

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 1827 of 2003

ORDER:

1) Assailing the order dated 23.01.2003, passed in R.C.A.No.38 of 1988 on the file of the Senior Civil Judge-cum-Rent Control Appellate Authority, Vizianagaram, wherein the order of the trial Court in R.C.C.No.35 of 1975 dated 27.08.1988 was *set aside*, the present Civil Revision Petition is filed under Section 22 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short "the Act").

2) The facts in issue are as under:

The respondents herein, who are the landlords, filed R.C.C.No.25 of 1975 seeking eviction of the first petitioner/deceased from the schedule premises on the ground of wilful default and denial of title. It is urged that respondent No.3, who was the owner of the petition schedule property situated in Prince of Wale Market, Vizianagaram, conveyed the same to the second respondent by means of registered sale deed dated 30.12.1971 and also a registered relinquishment deed dated 31.01.1972. The second respondent was admitted to the benefits of the partnership firm of the first respondent and from that date onwards respondent Nos.2 and 3 have no right, title or interest in the said shops. It is said that the first petitioner paid the rents and licence fee originally to the third respondent and later to the

second respondent upto 31.03.1973 and thereafter to the first respondent. It is said that there was a default in payment of the rents and licence fee from 01.04.1973 till the date of filing of the petition in spite of receiving the legal notice.

3) A counter came to be filed by the petitioners/tenants in R.C.C. admitting the tenancy but however denied the averments made therein stating that he and other tenants filed R.C.C.No.46 of 1978 before the Court below seeking permission to deposit the monthly rent and licence fee into the Court to the credit of the said R.C.C. The said application was allowed pursuant to which they are regularly depositing the licence fees in the Court. In view of the above, it is urged that there is no wilful default in payment of rents and licence fees to the landlords and hence seeks dismissal of the R.C.C.

4) In support of its case, the Landlord examined himself as PW.1 and the tenant as RW.1. Exs.A1 to A12 came to be marked on behalf of the landlord and Exs.B1 and B2 were marked on behalf of the tenant.

5) After considering the entire oral and documentary evidence, the trial Court dismissed the R.C.C. holding that the landlord failed to establish that there was any wilful default committed by the tenant. Aggrieved by the same, the landlord filed R.C.A.No.38 of 1998. By an order dated 24.12.1999, the appellate Court allowed the appeal filed by the landlords, ordering eviction of the tenant from the schedule premises on the ground of wilful

default and denial of title. Challenging the same, the tenant filed C.R.P.No.2220 of 2000 before this Court. The other tenants also filed appeals against the order of the appellate Court. By a common order dated 21.11.2001, this Court allowed the C.R.P. including the appeal filed by the tenants and remanded the matter back, directing the appellate authority to record proper findings in the light of the prior findings recorded in the earlier proceedings between the same parties, if necessary by affording further opportunity to lead evidence. Pursuant thereto, one more witness came to be examined on either side as PW.2 and RW.2. Similarly, the tenant got marked Exs.B3 and B4 in support of their plea. After considering the entire evidence, the appellate authority allowed the appeal *setting aside* the order dated 27.08.1988 passed in R.C.C.No.25 of 1975 by the Rent Controller, Vizianagaram. Aggrieved by the same, the present Civil Revision Petition is filed.

6) The main ground urged by the learned counsel for the petitioner is that no default committed by the tenants in paying the rents to the landlord. The same is clear from Exs.B3 and B4 certified copies of the ledger extracts. It is also urged that since the amount deposited has been withdrawn by the landlords, the question of default in payment of rent would not arise. Commenting on default from 01.04.1973 to the date of filing of the petition, it is urged that originally rents were paid to the third respondent for some time thereafter and when he refused to receive the rents the tenants moved an application before the

Rent Controller under Section 9 (3) of the Act. When the said application was rejected, they preferred an appeal and pending appeal the amounts were deposited. After dismissal of the appeal, the matter was carried before the High Court and on 13.03.1978, this Court directed the Rent Controller to number the petition and dispose of the same on merits. The Rent Controller considered the application on merits held that there was a genuine and bonafide dispute with regard to title. He further placed reliance on Ex.B2, ledger extract of R.C.C.No.46 of 1978 to show that an amount of Rs.2,700/- was sent to the credit of R.C.C.No.25 of 1975. In support of his plea, he placed reliance on the judgments of this Court in *Jyothi Automobiles, Hyderabad and others v. Khet Bai and another*¹ and *Khursheed Sultana and others v. Mir Asif Ali and others*².

7) Per contra, learned counsel for the respondents/ landlord would submit that tenants have committed default in payment of monthly rents. In view of the evidence of RW.2, wherein he categorically admitted that no documents are filed to show deposit of the amounts, the revision petitioners have no right to be in possession of the property. It is further urged that the tenants have not filed any challans in the Court as required under Rule 5 (3) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Rules, 1961 (for short "the Building Rules"). In support of his plea, he placed reliance on the judgment of the

¹ (2000) 1 ALD 627

² (2009) 1 ALD 593

Apex Court in *N.D.Thandani (dead) by L.R.s v. Arnavaz Rustom Printer and another*³ and judgment of this Court in *Mohammed Izhar Ali v. Olive Founseca (died) per L.R.s and others*⁴.

8) On perusal of the evidence, two questions that fall for consideration are that (1) whether there was any wilful default on the part of the tenant in payment of monthly rent; and (2) whether the tenants have complied with Rule 5 of the Building Rules, which is mandatory as per the Full Bench judgment of this Court (4 supra).

9) Coming to the question of denial of title, the appellate authority found that the landlords are not entitled to seek eviction of the tenants from the schedule premises on the ground of denial of title. The said finding remained un-challenged by the landlords. Therefore, the only ground that remains for consideration is whether there was any wilful default in payment of rent.

10) As seen from the record, the plea of the landlord is that there is no necessity for the tenant to wait till the final orders are passed by the Rent Controller, in an application filed under Section 9 (3) of the Act for depositing the rent. According to him, as per Rule 5 of the Building Rules, if the tenant desires to deposit the amount, he can do so by obtaining a challan, with the permission of the Court. Since such an attempt was not made by the tenants, the same amounts to wilful default. It is to be noted

³ (2004) 1 ALD 29 (SC)

⁴ (2008) 4 ALD 254 (FB)

that pursuant to an order passed by this Court in C.R.P.No.2451 of 1976, the tenants including the landlords filed a common application under Section 9 (3) of the Act seeking permission to deposit the rents into the Court. It is stated that an amount of Rs.2,700/- which was alleged to have been deposited as per the entry in Ex.B2 is not the arrears of rent deposited in R.C.C.No.25 of 1975 alone, but admittedly, the same was deposited on behalf of the tenants, who were about 179 in number in the first instance. Therefore, it is urged that an amount of Rs.2,700/- shown towards payment of rent in Ex.B2 is misconceived and baseless. It is also urged that there is no single entry in the ledger extracts to show deposits being made on behalf of the tenants in R.C.C.No.25 of 1975.

11) Having regard to the above, a doubt arises as to whether the deposit of Rs.2,700/-, which was shown in Ex.B2, relates to the arrears of rents deposited by the tenants in the present R.C.C. The said issue infact was considered at length by the appellate authority in para Nos.25 and 26 of the judgment, which reads as under:

“25. According to the evidence of PWs.1 and 2 the tenant paid the monthly rent and licence fee upto 31st March, 1973 and lateron committed wilful default in payment of such monthly rents and licence fee, and therefore, the tenant is liable for eviction from the schedule premises on the ground of wilful default. According to the evidence of RWs.1 and 2 the present tenant and the tenants in other batch RCCs are regularly depositing the monthly rents and licence fee to the credit of CMA 19/ 73 at the

first instance and later on started depositing the same to the credit of RCC 46/ 78 and in the meantime they withdraw the amount so paid to the credit of CMA 19/ 73 and credited the same to the credit of RCC 46/ 78 and therefore, they did not commit such wilful default as alleged by the landlords and thus, the landlord are not entitled for seeking his eviction on the ground of wilful default.

26. In support of his evidence the tenant marked certified copy of the ledger extract for the year 1979-80 and 1980-81 as Ex.B1 and 1979-80 as Ex.B2 before the court below and certified copy of the ledger extracts for the years 1979-80 to 1998-99 as Ex.B3 and another certified copy of ledger extracts from the years 1988-89 to 1998-99 as Ex.B4 in this Court, which do not specifically disclose about the deposit of arrears of rent as alleged by the landlords and so also deposit of further rents during the pendency of the present appeal. According to the evidence of RWs.1 and 2 coupled with ledger extract got marked on behalf of the tenant, the present tenant and the tenants in other batch RCCs deposited the amount in lumpsum to the credit of RCC 46/ 78 without furnishing the details, for whom and how much amount is deposited and to which period it pertains. It is pertinent to keep it in mind that RCC 46/ 78 was filed by number of petitioners/ tenants and admittedly during the period of pendency of the present appeal and other batch appeals, some of the tenants admittedly settled their disputes with the landlords and stopped depositing the rent and licence fee. So, in view of the non-furnishing of the particulars mentioned above it cannot definitely be said that the tenants including the present tenant is regularly depositing the rents to the credit of RCC 46/ 78. In fact, the tenants are the persons including the present tenant who took a plea, that they are regularly depositing the monthly rent and licence fee to the credit of RCC 46/ 78. Therefore, the burden lies on the tenants to establish

that they are regular in depositing the monthly rent and licence fee into the Court without committing any default. As stated above, the tenants including the present tenant admittedly failed to furnish such details. Because RW.1 at the time of his cross examination clearly admitted that he cannot given the exact amount withdrawn from CMA 19/ 73 and the exact amount deposited in RCC 46/ 78.”

12) From the evidence of RWs.1 and 2 it is clear that there was default in payment of rents. At this stage, it would be relevant to extract the admissions made by RW.1 in his evidence, which are as under:

“None of the petitioners have issued any notices to us officially claiming the rent and to pay the rent to the third petitioner and not to the other petitioners. We have not issued any notices officially to the petitioners as to whom the rent is payable. In 1972 to 1973 we tendered the rent to the third petitioner but the same was returned.”

13) The aforesaid admission on the part of RW.1 itself is sufficient to prove the default.

14) Insofar as the judgment relied upon by the petitioners herein in *Jyothi Automobiles, Hyderabad and others v. Khet Bai and another (1 supra)*, the same has no relevance to the facts of the present case. The judgment of this Court relied upon by the petitioner in *Khursheed Sultana and others v. Mir Asif Ali and others (2 supra)* cannot be of any helpful to the petitioner in view of the Full Bench Judgment of this Court in *Mohammed Izhar Ali v. Olive Founseca (died) per L.Rs. and others (4 supra)*.

15) In order to appreciate the argument with regard to Rule 5 of the Building Rules, it would be necessary to extract Rule 5 of the Building Rules, which is as under:

“5 (1) A tenant desirous of depositing the rent under sub-section (5) of Section 8 or Section 9 or Section 11 shall deposit the same, if the building concerned is in the City of Hyderabad, in the State Bank of Hyderabad and if the building is elsewhere, in the Controller’s office or in the nearest treasury, whichever is convenient, after obtaining permission for the deposit of the rent from the controller.

(2) The challan accompanying the deposit of the rent shall be in the Andhra Pradesh Treasury Code in Form No.10 in triplicate and shall specify:-

- (a) the name and address of tenant by whom or on whose behalf the rent is deposited;
- (b) the name and address of the landlord entitled to receive the rent deposited;
- (c) the rent at which and the period for which the rent is deposited;
- (d) the description of the building in respect of which the rent is deposited;
- (e) the provision of the Act including the circumstances under which the rent is deposited; and
- (f) the head of account to which the rent is credited, namely:-

“P.II. Deposits and Advances – (Deposits and bearing interest – C. Other Deposit Accounts – Civil Deposits – Personal Deposits – Personal Ledger Account of the Controller or appellate authority, as the case may be.”

(3) One copy of the challan for the deposit of rent returned by the State Bank of Hyderabad Controller's Officer or treasury, as the case may be, after endorsing thereon the receipt of the amount deposited, shall be delivered in the office of the Controller or the appellate authority as the case may be."

16) The said rule came up for consideration exhaustively before Full Bench of this Court in Mohammed Izhar Ali case (4 supra), wherein this Court after considering Sections 8, 9, 10 (2) (i) and proviso thereunder and 11 of the Act along with the procedure prescribed under Rule 5 of the Building Rules, observed as under:

"(1) Though Section 8 of the Act is directory and optional, a tenant taking advantage and benefit of the said provision has to strictly and mandatorily comply with the procedure prescribed under Rule 5 of the Building Rules.

(2) While deposit of rent in terms of the provisions of the Act and the Rules amounts to valid tender of rent to the landlord, the failure to comply with sub-rule (3) of Rule 5 requiring delivery of a copy of the challan for the deposit of rent in the office of the Controller or the appellate authority, as the case may be, so as to enable the Controller or the appellate authority to cause maintenance of proper accounts under sub-rule (5) and give notice of deposit to the person or persons concerned within seven days of such delivery of copy of the challan in one or the other of the modes specified in Rule 16 (paying within a reasonable time the prescribed fee as per Rule 17 for service of such notice, if the tenant himself did not serve such notice directly on the landlord or the advocate appearing for the landlord) under sub-rule (4), amounts to wilful default in making valid payment or lawful tender of the rent by the tenant to the landlord.

(3) Sub-rule (1) and/ or sub-rule (3) of Rule 5 of Rules do not prescribe any time limit for depositing rent after obtaining permission for such deposit from Rent Controller under Section 8 (5) of the Act. A perusal of sub-rules (2) and (3) of Rule 5 of Rules, however, shows that after obtaining permission a tenant has to deposit rent every month and as required under sub-rule (3) of Rule 5 of the Rules shall deliver rent challan in the office of Rent Controller or appellate authority as the case may be. A perusal of Section 10 (2) (i) of the Act would show that in the absence of any agreement, rent has to be paid by the last day of month next following that for which rent is payable or if there is agreement of tenancy within 15 days after expiry of time fixed in the agreement. This indicates some guidance as to reasonable time for deposit of rent. Thus, where a tenant obtains an order to deposit rent, same shall be deposited atleast by the last day of the month following that for which rent is payable and rent challan shall be delivered in the office of Controller within a reasonable time so that Rent Controller can take necessary action for service of notice of deposit under sub-rule (4) of Rule 5 of the Rules within seven days of such delivery. In the absence of compliance in so depositing rent and delivering challan in the office of Controller, tenant shall be deemed to have committed wilful default, as per conclusions on question Nos.1 and 2 above.

(4) There is no conflict between Section 10 (2) (i) and Section 10 (2) proviso on one hand and Rule 5 on the other.”

17) In view of the Full Bench Judgment of this Court referred to above and the findings given therein, it is to be noted that Section 8 of the Act which was held to be mandatory makes the tenant to comply with Rule 5 of the Building Rules in letter and spirit. Any

non-compliance of Rule 5 of the Building Rules makes the tenant a wilful defaulter. It was further held that Sections 8, 9, 10 (2) (1) and proviso thereunder and Section 11 are distinct and different without transgressing into each other's limits though capable of creating an illusion of overlapping at times. There is no conflict between the provisions of the Act *inter se* or with any Rule, more particularly Rule 5. In the present case, admittedly, there is no evidence to show that the petitioners herein have followed Rule 5 of the Building Rules. Further, the Apex Court in N.D.Thandani case (3 supra) clearly held that compliance of Rule 5 of the Building Rules is mandatory and any violation of non-compliance of the same amounts to wilful default. The Judgment of the Apex Court was followed by Full Bench of this Court in Mohammed Izhar Ali case (4 supra).

18) As stated earlier, RW.2 is categorically admitted in his cross examination that he does not know whether the rents were deposited in the Court under intimation to the landlord or to his counsel. Similarly, RW.1 has admitted in his evidence as under:

“It is true that they have withdrawn the amounts from the C.M.A.No.19 of 1973 with a view not to deposit all the amounts withdrawn, to the credit of R.C.C.No.46 of 1978. I have not filed any document to show that they have deposited subsequent rents in R.C.C.No.46 of 1978.”

19) From the aforesaid admission made by RW.1, who is the petitioner in the present Civil Revision Petition, it clearly

demonstrates that there was no compliance of Rule 5 (3) of the Building Rules.

20) In view of the above, it has to be held that there was wilful default in payment of rents. Hence I see no merits in the revision and the same is liable to be dismissed.

21) Accordingly, the Civil Revision Petition is dismissed. The petitioner shall vacate the premises within a period of six weeks from today. There shall be no order as to costs. Miscellaneous petitions, if any, pending, shall stand closed.

16.06.2017
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JUSTICE C. PRAVEEN KUMAR

