

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL REVISION PETITION No.3987 of 2009

ORDER:

This Civil Revision Petition, filed by the petitioner/respondent, under Section 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short, "the Act"), is arising out of the order and decree, dated 03.07.2009, passed in R.C.A.No.4 of 2008, on the file of the Principal Senior Civil Judge-cum-Appellate Court of Rent Control Cases, Visakhapatnam.

2. The revision petitioner is respondent/tenant and the respondent is the appellant/landlord in the R.C.A.No.4 of 2008.

3. In this civil revision petition, for the sake of convenience the parties are referred to as 'tenant' and 'landlord', as arrayed in R.C.A.No.4 of 2008.

4. Originally, the landlord has filed R.C.C.No.9 of 2005 under Sections 10(2)(1) and 3(a)(iii)(a) and (C) of the Act, on the file of Rent Controller-cum-IV Additional Junior Civil Judge at Visakhapatnam, seeking a direction to the tenant to vacate the petition schedule premises and deliver vacant possession of the same to the landlord. The learned Rent Controller, on consideration of the evidence of P.Ws.1 to 4 and the documents in Ex.A-1 – Served copy of the petition in R.C.C.No.41 of 2004, Ex.A-2 – Certified Copy of the petition in I.A.No.235 of 2004, Ex.A-3 – Copy of the plan in respect of the schedule property filed in R.C.C.No.9 of 2005 and the evidence of R.W.1 and the documents in Ex.B-1 – Rent Reports, Ex.B-2 – Certified copy of deposits of R.W.1 in R.C.C.No.41 of 2004 and Ex.B-3 – Legal Notice, has dismissed the claim of the landlord. The landlord,

being aggrieved by the orders passed in R.C.C.No.9 of 2005, has preferred an appeal in R.C.A.No.4 of 2008, on the file of the Principal Senior Civil Judge-cum-Appellate Court of Rent Control Cases at Visakhapatnam, under Section 20 of the Act. The appellate Court allowed the said R.C.A.No.4 of 2008 with costs by setting aside the decree and order of the learned Rent Controller, dated 11.12.2007, in R.C.C.No.9 of 2005 by accepting the personal requirement of the landlord for additional accommodation as *bona fide* and directed the respondent/tenant to be evicted from the schedule premises. Consequently, the respondent/tenant was directed to handover the vacant possession of the schedule premises to the appellant within two (2) months. Aggrieved by the said order passed by the appellate Court in R.C.A.No.4 of 2008, dated 11.12.2007, the respondent/tenant, who is the petitioner herein, preferred the present civil revision petition on various grounds.

5. Heard the arguments of Sri Balu Mahendra, learned counsel for the petitioner. None appeared on behalf of the respondent/landlord in spite of service of notice to the respondent/landlord.

6. It is contended on behalf of the petitioner herein that the findings recorded by the learned Rent Controller in R.C.C.No.9 of 2005 have been negated by the appellate Court in R.C.A.No.4 of 2008 without there being any reasons. It is further contended by the learned counsel for the petitioner that the respondent/landlord has failed to prove his *bona fide* personal requirement by any evidence in R.C.A.No.4 of 2008 other than the evidence produced before the learned Rent Controller in R.C.C.No.9 of 2005 seeking for eviction of the petitioner/tenant. It is further contended that the

respondent/landlord has no *bona fide* requirement of the construction of 'vididi' rooms in a Kalyana Mandapam and the appellate Court, without appreciating that fact, has set aside the order passed by the learned Rent Controller in R.C.C.No.9 of 2005, which are likely to be set aside now.

7. Admittedly, the respondent is the landlord of the petition schedule Shop No.21 of D.N. Murthy Complex bearing D.No.7-83, situated on the main road of Gopalapatnam, Visakhapatnam. It is obvious that the learned Rent Controller dismissed the R.C.C.No.9 of 2005 by holding that the landlord failed to prove the willful default and consequently, he dismissed the plea of additional accommodation sought by the landlord. The learned Rent Controller compared the hardship of the landlord and the hardship of the tenant and arrived at the conclusion that the hardship of the tenant is more and dismissed the R.C.C.No.9 of 2005 filed for eviction of the tenant from the petition schedule premises.

8. The appellate Court in R.C.A.No.4 of 2008, after consideration of the two points i.e., the willful default and also personal requirement of the landlord, held that the finding of the learned Rent Controller with regard to willful default does not require any interference and as far as the finding of personal requirement of the landlord is concerned, the appellate Court held that the *bona fide* personal requirement is proved. The appellate Court has given valued and convincing reasons for accepting the *bona fide* personal requirement of the landlord and set aside the findings of the learned Rent Controller in that regard and directed the tenant to handover the vacant possession of the schedule premises to the landlord within two (2) months.

9. It is appropriate to refer to the findings of the appellate Court in R.C.A.No.4 of 2008 at this juncture for appreciation of the evidence wherein the findings of the appellate Court are based on a decision reported in **Sharma Vs. Iswanth¹**, wherein it is held as follows:

BONAFIDE PERSONAL REQUIREMENT – “Landlord purchased the demised premises – Doing practice as Advocate and Tax Consultant in rented premises – He has to accommodate his aged parents – He requires the premises for his residence, practice and to accommodate his parents – Landlord’s hardship outweighs the hardship of tenant.”

The findings of the appellate Court that the landlord is having a Kalyana Mandapam and he intended to construct ‘vididi’ rooms for the purpose of Kalyana Mandapam as a *bona fide* requirement. It is observed by the appellate Court in para 12 of the order in R.C.A.No.4 of 2008 that the learned Rent Controller, having accepted the personal requirement of the landlord for additional accommodation as *bona fide*, dismissed the R.C.C.No.9 of 2005 by holding that the hardship of the tenant is more when compared to the hardship of the landlord. As a matter of fact, the landlord intended to construct ‘vididi’ rooms for the best utility of Kalyana Mandapam, which clearly indicates that the requirement of the landlord is *bona fide*. The reasoning given by the appellate Court is that it is more convenient to the tenant to secure alternative accommodation for the shop in that area, but such facility is not available to the landlord because he has to construct ‘vididi’ rooms abutting his Kalyana Mandapam and he cannot construct ‘vididi’ rooms at far off place or at a distant place. The landlord has quite reasonable and acceptable reason under *bona*

¹ 2006(3) ALT 478

fide requirement. Therefore, I do not see any valid grounds to interfere with the findings of the appellate Court in directing the petitioner/tenant to vacate the schedule premises on the ground of *bona fide* requirement by the respondent/landlord and the civil revision petition is liable to be dismissed.

10. In the result, the Civil Revision Petition is dismissed.
There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this civil revision petition shall stand closed.

GUDISEVA SHYAM PRASAD, J

Date:20th April, 2014

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THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



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