

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CIVIL REVISION PETITION No.4576 OF 2016

ORDER:

This Civil Revision Petition under Section 22 of A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960 has been filed challenging the order of the Rent Control Appellate Authority-cum-Principal Senior Civil Judge at Kakinada dated 08.08.2016 dismissing the appeal in R.C.A.No.6 of 2015 confirming the orders dated 02.03.2015 in R.C.C.No.10 of 2013 on the file of Rent Controller-cum-Principal Junior Civil Judge, Kakinada.

The petitioner herein is the tenant and the respondent is the landlord. The landlord filed R.C.C.No.10 of 2013 before the rent controller seeking eviction of the tenant from the petition schedule property contending that the petitioner herein is a month to month tenant on monthly rent of Rs.2,500/-, that the tenant failed to deposit the rents in the landlord's bank account regularly and that he disputed the quantum of rent contending that the monthly rent is only Rs.1,500/- but not Rs.2,500/- and also filed a suit in O.S.No.568 of 2010. The petitioner-tenant has committed default in payment of rents from October, 2010 till February, 2013 at the rate of Rs.1,000/- per month. The petitioner-tenant opposed the R.C.C. by filing counter denying the allegations made by the landlord regarding default in payment of rents. According to the petitioner-tenant, he is a protected tenant and the tenancy is governed by Andhra Pradesh Building (Lease, Rent & Eviction) Control Act, and therefore,

the landlord has no right to evict him from the schedule property without due process of law.

During the course of enquiry, on behalf of landlord, his wife was examined as P.W.1 and Exs.P.1 and P.2 were marked on his behalf. The tenant himself examined as R.W.1 and got marked Ex.R.1.

The learned Rent Controller after evaluation of the evidence brought on record and the admission of tenant in cross-examination as R.W.1 held that the rent was Rs.2,500/- per month as contended by the landlord and thus the petitioner-tenant committed default in payment of rents since November, 2011 and accordingly allowed the R.C.C. directing the petitioner-tenant to vacate the schedule premises and handover the vacant possession of the same to the landlord within three months from the date of the order. Aggrieved by the said order, the petitioner-tenant preferred an appeal in R.C.A.No.6 of 2015 on the file of Rent Control Appellate Authority-cum-Principal Senior Civil Judge at Kakinada. The appellate authority after re-appreciation of entire evidence came to the conclusion that the rent is Rs.2,500/- per month even as per the admission of tenant himself and thus the tenant committed default in payment of rents. Holding so, the appellate authority dismissed the appeal confirming the orders of the rent controller and directed the tenant to vacate the premises and handover possession of the same to the landlord.

Heard and perused the material available on record.

The learned counsel for the petitioner submitted that as seen from Ex.P.2-statement of account issued by the bank, both the courts below failed to appreciate the fact that the plea of petitioner-tenant about the rent of Rs.1,500/- per month is proved. It is further contended that before ordering eviction, the Courts below ought to have determined the rent payable by the tenant or the agreed rent between the landlord and tenant, but without determining the same, the Courts below believing the version of the landlord ordered eviction.

During the course of evidence, before the rent controller, the petitioner as R.W.1 admitted in his cross-examination that "it is true that the upper portion was given on monthly rent Rs.2,500/- and ground floor for Rs.2,500/-. Further the petitioner-R.W.1 admitted that he had deposited rent in the bank account of the respondent-landlord and also admitted the bank statement-Ex.P.2 to be correct regarding his depositing the rents by way of challan. At one stage, the petitioner deposed that he is depositing Rs.1,500/- per month for first floor and his brother is depositing Rs.1,000/- for ground floor, which is quite contrary to the evidence of his own cross-examination at earlier stage. Considering this evidence, the rent controller held that the petitioner-tenant committed default in payment of rent since November 2011. The relevant findings of rent controller at para 10 reads as under:

"10.....Besides the admission made by the R.W.1 during the cross examination, on perusal of the Ex.A.2 account statement, it shows that there are regular payment of Rs.1000/- and Rs.1500/- separately besides that Rs.2500/- which is said to be the rent by ground floor tenant.

Those are regularly paid till 3-11-2010. Thereafter again Rs.1500/- it was paid with different dates in the month of March 2011, April 2011 and thereafter in the month of July 2011. Thereafter the payment of Rs.1000/- is stopped. Likewise, the payment of Rs.2500/- is also stopped after June 2012. Admittedly the ground floor tenant has vacated the schedule premises during the pending suit OS 568/2010. So since the Ex.A.2 is not challenged by the R.W.1. Moreover, it was admitted by R.W.1 as it is correct. The reading of Ex.A.2 coupled with the oral evidence of PW.1 and R.W1, it can be easily said that there was a habit of depositing rent of Rs.2500/- by respondent and his brother @ Rs.1500/- + Rs.1000/- as shown in the Ex.A.2 statement of account.”

On appeal being preferred by the petitioner, the appellate authority on re-appreciation of entire evidence brought on record observed that though the petitioner-tenant admitted that his brother is depositing some amount for the ground floor, he failed to adduce evidence of his brother-another tenant, as a witness. Further considering the evidence of R.W.1 regarding the admission of rent at Rs.2,500/- per month, the appellate authority held that the appeal is not maintainable since the petitioner-tenant failed to deposit the admitted rents while numbering the appeal. With the said observations, the appellate authority dismissed the appeal confirming the eviction orders passed by the rent controller.

Both the Courts below taking into consideration the crucial admission made by the tenant during the course of his cross-examination as R.W.1 with regard to quantum of rent as Rs.2,500/- ordered eviction. Further the petitioner-tenant in his evidence admitted that Ex.P.2-statement of account is correct, but there is no proper explanation as to why he has deposited Rs.1,000/- for certain months and later on

Rs.1,500/-. Considering the evidence in proper perspective, both the Courts below concurrently held that the petitioner-tenant committed default in payment of rent and rightly ordered for his eviction. No ground is made out to interfere with the findings of both the Courts below and the revision fails and liable to be dismissed.

Accordingly, the Civil Revision Petition is dismissed. However, the petitioner-tenant shall vacate the premises within six months from today and hand over the possession of the schedule property to the respondent-landlord. The respondent-landlord is agreed and consented for waiving the arrears of rents, if any, and also agreed not to claim the rent from the petitioner-tenant for the period of six months' time granted by this Court for vacating the premises. There shall be no order as to costs.

Pending miscellaneous petitions shall stand closed.

JUSTICE RAJA ELANGO

31.01.2017
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