

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.2031 of 2013

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India challenging the order dated 03.4.2013 in I.A.No.264 of 2011 in R.C. No.269 of 2011 on the file of the III Additional Rent Controller, Hyderabad.

2. In spite of service of notice, none appeared on behalf of the respondent. Hence, this court is inclined to pass the order on merits.

3. Heard the learned counsel for the petitioner.

4. The contention of learned counsel for the petitioner is two fold: (1) the finding of the Rent Controller that I.A. No.264 of 2011 is not maintainable in view of denial of the title of the petitioner by the respondent is erroneous, and (2) the order passed by the Rent Controller is not sustainable either on facts or in law.

5. The facts leading to filing of the revision is as follows: The petitioner filed R.C. No.269 of 2011 on the file of the Court of III Additional Rent Controller, Hyderabad against the respondent for eviction from the schedule property on the ground that the respondent committed willful default in payment of rent. Pending eviction petition, the petitioner filed I.A. No.264 of 2011 under Section 11(1) of the A.P. Buildings (Lease, Rent & Eviction) Control Act (for short, the Rent Control Act) to direct the respondent to deposit the rents. The respondent filed counter opposing the petition. After affording reasonable opportunity to both parties,

the Rent Controller dismissed the I.A., on the sole ground that the respondent denied the title of the petitioner; therefore, the I.A., is not maintainable under law.

6. Now the crucial question that arises for consideration is whether the I.A., is maintainable under law or not.

7. To substantiate the argument, learned counsel for the petitioner has drawn the attention of this Court to the following decisions:

(i) **Changanlal v Narsingh Pershad**¹, wherein a Full Bench of this Court held at para Nos.16 and 22 as follows:

16. Having regard to these circumstances, we are clearly of opinion that Section 11 of the Act applies not only to cases where the relationship of landlord and tenant is admitted but also to other cases where that relationship is denied. That question of fact, being a jurisdictional fact even for the purpose of Section 11, has to be decided finally by means of a regular enquiry and it would become the determination in the main eviction petition itself. We do not think that such a question can be decided summarily once for the purpose of Section 11 and a second time finally for the purpose of disposal of the eviction petition. We are unable to agree with the learned Judges in (1970) 1 Andh W R 149 who took a contrary view. In some cases that final determination may itself dispose of the main eviction petition itself. But that would be a different thing and it does not matter.

22. In the end we hold that Section 11 is applicable not only to cases where the relationship of landlord and tenant is admitted but also to cases where such relationship is denied. For the purpose of passing orders under Section 11 of the Act, when the relationship of landlord and tenant is denied, the Rent Controller must determine that question finally by making a regular enquiry and not provisionally by making a summary enquiry before assuming jurisdiction in the matter and pass orders and such a determination will be the decision in the main eviction petition itself. We answer the question referred accordingly.

(ii) **Jani Miyan v Government of A.P.**², wherein a Division Bench of this Court held at para No.11 as follows:

¹ AIR 1973 AP 1 (FB)

22. In *Changanlal's* case, a Full Bench of this Court held that Section 11 is applicable not only to cases where the relationship of landlord and tenant is admitted, but also to cases where such relationship is denied. For the purpose of passing orders under Section 11 of the Act, when the relationship of landlord and tenant is denied, the Rent Controller must determine that question finally by making a regular enquiry and not provisionally by making a summary enquiry before assuming jurisdiction in the matter and pass orders and such a determination will be the decision in the main eviction petition itself. In *Ramulu v Government of A.P.*, 1975 ALT 220, a Division Bench of our High Court upheld the validity of Section 11 of the Rent Control Act. In *Surya Dev Rai v Ram Chander Rai*, 2003 (5) ALD 36 (SC) = (2003) 6 SCC 675, the Supreme Court held that power under Article 227 of the Constitution is wider than the one conferred on the High Court under Article 226 of the Constitution in the sense that the power of superintendence is not subject to those technicalities or procedures or professional fetters to be found in *certiorari* jurisdiction. ...

As per the principle enunciated in the cases cited supra, petition under Section 11(1) of the Rent Control Act is maintainable even if the tenant denies the title of the landlord.

8. The learned counsel for the petitioner submitted that he cited the above two decisions before the Rent Controller but the same were not considered. He also taken the same plea in the ground of revision also.

9. The Rent Controller dismissed the I.A., relying upon the judgment in **Bahadur Ali Khan v III Additional Rent Controller, City Civil Court (A.P.)**³; the principle enunciated therein is that the Rent Controller cannot dispose of the application filed under Section 11(1) of the Rent Control Act summarily. It is not observed in that judgment that the petition under Section 11(1) of the Rent Control Act is not maintainable.

² 2005(2) ALD 243 (DB)

³ 2004 (1) An.W.R. 96

10. The facts of the case on hand are identical to the facts of the decisions of the Full Bench in **Changanlal** and the Division Bench in **Jani Miyan**.

11. Having regard to the facts and circumstances of the case and also the principle enunciated in **Changanlal** and **Jani Miyan**, I am of the considered view that I.A. No.264 of 2011 filed by the petitioner under Section 11(1) of the Rent Control Act to direct the respondent to deposit the rent is maintainable, even though the respondent denied the title of the petitioner in respect of the petition schedule house.

12. In the result, the civil revision petition is allowed, setting aside the order dated 03.4.2013 in I.A.No.264 of 2011. Consequently I.A. No.264 of 2011 in R.C. No.269 of 2011 on the file of the III Additional Rent Controller, Hyderabad is allowed directing the respondent-tenant to deposit the arrears of rent within a period of three months from today. The respondent is further directed to pay the future rent on or before 10th of every succeeding month. Miscellaneous petitions, if any pending in this revision petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 03.2.2017.

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