal representatives, respondents 2, 4, 5 and 6 are not necessary parties by virtue of the registered partition deed, dated 07.01.2006. The schedule premises fell to the share of the 3rd decree-holder, Rekha Jain. She is a resident of Lucknow of Uttar Pradesh. Her husband, a Senior Anaesthetist, is employed in Uttar Pradesh Medical Services. During the period subsequent to the passing of the eviction order in the rent control appeal and till October, 2007, she was stationed at Basti (near Gorakhpur) of Uttar Pradesh. In the circumstances, she could not come over to Hyderabad from a far off place and could not take necessary steps to file the execution petition for obtaining vacant possession of the schedule premises. Hence, the delay had occasioned. Being unable to look after her affairs, she had entered into an agreement of sale with possession –cum –general power of attorney on 17.06.2010 with one Afzal Hussain Quadri and requested him to verify the facts and file the execution petition. Accordingly, the GPA holder, having verified the position and having taken steps, got filed the execution petition. Since the delay had occasioned in the circumstances stated, the application is filed for condonation of delay, which is not due

to wilful and wanton reasons. If the delay is not condoned, the 3rd decree-holder suffers serious loss, as the eviction orders are obtained after a long drawn litigation and serious contest. No landlady, having obtained an eviction order, would allow the decree to be time barred unless there are reasons beyond her control. The learned Rent Controller, having considered the contentions and the rival contentions and having exercised the discretion judiciously, condoned the delay. Every person aggrieved of an order of the learned Rent Controller may have to file an appeal as postulated under Section 20 of the Act of 1960. Without availing the remedy of appeal as provided under Section 20 of the Act, the present revision petition is filed. Hence, the revision petition is not maintainable. In any view of the matter, three months time is granted to the tenants to vacate and deliver vacant possession of the schedule premises. Therefore, the decree holders are obliged to file the execution petition only on the expiry of the said period of three months. Further, Rule 23 of the Rules gives ample power to the Court to condone the delay in filing the execution petition. The delay in filing the execution petition is satisfactorily explained. The revision is devoid of merit and is liable to be dismissed.

I have bestowed my attention to the facts and I have given earnest consideration to the submissions. The respective cases of the parties are already stated *supra*, in detail.

Dealing first with the aspect as to the maintainability of the execution petition filed along with an execution application for condonation of delay, it is necessary to refer to Rule 23(1) of the Rules and the proviso appended to it, which read as under:-

“23. (1) Every application for the execution of orders passed under this Act shall be writing signed and verified by the decree-holder and filed before the Controller within six months from the date of the order accompanied by a certified copy of the order concerned together with the necessary process fee:

Provided that an application may be admitted after the specified period if the applicant satisfies the Controller that he has sufficient cause for not preferring the application within such period.”

A plain reading of the proviso appended to the above rule makes it manifest that the learned Rent Controller is empowered to admit an application for execution of the orders passed under the Act, if the applicant satisfies that the applicant has sufficient cause for not preferring the execution petition within the period of six months from the date of the order. Hence, the contention that the execution petition is not maintainable is devoid of merit.

Coming to the aspect as to whether sufficient cause is shown for condonation of delay, it is to be noted that the GPA holder of the decree-holder gave a detailed explanation in his affidavit. The said explanation is stated supra, while adverting to the pleadings of the decree holder. Under the registered partition deed dated 07.01.2006, the 3rd respondent/ decree-holder herein, who is one of the legal representatives of the original landlady, acquired exclusive rights over the petition schedule premises is undeniable. As she is a resident of a distant place in Uttar Pradesh State and in the circumstances stated, being unable to file and prosecute the execution petition, she had executed an agreement of sale with possession – cum – general power of attorney and instructed her GPA holder to take necessary steps. Accordingly, the GPA holder of the decree-holder filed the execution petition along with an application for condonation of delay supported by an affidavit. In that supporting affidavit he offered sufficient explanation for the delay that had occasioned in filing the execution petition. The defence in the counter is only in the nature of general denial. As rightly contended, the eviction orders were obtained after a long drawn litigation and serious contest. The eviction petition filed in the year 1996 culminated in the dismissal of the appeal of the tenants in

December, 2007. The tenants did not vacate the premises within the time granted in the order of the appellate authority. In the facts and circumstances of the case, the cause shown for condonation of delay can be accepted as sufficient cause. The learned Rent Controller, having exercised the discretion judiciously, recorded satisfaction that the cause shown is sufficient cause and on such satisfaction condoned the delay and admitted the execution application.

On the above analysis this Court finds that there is neither patent illegality nor jurisdictional error in the order impugned calling for interference. Viewed thus, this Court finds that the learned Rent Controller is justified in allowing the execution application filed for condonation of delay and that the CRP, which is devoid of merit, is liable to be dismissed.

In the result, the Civil Revision Petition is dismissed confirming the orders of the learned Rent Controller. It is needless to state that the learned Rent Controller shall give an opportunity to judgment debtors, including the revision petitioner, if they so choose and so desire, to file their counters, if any, in the EP and pass appropriate orders on merits after following the procedure established by law.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

17th September, 2016
Bvv

M.Seetharama Murthi, J