

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

CIVIL REVISION PETITION No.3677 OF 2016

O R D E R:

This revision has been filed by petitioner challenging the order and decree dated 30.11.2013 passed in RCC No.5 of 2009 on the file of Rent Controller-cum-Principal Junior Civil Judge, Tenali.

2. The brief facts of the case are that the respondents herein filed a petition in RCC No.5 of 2009 against the petitioner herein under Section 10 (2)(i)(ii)(b) and Section 3(a)(i)(a) of A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 for eviction of the petitioner from the schedule premises and to deliver the vacant possession to the respondents with costs. The said petition was allowed with costs by directing the petitioner to vacate the schedule premises within two months from the date of the order. Failing which, the respondents are at liberty to evict the petitioner as per law contemplated. The advocate fee also fixed at Rs.2,000/-.

3. However, the respondents preferred RCA No.2 of 2014 filed under Section 20 of A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 against the order and decree dated 30.11.2013 passed in RCC No.5 of 2009 by the Rent controller-cum-Principal Junior Civil Judge, Tenali, to set aside the findings dated 30.11.2013 in RCC No.5 of 2009 in respect of (a) willful default aspect; (b) towards costs. The said RCC was allowed directing the petitioner to vacate the schedule premises within two months from the date of the order on the ground of willful default in payment of rent.

4. Being aggrieved by the aforesaid order, the petitioner filed the present civil revision petition on the ground that the Courts below erred in holding that the respondents require the premises for their bonafide personal occupation, is incorrect. From the date of filing of the petition, adjacent portion to the portion in which the second respondent was in occupation was vacant which could be more convenient for the first respondent to occupy by the second respondent and his wife.

5. The Courts below further erred in holding that the petitioner was not using the premises for the purpose for which it was let out. The courts below failed to see that the schedule premises was let out for computer classes for teaching as well as partial residential purposes to take rest by the teachers does not amount to change of use.

6. The Courts below further failed to see that admittedly the premises let out is a residential portion and as such the use of the same even for residential purpose do not give rise to eviction and the understanding of the Courts below in this regard is incorrect. So long as the rent as agreed is paid, the used premises as residential premises for which it was meant do not give rise to a cause to evict the petitioner.

7. Further ground is taken by the petitioner is that use of premises even for residential purpose do not cause any damage to the property or loss to the landlord or in any way affect the parties, accordingly, the same is not a ground for eviction.

8. The case of the petitioner is that he took the schedule property on lease in the year 1997 and later he entered into an agreement on 05.05.2001 with the first respondent. The petitioner had occupied the premises on 15th May 2001 and paid Rs.15,000/- as advance and the agreed rent, under the agreement, was Rs.400/- per month. Later, he gradually enhanced the same from Rs.400/- to Rs.1500/- per month at the instance of the respondents. The petitioner has been regularly paying the rents. As the respondents refused to receive the rent in December 2008, he sent the rent by way of pay order. The reply notice got issued by him clearly discloses the same. Later, the respondents had received the rents regularly.

9. Learned counsel appearing on behalf of the petitioner submitted that the petitioner is running Intel Computers in the schedule property and the brothers of the petitioner are the teachers. All his brothers are running the said institution in shift duty. Due to adamant behavior of the respondents, the strength of the students was decreased gradually. In fact, some of the tenants in the complex are using their portion for commercial purpose and others are using for residential purpose. Originally the complex in which the schedule property is, a part was built for residential purpose. By the date of issuance of notice by the respondents, there were four empty portions in the complex. During trial, one portion was occupied by Veda Software for running the computer education. Still there are two vacant portions in the complex. If really, the respondents intend to occupy the additional accommodation, they can occupy one of the portions which are still

vacant. However, the respondents with an ulterior motive are determined to vacate the petitioner with all false allegations for the reasons best known to them. The petitioner had paid an amount of Rs.15,000/- as advance to the respondents and Rs.15,000/- towards penalty to convert the electricity meter from Category-I to Category-II . He has been paying rent regularly. The petitioner has also using the premises as per the terms and conditions of the understanding between the respondents and the petitioner. Hence, the order passed by the court below is contrary to the material available on file.

10. On the other hand, learned counsel appearing on behalf of the respondents herein submitted that the first respondent is the absolute owner of the petition schedule property and the second respondent, who is the grandfather of first respondent, is looking after the affairs of first respondent on his behalf. The schedule property is the residential portion having electricity meter under Category-I for domestic purpose bearing No.28294. The petitioner had taken the schedule property on lease for running Intel Computers for 11 months i.e., from 01.07.2000 to 01.06.2001 from second respondent at a monthly rent of Rs.1900/- plus Rs.100/- towards providing water and other facilities payable by the 5th day of every succeeding month. The petitioner had agreed to pay the electricity charges as service connection is under Category-I. However, in spite of repeated requests made by the second respondent, the petitioner delayed in obtaining permission from the electricity department for changing the service connection under Category-II. Therefore, the Electricity Department got issued a

notice to the wife of the second respondent on 18.08.2000 as if guilty of malpractice. The petitioner did not pay the rent of Rs.2000/- from August 2000 onwards, and accordingly, he had committed willful default in payment of rent. Instead of paying the rent and vacating the premises, the petitioner got filed a suit in O.S.No.205 of 2003 on the file of Principal Junior Civil Judge, Tenali against the respondents and got obtained decree on 09.08.2007. Though the petitioner had taken the schedule property for running Intel Computers, which is for non-residential purpose, he has been using the schedule property for domestic purpose and residing with his family in the schedule property. Moreover, the petitioner has also been causing waste and damage to the schedule premises by closing the doors under lock and key for months together.

11. It is also submitted that now the first respondent has been residing at Ithanagar in other house. Therefore, the respondents got issued a registered legal notice on 31.12.2008 not only demanding the petitioner for payment of arrears of rent from August 2000 to till December 2008 and also demanded to deliver the vacant possession of the schedule property. The petitioner received the said notice on 07.01.2009 and sent an envelope cover on 13.01.2009 with a pay order for Rs.1,500/- without any particulars. However, without prejudice to their contention and by not admitting that the rent per month is only Rs.1500/-. After sending the first pay order, the petitioner got issued a reply through his counsel with all false allegations. By receiving the legal notice, the respondent had came to know that Rs.1500/- is sent by

the petitioner towards rent of December,2008. Therefore, it is clear that the petitioner has not only committed willful default in payment of rent other than he has let out and the respondents are also require the schedule property for their bonafide requirements. Hence, the respondents prayed for eviction of the petition schedule property.

12. Heard learned counsel for the parties and perused the material on record.

13. The issues before the Court below and before this Court are that:

- 1) Whether the petitioner is a willful defaulter in payment of rent?
- 2) Whether the respondents require the schedule premises for their bonafide requirement?
- 3) Whether the petitioner has changed the nature of using of the schedule property from commercial to domestic purpose, thereby he is liable to be evicted from the schedule property?

14. The case of the respondents is that the petitioner had taken the schedule premises on 01.07.2000 for a period of 11 months till 01.06.2001 for a monthly rent of Rs.1900/- + Rs.100/- towards water charges. Since then, the petitioner has been in possession of the schedule premises. The petitioner has paid one month rent after he had taken possession of the schedule property. Thereafter, the petitioner has made default in payment of rent and did not render any rent thereafter, thereby committed willful default in payment of rents.

15. To establish the case, the second respondent was examined as PW.1 who deposed that the first respondent is the

owner of the schedule property and managing the entire property of the first respondent and the petitioner had entered into an agreement with him for establishing Intel Computers in the schedule premises and entered into an agreement on 01.07.2000 agreeing to pay the rent at Rs.1900/- and Rs.100/- towards water charges per month. At the time of agreement it was agreed by the petitioner that he shall to take steps for conversion of electricity connection from Category I to Category II. However, he did not heed the words of the second respondent in spite of several requests made by him and avoided the conversion of electricity service connection, consequently, the electricity department had issued a notice to the wife of the second respondent demanding for payment of penalty. Thereafter, the petitioner had paid penalty for conversion of electricity connection. The schedule property is having eight portions and the petitioner has occupied one of the portions and the remaining seven are let out. The respondents also let out one of the portions to ICICI bank. There is a variation of rents for the portions which are abutting to the road which are let out for commercial purpose with that of the portions which are situated back side to the building and which are using for residential purpose. Out of 8 portions, three portions are leased out for commercial purpose and four portions are leased out for domestic purpose and one portion is in his occupation. The said respondent admitted that he has been receiving the pay orders to a tune of Rs.1500/- per month since the date of issuance of legal notice by the first respondent as per Ex.A2.

16. It is pertinent to mention here that the petitioner has filed a suit vide O.S.No.205 of 2003 and thereafter the respondent filed suit vide O.S.No.65 of 2004. The case of the petitioner is that he has entered into the schedule premises in the year 1997 and since then he is having possession of the schedule property and running Intel Computers in it. Subsequently, on 05.05.2004 he has entered into a lease agreement with the respondent and the rent was fixed at Rs.400/- per month. Thereafter, in four intervals the same was enhanced from time to time with the consent of the respondents and in the year 2008, the rent was came to Rs.1500/- per month. To prove his contention, the petitioner himself was examined as RW.1 and deposed that though there are disputes between him and respondents, he has been paying the rents regularly as per the agreement between them. During December, 2008 the petitioner had tendered rent to the respondents. But, the respondents refused to receive the rent and issued a legal notice. Then the petitioner sent rent by way of Pay Order to a tune of Rs.1500/- till to date he has been sending the amounts by way of Pay Orders and the same was received by the respondents. He deposed innocence with regard to the existence of the lease deed dated 01.07.2000.

17. As per the settled law, the initial burden is on the respondents to prove that the petitioner is in willful defaulter in payment of rents. In a case reported in **Venukonda Radha Krishna Vs. Pullivarthi Ramaiah**¹, wherein it was held that under the law of evidence when once a particular party asserted that the

¹ 2009 (2) ALT 537

other party committed willful default in payment of the rent, the burden is on him to prove that the tenant willfully failed to pay the rent.

18. Keeping in view the facts discussed above, it is established that the respondents filed petition for eviction of the petitioner from the schedule premises as if he has been committing willful default in payment of rents since August 2000 and he is in arrears of rent to be paid to the respondents. In that eventuality, the entire onus is on the respondents to show that the petitioner is in willful default in payment of rent. To prove the same, the respondents themselves examined as PWs.2 and 1, who deposed about the entering of lease agreement by them with the petitioner on 01.07.2000 and fixing of rent at Rs.2,000/- per month. Though there is a variation with regard to when petitioner came into possession of the schedule property. But from the evidence of both parties, it is established that the schedule premises was let out to the petitioner for running Intel Computers.

19. It is also an admitted fact that originally the schedule premises is built for residential purpose but the same was let out for commercial purpose for running a computer institution. From the evidence of RW1 also it is established that the petitioner was agreed to pay the conversion charges of the electricity service connection to be used for commercial purpose. From the evidence of PW.1 and RW.1 it is established that subsequently the electricity department has got issued a notice to the wife of the second respondent calling upon her to pay penalty for using of the service connection for commercial purpose instead of residential purpose.

From the evidence of RW.1, it is proved that he has paid an amount of Rs.15,000/- for penalty to the electricity department as per the demand made by the electricity department.

20. In view of the facts recorded above, the Court below opined that from the evidence of both parties and admission of payment of penalty to the electricity department by the petitioner, it is clear that there is a written agreement between the parties, but either party has failed to produce the alleged lease agreements, dated 01.07.2000. Further as per the version of the petitioner the said agreement was executed on 05.05.2001. From the evidence of both parties, it is clear that there is no passing of receipts between them. From the evidence of PW.1 it reveals that immediately after the petitioner entered into the schedule premises after lapsing of one month the electricity department had issued a notice to the wife of the second respondent. It is also the evidence of RW.1 that there arose a dispute between him and the second respondent with regard to the enhancement of rent and demanding for conversion of the electricity connection, thereby the petitioner had instituted a suit vide O.S.No.205 of 2003 for permanent injunction against the respondents and the said suit was decreed in the year 2007. Though the petitioner had filed injunction suit against the respondents in the year 2003, it is the contention of the respondents that after lapse of one month of the entering of the petitioner into the schedule property as a tenant, the petitioner had not paid any rent, thus became willful defaulter. But the respondents did not get issued any notice even after filing of the suit by the petitioner against them in the year 2003. Though it is

an admitted fact that in the year 2004 the respondents had filed a suit for arrears of rent vide O.S.No.64 of 2004 but prior to the filing of that suit during the pendency of O.S.No.205 of 2003, he did not get issued any legal notice demanding the petitioner calling him to pay the rent due to him along with arrears of rent which is alleged by the respondents.

21. It is also on record that in the suit filed by the petitioner, he has relied on lease deed dated 05.05.2001 and basing on it, the court has also decreed injunction against the plaintiff. Then it is presumed that there is a lease deed dated 05.05.2001. However, coming to the evidence of RW.1, the lease deed dated 01.07.2000 is in the following lines:

“The lease agreement of 01.07.2000 are counter part is with first respondent and another counter part of document was filed by him in the court proceedings for the suit in the year 2003. In the lease agreement dated 01.07.2000, there is no stipulation by whom the conversion charges has to be paid.”

22. From the above evidence of RW.1, it appears that there is also a lease agreement dated 01.07.2000 as alleged by the respondents. However, why the parties have entered into two lease agreements within a period of ten months, the said fact has not come on record as either party failed to file said lease agreement before the Court. However, on accepting the rent at the rate of Rs.1500/- per month and on a perusal of income tax assessments as per Ex.P8 to Ex.P14, it reveals that might be as on the date of filing of the petition, rent for the schedule premises was Rs.1500/-

per month. It is also an admitted fact that the suit which was filed by the respondents vide O.S.No.64 of 2004 was dismissed for default during the pendency of injunction suit which was filed by the petitioner.

23. It is not out of place to mention here that the aforesaid issue was not before the Court below however it came on record from the evidence and on perusal of Ex.A1, and as per Ex.A1, the suit filed by the petitioner was decreed in the year 2007.

24. As per the case of the respondents, the date of dispute is in the month of August 2000 from where the petitioner has not been tendering amount/rents to them. Thus, the cause of action arose in the month of August 2000. From the admissions made by PW.2 in his evidence that even after the date of disputes between him and the petitioner as well as after passing of notice between them, the petitioner has been paying the rents regularly itself disclosed that not only pay order which was paid by the petitioner after notice, the petitioner is tendering rents regularly as pleaded by him.

25. In a case reported in **Gisulal Gulabchand Vs D. Harinarayana**², wherein it was held by this Court in para No.18 by referring the case of Jametti Satyanarayana, Nimmagadda Krishna Hari and another's case and Mohd Khaja's case , wherein it was held that *"Procedure prescribed under Section 8 of the Act is not mandatory in nature but only directory. However, the court observed that it is bound by the judgment of the Apex Court in M. Bhaskar's*

² 2012(3) ALD 100

case, which was not placed before the Court in the above referred decisions of this Court.

26. The petitioner has adduced evidence of himself as RW.1 and also examined RW.2 to RW.4, who are the lecturers of his institution showing that the petitioner is paying rents without any default from the date of entering into lease agreement in the year 2001 till date of issuance of notice in the December, 2008. However, the petitioner has failed to show that the amounts which are rendered by the respondents is not original rent amount as alleged by him. Except the evidence of PWs.1 and 2, who are owner and Manager of the property, they did not adduce any evidence of the other tenants, though it was came on the record from the evidence of PW.1 that schedule property contains 8 portions and he had given three portions for residential purpose and 4 portions for commercial purpose and he has occupied one of the portions. Form the above discussion, it is established that the petitioner has been a willful defaulter in payment of rent.

27. On the issue of whether the respondents required the schedule premises for their bonafide requirement? The second respondent is an old aged person and the grand parents of the first respondent are effected with old age ailments and the continuous service of respondent is necessary for which he has to occupy the schedule property, which is convenient for him to reside.

28. In a case reported in **Siddalingamma and another Vs. Mamtha Shenoy**³, wherein the Hon'ble Apex Court has considered

³ 2001 (8) SCC 561

the parameters of bonafide requirement and it was held that bonafide requirement must be the outcome of sincere, honest desire in contradistinction with a mere pretext for evicting the tenant on the part of the landlord claiming to occupy the premises or for any member of the family. Thus, the bonafide means a good faith and genuine cause for seeking possession of the schedule property which is in good faith without fraud or deceit.

29. It is established from the evidence of PW.1 as well as pleadings, since the beginning, the respondents claiming the schedule premises for their bonafide occupation, as if the grand parents of the first respondent are old in age and they are suffering with old age ailments and he is the only person to see the welfare of his parents, thereby residing near the schedule premises is necessary to look after his grand parents. Moreover, from the evidence of RW.1, it is established that the second respondent is an old aged person and both grand parents are residing in first floor of the schedule property and they require the services of this respondent being a grandson.

30. It is settled preposition of law that it is the landlord to decide which portion is convenient for him to reside in the schedule property. However, the tenant cannot dictate to the landlord to occupy a particular portion. The judgment rendered by this Court reported in **Dunna Venkata Rao Vs. Mootha Ramakoti**⁴, is relevant in the present case, wherein it was held that it is the choice of the landlord to choose his premises for the purpose of accommodating his own business. In the light of the same, the

⁴ 2006 (4) ALD 523

contradictory stand if any taken in pleading and proof can not come in the way of the landlord getting an order of eviction on the ground of bonafide personal requirement.

31. In a case reported in **Narayana Rao Patalay (died) by LrsVs. Naresh Thappor**⁵ , wherein this Court held that landlord has a right to choose any premises of his choice.

32. Though there are some other vacant portions in the first floor as the building contains eight portions, the respondents could choose other portion instead of the schedule premises. However, keeping in view the judgments cited above, the landlord has a choice to choose a place for his residence or bonafide necessity to run the business.

33. Coming back to the case in hand, the petitioner has changed nature of using of the schedule property from commercial to domestic. The schedule property is in occupation of the petitioner as a tenant to run computer institution, which is for commercial purpose. The said fact also came on record from the evidence of PW.1, PW.2 and RW.1 that though the schedule property was constructed for domestic purpose, however, it was let out for commercial purpose with a clause that the petitioner has to meet the charges for conversion of electricity service connection from Category-I to Category-II. It is also on record from the evidence of both parties that in August 2000 electricity department has got issued a notice to the wife of the second respondent to pay penalty and the same was paid by the petitioner, who had agreed

⁵ 2003 (6) ALD (NOC) 16

the same in view of the agreement arose in between them. Moreover, Ex.P15-certified copy of meter reading with regard to the electricity consumption of the schedule premises from January 2006 to April 2012, reveals that the petitioner was not consuming the electricity though he claimed to be running computer centre in the schedule premises.

34. Moreover, to prove the aforesaid fact, an Advocate Commissioner was appointed who visited the schedule property and filed his report under Ex.C2 whereby stated that apart from the office room and class room, in the bed room there are household articles. He also found gas stove and other utensils which are used in kitchen in the verandah outside the schedule property which includes the Washing Machine, Deewan Cot, Sofa Set, Single cot etc. It is further mentioned in the report that except one computer which is in the office room none of the computers are working. It was further noticed by the Advocate Commissioner that it was reported by the petitioner that the other six computers are not working in view of the not functioning of the stabilizer.

35. The court below, on a perusal of entire contents of the Advocate Commissioner, it is opined that there is no running of classes in the schedule property. Though, there is evidence from the deposition of RWs.1, 2 to 4, who are lecturers in the Intel Computers, however failed to file any single piece of document with regard to the running of classes; attendance register of the students; how many batches are running and what are the number of students in each batch; account books and the information with regard to the examinations conducted by the said institute etc.

36. It is established from the evidence of RW.1 that since 2002, there is no good running of the business in the schedule property. Since then, the petitioner is continued in the schedule property as if he is running Intel Computers in the schedule property. But in Ex.C2, it is very clear that the petitioner is using the schedule property for domestic purpose. Thus, it is clear that the petitioner has deviated from the agreement by using the schedule premises for domestic purpose apart from commercial purpose.

37. In view of the above discussion, I find no perversity or illegality in the impugned order and decree dated 30.11.2013 passed in RCC No.5 of 2009 by the Rent Controller-cum-Principal Junior Civil Judge, Tenali.

38. Finding no merit in the instant petition and the same is accordingly dismissed. There shall be no order as to costs.

Miscellaneous Petitions, if any pending, shall stand closed.

JUSTICE SURESH KUMAR KAIT.

Date: 14-02 -2017

Note : L.R. copy to be marked

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