

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.2954 OF 2007

ORDER:

The present Civil Revision Petition is directed against the order dated 30.03.2007 in C.M.A. No.1 of 1997 passed by the learned Principal Senior Civil Judge, Nellore, whereby and whereunder, the order passed by the learned Rent Controller - cum - Principal District Munsif, Nellore in R.C.C. No.13 of 1991 by the order dated 15.10.1996, dismissing the same was confirmed.

2. The revision petitioner viz., Maddela Surekha, in fact, is the legal representative of the original petitioner viz., Kandikattu Vanajakshamma (landlady) in the R.C.C. She came on record on death of the landlady while the first appeal in C.M.A. No.1 of 1997 was pending. Even the sole respondent viz., Mullangi Venkaiah died during the pendency of the present revision petition and his legal representatives have come on record as respondent Nos.2 to 4.

3. Since the fact-situation requires advertence as both the Courts have rendered concurrent findings on both grounds against the landlady, the facts, which are absolutely necessary, are referred to herein.

4. It is not in dispute that the leased premises belonged to the landlady. The revision petitioner is no other than the daughter of the landlady. The subject premises was let out to the deceased respondent

(hereinafter referred to as 'tenant') under an unregistered rental agreement, originally for a period of four (4) years from 01.07.1987 to 30.06.1991 for running cloth business by the tenant with certain other terms. The first ground urged was default in payment of rents from the month of September, 1990, and despite issue of notice dated 02.01.1991, it stood unanswered. The second ground is that the premises is sublet by the tenant. The third ground agitated is that there has been *bona fide* requirement to run business by the landlady along with her son-in-law. Thus, it is specifically shown that she intended to run business along with her son-in-law and the same constituted *bona fide* requirement.

5. The tenant resisted the request. According to him, he started carrying on cloth business under the name and style of '*Priya Colour Complex*' and originally the rent was Rs.400/- and later it was enhanced to Rs.525/- per month and rent-note was obtained for a period of four years and he paid an advance amount of Rs.10,000/- under the earlier agreement and the same was made over to the fresh agreement and the terms were reduced into writing on 06.10.1987. He has raised various pleas. One of the pleas relate to that when he went to pay rent, the daughter of landlady refused to receive the same on the ground that the landlady went to Madras and asked her not to receive rents and that that was the reason, he could not tender rent for the month of October, 1990, but he got an endorsement made in the notebook as to receipt of rent for that month also and later when he

went to tender both months' rent, he was informed that the landlady did not return from Madras, but, surprisingly, she got issued a lawyer's notice dated 20.11.1990. On receipt of the notice, he approached her to tender rents, but she was not found and he was informed that she left to Madras and later when he again approached, he informed that she was expected shortly and that is how, he could not give reply. Therefore, he remitted the rents in a sum of Rs.2,100/- , for 10.09.1990 to 10.01.1991 for four (4) months, by Money Order, but, it was refused by the landlady.

6. Thus, on account of the dilatory tactics of the landlady, rents could not be tendered and, therefore, he was not at default being committed, much less, willful default.

7. Concerning *bona fide* requirement, he would state that the landlady has three daughters. The first son-in-law, who is at Madras is in cine field. The second son-in-law is doing television service business in Anamvari Street, Nellore, and the third son-in-law is employed in Nippo Factory, Tada, and their services are not available to the landlady and, therefore, the question of her doing business with the help of her son-in-law does not arise. Therefore, sought to dismiss the R.C.C.

8. The learned Rent Controller framed the following two (2) points for consideration:

“Whether the petitioner is entitled to get respondent evicted on the ground (1) that the respondent committed willful default in paying the rents from September 1990 onwards? and, (2) that the petitioner requires the premises for carrying on business with the help of her son-in-law i.e. she requires the premises for her personal occupation?”

9. During enquiry, PWs.1 to 4 were examined and Exs.A-1 to A-3 were marked on behalf of the landlady, and, the tenant examined himself as RW.1 and marked Exs.B-1 to -10 coupled with Ex.C-1

10. The learned Rent Controller, in his order dated 15.10.1996, on analyzing the oral evidence of both sides coupled with the documentary evidence, recording that there was no dispute in regard to lease and advance of Rs.10,000/- paid by the tenant was in tact and there was regular payment of rents prior to the period of default complained by the landlady and thereby, held point No.1 against the landlady. On point No.2, referring to the decisions in **Modern Hotel, Gudur v. K. Radhakrishnaiah**¹, **Kranthi Swaroop Machien Tools Private Limitd v. Smt. Kranta Sai Aswas**², **S. Sundaram Pillai v. V.R. Pattabhiraman**³, **S.C. Basappa v. Jumnadass alias Jumnadass Manckchand (Mad)**⁴, **G. Murali Krishna v. P. Mahalakshmi**⁵, **Gandepalli Samudralu v. P. Satyavathi**⁶, **M.S.**

¹. AIR 1989 SC 1510

². 1994 (1) Law Summary 15

³. C.A. No.1178 of 1984 1985 (1) Digestive Notes of Cases APLJ 34)

⁴. 1980 (1) M.C.J. 228

⁵. 1992 (2) Law Summary of Recent Cases 27 (CRP No.332 of 1991),

⁶. 1995 (3) ALT 51

Malpani v. A.D. Aswas⁷, M/s. Deccan Wine and General Stores v. A. Eswaraiah⁸ and D.V.V.G. Satyanarayana v. S.V. Raghavaiah⁹ observing that the landlady has not given relevant details of the business which she intends to start along with her son-in-law, *bona fide* requirement pleaded by the petitioner was, according to him, not genuine, and, therefore, holding that there was no *bona fide* requirement of the subject premises, dismissed the R.C.C.

11. On appeal in C.M.A. No.1 of 1997, the learned Principal Senior Civil Judge, Nellore, having referred to the fact-situation, formulated the point for consideration thus:

“Whether the impugned order passed by the learned Rent Controller-cum-Principal District Munsif, Nellore dated 15.10.1996 in R.C.C. No.13 of 1991 is sustainable under law?”

12. He has discussed both the grounds distinctly, believed the entry in the rent note book as to the endorsement made for payment of rents every month and held that there was no willful default and thereby confirmed the finding recorded by the learned Rent Controller so far as the ground of willful default is concerned.

13. On *bona fide* requirement, referring to the decisions relied on by the learned counsel on either side which were adverted to in sub-paragraph Nos.(iii), (v) and (vi) of paragraph No.10, while

⁷. 1986 (2) ALT 492 (DB)

⁸. CRP No.7764 of 1979 dated 27.02.1980 [1980 (1) APLJ SNRC 23]

⁹. AIR 1987 SC 406

observing that the landlady is at liberty to appropriate the arrears of rent due by the tenant from out of the deposit amount and in view of the prohibition under Section 3 of Section 7 of the Andhra Pradesh Buildings (Lease, Rent and eviction) Control Act, 1960 (for short 'Act, 1960'), held that there was no willful default. On *bona fide* requirement, in sub-paragraph No.(vi) of paragraph No.10, observing that if the land lady requires the subject premises for carrying on business with the help of her son-in-law to feed herself and her son's-in-law family, she would have mentioned the requirement under Ex.A-1 notice, but the same does not contain the recital as to personal requirement, dismissed the appeal.

14. Now, the question is, whether the concurrent findings recorded by the Courts below are legally infirm or patently perverse warranting interference as pleaded by the revision petitioner.

15. Concerning the maintainability of proceedings under the Act, 1960, for eviction by the legal representatives of the original landlady on the ground of *bona fide* requirement, the learned senior counsel for the revision petitioner places reliance in **Kamleshwar Prasad v. Pradumanju Agarwal (dead) by LRs**¹⁰. Sri M.V.S. Suresh Kumar, learned senior counsel would point out the observations made by the Hon'ble Supreme Court in paragraph No.3 thus:

¹⁰. (1997) 4 SCC 413

“..... Even if the landlord died during the pendency of the writ petition in the High Court the bona fide need cannot be said to have lapsed as the business in question can be carried on by his widow or any elder (*sic* other) son....”

The ruling referred to and relied on by the learned senior counsel is in the context of the submission that since the landlady died, the question of *bona fide* requirement does not arise. It would be appropriate to extract the entire paragraph No.3 of the aforesaid decision thus:

“3. Mr. Manoj Swarup, learned Counsel appearing for the appellant in this Court urged that the person for whose bonafide requirement the order of eviction has been passed by the appellate authority having died during the pendency of the writ petition, the said bonafide requirement no longer subsists and consequently the High Court should have taken that fact into consideration and should have interfered with the order passed by the appellate authority for the eviction of the tenant. The learned Counsel further urged that no doubt the proceedings under Article 226 of the Constitution is not a continuation of the eviction proceedings under the Act, but all the same the High Court while exercising its power of supervision under Article 226 of the Constitution is not denuded of its power to take into consideration the subsequent event that had happened which is necessary to be taken into consideration in the interest of justice. Accordingly, the High Court committed serious error in not taking into account the facts of the death of the landlord for whose bona fide requirement the order of eviction had been passed by the appellate authority, and therefore, this Court should interfere with the said order of the High Court. Having given an anxious consideration to the contention raised by the learned Counsel for the appellant and under the facts and

circumstances of this case we are of the considered opinion that this case does not warrant interference by this Court under Article 136 of the Constitution. Under the Act the order of the appellate authority is final and the said order is a decree of the civil court and decree of a competent Court having become final cannot be interfered with by the High Court in exercise of its power of superintendence under Articles 226 and 227 of the Constitution by taking into account any subsequent event which might have happened. That apart, the fact that the landlord needed the premises in question for starting a business which fact has been found by the appellate authority, in eye of law, it must be that on the day of application for eviction which is the crucial date, the tenant incurred the liability of being evicted from the premises. Even if the landlord died during the pendency of the writ petition in the High Court the bonafide need cannot be said to have lapsed as the business in question can be carried on by his widow or any elder son. In this view of the matter, we find no force in the contention of Mr. Manoj Swarup, learned Counsel appearing for the appellant and we do not find any error in the impugned judgment of the High Court warranting interference by this Court under Article 136 of the Constitution. The appeal, accordingly, fails and is dismissed but in the circumstances without any order as to costs.”

Therefore, so far as maintainability of the present revision is concerned, the present Civil Revision Petition is maintainable and also the cause for eviction on the ground of *bona fide* requirement also cannot be overlooked on the ground that the landlady, who filed the Rent Control Proceedings originally, is no more.

16. Now, the question is, whether the Courts below did commit any error in recording the findings, and whether the findings recorded are tainted with utter perversity?

17. Concerning the first ground of wilful default, both the Courts below are in agreement, but certain issues cannot be sidelined. The deposit of Rs.10,000/- lying with the deceased landlady cannot be a ground to exonerate the default in payment of regular rents. The evidence on record would clearly prove that the monthly rent for four months was not paid. The reason assigned by the deceased tenant was that when he approached to tender the rent, the daughter of the landlady informed him that landlady asked her not to receive the rents and, thus, she refused to receive the rents and, therefore, he has no alternative except awaiting arrival of the landlady, who had gone to Madras for treatment according to him. Certainly, that reason cannot be construed as plausible reason though, the Courts below went on deliberating in detail, but without properly appreciating the fact that, in case there was refusal to receive the rents, it was always open for the deceased tenant to approach the Rent Controller and to deposit the rents by filing a proper petition. This apart, he could have issued a legal notice asking the deceased landlady to provide the account number and the bank in which she was maintaining account or to open an account in case such account is not available in any bank. That was not done by the deceased tenant. On the other hand, though, a notice was got issued by the deceased landlady dated 02.01.1991, no

reply at all was issued by the deceased tenant. No doubt, *bona fide* requirement was not sought for in the said notice, but the allegation that the tenant had sublet the demised premises was made. The silence maintained by the deceased tenant is significantly important in assessing the conduct of the tenant coupled with the default for continuous period of four months in payment of rents, and only tendering the rents after the Rent Control proceedings were initiated. That itself is sufficient enough to hold that there has been wilful default of payment of rents. No doubt, a catena of decisions were referred to by the Courts below, but the fact is, when the deceased tenant was inducted into possession as tenant on 01.07.1987, quite long time elapsed and he is holding the demised premises without there-being any enhancement after the second enhancement of rent from Rs.400/- to Rs.525/- was done, it is almost 30 years now, the deceased tenant was inducted and later his legal heirs have been occupying it. Therefore, that finding recorded by the Courts below appears to be infirm.

i) Concerning the *bona fide* requirement, it is no doubt true, the details have not been mentioned in the petition and, in the lawyer's notice there was no reference to the *bona fide* requirement as one of the grounds for seeking eviction of the deceased tenant. But, that alone cannot be a ground to discard the *bona fide* requirement pleaded by the deceased landlady. The fact that she has mentioned that she intends to run the business with her last son-in-law i.e. third son-in-

law cannot lightly be brushed aside. The reason being that the last son-in-law was though, holding a Job, was intending to give up the job or on attaining the age of superannuation, to run the business, and that was what the deceased landlady intended. Therefore, merely on the ground that the third son-in-law was employed elsewhere is no ground to reject the request for eviction based on *bona fide* requirement.

ii) The evidence of deceased landlady would clearly show that she intended to start a fancy goods business in the demised premises with the help of her third son-in-law. That cannot certainly be construed as an after-thought merely because of its absence in the notice. Now, the situation is that neither the landlady, nor the tenant is alive, and the legal representatives have been fighting the *lis*. The premises was taken on rent in the year 1987. Already 30 years elapsed. On a meagre rent of Rs.525/-, the legal representatives of the deceased tenant have been continuing. The possession of the demised premises, certainly, cannot be allowed to be continued, as there is *bona fide* requirement pleaded in the petition and the third son-in-law is available to run the business in the demised premises, since the learned senior counsel for the revision petitioner, during course of arguments, submitted that in fact, the third son-in-law was retired long back and without any avocation, he has been trying for the premises to start a business.

18. Thus, from the foregoing discussion, it is clear that the findings recorded by the Courts below though, concurrent findings, but suffer from patent illegality and liable to be set aside and, accordingly, set aside.

19. The Civil Revision Petition is, therefore, allowed setting aside the orders and decrees passed by the first Appellate Court as well as the Rent Controller Court, directing the respondents - tenants to vacate the demised premises within three months. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the revision shall stand closed.

September 15, 2017
PV/Mgr

A. SHANKAR NARAYANA, J

