

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.4313 OF 2011

ORDER:

This Civil Revision Petition is filed by the petitioner/appellant under Section 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short 'the Rent Control Act') challenging the judgment dated 05.08.2011 in R.A.No.127 of 2009 passed by the Additional Chief Judge, City Small Causes Court, Hyderabad, confirming the order dated 18.11.2001 in R.C.No.483 of 2009, passed by the Principal Rent Controller-cum-XII Junior Civil Judge, Hyderabad, allowing the petition filed for eviction of the respondent from the schedule premises within one month from the date of order.

2. For convenience sake, the petitioner and the respondent hereinafter will be referred as tenant and landlord respectively.

3. The landlord filed eviction petition alleging that he is the owner of the demised premises admeasuring 180.54 sft. forming part of the premises bearing No.15-8-499, Feelkhana, Hyderabad (for short 'the premises'). The mother of the landlord let out the premises to the tenant in the year 1985 for a period of 11 months. The tenant deposited Rs.10,000/-, which is refundable at the time of vacating the premises. The tenant is carrying on partnership business in the premises under the name and style of M/s Kamal Medical Hall and

General Stores. Even after the death of the mother of the landlord the tenant continued the tenancy, the monthly rent of Rs.2,439/-, exclusive of electricity charges and municipal taxes directly payable to the respective departments. The monthly rent shall be paid on or before 5th of every calendar month, in advance.

4. While the matter stood thus, as the tenant committed willful default in payment of rent and despite legal proceedings in the earlier round the tenant did not vacate the premises, the landlord filed a petition for fixation of fair rent under Section 4 of the Rent Control Act.

5. The landlord is in urgent need of premises for his personal occupation i.e., to start and locate the advocate office by his son Abisekh, who has completed his Law Degree and that the schedule premises is suitable for his son's occupation. Despite the requests made by the landlord, the tenant did not vacate the premises. It is further contended that the landlord did not possess any other suitable premises to carry on his son's advocate profession and prayed to order eviction of the tenant, who is in occupation of the premises.

6. The tenant filed counter admitting jural relationship of landlord and tenant, his induction as a tenant and also deposit of Rs.10,000/-, while denying willful default alleged against him. It is also contended that late Smt.Jamuna Bai filed eviction petition on the ground of additional accommodation of

her son Mr Shyam Sunder in R.C.No.1296 of 1987 before the II Additional Rent Controller, Hyderabad, and she died during pendency of the said R.C. and subsequently, the landlord and his brother were impleaded as the parties being landlords in that R.C. and thus, they became joint owners. Subsequently, R.C.No.1296 of 1987 was allowed on 30.12.1981 and the appeal in R.A.No.125 of 1992 preferred by the tenant was allowed setting aside the order dated 30.12.1981 passed by the Rent Controller. Aggrieved by the same, the landlords therein preferred C.R.P.No.2019 of 1993 and the same was dismissed, confirming the order passed by the lower appellate Court, dismissing the petition filed for eviction of the tenant.

7. After dismissal of C.R.P.No.2019 of 1993, the respondent/landlord and his brother filed R.C.No.589 of 1997 before the II Additional Rent Controller, Hyderabad on the grounds of personal occupation for additional occupation of his brother's business and for willful default in payment of rent. The said Rent Control case was dismissed on 20.11.1998. Aggrieved by the same, R.A.No.378 of 1998 was preferred, but the same was also dismissed on 19.07.2004. Therefore, the requirement of the landlord is not bonafide and that the landlord is in the habit of filing petitions one after the other somehow to evict the tenant from the schedule premises.

8. The tenant further contended that R.C.No.78 of 2002 filed by the landlord and his brother for fixation of fair rent at

Rs.5,000/- per month was allowed fixing fair rent at Rs.4,000/- per month. Aggrieved by the same, the tenant preferred R.A.No.137 of 2004 and that landlord and his brother preferred R.A.No.309 of 2004. The appeal preferred by the landlord was dismissed and the appeal preferred by the tenant was partly allowed fixing fair rent at Rs.2439/- per month and that he is paying the said rent regularly.

9. It is further contended that the requirement of the premises by the landlord for his son's occupation to run advocate office is not bonafide; that the landlord and his brother are in possession of four mulgies and recently one tenant of such mulgi vacated the mulgi in the ground floor and shifted his office to the second floor; that the landlord, being a Chartered Accountant, has set up his office in the second floor on vacating the mulgi in the ground floor. Thus, the ground floor mulgi is vacant and in possession of the landlord, whereas the landlord is not residing in the said house and shifted to Esamia Bazar, Hyderabad. As the landlord is in occupation of one mulgi and other mulgi is found vacant, his requirement is not bonafide and prayed for dismissal of the eviction petition.

10. During enquiry, on behalf of the landlord, PWs.1 and 2 were examined and marked Ex.P.1-rough plan; on behalf of the tenant RW.1 was examined and marked Ex.R.1-certified copy of judgment in R.A.No.378 of 1998.

11. Upon hearing argument of both counsel, the Rent Controller by order dated 18.11.2001 allowed R.C.No.483 of 2009 with costs directing the tenant to vacate the premises within one month from the date of order on the ground of bonafide requirement.

12. Aggrieved by the eviction order dated 18.11.2001 passed by the Rent Controller, the tenant preferred appeal in R.A.No.127 of 2009 before the Additional Chief Judge, City Small Causes Court, Hyderabad, which was ended in dismissal on 05.08.2011, confirming the eviction order passed by the Rent Controller.

13. Aggrieved by the same, the present revision petition is filed by the tenant on various grounds, mainly contending that the landlord secured alternative premises for occupation of his son to carry on his advocate profession. But the said ground was not considered by the Rent Controller and the appellate Court in proper perspective. It is also contended that when the landlord is in occupation of other premises, his son can occupy the other mulgi for carrying on his advocate profession. But, both the Courts below did not consider the same in proper perspective and committed error in dismissing the appeal while confirming the eviction order passed by the Rent Controller.

14. During pendency of this Revision Petition, the tenant filed C.R.P.M.P.No.650 of 2015 under Order XXVI Rule 9 read

with Section 151 of C.P.C., to appoint an Advocate Commissioner, which was dismissed by order dated 02.06.2017.

15. Learned counsel for the tenant would contend that the landlord is only a co-owner along with his brother and without impleading his brother as a party to the eviction proceedings the eviction of the tenant cannot be maintained and apart from that the landlord did not occupy the other premises, which fell vacant during pendency of the proceedings, which is subject matter of R.C.No.483 of 2008 on the file of Principal Rent Controller, Hyderabad, but he did not occupy the premises despite its availability. In the absence of any inconvenience to occupy the other premises, the landlord is not entitled to claim eviction of the tenant and prayed for dismissal of R.C.No.483 of 2008 and R.A.No.127 of 2009 by allowing civil revision petition, exercising power under Section 22 of the Rent Control Act.

16. On the other hand, learned counsel for the landlord mainly contended that a co-owner can maintain a Rent Control Petition without impleading the other co-owner when his requirement is bonafide or on any other ground and relied on judgment of this Court in **P.Kanti and others v Boddu Paidanna @ Rambabu**¹. He further contended that the other premises is not convenient for his son's occupation to carry on

¹ 1999(4) ALD 318

his advocate office, who completed his Law Degree. On the strength of the law declared by the Apex Court and this Court, he contended that the trial Court and appellate Court found that the requirement of the landlord is bonafide and this Court cannot exercise its power under Section 22 of the Rent Control Act to interfere with the finding recorded by the Rent Controller and affirmed by the appellate Court, unless there is illegality in appreciation of evidence or any law. Therefore, prayed for dismissal of the revision petition confirming the order passed by the Rent Controller and Appellate Court.

17. Considering the rival contentions of both sides, the following points arise for consideration:

- 1) Whether a co-owner can maintain an application without impleading the other co-owner as a party to evict the tenant in occupation of premises?
- 2) Whether the requirement of the premises by the landlord for occupation of his son to carry on advocate profession is bonafide?

18. The jurisdiction under Section 22 of the Act is limited and this Court is not entitled to interfere with findings of fact recorded, concurrently by both the authorities under the Act. This Court can examine and decide whether both the Courts recorded the findings in accordance with law, finding of fact recorded by the Courts below is perverse, this Court can interfere otherwise, not vide **Hindustan Petroleum**

Corporation v Dhillbahar Singh², keeping in view the points are decided hereunder.

POINT No.1:

19. The first and foremost contention raised before this Court is that the landlord, being a co-owner, is not entitled to claim eviction of tenant in occupation without impleading the other co-owner. There is no dispute regarding ownership of the property, every co-owner has got a right in every inch of the property and can maintain eviction petition without impleading the other co-owner, when there is no conflict of interest between them. Therefore, on the ground of non joinder of other co-owner, as a party to the Rent Control Petition, can be maintained for eviction of a tenant in view of law declared by the Apex Court in case like **M/s Karta Ram Rameshwar Dass v Ram Bilas and others**³. Apart from that the maintainability shall not be challenged before the Rent Controller or in the Appellate Court on the ground of non joinder of other co-owner as a party to the petition. The pleading was not amended suitably by the landlord even after he came to know about the failure to implead the other co-owner. Pleading is the foundation to claim any right in the proceedings or defect in any claim made by the other, adversely. In the absence of pleading, such contention cannot be entertained in revision petition filed under Section 22 of the Rent Control Act.

² AIR 2014 SC 3708

³ (2006)1 SCC 125

However, the law declared by the Apex Court and this Court in **P.Kanti and others** (1st referred supra) is against the contention raised by the tenant before this Court. Hence, I find no substance in the contention raised by the learned counsel for the tenant. Accordingly, this point is answered in favour of the landlord and against the tenant.

POINT No.2:

20. Undisputedly, the landlord is the co-owner along with his brother. The schedule premises is the convenient premises to carry on advocate profession by his son, who completed his law degree. It is for the landlord to choose a convenient premises for the occupation of his son's profession and the tenant cannot dictate the terms to the landlord to occupy a particular premises. When the landlord sought eviction of the tenant on the ground of bonafide requirement for personal occupation, at best, the comparative hardship is the only ground available to the tenant in occupation. But, no such plea was raised and that too, the tenant is carrying on medical business since long time and whereas the son of the landlord completed law decree recently, and intend to commence legal profession in the schedule premises. Therefore, it is an undisputed fact that the son of the landlord completed his Law Degree and, in such a case, the landlord can seek eviction in the absence of any malafides to evict the tenant in occupation. It is an undisputed fact that the landlord filed eviction petition

earlier on various grounds and the petition for fixation of fair rent also, which attained finality before this Court in revision. In such a situation, earlier proceedings became totally irrelevant as the ground urged in the earlier petition was totally distinct from the ground urged in the present petition. In the earlier round of litigation, the landlords sought eviction of the tenant on the ground of bonafide requirement for one of his brother. In the present petition, the requirement is for his son's occupation to carry on his advocate profession, who completed Degree in Law. Therefore, based on earlier proceedings, the eviction of the tenant cannot be denied.

21. It is an undisputed fact that the other premises, which fell vacant during pendency of the proceedings vide order in Rent Control case and affirmed in appeal, is more convenient. But that is not a ground to deny eviction of the tenant in the absence of any specific amendment to the counter in Rent Control petition. Therefore, in the absence of any pleading based on subsequent events, this Court cannot deny the eviction order passed by the Rent Controller and as affirmed by the appellate Court in view of the limited jurisdiction of this Court under Section 22 of the Rent Control Act as held by this Court in **Shanthi Tarachand v C.S.Narasimha Rao and others**⁴ and **Hindusthan Petroleum Corporation** referred supra. This Court, while exercising power under Section 22 of the Act, cannot arrogate itself as an appellate authority and

⁴ 2000(4) ALD 578

cannot go into the questions of fact already decided by the lower Court.

22. Learned counsel for the landlord contended that in the absence of any malafides, requirement of premises by a practicing lawyer to run his office is bonafide requirement and placed reliance in **M/s Chennawar and Company and others v R.Madhusudhan Rao**⁵, wherein, the Apex Court at para 9 held as follows:

“Admittedly the respondent is an advocate with a standing of more than 20 years at the bar. In the counter filed on behalf of the tenants to the eviction petition, it is categorically admitted that the landlord is a well established advocate with a good reputation. The rented premises in which he is presently running his office is a small room located on the mezzanine floor of the building in which it is not possible to have been a ceiling fan fixed. The available accommodation is very much limited and it is hardly sufficient to keep the office furniture and the library. The Court can certainly take judicial notice of the fact that an advocate with a standing of 20 years will normally have a working library with sufficient number of books if not a huge library. Naturally an advocate needs sufficient accommodation to run his office properly.”

23. Similarly in **S.K.Sharma v A.Viswanath**⁶, this Court at para 11 held that, when the landlord by examining himself as a witness before the Court asserted that the requirement is bonafide, in the absence of proof that the witness secured alternative suitable premises for occupation to run Advocate and Tax Consultant practice, the eviction cannot be denied.

⁵ AIR 2000AP 32

⁶ 2006(3) ALT 478

The facts of that case are that the requirement of landlord is that his son is practicing as an advocate and tax consultant in Hyderabad for the last 10 years and requires the premises for his bonafide occupation of the premises which is in the occupation of tenant. However, the requirement is substantiated by oral evidence and confirmed the order passed by the Rent Controller and appellate authority. The facts of the above two cases are almost identical of the facts OF the present case.

24. Though, learned counsel for the tenant contended that on account of subsequent events i.e., obtaining possession of the other premises and letting out the same to the other tenant disentitles the landlord to claim eviction of the tenant in occupation of the schedule premises as there are no bonafides in his claim, learned counsel for the landlord would contend that the premises, which fell vacant during the pendency of the proceedings is not suitable and convenient for running the advocate profession on account of its location and other surroundings and consequently the Court cannot deny the eviction of the tenant and in support of his contention, he placed reliance in **Boorgu Jagadeshwaraiah and sons v Pushpa Trading Co.**⁷, wherein the Apex Court, at para 8 held that:

“8. The aspects of quality, size and suitability of the building have been totally put out of consideration. We

⁷ (1998)5 SCC 572

think this would frustrate the purposes of the Act. Here was a claim set up by the landlord that the non-residential premises he owned did not serve the purpose of his need of setting up a textile and cloth business and that the need could only be met in seeking eviction of the tenant from the premises sought. As we view it there is no difficulty in D. Devaji Case (Supra) standing in the way of the landlord-appellant to have the issue examined from the point of view which would carry out the purposes of the Act. We refrain from mentioning any facts on the basis of which the landlord's claim is based lest the manner they are recounted cause prejudice to either of the parties."

25. In the aforesaid case, the Apex Court affirmed the eviction order on the ground that the premises in occupation of the tenant alone made good the requirement of the landlord for his business and availability of the other premises is not a ground to decline eviction of a tenant in occupation.

26. Learned counsel for the tenant raised a specific contention that the premises is available for occupation of the landlord for his son's advocate profession and he failed to bring on record any material and on the other hand, he filed an application under Order 26 Rule 9 of C.P.C., to appoint an Advocate Commissioner to inspect the premises bearing No.5-8-499, which was dismissed by this Court on the ground that the premises sought to be inspected by the Commissioner is not the subject matter of the Rent Control proceedings and it attained finality, consequently, the eviction petition cannot be dismissed on that ground.

27. On oral consideration of the material available on record, the landlord is not in occupation of any other suitable premises for carrying on legal profession by his son. In such a case, the eviction of the tenant cannot be denied and that as per the findings recorded by the Rent Controller and the appellate Court and also in view of the limited jurisdiction conferred under Section 22 of the Act, this Court cannot reappraise the entire evidence, unless, the Rent Controller or appellate Court failed to appreciate the evidence in proper perspective in flagrant violation of the principles of appreciation of evidence or the findings are perverse. But this Court find no such failure either by the Rent Controller or by the appellate Court in appreciation of evidence in arriving at such concurrent findings of fact by both the Courts. Therefore, this Court find no ground warranting interference by this Court, while exercising power under Section 22 of the Rent Control Act either to reverse or set aside the order under challenge. Consequently, the revision petition is devoid of merits and liable to be dismissed.

28. In the result, the Civil Revision Petition is dismissed, confirming the concurrent findings recorded by the Rent Controller and the appellate Court, on facts and law. The petitioner/tenant is directed to deliver vacant possession of the schedule premises to the respondent/landlord within three

months from the date of receipt of a copy of this order. There shall be no order as to costs.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

19.06.2017
kvrn

