

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1219 of 2017

ORDER:

This Civil Revision Petition, under Section 22 of AP Buildings (Lease, Rent and Eviction) Control Act, is filed by the petitioner challenging the Judgment, dated 23.12.2016, passed in R.A.No.230 of 2012 by the Chief Judge, City Small Causes Court, Hyderabad, whereby, the lower appellate Court, while reversing the findings in the Order, dated 02.11.2012, passed in R.C.No.326 of 2008 by the I Additional Rent Controller, Hyderabad, directed the petitioner herein to vacate and handover vacant possession of the petition schedule premises to the respondent herein, within four months from the date of the said judgment.

The revision petitioner herein is the tenant and the respondent herein is the landlady and they will be hereinafter referred to as petitioner and respondent for the sake of convenience.

Initially, the respondent/landlady filed a petition before the trial Court under Section 10(2)(i), 10(2)(v) and 10(3)(c) of The A.P.Buildings (Lease, Rent and Eviction) Control Act, 1960, (for short 'Rent Control Act'), alleging that she is the absolute owner of Mulgi bearing No. 13-6-740 situated at Karvansahoo, Hyderabad, and the petitioner

is the tenant of the said Mulgi for the last twenty years, on a monthly rent of Rs.1,300/- as on the date of filing of the petition. The respondent/landlady let out the premises for business purpose of the petitioner/tenant and, accordingly, the petitioner/tenant is carrying on cloth business in the said premises in the name and style of 'B. Chendrasekhar Cloth Merchant'. As per the oral tenancy, the petitioner/tenant has to pay rent every month regularly, but he is always irregular in payment of rent, and as on the date of filing eviction petition, the petitioner herein became due in a sum of Rs.2,600/- towards arrears of rent for the months of June and July, 2008 and deliberately evaded payment of rent for the two months in spite of repeated demands, and such an act of the petitioner would amount to willful default, and sought for eviction of the petitioner from the petition schedule premises on the ground of willful default.

The respondent/landlady further contended that there is a mulgi belonging to her in the same house bearing the same house number and that in the said mulgi, her husband is carrying on cloth business in the name and style of 'Sree Prabhakar Handloom Texttiles' proprietary concern and that the said mulgi is not at all sufficient for carrying on cloth business by her husband and that her youngest son S. Venkatesh, who completed B.Tech., who is unemployed,

joined in the business of his father to assist him, with a view to expand the cloth business. Thus, the petition schedule premises, which is adjacent to the mulgi in which her husband carrying on business, is suitable for expansion of cloth business being carried on by her husband and the said premises is required as additional accommodation to expand the subsisting cloth business and therefore, she sought for eviction of the petitioner from the petition schedule premises on that ground also.

The respondent/landlady further contended that the petitioner/tenant secured suitable alternative accommodation, i.e., the premises bearing No.13-6-750/A situated at Karwanshahoo, Hyderabad, the said mulgi is vacant and the petitioner/tenant can carry on business in the said mulgi as the petitioner/tenant secured alternative accommodation for carrying on his cloth business, she sought eviction of the petitioner/tenant from the schedule premises on that ground also.

She further contended that the petitioner/tenant further secured the premises bearing No.13-4-762 situated at Karwansahoo, Hyderabad, which is quite opposite to the petition schedule premises and he can carry on his cloth business there also. Thus, the respondent/landlady sought

eviction of the petitioner herein from the petition schedule premises on the three grounds stated supra.

The petitioner/tenant filed Counter denying the material allegations while contending that he obtained the petition schedule premises on lease from the respondent/landlady about 30 years ago, initially on a monthly rent of Rs.200/-, which is enhanced from time to time to Rs.1300/- per month as on the date of filing of the petition. The respondent/landlady had undertaken alterations and repairs to the schedule premises and the respondent/landlady orally agreed not to insist the petitioner/tenant to vacate him from the petition schedule premises as long as he is carrying on business in the said premises. Basing on the said oral promise, he continued in possession and enjoyment of the petition schedule premises as a tenant for the last 30 years, having obtained necessary permission to carry on the business from the concerned authorities and is carrying on the cloth business in the said premises by paying the monthly rent regularly to the respondent/land lady.

The petitioner further contended that requirement of the petition schedule premises by the husband of the respondent/landlady as additional accommodation is not true and that the petitioner/tenant is having no other

source of income for his livelihood and if, for any reason, he is evicted from the petition schedule premises, he would be put to inconvenience, as he already incurred huge financial loss in the business. He further contended that he has not secured any alternative premises to carry on the business, and thus prayed for dismissal of the petition.

During enquiry, on behalf of petitioner/tenant, PWs 1 to 3 were examined and Ex.P.1 was marked. On behalf of the respondent/landlady, RWs 1 and 2 were examined and Exs.R.1 to R.10 were marked.

Upon hearing both the counsel, the Rent Controller dismissed the petition without costs, disbelieving all the three grounds raised by the respondent/landlady.

Aggrieved by the Order, dated 02.12.2012, passed in R.C. No.326 of 2008, by the Rent Controller, the respondent/landlady preferred an appeal in R.C.No.230 of 2012 on the file of the Chief Judge, City Small Causes Court, Hyderabad, which was allowed by the lower appellate Court by reversing the findings recorded by the Rent Controller and directing the petitioner/tenant to vacate and deliver vacant possession of the petition schedule premises to the respondent/landlady within four months from the date of the said judgment.

Aggrieved by the eviction Order passed by the lower Appellate Court in R.A.No.230 of 2012, the present Revision Petition is filed by the petitioner/tenant on various grounds, mainly contending that the willful default in payment of rent, which is upheld by the lower Appellate Court, is not in accordance with law, since the respondent/landlady pleaded that the petitioner herein was only irregular in payment of rent, but did not adduce any evidence to prove that the petitioner had willfully defaulted payment of rent. The observation of the lower appellate Court that requirement of the petition schedule premises as additional accommodation to the husband of the respondent/landlady in order to expand the cloth business with the assistance of his son is not based on any material. Similarly, the contention that the petitioner/tenant had secured alternative accommodation to carry on his cloth business is incorrect, but the lower appellate Court, without assigning satisfactory reasons, overturned the findings recorded by the Rent Controller and, accordingly, prayed to allow the revision petition by setting aside the judgment, dated 23.12.2016, passed by the lower appellate Court in R.A.No.230 of 2012 restoring the Order, dated 02.11.2012, passed in RC No.326 of 2008 by the I Additional Rent Controller, Hyderabad.

During hearing, Sri J.U.M.V.Prasad, learned counsel for the revision petitioner/tenant contended that the findings recorded by the Rent Controller regarding willful default in payment of rent is contrary to the pleadings in the eviction petition, since the respondent/landlady herself pleaded that the petitioner/tenant is not a defaulter but was only irregular in payment of rent and that apart, the evidence brought on record is also inconsistent with the contention of willful default in payment of rent. Similarly, there are no *bona fides* in the contention that the petition schedule premises is required as additional accommodation for expansion of cloth business being carried on by the husband of the respondent/landlady with the assistance of her son, and in the absence of any *bona fides* in the said contention, the lower Appellate Court ought not to have recorded a finding that the requirement of the petition schedule premises as additional accommodation to the husband of the respondent is *bona fide*. Similarly, the finding recorded by the lower appellate Court that the petitioner secured alternative accommodation is also not based on any material and that without assigning any cogent reasons, the lower appellate Court reversed the findings of the Rent Controller, and prayed to set aside the judgment in R.A.No.230 of 2012 and restore the Order in R.C.No.326 of 2008.

Per contra, learned counsel for respondent supported the findings recorded by the lower appellate Court while requesting to ignore Order passed by the Rent Controller and requested to affirm the Order passed by the lower appellate Court by dismissing the revision petition.

Considering rival contentions and perusing the material available on record, the points that arise for consideration are:

- 1) *Whether the petitioner/tenant committed willful default in payment of the rent for two months i.e., June, 2008 and July, 2008 @ Rs.1300/- per month?*
- 2) *Whether the petitioner/tenant secured any alternative accommodation and, if so, whether he is liable for eviction from the petition schedule premises?*
- 3) *Whether the requirement of the petition schedule premises as additional accommodation by the respondent/landlady for expansion of cloth business being carried on by her husband is bona fide, if so, whether the petitioner/tenant is liable to be evicted under Section 10(3) (c) of Rent Control Act?*

Before deciding the issues, I would like to examine the scope of Section 22 of the Rent Control Act. Section 22 of the Rent Control deals with the powers of revision of this Court. According to Section 22, the High Court may, at any time, on the application of any aggrieved party, call for and examine the records relating to any order passed or proceedings taken under this Act by such authority for the

purpose of satisfying itself as to the legality, regularity or propriety of such order or proceedings and may pass such order in reference thereto as it thinks fit.

Therefore, this Court, at best, can examine the legality, regularity and propriety of the Order, but not otherwise.

The Constitutional Bench of the Apex Court, in *Hindustan Petroleum Corporation Limited v Dilbahar Singh*¹, discussed about the scope of the Revision under the Rent Control Acts of Haryana, Kerala and Tamil Nadu. But, the provisions of the said Act of Tamil Nadu State are in Pary Materia with the provisions of Andhra Pradesh Act. The Apex Court concluded as follows: -

“...The appellate authority can re-appraise or re-assess the evidence for coming to a different finding on facts. Revisional Power is not and cannot be equated with the power of reconsideration of all questions of fact as a Court of first appeal. Where the High Court is required to be satisfied with the decision in accordance with the law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity. Conceptually, Revisional jurisdiction is a part of appellate jurisdiction, but it is not vice-versa. Both appellate jurisdiction and Revisional jurisdiction are creatures of statutes. No party to the proceeding has an inherent right of appeal or revision. An appeal is continuation of a suit or original proceeding, as the case may be. The power of the appellate Court is co-extensive with that of the trial Court. Ordinarily, appellate jurisdiction involves re-hearing on facts and law but such jurisdiction may be limited by the statute itself that provides for appellate jurisdiction. On the other hand, revisional jurisdiction, though, is a part of appellate jurisdiction but ordinarily it cannot be equated with that of a full fledged appeal. In other words, revision is not a continuation of suit or of

¹ AIR 2014 SC 3708

original proceeding. When the aid of revisional Court is invoked on the revisional side, it can interfere within the permissible parameters provided in the statute. It goes without saying that if a revision is provided against an Order passed by the Tribunal/appellate authority, the decision of the revisional Court is the operative decision in law. As regards the extent of appellate or revisional jurisdiction, much would, however, depend on the language employed by the statute conferring appellate jurisdiction and revisional jurisdiction. The ordinary meaning of the word 'legality' is lawfulness. It refers to strict adherence to law, prescription, or doctrine; the quality of being legal. The term 'propriety' means fitness; appropriateness, aptitude; suitability; appropriateness to the circumstances or condition in conformity with requirement; rules or principle, rightness, correctness, justness, accuracy. The terms 'correctness' and 'propriety' ordinarily convey the same meaning, that is, something which is legal and proper. In its ordinary meaning and substance, 'correctness' is compounded of 'legality' and 'propriety' and that which is legal and proper is 'correct'. The expression "regularity" with reference to an order ordinarily relates to the procedure being followed in accord with the principles of natural justice and fair play.

The above principle is reiterated by the Apex Court in *Smt. Kasthuri Radhakrishnan and Others V. M. Chinniyan and Others*²

In view of law declared by Apex Court, it is clear that this Court can exercise Revisional power under Section 22 of the Rent Control Act, only to decide legality, proprietary and regularity, but cannot interfere with the fact findings recorded by the lower appellate Court.

Keeping in mind, the above principles laid down by the Apex Court, now let me proceed to decide the issues.

POINT NO.1: The first ground urged before this Court is that the petitioner/tenant committed wilful default in

² AIR 2016 SC 609

payment of rent for two months i.e., for the months of June and July, 2008 @ 1300/- per month, curiously, in the petition itself, the respondent/landlady pleaded that the petitioner/tenant was only irregular in payment of the rent. Thus, the judicial admission in the pleadings of the respondent/landlady would clearly show that the petitioner/tenant was not a wilful defaulter but is only irregular in paying rent. However, the respondent/landlady accepted such irregular payment without any demur. Therefore, non-payment of rent for the months of June and July, 2008 by the date of filing of the petition in the month of August, 2008, cannot be construed as wilful default, since the petitioner/tenant is in the habit of paying rent at irregular intervals and the respondent/landlady was accepting the same without any demur.

Though the term 'wilful default' is not defined anywhere in the Rent Control Act, but, 'wilful default' can be termed as 'a deliberate, conscious and culpable avoidance to pay rent despite objection'. In the present case, the tenancy is oral and it is monthly tenancy. At best, the tenant is required to pay or tender rent every month before the end of succeeding month. But here, the pleadings in the petition are clear that the petitioner/tenant was in the habit of payment of rent at irregular intervals and in fact never paid in time. In such a case, the

contention of wilful default is not based on any material and cannot be accepted. Even the evidence adduced is contrary to the pleading in the petition. The Rent Controller disbelieved the ground of wilful default, but the Appellate Court reversed the finding on the ground of non-payment of rent not only for two months but also for the subsequent periods. The Rent Controller recorded a finding that PW.1 admitted that the petitioner/tenant is a defaulter in payment of rent and committed default in payment of rent for the month of June and July, 2008 and was irregular in payment of rent. But, it has to be seen that the respondent/landlady admitted that she was not in the habit of collecting rent personally but her husband or her son used to collect rent from the petitioner/tenant. Thus, the practice prevailing, as admitted by PW.1, is that the respondent's/land lady's husband or her son used to go to the petition schedule premises and collect rent from the petitioner/tenant in occupation. The respondent/landlady also admitted that except for two months, the entire rent was paid. PW.2 is the husband of PW.1, he admitted that the petitioner/tenant never committed default in payment of rent, but used to pay the rent at irregular intervals and even used to pay two months rent at once. These evidentiary admissions, clinches the issue of wilful default. If the evidence of PW.2, who was collecting rent on behalf

of respondent/landlady is accepted, the default allegedly committed by the petitioner/tenant herein does not amount to wilful default, consequently, it is not a ground to evict him for the that there was a practice of collecting rent once in two months, as admitted by PW.2; and, such delay in payment of rent or collection of amount at irregular intervals would not amount to wilful default, since it is not deliberate. But the lower appellate Court, on wrong appreciation of evidence without touching the evidentiary admissions, erroneously concluded that the petitioner/tenant committed wilful default in payment of the rent. Therefore, the finding recorded by the lower appellate Court on wilful default is hereby set aside while restoring the finding of the Rent Controller on the aspect of wilful default. Accordingly, the Point is answered in favour of the petitioner/tenant and against the respondent/landlady.

POINT NO.2: The second contention of the respondent/landlady is that the petitioner/tenant owns a double storied building with a mulgi and also secured another premises opposite to the petition schedule premises to carry on his business. PW.1 testified about securing alternative accommodation by the tenant. However, RW.1 admitted that he is not carrying on any other business except in the petition schedule premises and did not own and possess any house. PWs 1 and 2 testified

that the petitioner/tenant secured alternative accommodation to carry on business and if the petitioner/tenant is evicted, it will not cause any hardship to him. The Rent Controller found some inconsistency in the evidence of PWs. 1 and 2, declined to order eviction on the ground of securing alternative accommodation. But, as seen from the judgment of the lower appellate Court, the petitioner/tenant secured a premises just opposite to the schedule premises, which is vacant. But, none of the parties, including the petitioner/tenant, have stated anything before this Court about suitability or otherwise of the mulgi secured by the petitioner/tenant just opposite to the petition schedule premises bearing No.13-4-762.

More curiously, the respondent/landlady admitted in her cross examination that the petitioner/tenant obtained the Mulgi just opposite to the petition schedule premises, but, he had vacated the mulgi in the year 2009 at the request of the owner. But, admittedly, the R.C. was filed in the year 2008 and thus, by the date of filing of the R.C., the petitioner/tenant is in possession of alternative mulgi bearing No.13-4-762, which he has vacated in the year 2009 at the request of the owner of the said mulgi, as admitted by RW 2. This admission is suffice to hold that the petitioner/tenant secured alternative accommodation to carry on his business which he is carrying on in the petition

schedule premises. The Rent Controller, though discussed the evidence, did not consider the crucial admission of Pw.1, Rw.2 in the cross examination. Therefore, the lower appellate Court, advertent to the judicial admissions in the cross examination of P.W.1 and Rw.2, rightly concluded that the petitioner herein secured alternative accommodation, which is a ground to evict him from the petition schedule premises. Therefore, the judgment of the lower appellate Court ordering eviction on the ground that the petitioner/tenant secured alternative accommodation, cannot be overturned. Therefore, I find no illegality in the Order passed by the lower appellate Court in ordering eviction of the tenant, who secured alternative accommodation, as held by this Court in *Guntuboyina Krishna and others v. Vangapandu Balaram*³. Accordingly, the point is answered in favour of the respondent/landlady and against the petitioner/tenant.

POINT NO.3: The third ground raised before the Rent Controller and the lower appellate Court is that the husband of the respondent/landlady is carrying on cloth business in the adjacent mulgi in the same building and her son, after completion of his graduation in engineering, who is unemployed, joined in the business, assisting his father in

³ 2006 (6) ALT 814

the business and they proposed to expand their cloth business. Undisputedly, both the mulgies are adjacent to one another. But, the petitioner/tenant resisted the claim on the ground that there are two mulgies behind the mulgi occupied by the husband of the respondent which were let out to government hospital. The schedule premises is facing towards road, whereas the other two rooms are behind the mulgi, which are in occupation of the husband of the landlady, are in the rear portion of the building. The business being carried on by the husband of the respondent is cloth business and unless it is exposed to the public, it is difficult for him to carry on such business. Hence, the availability of space in the rear portion of the building is not a ground to deny eviction of the tenant on the ground of additional accommodation and it is for the respondent/landlady to choose the convenience and suitability of the premises and the tenant cannot dictate the terms to the landlady or landlord to occupy a particular premises for his business. The Appellate Court adverted to the law declared by this Court reported in *Gurrampadi Annamma Raja v. Pathakamoori Malyadri*⁴, *Singareni Collieries Co.Cooperative House Building Society Limited v. P. Yellaiah*⁵, *Garipalli Rajasree v.*

⁴ 2011(3) ALT 5

⁵ 2012(2) ALLD (NOC 21)

*Kondapuram Mallesha and brothers and other*⁶ and the Apex Court in *Gangaram v. N. Shankar Reddy*⁷ and concluded that the requirement of the petition schedule premises by the respondent/landlady is *bona fide* i.e., for additional accommodation for expansion of the business being undisputedly run by her husband and on account of joining of her son in the business who completed his degree in engineering and unemployed. Nothing has been shown that the requirement of the petition schedule premises by the respondent/landlady is not *bona fide* and the hardship being caused to the petitioner/tenant would outweigh the hardship being caused to the respondent/landlady in case of ordering eviction. However, the alleged eviction had taken place during pendency of the eviction proceedings. Therefore, I find no ground to reverse the findings recorded by the lower appellate Court regarding the respondent's *bona fide* requirement of the petition schedule premises as additional accommodation for expansion of cloth business.

On overall consideration of the entire material available on record, keeping in mind the scope of the Revision under Section 22 of the Rent Control Act, I am not inclined to interfere with the findings recorded by the lower appellate Court ordering eviction on two grounds, i.e.,

⁶ 2008(5) ALD 46

⁷ AIR 1989 SC 302

securing alternative accommodation and *bona fide* requirement i.e., additional accommodation for expansion of the business by the husband of the respondent/landlady under Section 10(III)(3) of Rent Control Act. Therefore, I find that the Revision is devoid of merit and the eviction order passed by the lower appellate Court is hereby confirmed on two grounds stated above. Consequently, this Revision is liable to be dismissed.

Accordingly, this Civil Revision Petition is dismissed. The revision petitioner herein/tenant is directed to vacate and deliver the vacant possession of the petition schedule premises to the respondent/landlady within a period of four (04) months from today. In the event of failure on the part of the petitioner/tenant to vacate and deliver vacant possession of the petition schedule premises, the respondent/landlady is at liberty to execute the decree through process of Court and obtain possession. No costs.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

03rd July, 2017
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M. SATYANARAYANA MURTHY, J



HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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Dt. 03-07-2017

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