HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.2237 of 2013 & 4769 of 2016

COMMON ORDER:

1. C.R.P.No.2237 of 2013

1(a). Aggrieved by the order dated 22.04.2013 passed by the Additional Chief Judge, City Small Causes Court, Hyderabad in R.A.No.142 of 2012 along with cross objections, while dismissing both the R.A.No.36 of 2006 and also the cross objections by confirmed the order passed by the Principal Rent Controller, Hyderabad dated 25.06.2012 in R.C.No.158 of 2009 of the landlady, by fixing the fair rent at Rs.7,500/- per month from original agreed rent of Rs.2,000/- per month, present revision is maintained by the unsuccessful tenants against concurrent findings in this regard.

1(b). The contentions in the grounds of the revision vis-à-vis the oral submissions of their counsel are that the Courts below in their concurrent findings erred in appreciating the facts of the case and legal position and arrived an erroneous conclusion in enhancing the rent from Rs.2,000/- to Rs.7,500/- p.m. from the date of fair rent petition and also for the periodical enhancement of 10% for every two years, they ought to have taken into consideration that except Sub Section (1) of Section 4 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short '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

[1] 1997(6) ALT page 436

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 Court took away the statutory protection available to the petitioners-tenants herein by exceeding its pecuniary limits of jurisdiction and thereby the Courts below acted illegally in exercise of their jurisdiction while imposing a condition also of periodical enhancement of rent and also erred in not considering Exs.R1 to R5 which relate to the property tax proceedings of the Greater Hyderabad Municipal Corporation in connection with the schedule premises and hence to set aside the concurrent findings by allowing the revision by reducing fair rent to below Rs.3,500/-, if not chosen for dismissing the fair rent petition in toto.

1(c). On the contrary, the contentions of the revision respondent landlady are that, the orders passed by the Rent Controller and the lower appellate Court, while sitting in revision no way require interfere, but for no cross objections or separate revision of the landlady to enhance for Rs.7,500/- per month is utterly low and hence to dismiss the revision.

2. C.R.P.No.4769 of 2016

2(a). The revision petitioners/defendant Nos.1 and 2 (no other than petitioner Nos.1 and 3 of CRP.No.2237 of 2013 supra) impugning the dismissal order dated 22.09.2016 passed in

I.A.No.139 of 2016 in O.S.No.664 of 2013 by the learned XVIII Additional Senior Civil Judge, City Civil Court, Hyderabad, filed under Section 10 of the Civil Procedure Code(for short, 'the CPC'), for grant of stay of all further proceedings in the suit, pending disposal of the CRP No.2237 of 2013 supra, maintained the revision.

2(b). The grounds of revision vis-à-vis the oral submissions of the learned counsel for the revision petitioners-defendants are that the trial Court failed to see that the orders of the Rent Controller in R.C.No.158 of 2009 confirmed by the Appellate Court in R.A.No.142 of 2012 by order dated 22.04.2013, on which basis the suit for eviction and recovery of rents was filed, though the judgment dated 22.04.2013 in R.A.No.142 of 2012 was suspended by the order dated 22.05.2013 passed by this Court in CRPMP.No.2938 of 2013 in CRP.No.2237 of 2013 pending its disposal and the trial Court should have seen that the petitioners raised a specific plea in their written statement of the civil Court has no jurisdiction for the agreed rent is Rs.2000/- per month and thereby eviction of tenant is only under the provisions of the Act and thereby sought for setting aside the dismissal order by allowing the same by allowing the revision as prayed for.

2(c). On contra, the counsel for the respondent landlady submits that the order of the trial Court holds good and for this Court while sitting in revision there is nothing to interfere and hence to dismiss the revision.

3. At request of both sides, both the revision petitions are taken up together for common disposal. Heard and perused the material on record.

4. As very maintainability of the suit for ejectment with arrears of rent sought in O.S.No.664 of 2013 that was sought for stay pending disposal of the rent appeal (invoking Section 10 of CPC) which is subject matter of CRP.No.4769 of 2016, depends upon the result of the revision against the concurrent findings of the Rent Controller and lower appellate Court in fixing fair rent at Rs.7,500/- per month from Rs.2,000/- per month, which is subject matter of CRP.No.2237 of 2013. The said revision against the fair rent is required to be decided first.

5. The premises in question undisputedly situated at Sultan Bazar, Hyderabad, GHMC limits and it is a commercial shop bearing municipal No.4-4-6/1 of the ground floor admeasuring 10x30 feet and the tenants run a partnership entity in the business of cloth and hosiery and the premises also got at the ground floor a mezzanine floor undisputedly admeasuring 10x20 feet and thereby the total area under use and occupation of the tenant is about 500 square feet. The original rent was of Rs.800/- per month said to have been fixed when the tenancy commenced from October 1987. The right over the property of the landlady though originally claimed from her mother-in-law taken the lease and the landlady now succeeded as her heir not in dispute. The petition schedule property is situated on the main road leading to Kachiguda on one side and Abids and Koti on other side not in dispute even. The

evidence on record further shows from the big commercial complex, hotels, cinema halls, function halls, nursing homes, banks and post office and several business establishments particularly in textiles, readymade garments, jewellery shops and foot wear etc. It is therefrom the landlady claiming monthly rent of Rs.2000/- is utterly low and had it been leased out as per the prevailing rents in the locality it could fetch Rs.30,000/- per month, hence to fix at the same rate. Even from the tenants' counter in opposing the fair rent application is in saying the rent prevailing not exceeding Rs.3,000/- per month in the surroundings of similar area and the mezzanine floor constructed is at their expenses from which the original ground floor height is reduced even erected as temporary wooden loft which may not accommodate any heavy weight much less for storage. It is also admitted that it is 80 feet road abutting which the shop lies however in saying it is under encroachment by hawkers and there is no proper place for parking and there is business competition. It is from these pleadings and evidence on record that was discussed at length by the Rent Controller saying among Exs.P1 to P12 and X1 to X9 with reference to evidence of PWs.1 to 4, Ex.P2 is rental deed proves that the building constructed is of the year 1961 and there are no further amenities to it and market value certificate not filed to say however it is worth about Rs.25,00,000/-. A perusal of Ex.P1 (Ex.P2 sic.) shows the tenant of that premises paying Rs.14,000/- per month though what are the amenities available therein not disclosing, but for to say it is nearby to the schedule property including from Ex.P1-

sketch apart from evidence of PW.3 another tenant of the petitioner of 2 more mulgies, abutting to the petition schedule property), bearing Nos.4-4-5/2 and 6 of 350 square feet paying rent of Rs.20,000/- per month shown by cheques covered by registered lease deed and the evidence of PW.3 considered in saying the rent for schedule property the abutting main road may fetch @ Rs.60/- per square feet. Ex.X1 is the bank statement substantiates the same of Rs.20,000/- per month paying particularly for the months of October, November and December 2011 and the eviction petition is no doubt of the year 2009 to say it is a pendentilite document in appreciation of its evidentiary value and Ex.P3 is the rental deed no doubt substantiating the same of rent is Rs.20,000/- per month. PW.2 died pending his completion of evidence it appears and there remained evidence of PW.4 owner of the premises door No.4-2-297 & 299 showing in RC.Nos.473 and 337 of 2009 fair rent fixed of Rs.14,000/- and Rs.6,875/- per month for the 2 shops respectively covered by certified copies of the orders i.e., Exs.X2 and X3 even there are appeals pending against the same without finality.

6. It is contra to the evidence, from the evidence of respondents covered by Exs.R1 to R5 and RWs.1 to 4. Ex.R1 is the property tax special notice dated 30.08.2011 and Ex.R2 is the objections of the landlady before the MCH dated 12.12.2011, Ex.R3 is the notice on the objections for hearing, Ex.R4 is the demand notice and Ex.R5 is the property tax receipt dated 28.03.2012. The trial Court observed that Ex.P4 nowhere mentioned the

property tax levied is based on rental value and actual rent paying whether taken into consideration or not is apart from the prevailing rental value. So far as RW.2 tenant of Jeevaraksha Gnana Pracharaka Mandali for door No.4-4-290 is for 380 square feet paying Rs.805/- per month a non profit organization let out not basing on market value. It is therefrom held it is of no relevancy to the lis to fix fair rent from market value prevailing. RW.4 evidence rightly rejected by the Courts below for not a signatory to Exs.X7 to X9 nor he could identify whose signatures therein if at all to depose. Once therefrom the Rent Controller by considering all these aspects including from the expressions of the Apex Court in A. Satyanarayan Shah vs M. Yadigiri[2] to say wooden structure is also within the part of the meaning of building and capable of being used for residential as well as non-residential purpose and even taken mezzanine floor wooden structure ignored even for the ground floor with plinth area that can be taken by 300 square feet even at minimum of Rs.25/- per square feet Rs.7,500/- is just rent by dismissing the landlady's cross objections and the tenant appeal, lower appellate Court confirmed the same as the order supported by reasons and no way requires interference while sitting in appeal merely because some other view is possible. Thus against the concurrent findings so far as fixation of fair rent concerned there is nothing to interfere.

7. From this now coming to the contention of the fair rent shall not be exceeded even the application is filed in the year 2009

[2] 2003 (1) ALD 81 (SC)

after amended Section 32 of the Act which is maximum ceiling of application of the Act to building the rental value is Rs.3,500/- per month and once it the statutory limit, the fair rent cannot be exceeded while fixing under the Act beyond the ceiling limit. This contention has no legs to stand even from consideration of the expression of the Apex Court against the larger Bench expression of this Court in Noorunnissa Begum Vs. Brij Kishore Sanghi[3]. What the expression says is that Section 32 of the Act is prospective in operation for some part and retrospective for other part and this Section relates to non-applicability of the Act to a class of buildings and Sections 26 and 32 are in different folds, as Section 26 deals with the power of the State to exempt any buildings or class of buildings from application of the Act and after Section 32 came into force clause (a) of G.O.Ms.No.636 dated 29.12.1983 became redundant only though question of Section 32 overriding Section 26 or vice versa does not arise and so far as clause (b) of G.O.Ms.No.636 issued within the power under Section 26 still holds good and the suits or appeals or revisions or execution petitions pending for determination under general law not affected by amended Section 32 for those continued to be decided in accordance with the general law. This judgment no way say much less any of the judgments apart from there is no provision under the Act of fair rent shall not be fixed beyond the limits of the ceiling under any of the 2 provisions. Why fair rent application to be filed is once the rent below the ceiling limit under the

[3] AIR 2015 SC 2322

provisions supra, fair rent application is maintainable. From Section 4 of the Act to the extent not held unconstitutional, if at all enables the fixation of fair rent the criteria for it as per the settled expressions is that, what is the rent reasonably fetch for similar premises in the locality. The Court is bound to take judicial notice of increase in the value of immovable properties, particularly urbanite and for buildings with commercial utility, so also the rental values as per the expressions of the Apex Court and this Court, in determining the fair rent. Once such is the case the fair rent can be fixed even beyond the ceiling limits under Section 26 and 32 of the Act as what is the rent reasonably that can fetch by date of fair rent application and thereafter with proportionate increase from time to time that is the criteria, that too when once fair rent fixed, no further fair rent application shall lie but for reconstruction or renovation with utility improvements, though not for mere minor alterations. Thus the fair rent as on date of fair rent application fixed of Rs.7,500/- P.M. is just and reasonable, but for to modify the 10% increase for every two years thereafter to 10% increase for every three years. The law is also well-settled and same is reiterated with reference to Sections 4 and 5 of the Act in the expressions of this Court in CRP.Nos.3172 of 2008, 1723 of 2009 and 2014 of 2015 dated 02.09.2016 and also in CRP.Nos.229, 235, 256 and 261 of 2016 dated 24.01.2017.

8. Once such is the case even within the limited scope under Section 22 of the Act on the legality, propriety and correctness of the impugned appellate order, prone to revision including from the

Constitution Bench Expression of the Apex Court in Hindustan Petroleum Corporation Limited Vs. Dilbahar Singh[4] for sitting in revision, but for to say sitting in revision does not mean 2nd re-appreciation as an appellate Court of entire facts of the matter, but for in deciding within the limited scope only by consideration of the relevant facts. Even from such appreciation so far as the quantum concerned what the Court fixed is no way unjust or excessive much less exorbitant but for a real fair rent and once the fair rent of Rs.7,500/- P.M. is reasonable, just and within the competency of the Rent Controller that was also confirmed by the lower appellate court, it no way requires interference much for this Court while sitting in revision against the fixing of fair rent from the date of petition at Rs.7,500/- but for to modify further increase thereon at 10% for every two years to every three years. Once such is the case, the lower appellate Court and also by this Court respectively pending the appeal and the revision suspended the respective orders; in view of the conclusions arrived supra, the revision deserves dismissal on merits upholding the concurrent findings of the Courts below, so far as fair rent of Rs.7,500/- P.M. from date of fair rent petition, but for to modify the further prospective increase of 10% at every two years to at every three years in allowing the revision petition No.2237 of 2013 in part and to dismiss the revision petition No.4769 of 2016 in toto as, for all purposes, when the fair rent fixed traced back from date of filing fair rent case, the civil suit as on the date of filing of the suit,

[4] 2014 (9) SCC 78

which is subsequent to the fair rent case is within the competency of the civil Court also by virtue of the final disposal of the fair rent case by sitting in revision now and thereby there are no grounds to stay the civil suit proceedings much less by invoking Section 10 CPC and that impugned order also no way requires interference therefrom so also from the subsequent event by virtue of the result of the revision petition No.2237 of 2013.

8. Accordingly and in the result, (a) The revision petition No.2237 of 2013 is allowed in part while confirming fair rent fixed at Rs.7,500/- P.M. from date of petition, however, modified the prospective 10% increase at every two years to every three years; (b) the revision petition No.4769 of 2016 is dismissed to toto and (c) there is no order as to costs in both the revisions.

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

Dr. B. SIVA SANKARA RAO, J

Date:27.01.2017
ska