

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.3189 of 2014

ORDER:

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This Civil Revision Petition under Article 227 of the Constitution of India by the tenant/petitioner/appellant in the unregistered RASR.no.3140 of 2014 is directed against the orders dated 22.08.2014 of the learned Chief Judge, City Small Causes Court, Hyderabad passed in the aforementioned unregistered Appeal.

2. I have heard the submissions of the learned counsel for the revision petitioner/tenant ('the tenant', for brevity) and the learned counsel for the respondent/landlord ('the landlord', for brevity). I have perused the material record.

3. The facts necessary for consideration, in brief, are as follows:

The landlord brought the Rent Control Case in RC.no.13 of 2013 on the file of the Court of the learned II Additional Rent Controller, City Small Cause's Court, Hyderabad for eviction of the tenant. After full fledged trial and on merits, the said Rent Control Case was allowed on 03.06.2014 directing the tenant to vacate and handover physical possession of the petition schedule property to the landlord. Aggrieved of the said orders, the tenant had filed the aforementioned unregistered appeal before the learned Chief Judge, City Small Causes Court, Hyderabad. However, since rents are not deposited while instituting the said unregistered appeal, the Office of the Court of the learned Chief Judge has taken an objection for numbering the said appeal. A contention was raised that there is no finding in the judgment of the learned Rent Controller in regard to the period of default and that the tenant is disputing the jural relationship. However, since an order of eviction was also granted to the landlord on the ground of willful default, the learned Chief Judge had refused to register the appeal and had directed the tenant to deposit the rents from August, 2010 onwards to have the Appeal numbered.

Aggrieved of the said orders, the tenant had preferred this Revision Petition.

4. The learned counsel for the tenant would contend as follows:

Without there being a finding directing the tenant to deposit the arrears of rent in the order of the learned Rent Controller, the direction given by the learned Chief Judge in the order impugned is illegal and unsustainable. There is no finding regarding admitted rent in the orders of the learned Rent Controller. Therefore, the question of deposit of arrears of rent, if any, does not arise. The tenant also denied the jural relationship. Hence, the direction to deposit the arrears of rent from August 2010 as a condition precedent for registering the appeal is unsustainable.

5. On the other hand, the learned counsel for the landlord, while supporting the orders of the Court below had contended as follows: 'The learned Rent Controller by the order impugned in the unregistered Appeal filed by the tenant had categorically recorded a finding that the tenant is a willful defaulter in payment of rents and, therefore, ordered eviction on that ground also. The learned Rent Controller also recorded a finding that there is jural relationship between the parties. It is also stated in the orders of the learned Rent Controller that the case of the landlord is that the rents are not being paid from August 2010. Therefore, the order assailed in this revision does not warrant interference.'

6. In the light of the contentions of the parties and the facts of the case, it is necessary to refer to Section 11 of the A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960, which reads as follows:

"11. Payment or deposit of rent during the pendency of proceedings for eviction:- (1) No tenant against whom an application for eviction has been made by a landlord under Section 10, shall be entitled to contest the application before the Controller under that Section or to prefer any appeal under Section 20 against any order made by the Controller on the application, unless he has paid to the landlord or deposits with the Controller or the appellate authority, as the case may be, all arrears of rent due in respect of the building up to the date of payment or deposit and continues to pay or deposit any rent which may subsequently become due in respect of the building, until the termination of the proceedings before the Controller or the appellate authority, as the case may be.

(2) The deposit of rent under sub-section (1) shall be made within

the time and in the manner prescribed.

(3) Where there is any dispute as to the amount of rent to be paid or deposited under sub-section (1), the Controller or the appellate authority, as the case may be, shall on application made to him either by the tenant or by the landlord, and after making such inquiry as he deems necessary, determine summarily the rent to be so paid or deposited.

(4) if any tenant fails to pay or to deposit the rent as aforesaid, the Controller or the appellate authority, as the case may be, shall, unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building.

(5) The amount deposited under sub-section (1) may, subject to such conditions as may be prescribed, be withdrawn by the landlord on application made by him in that behalf to the Controller or the appellate authority, as the case may be.”

Under Section 11(4), if any tenant fails to pay or deposit rents, the learned Controller or the appellate authority, as the case may be, shall, unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building. As already noted, the learned appellate authority/Chief Judge, in exercise of powers conferred on her under Section 11(4) of the Act, had, by her order directed the petitioner herein to deposit the rental arrears from August, 2010 onwards to the credit of the Rent Appeal within two weeks from the date of the order impugned to get the appeal registered. This Court in the decision in **Smt. Moortha Appikondamma @ Shyamala v. Kuppli Govinda Rao**^[1] having referred to a catena of decisions, had finally held as under:

“It is evident from the law declared, in the aforesaid judgments, that the appellate tribunal, at the stage of entertaining an appeal and in requiring the appellant-tenant to deposit arrears of rent, would not cause an enquiry into the finding recorded by the Rent Controller that the jural relationship of landlord and tenant exists; the appellate tribunal would depend upon the finding of the Rent Controller that the jural relationship of landlord and tenant exists; before passing an order under Section 11 of the Act, the appellate tribunal need not conduct another full-fledged enquiry into the jural relationship of landlord and tenant; no tenant can prefer an appeal under Section 20 of the Act unless he has paid the landlord, or has deposited in Court, the entire arrears of rent; payment of rent is a condition precedent for entertaining an appeal; section 11 makes it obligatory for the tenant to pay arrears of rent if he chooses to prefer an appeal under Section 20 of the Act; and the appeal itself would not be maintainable, unless and until the tenant pays the arrears of rent, or deposits it into Court.”

In the case on hand, the tenant had not deposited the rents while instituting the Rent Appeal in RASR.no.3140 of 2014. In **Nathmal Sumerimal & Company v. Kunala Purnachandra Rao** [1963 (1) An.W.R 141], **Kunta Hari Rao v. Yelukur Subba Lakshamma** [1966 (1) An.W.R 122], this Court has considered the earlier judgments and had held as follows:

“After considered the earlier judgment in **Nathmal Sumerimal & Co.** this Court in **Kunta Hari Rao** held that it cannot be said that, merely because the relationship of landlord and tenant continues to be in dispute before the appellate court, the appellate Court can never give a direction under Section 11 of the Act; the effect of agreeing with such a contention is that, in all cases where the relationship of landlord and tenant is disputed, Section 11 would at no stage apply, because that relationship would continue to be disputed by the tenant until a final stage is reached under the Act; in such a case, at no stage of the proceedings, either the Rent Controller or the Appellate Authority would be in a position to pass any order under Section 11 of the Act although it is or can be found by the Rent Controller that the jural relationship existed between the parties, and the tenant is in arrears; the whole purpose of Section 11 would thus be defeated; the intention of the legislature is to apply Section 11 not merely to cases where the jural relationship is admitted; it also applies to cases where it is disputed, but on enquiry it is found that the jural relationship of landlord and tenant exists between the parties; the purpose of Section 11 is to minimize the hardship which the Act causes to the landlord; by inserting Section 11 in the Act, the legislature clearly intended to give protection to the tenants provided they paid the rent due to the landlord, and continue to pay till the disputes are settled; Section 11 applies not only to a case where tenancy is admitted, but also to a case where tenancy is disputed; while the appellate Court is competent to give a direction to the tenant to deposit arrears of rent, it was not competent to dismiss the appeal on failure of the tenant to deposit the rent; and, instead, the appellate authority should have given a direction to the tenant to put the landlord in possession under Section 11(4), after stopping all further proceedings.”

7. Reverting to the facts of the case, there is an order of the learned II

Additional Rent Controller against the petitioner/tenant. Though the said order is being sought to be assailed in the unregistered Rent Appeal, the law ordains that such appeal shall not be entertained unless the rental arrears are deposited. The deposit of rental arrears is a condition precedent for entertaining and proceeding with the hearing of the rent appeal (RA). In the case on hand, the petitioner had not paid to the respondent herein or deposited the arrears of rents at the time of institution of the proposed appeal. The law is clear that Section 11 applies to cases where the jural relationship and the arrears of rent are disputed, but, on enquiry, it is found by the learned Rent Controller that the relationship of landlord and tenant exists between the parties and that the tenant is a wilful defaulter in payment of rents. As held in the cited decision, the purpose of Section 11 is to minimize the hardship to the landlord; by inserting Section 11 in the Act, the legislature clearly intended to give protection to the tenants provided they paid the rent due to the landlord, and continue to pay till the disputes are settled; no tenant can prefer an appeal under Section 20 of the Act unless he has paid the landlord or has deposited in Court, the entire arrears of rent; payment of rent is a condition precedent for entertaining an appeal. In view of the facts of the case and the settled legal position, this Court is of the well-considered view that the order impugned does not call for any interference.

8. In the result, the Civil Revision Petition is dismissed. However, the revision petitioner/tenant is granted a time of eight weeks from the date of receipt of a copy of this order to deposit the entire arrears of rent due from August 2010 upto date in respect of the schedule premises. On such deposit, the learned Chief Judge shall direct that the unregistered Appeal shall be registered, if it is otherwise in order. It is made clear that the revision petitioner/tenant shall continue to pay or deposit the rents, which may successively fall due in respect of the schedule premises to the credit of the Rent Appeal until the termination of the proceedings before the learned Appellate Authority.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SEETHARAMA MURTI, J

26th April, 2016
Vjl

[\[1\]](#) C.R.P.No.1692 of 2015 dated 03.07.2015