

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE
OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

CIVIL REVISION PETITION No. 2022 OF 2017

Between:

M/s. Leela Enterprises,
Rep. by its proprietor K.Surender and another ... Petitioners

AND

Kamar Sultana @ Kamer Hassan ... Respondent

Date of Order Pronounced : 18-07-2017

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

- 
1. Whether Reporters of Local newspapers
May be allowed to see the order? Yes/No
 2. Whether the copy of order may
be marked to Law Reporters/Journals? Yes/No
 3. Whether his Lordship wishes to see the
Fair copy of the order? Yes/No

M.SATYANARAYANA MURTHY, J.

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY*+CIVIL REVISION PETITION No. 2022 OF 2017****%Dated: 18-07-2017**

#M/s. Leela Enterprises,

Rep. by its proprietor K.Surender,

Premises No. 4-3-122, Ground floor,

Ghasmandi, Secunderabad, and another

... Petitioners

VERSUS

\$Kamar Sultana @ Kamer Hasan,

W/o shaik Hassan, 64 years,

Housewife, R/o Flat No. 502,

H.No. 1-3-1030 & 1031, Alpine Towers,

Lower Tank Bund, Secunderabad

... Respondent

!Counsel for the petitioners : Sri R.A.Achuthanand**^Counsel for the respondent : Sri Aarifa Imran Khan****<GIST :****>HEAD NOTE :****?Cases referred :**

1. 2011 (4) SCC Civil 79
2. AIR 1986 SC 1444
3. 2008 (6) ALT 210
4. 2011 (4) SCC 240
5. AIR 2014 SC 3708
6. 1996 (2) ALT 498
7. 2003 (3) ALD 70
8. 2003 (1) ALD 778
9. 1969 (2) APLJ 290
10. AIR 1978 A 319
11. (2010) 13 SCC 530
12. (2007) 14 SCC 326
13. (2006) 3 SCC 224
14. AIR 1999 SC 3381
15. 1990 CrI.L.J.2148
16. (2010) 4 SCC 785
17. 2012 (10) SCC 734
18. MANU/USSC/0098/1979
19. 11 Cal. 3d 313

20. 919 F. 2d 753
21. MANU/FEET/0229/1987
22. (1986) 2 GLR 487
23. (1904) AR 182 at 185
24. (886) AC 245
25. (1992) 28 NSWLR 26
26. (1993) 173 LSJS 14
27. LAWS (SC) 1975 122
28. AIR 1953 SC 228
29. (1903) 13 MLJ 83
30. 1966 LAWS (SC) 1220
31. (2008) 2 SCC 728
32. AIR 1990 (SC) 2289
33. 2011 (4) SCC (Civil) 79
34. AIR 1986 SC 1444



THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**CIVIL REVISION PETITION No. 2022 OF 2017****ORDER:**

This revision under Section 22 of the Andhra Pradesh Buildings (Lease, Rent & Eviction) Control Act, 1960 (for short, 'the Act'), is filed by the appellants-tenants in R.A.No. 90 of 2013 on the file of the learned Chief Judge, City Small Causes Court, Hyderabad (for short, 'the Appellate Court'), and the respondents-tenants in R.C.No. 200 of 2007 on the file of the learned Additional Rent Controller, Secunderabad (for short, 'the Rent Controller'), challenging the order dated 21-03-2017 in R.A.No. 90 of 2013, whereby the Appellate Court confirmed the order dated 03-06-2013 in R.C.No. 200 of 2007 of the Rent Controller fixing fair rent for the premises at Rs.4,500/- per month.

The parties will hereinafter be referred as landlady and tenants for convenience.

The landlady filed petition under Section 4 (1) of the Act, for fixation of fair rent for the premises bearing No. 4-3-122, ground floor, situated at Ghasmandi, Secunderabad. The tenancy is oral on month to month basis. The schedule property was originally let out by the brother of the landlady to the tenants, he gifted the property to her and thereby tenancy was also attained in her favour. The schedule property is a non-residential building in the ground floor exclusively used for commercial purpose. The rent agreed to be paid by the tenants is Rs.250/- besides payment of property tax and water and electricity consumption charges. Property tax at Rs.278/- per annum is payable by the landlady and the balance of tax has to be paid by the tenants. The schedule property is situated in prime locality *i.e.* heart of the commercial centre of Secunderabad. It is in the main business centre known as Ghasmandi, Hill Street, and the premises would fetch not less than Rs.8,000/- per month easily if it is let out to any reasonable

tenant in view of its location adjacent to 50' width road in high commercial locality surrounded by commercial establishments, near to railway station, bus stop, telegraph office, petrol bunk *etc.*,. The market value of square yard is about Rs.30,000/- in the locality and the rent being paid by the tenants for the similar premises in ground floor is about Rs.70/- per square foot. The extent of the premises is 182.5 square feet. Taking into consideration of the commercial value of the premises, its location, the use to which it is put to and the prevailing rent for similar premises in the locality, the landlady requested to fix fair rent for the premises @ Rs.8,000/- per month under Section 4 (1) of the Act.

The tenants filed counter denying material allegations while admitting the relationship of landlady and tenants, monthly rent being paid by the tenants to the landlady, attornment of tenancy and liability to pay appropriate taxes *etc.*,. The tenants denied the location of the premises and its commercial potentiality while denying that the schedule premises would fetch rent of Rs.8,000/- per month and it is unjust rent demanded by the landlady. It is also contended that all the mulgies in occupation of tenants were sold by owners as the mulgies were located in by-lane measuring 22' to 25' road not fetching good rents. Respondent No. 2, the proprietor of respondent No. 1 tenant, had acquaintance with the original landlord Abdul Subhan Khan and respondent No. 2 was introduced by late Hanumaiah and late Akram Khan, upon which late Abdul Subhan Khan entrusted the construction work of building bearing Nos. 4-3-119 to 128 (old Nos. 2513 to 2530 and 2305) situated at Chandkhan Street, Hill Street, Secunderabad. Respondent No. 2 supervised the construction work and safeguarded the construction material as he was residing in the building opposite to the building known as Abdul Subhan Khan Complex. The tenants initially obtained the premises on monthly rent of Rs.100/- and paying regularly and it was later enhanced to Rs.175/- per month during the lifetime of Abdul Subhan

Khan who agreed in writing that he would not enhance the rent but the declaration is not traced now. It is further contended that the tenants have paid Rs.3,000/- as security deposit and Rs.300/- as advance rent and receipt of the same was acknowledged by A.R.Khan, the family engineer of late Abdul Subhan Khan.

It is further contended that initially wife of respondent No. 2 carried on business in general items in the name and style of "Leela Enterprises" and later it was closed but continued the business in the same name and style as "Leela Enterprises" as a military supplier, supplying items such as food condiments, stationary, paints and hardware and cleaning materials etc.,. After the death of Abdul Subhan Khan, the tenants paid rent to Dr. Ghulam Mohammad Khan, obtained rent receipts through his bill collector and continued accordingly. Thus, as on date, the rent payable for the premises is Rs.250/- and the schedule premises would not fetch more than Rs.250/- per month in view of its location, age and use to which it is put to and prayed for dismissal of the petition.

The landlady filed rejoinder denying the allegations regarding agreement not to enhance rent by 10% and declaration so also deposit of Rs.3,000/- as security and deposit of Rs.300/- as advance rent.

During inquiry before the Rent Controller, the landlady and D.Anil Kumar were examined as P.Ws.1 and 2 respectively and marked Exs.P1 to P7 and Exs.X1 to X4. On behalf of the tenants, respondent No. 2 and B.Yadaiah Yadav were examined as R.Ws.1 and 2 respectively and marked Exs.X1 and X2.

The Rent Controller disbelieved the evidence of both parties for one reason or other in the discussion up to para No. 25 and in para No. 28 of the order, following the principle laid down in **Mohammed Ahmed and another Vs.**

Atma Ram Chauhan and others¹, concluded that the schedule premises is in an extent of 182.5 square feet approximately, the premises would fetch Rs.4,500/- per month (@ Rs.25/- per square feet) and fixed the fair rent.

Aggrieved by the fair rent fixed by the Rent Controller, the tenants preferred appeal under Section 20 of the Act in R.A.No. 90 of 2013 on various grounds. The Appellate Court affirmed the order passed by the Rent Controller by its judgment dated 21-03-2017. The landlady also preferred another appeal having dissatisfied with the fixation of fair rent at Rs.4,500/-. Despite filing two appeals against the same order by both parties, the Appellate Court disposed of the appeal filed by the tenants while keeping the appeal filed by the landlady in R.A.No. 212 of 2013 pending for adjudication. The Appellate Court extracted the findings on one or two grounds raised in the grounds of appeal reiterating the principles laid down in ***Ratan Arya Vs. State of Tamilnadu and another***² and ***Jupudi Parthasarathy Vs. Kondapalli Rajeswari***³ without recording any specific reason as to how the Appellate Court agreed with the findings recorded by the Rent Controller. Therefore, the present revision is filed under Section 22 of the Act raising several contentions mainly on the ground that the appeal filed by the petitioners against the order of the Rent Controller cannot be disposed of independently when the appeal filed by the landlady against the very same order of the Rent Controller is pending. Apart from that, the judgment of the Appellate Court is contrary to the requirements under Order 41 Rule 31 of the Code of Civil Procedure (for short, 'C.P.C.'). In the absence of framing any point for consideration and finding thereon with reasons, the order cannot be sustained. Thus, the judgment of the Appellate Court suffers from serious irregularity. On

¹ 2011 (4) SCC Civil 79

² AIR 1986 SC 1444

³ 2008 (6) ALT 210

this ground alone, the revision is to be allowed setting aside the judgment of the Appellate Court in R.A.No. 90 of 2013 dated 21-03-2017.

It is also contended that though several grounds were raised, the Appellate Court even did not advert to the grounds and, without recording any reasons, disposed of the appeal in the most cavalry and casual manner. As such, the judgment of the Appellate Court is contrary to the principle laid down in **S.Siddiqui Vs. A.Ramalingam**⁴. It is also contended that the evidence on record was not appreciated by the Appellate Court and even did not refer to any exhibit marked or oral evidence recorded by the Rent Controller and fixed fair rent at Rs.25/- per square feet without any basis. As such, the judgment of the Appellate Court is illegal and prayed to set aside the same.

During hearing, Sri R.A.Achuthanand, learned counsel for the tenants, would draw the attention of this Court to the contents of the judgment and the points framed by the Appellate Court to contend that the same is not in compliance with Order 41 Rule 31 of C.P.C. It is also contended that the Rent Controller did not believe the evidence adduced by both parties but recorded a finding that the premises would fetch Rs.25/- per square feet without any basis and the same is confirmed by the Appellate Court in the most casual manner. Though the Rent Controller recorded a finding, still it is the duty of the Appellate Court to look into the finding and record reasons as to how the Appellate Court supports the finding recorded by the Rent Controller but without recording any such reason affirmed the order which is a serious irregularity committed by the Appellate Court as it is a final Court of fact. It is also further contended that when two appeals are filed against the same order by both rival parties, the Appellate Court is expected to decide both the appeals to avoid conflicting judgments but the Appellate Court in its hurry disposed of the appeal filed by the

⁴ 2011 (4) SCC 240

tenants while keeping the other appeal pending for adjudication. This is a serious irregularity and prayed to set aside the same.

Per contra, Sri Aarif Imran Khan, learned counsel for the landlady, supported the judgment of the Appellate Court in all respects while contending that even if points for consideration were not framed appropriately, the reasons recorded by the Appellate Court would convey the mind of the judge as to how the judge affirmed the findings of the Rent Controller and mere failure to frame appropriate points for consideration would not vitiate the judgment and on such ground, the judgment of the Appellate Court cannot be set aside. It is also contended that while keeping pending the appeal filed by the landlady and disposal of the appeal filed by the tenants would not cause any prejudice and would not lead to any conflicting judgments and thereby it is not a serious irregularity committed by the Appellate Court. Therefore, the judgment cannot be set aside on that ground and finally prayed to confirm the order passed by the Appellate Court in R.A.No. 90 of 2013 dated 21-03-2017.

In view of rival contentions, it is the duty of this Court, being the revisional Court, to decide the legality, regularity and propriety of the judgment of the Appellate Court keeping in mind the scope of revision under Section 22 of the Act. The scope of revision under Section 22 of the Act is limited and this Court cannot interfere with the fact findings recorded by the Rent Controller as held by the Apex Court in ***Hindustan Petroleum Corporation Limited Vs. Dilbahar Singh***⁵. No doubt the revisional powers of this Court under Section 22 of the Act are limited and this Court cannot interfere with the fact findings recorded by the Rent Controller and the Appellate Court except where the Courts committed an illegality or irregularity and pronounced incorrect orders and such findings are *ex facie* perverse.

⁵ AIR 2014 SC 3708

The first and foremost contention raised by learned counsel for the tenants is that the judgment of the Appellate Court is not in consonance with Order 41 Rule 31 of C.P.C. and thereby it is liable to be set aside. Section 20 of the Act deals with appeals. Any person aggrieved by an order passed by the Controller may, within thirty days, from the date of such order, prefer an appeal in writing to the Chief Judge, Small Causes Court in the cities of Hyderabad and Secunderabad and elsewhere to the Subordinate Judge or if there are more than one Subordinate Judge, to the Principal Subordinate Judge having original jurisdiction over the area aforesaid. On such appeal being preferred, the appellate authority shall send for the records of the case from the Controller and after giving the parties an opportunity of being heard and, if necessary, after making such further inquiry as he thinks fit either personally or through the Controller, shall decide the appeal and the decision of the appellate authority and subject to such decision, an order of the Controller shall be final and shall not be liable to be called in question in any Court of Law, except as provided in Section 22 of the Act. Thus, the powers of the Appellate Court under Section 20 of the Act are unlimited and the Court shall decide the real controversy, advertent to both fact and law, in accordance with law after affording reasonable opportunity to both parties being heard and if necessary the Appellate Court may also conduct an inquiry personally or through the Rent Controller. Therefore, the jurisdiction of the Appellate Court is almost akin to the jurisdiction of the Courts in regular appeals under Section 96 read with Order 41 of C.P.C. Rule 22 (8) of the Andhra Pradesh Building (Lease, Rent and Eviction) Control Rules, 1961 (for short, 'the Rules'), deals with what the order passed by either Rent Controller or Appellate Authority shall contain and it is extracted hereunder for better appreciation:

"The Controller or the appellate authority deciding the dispute shall record a brief note of the parties and witnesses who attend and upon the evidence

so recorded, and after consideration of any documentary evidence produced by the parties; a decision shall be given in accordance with justice, equity and good conscience by the Controller or appellate authority. The decision given shall be reduced to writing. If any party duly summoned to attend, does not attend, the dispute may be decided ex parte."

From a bare reading of sub-rule (8) of Rule 23 of the Rules, the Controller or the Appellate Authority is required to pronounce decision in accordance with justice, equity and good conscience upon consideration of evidence recorded and other documentary evidence produced but it does not contemplate framing of points for consideration and recording of any reasoning by Controller or Appellate Authority for their conclusion in the decision given by them. The Rules framed under the Act provide certain procedures to be followed during inquiry in rent control petitions like summoning and for impleading legal-heirs *etc.*, but there is no embargo either directly or indirectly from application of the provisions of C.P.C. If there is any complete bar from applying the provisions of C.P.C., question of amending pleadings, framing of points and other incidental proceedings like producing documents, condoning delay *etc.*, would not arise in petitions under the Act but still Rent Controller and Appellate Authority under the Act in practice adopting the provisions of C.P.C. as there was no complete bar against application of the provisions of C.P.C. As per the contention of learned counsel for the tenants, the question is whether the provisions of C.P.C., more particularly Order 41 Rule 31 of C.P.C. is required to be complied with by the Appellate Court while pronouncing order under the provisions of the Act. Order 41 applies to first appeals filed under Section 96 of C.P.C. but appeal under the Act shall be filed under Section 20 of the Act and decision thereon shall be in accordance with Rule 22 (8) of the Rules. When specific Rule contemplates what the order passed by either Rent Controller or Appellate Authority shall consist, normally the provisions of C.P.C. shall not be applied to the proceedings under the Act, more particularly for pronouncement of orders by either of the

Courts. The Courts consistently held that reason in the judgment is heart and soul of order or judgment, either under procedural law or as per common law doctrine incorporated in Rule 22(8) of the Rules. However, learned counsel for the landlady contended that strict adherence to the procedure contemplated under C.P.C cannot be insisted, since the Act itself is a complete Code. If such contention is accepted, it is difficult to decide several applications under the Act, for the reason, sometimes the parties may amend the pleadings etc., for which the Act contained no provision. The view of learned counsel for the respondent is supported by judgment of the Court in ***M. Nagender Rao Vs. B.M. Lakshmaiah***⁶. But, the other judges did not agree with the view of another single Judge in ***M. Nagender Rao*** case, *vide* ***Sachivada Simhachalam and other Vs. Kalla Naidu and others***⁷ and ***L.K. Pranesh Babu and another Vs. Mohd. Akbar and another***⁸, following the law declared by Division Bench of the Court in ***Hari Kishan Singh Vs. B. Narayan***⁹, reiterated in ***P.N. Rao Vs. Radhakrishnamacharyulu***¹⁰ by the larger Bench of this Court. Moreover, Section 141 of C.P.C made it clear that provisions of C.P.C, if not inconsistent with specific provision under the Act or Rules, scheme and the purpose of Act, can be made applicable. Therefore, the view expressed by single Judge in ***M. Nagender Rao*** case is not binding precedent and consequently the contention of learned counsel for the landlady is rejected.

In view of the above discussion, the provisions of C.P.C. are applicable to the proceedings under the Act. Order XLI deals with appeals. Rule 31 of the Order specified what judgment in appeal should contain, viz.; the points for determination; the decision thereon; the reasons for the decision; and where the

⁶ 1996 (2) ALT 498

⁷ 2003 (3) ALD 70

⁸ 2003 (1) ALD 778

⁹ 1969 (2) APLJ 290

¹⁰ AIR 1978 AP 319

decree appealed from is reversed or varied, the relief to which the appellant is entitled. The judgment in appeal under Section 20 of the Act is final, subject to revision under Section 22 of the Act and the Appellate Court's judgment as to question of fact cannot be interfered with except when such fact finding is perverse or not based on evidence. When the Appellate Court failed to discharge the obligation under Rule 31 of Order XLI of C.P.C., the judgment is liable to be set aside (*vide B.V.Nagesh and others Vs. H.V.Sreenivas Murthy*¹¹). When Rule 31 is not complied with, judgment is liable to be set aside and shall be remitted to Court (*vide Union of India and another Vs. Ranchold and others*¹²) but in *G.Amalorpavam and others Vs. R.C.Diocese of Madurai and others*¹³ expressing contrary view held that where there is an honest endeavour on the Appellate Court to consider the controversy between the parties and there is a proper appraisal of respective cases weighing both sides is clearly manifest by perusal of judgment of the lower Appellate Court, it would be a valid judgment.

In any view, the law is consistent that the Appellate Court has to make an endeavour to decide real controversy on appraisal of evidence with reference to grounds urged before it. Even if respondent did not contest, still it is the duty of Court to decide *lis* without dispensing with the process of reasoning (*vide Balraj Taneja and another Vs. Sunil Madan and another*¹⁴). Any law in India did not dispense with the process of reasoning. Even if any question is required to be decided based on common law doctrine of justice, equity and good conscience, the Court has to record reasons. Therefore, viewed from any angle, it is the duty of the Appellate Court to record reasons in compliance with Order XLI Rule 31 of

¹¹ (2010) 13 SCC 530

¹² (2007) 14 SCC 326

¹³ (2006) 3 SCC 224

¹⁴ AIR 1999 SC 3381

C.P.C. read with Rule 22 (8) of the Rules. As the judgment of the Appellate Court is not in compliance with Order XLI Rule 31 of C.P.C. and Rule 22 (8) of the Rules, the same is not legally sustainable. Order 41 of C.P.C. is applicable but still parties under the Act are under obligation to comply with the requirements under sub-rule (8) of Rule 22 of the Rules. The framers of the Rules perhaps thought that if the procedure in regular suits or appeals is applied, it may lead to certain complications and delay the proceedings. When a special statute provides special procedure, the adjudicating authority shall follow the procedure and not the general procedure. In the present case, the Appellate Court framed the following points for consideration:

- "1. Whether the orders of the trial Court in R.C.No. 200 of 2007 be set aside?**
- 2. To what relief?"**

The tenants raised several contentions but the Appellate Court framed a point for consideration in the most casual and cavalry manner without advertng to any of the specific contentions raised in the grounds of appeal. Such procedure is against the spirit of Rule 22 (8) of the Rules. What an order shall contain normally is not specified anywhere but the order must be reasoned one since the judgment or order in its final shape usually contains in addition to formal parts:- (i) A preliminary or introductory part, showing the form of the application upon which it was made, the manner in which and the place at which, the writ or other originating process was served, the parties appearing any consent, waivers, undertakings or admissions given or made, so placed as to indicate whether they relate to the whole judgment or order or only part of it, and a reference to the evidence upon which the judgment or order is based and (ii) A substantive or mandatory part, containing the order made by the Court" as has been said in ***Halsbury's Laws of England (4th Edition, Volume 26 P. 260)***. Thus, in view of the requirements of an order or judgment referred above, an

order pronounced on the bench shall contain the reasoning since the judge speaks with authority by his judgment. The strength of a judgment lies in its reasoning and it should therefore be convincing. Clarity of exposition is always essential. Dignity, convincingness and clarity are exacting requirements but they are subservient to what, after all, is the main object of a judgment, which is not only to do but to seem to do justice. In addition to these cardinal qualities of a good judgment, there are the attributes of style, elegance and happy phrasing which are its embellishments. In the words of Former Chief Justice of the Supreme Court Sabyasachi Mukharji, the requirement of a good judgment is reason. Judgment is of value on the strength of its reasons. The weight of a judgment, its binding character or its persuasive character depends on the presentation and articulation of reasons. Reason, therefore, is the soul and spirit of a good judgment. Equity, justice and good conscience are the hallmarks of judging. One who seeks to rely only on principles of law, and looks only for the decided cases to support the reasons to be given in a case or acts with bias or emotions, loses rationality in deciding the cases. The blind or strict adherence to the principles of law sometimes carries away a judge and deviates from the objectivity of judging issues brought before him. Justice M.M. Corbett, Former Chief Justice of the Supreme Court of South Africa, recommended a basic structural form for judgment writing, which is as follows:

- "(i) Introduction section;**
- (ii) Setting out of the facts;**
- (iii) The law and the issues;**
- (iv) Applying the law to the facts;**
- (v) Determining the relief; including costs; and**
- (vi) Finally, the order of the Court.**

Keeping in view various principles and observations including the definition of order and judgment, the Apex Court laid down certain guidelines for writing judgments and orders in ***Joint Commissioner of Income Tax, Surat, Vs. Saheli Leasing and Industries Limited*** (Civil Appeal No. 4278 of 2010) in para No. 7 of the judgment and they are extracted hereunder:

- "7. ***These guidelines are only illustrative in nature, not exhaustive and can further be elaborated looking to the need and requirement of a given case:-***
- a) ***It should always be kept in mind that nothing should be written in the judgment/order, which may not be germane to the facts of the case; It should have a co-relation with the applicable law and facts. The ratio decidendi should be clearly spelt out from the judgment/order.***
 - b) ***After preparing the draft, it is necessary to go through the same to find out, if anything, essential to be mentioned, has escaped discussion."***
 - c) ***The ultimate finished judgment/order should have sustained chronology, regard being had to the concept that it has readable, continued interest and one does not feel like parting or leaving it in the midway. To elaborate, it should have flow and perfect sequence of events, which would continue to generate interest in the reader.***
 - d) ***Appropriate care should be taken not to load it with all legal knowledge on the subject as citation of too many judgments creates more confusion rather than clarity. The foremost requirement is that leading judgments should be mentioned and the evolution that has taken place ever since the same were pronounced and thereafter, latest judgment, in which all previous judgments have been considered, should be mentioned. While writing judgment, psychology of the reader has also to be borne in mind, for the perception on that score is imperative.***
 - e) ***Language should not be rhetoric and should not reflect a contrived effort on the part of the author.***
 - f) ***After arguments are concluded, an endeavour should be made to pronounce the judgment at the earliest and in any case not beyond a period of three months. Keeping it pending for long time, sends a wrong signal to the litigants and the society.***
 - g) ***It should be avoided to give instances, which are likely to cause public agitation or to a particular society. Nothing should be reflected in the same which may hurt the feelings or emotions of any individual or society."***

Therefore, a judgment or an order shall contain the above seven minimum requirements i.e. a to g. In the present case, the judgment passed by the Appellate Authority is bereft of such requirements. Therefore, the order of the Appellate Court is against the requirements under Rule 22 (8) of the Rules.

When judgment is pronounced without reasoning, it is not a judgment in the eye of law for the reason that the requirement of reasoning either by Rent Controller or Appellate Authority is to convey the mind of the judge while deciding such an issue before the Court. Where the Appellate Court has considered the entire evidence on record and discussed the same in detail, come to any conclusion and its findings are supported by reasons even though the point has not been framed by the Appellate Court, there is substantial compliance with the provisions of Order 41 Rule 31 of C.P.C. and the judgment is not in any manner vitiated by the absence of a point of determination. Where there is an honest endeavour on the part of the lower Appellate Court to consider the controversy between the parties and there is proper appraisal of the respective cases and weighing and balancing of the evidence, facts and the other considerations appearing on both sides is clearly manifest by the perusal of the judgment of the lower Appellate Court, it would be a valid judgment even though it does not contain the points for determination. The object of the Rule in making it incumbent upon the Appellate Court to frame points for determination and to cite reasons for the decision is to focus attention of the Court on the rival contentions which arise for determination and also to provide litigant parties opportunity in understanding the ground upon which the decision is founded with a view to enabling them to know the basis of the decision and if so considered appropriate and so advised, to avail the remedy of second appeal conferred by Section 100 of C.P.C. (*vide G.Amalorpavam*). From a bare reading of the principle laid down in the above judgment, the requirement of recording of reasons is only to show that the Court has focused concentration on rival contentions and to provide litigant parties an opportunity of understanding the ground upon which the decision is founded. Even if it is an order under the provisions of the Act, still these basic requirements cannot be ignored by Courts. In such case, a judge is

required to apply his mind and give focused consideration to rival considerations raised by both parties but in this case the Appellate Court repeated the finding recorded by the Rent Controller without independent consideration and appreciating evidence on record. Such order or judgment without independent consideration is not legally sustainable since Courts do not act blindly or mechanically and pass orders or judgments. Courts ought to be cautious and only on being satisfied that there is no fact which needs to be proved despite being in admission, should proceed to pass judgments (vide **Balraj Taneja**). Thus, in the absence of application of mind in arriving at such conclusion without considering the evidence independently is nothing but repeating of findings recorded by the Rent Controller. The need for recording of reasons is greater in a case where the order is passed at the original stage, a decision without reasons is like grass without root, the requirement to record reasons is one of the principles of natural justice as well and where a statute required recording of reasons in support of the order, it must be done by the authorities concerned as held by the Apex Court in **S.M.Mukerji Vs. Union of India**¹⁵. The increasing institution of cases in all Courts in India and the resultant burden upon the Courts has invited attention of all concerned in the justice administration system. Despite heavy quantum of cases in the Courts, in the view of Courts, it would neither be permissible nor possible to state as principle of law that while exercising power of judicial review on administrative action and more particularly judgment of Courts in appeal before in High Court, providing of reasons can never be dispensed with. The doctrine of *audi alteram partem* has three basic essentials, firstly; a person against whom an order is required to be passed or whose rights are likely to be affected adversely must be granted an opportunity of being heard, secondly; the concerned authority should follow fair and

¹⁵ 1990 CrI.L.J. 2148

transparent procedure and lastly; the authority concerned must apply its mind and dispose of the matters by reasoned order or speaking order. This has been uniformly applied by Courts in India and abroad (*vide Assistant Commissioner, Commercial Tax Vs. M/s. Shukla and others*¹⁶). Here in this case, the judgment is only repetition of the findings recorded by the Rent Controller. When the Appellate Court passed such judgment without considering the requirements contemplated under Rule 22 (8) of the Rules, such judgment cannot be sustained. Even otherwise, it is the duty of the Court to state its reasons on each issue by due application of mind, clarity of reasoning and focused consideration; a slipshod consideration or cryptic order or decree without due reflection on issues raised in the matter may render such decree unsustainable and therefore hasty adjudication must be avoided and each and every matter that comes to the Court must be examined with seriousness it deserves as held by the Supreme Court in *Board of Trustees of Martyr Memorial Trust and another Vs. Union of India and another*¹⁷. From the principles laid down in the above judgments, the judgment of the Appellate Court is nothing but a slipshod one without focused consideration on the issues raised by both parties. In such case, the same cannot be sustained.

The doctrine of justice, equity and good conscience is common law doctrine which was introduced in Calcutta in seventeenth century, later in Bombay and Madras Presidencies. In the absence of any rules of procedure, the Courts have to decide the suits or proceedings by applying the doctrine but the rules framed under the Act, which are having statutory force of law, prescribed such procedure to decide rent control cases or appeals by Rent Controller or Appellate Court on the basis of common law principles (*vide Rule*

¹⁶ (2010) 4 SCC 785

¹⁷ 2012 (10) SCC 734

22 (8) of the Act), though not Courts in India are not Courts of equity but Courts of law.

The word equity allows Courts to use their discretion to dispense justice in accordance with natural law. In practice, modern equity is sometimes limited by substantive and procedural rules but this is always not in case; in the Act, certain provisions and rules envisaged procedure, except the contents of orders passed by authority. Moreover, there is any amount of inconsistency in the procedure followed by Presiding Officers both as Rent Controllers or Appellate Judges.

In the absence of any definition of the words 'justice, equity and good conscience in the Act or the Rules, Courts may fall back on judge made law since the words will be interpreted as taking their ordinary, contemporary and common meaning. The term equity 'denotes the spirit and habit of fairness and justness" (vide ***Perrin Vs. United States***¹⁸). The term conscience means "the sense of right or wrong together with a feeling of obligation to do or be that which is recognized as good" (vide ***Gilles Vs. Department of Human Resources Development***¹⁹) (quoting Black's Law Dictionary). The Court also recognized that such broad language "necessarily anticipates that the trier of fact, instead of attempting to channelize his decision with rigid and specific rules, will draw upon precepts of justice and morality as the basis for his ruling.

In ***International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, AL., Vs. Elizabeth H. Dole, Secretary of the United States Department of Labor***²⁰, it was held that

"It goes without saying that persons of good will may differ widely as to what is "fair", "just" and consistent with "right dealing" in a given context. The fairness and justness of decisions made by this Court, for example, regularly occasion

¹⁸ MANU/USSC/0098/1979

¹⁹ 11 Cal. 3d 313

²⁰ 919 F.2d 753

disagreement between successful and unsuccessful litigants. Just so, in the present case. Those who have received money because of the government's error and through no fault of their own may think it not consistent with right dealing to require them to pay the money back, all the more so when they spent the money not knowing they had no entitlement to it. Nonetheless, the Secretary remains responsible to the taxpayers who paid in the funds paid out through bureaucratic error, and to a Congress and Executive determined to make drastic cuts in TAA program spending. See supra at 754, 757. Given the Administration's cost-cutting policy, a policy approved and adopted by Congress, see supra at 757, the Secretary can hardly be taken greatly to task for making waiver of recoupment a tightly limited exception to the pay-it-back main rule.

*In face of the elastic nature of "equity and good conscience", and the obligation of Courts to heed the context in which the words appear, appellants argue that the Secretary's interpretation is unreasonably narrow. Appellants rely, particularly, on the Eighth Circuit's decision in **Groseclose Vs. Bowen**²¹. In that case, the state sought to recover overpayment of a child's insurance benefits by deducting the overpayment amount from the father's retirement insurance benefits, even though the father did not himself receive, and had no knowledge of, the overpayment. Groseclose, 809 F.2d at 503. The regulation successfully challenged in Groseclose looked to one factor only, detrimental reliance. The father necessarily had not relied on receipts of which he was unaware. The Secretary maintained that, because the father was unable to show detrimental reliance, recoupment was not barred by "equity and good conscience" as defined in the regulations."*

In **U.Bransly Nongaiang Vs. U.Drolishon Syiemiong and others**²², the High Court of Gauhati set aside the order on the ground that the order is violative of principles of justice, equity and good conscience but not defined the doctrine.

A similar statute i.e. Residential Tenancies Act, 1987, where the same doctrine came up for consideration before New South Wales Residential Tenancies Tribunal. In determining applications, Tribunal and Board members are required to act according to "equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms." As such, wide

²¹ MANU/FEET/0229/1987

²² (1986) 2 GLR 487

discretionary power is conferred on Property Tribunals in dispensation of justice without adhering to any procedural fetters.

The expression "equity and good conscience" was first used in 1606 in the Statute which established in England Courts of Requests (3 Jac. 1, c. 15). These Courts had previously been established by Order in Council during the reign of Henry VIII, when they were known as "the Courts of Conscience in the Guildhall" and had Jurisdiction to try matters of debt up to 40 shillings. The Commissioners of the Courts of Request were required to make such orders "as they shall find to stand with Equity and Good Conscience". In ***Colliery Employees' Federation Vs. Northern Colliery Proprietors' Association***²³, Cohen J. said

".....the words 'equity and good conscience' leave this Court, in my opinion, in the position that, whilst not infringing any positive law of the country, it may do that which it believes to be right and fair and honest between man and man.....".

In the Long Service Leave (Engine Driver) Award case (1961) AILR, case 308, Gallagher J. sitting as the Coal Industry Tribunal, said that "equity and good conscience required the Tribunal to have regard to "such consideration as the requirements of natural Justice, the taking of a realistic view, the necessity of doing what is right and fair and honest between man and man, conscientious observance of rules of fair play, the quality of being equal or fair, common fairness as opposed to meticulous insistence upon the formalities of the law."

After reviewing a large number of decided cases, Olsson expressed the view that certain "fundamental concepts" emerged from this provision:

- (1) ***A tribunal which is, by statute, enjoined to be governed in its procedure and judgments by equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms or the practice of other Courts is not, generally***

²³ (1904) AR 182 at 185

speaking, bound to decide proceedings stricti juris. Rather it is a Court of conscience different from those regulated by established principles of law and equity and not absolutely bound to adjudicate according thereto.

- (2) *This is not to say that the tribunal may not or should not take established principles of law and equity into consideration (and, indeed in appropriate circumstances even decide certain cases solely upon the footing thereof as being the most just approach) but it must, in the final analysis, test its conclusion solely in the light of the express statutory mandate.*
- (3) *The wide discretionary power conferred is, in a sense, self limiting in terms of procedure. Whilst informal procedures and evidence may usually be adopted, nevertheless, everything done (or omitted) must stand the test of the established principles of natural justice.*
- (4) *The very nature of the proceedings will have a direct bearing upon the exercise of discretion under the statute, both in procedural and substantive respects. Thus, for example, cases involving penal or quassi penal consequences may well be treated on a basis of evidence, standard of proof and principles substantially different from arbitral claims or non-penal actions.*
- (5) *The Tribunal is not empowered to disregard as absolute statutory directive which bears upon the subject matter and manifestly is not intended to be read down in light of a general power of conscience.*

There are suggestions in some of the decided cases that where Parliament has clearly intended that a Court or tribunal should act as a "court of conscience" rather than a court of law, there can be no appeal from a decision of such a court or tribunal. This argument has then been turned around to support the proposition that if Parliament has provided an avenue of appeal, which it has with the Residential Tenancies Tribunal and the Strata Titles Board, this must indicate some restriction on the extent to which the court or tribunal against

which the appeal lies may make use of the "equity and good conscience" provision. The case usually cited in support of these arguments is **Moses Vs. Parker**²⁴. In that case, the court in question was directed to be guided by equity and good conscience only, and by the best evidence procurable, even if not required or admissible in ordinary cases, and not to be bound by strict rules of law, equity or by any legal forms. The question arose as to whether there was a right of appeal to the privy Council. The Privy Council held that there could be no appeal, because the members of the Court were expressly exonerated from all rules of law and equity and all legal forms. The decision continued:

"How then can the propriety of their decision be tested on appeal? What are the canons by which this Board is to be guided in advising Her Majesty whether the Supreme Court is right or wrong? It seems almost impossible that decisions can be varied except by reference to some rule; whereas the Court making them is free from rules. If appeals were allowed, the certain result would be to establish some system of rules; and that is the very thing from which the Tasmanian Legislature has decided to leave this court free and unfettered in each case. If it were clear that appeals ought to be allowed, such difficulties would doubtless be met somehow. But there are strong arguments to show that the matter is not an alppealable nature."

In **Qantas Airlines Limited Vs. Gubbins**²⁵, the New South Wales Court of Appeal had to consider s.108 (1) (b) and s. 118 of the Anti-Discrimination Act, 1977. The former provision provided that the Tribunal in question "shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms". The latter provision provided for an appeal to the Supreme Court on questions of law. Gleeson C.J. and Handley J., in a joint judgment, describing these provisions as "apparently conflicting", held that the conflict could be resolved only by holding that the "equity and good conscience" provision did not release the Tribunal from the obligation to apply

²⁴ (886) AC 245

²⁵ (1992) 28 NSWLR 26

rules of law in arriving at its decisions. It was pointed out that in some cases, the words equity, good conscience and the substantial merits of the case" may indicate that "the decision maker is free from any obligation to apply rules of law so that any decision will be executive rather than judicial and not subject to appeal even if that is otherwise available". In other contexts, those words have been construed as requiring the Tribunal to apply the ordinary law.

In an attempt to summarize the way in which the tribunals should approach the question of equity and good conscience, Noblet J in **Russito Pty Ltd Vs. Rosso**²⁶ has this to say:

"It is not appropriate to attempt an exhaustive definition of what is meant by 'equity and good conscience'. Each case must be examined on its merits. However, in view of the difficulty in reconciling some recent decisions, and having regard to my responsibility as Chairman to determine any question of law or procedure, it may be useful for me to attempt to extract from the authorities some general principles which I consider should guide the tribunal in the future.

- (1) The Tribunal must always ensure that principles of natural justice are scrupulously observed.*
- (2) The Tribunal must comply with any express statutory directive that is clearly not intended to be ignored or departed from, even if the result may not seem to accord with equity and good conscience.*
- (3) In matters of statutory interpretation, the Tribunal must not give a statute a meaning other than that which a court of law would place upon it.*
- (4) Subject to the above, the Tribunal may determine a matter before it by the application of conscience, fairness and common sense, rather than according to strict law, if it is satisfied that this is an appropriate approach in all the circumstances of the particular case.*
- (5) In deciding whether this alternative approach is appropriate, the Tribunal should have regard to all relevant factors and, in particular, the following:*
 - (a) the nature of the proceedings (the alternative approach may not be appropriate if the proceedings involve penal or quasi-penal consequences),*

²⁶ (1993) 173 LSJS 14

- (b) *the nature of any dispute involved in the proceedings (the alternative approach may not be appropriate if it would remove the degree of certainty which the law attempts to bring to commercial transactions),*
- (c) *the conduct of the parties (the alternative approach may not be appropriate if it would remove the degree of certainty which the law attempts to bring to commercial transactions),*
- (d) *in cases involving contracts or agreements, the relative bargaining power of the parties and the extent to which they have had legal or other appropriate advice (the alternative approach may be appropriate if one party is in an inferior position relative to the other and has acted to his or her disadvantage without advice)."*

In view of the meaning given to the words "equity and good conscience" in the above judgments and applying the same meaning to the proceedings before the Rent Controller and the Appellate Court, they are bound to pass order/judgment applying the common law doctrine of "justice, equity and good conscience". When such wide discretion is conferred on Rent Controller and Appellate Authority, they must act more diligently and exercise discretion judiciously. Merely because the adjudicating authorities are given discretion, such discretion shall not be exercised at their whims and fancies. However, the tenancy disputes are increasing to manifold due to urbanization and industrialization. In such case, the adjudicating authorities under the Act must not act in haphazard manner to decide rights of parties in such applications as such decisions will have serious consequences and in fact the doctrine is not workable in the present conditions prevailing in the State.

A Full Bench of the Apex Court in ***Rattan Lal Vs. Vardesh Chander***²⁷, while dealing with an eviction dispute between landlord and tenant come across an identical situation, relied on ***Namdeo Lokman Lodhi Vs. Narmadabai***²⁸ to hold as follows:

²⁷ LAWS (SC) 1975 122

²⁸ AIR 1953 SC 228

"It is axiomatic that the courts must apply the principles of justice, equity and good conscience to transactions which come up before them for determination even though the statutory provisions of the Transfer of Property Act are not made applicable to these transactions. It follows therefore that the provisions of the Act which are but a statutory recognition of the rules of justice equity and good conscience also govern those transfers. If, therefore, we are satisfied that the particular principle to which the legislature has now given effect by the amendment to Section 111 (g) did in fact represent a principle of justice, equity and good conscience, undoubtedly the case will have to be decided in accordance with the rule laid down in the section, although in express terms it has not been made applicable to leases executed prior to the Transfer of Property Act coming into force."

In ***Maharaja of Vizianagaram by his Guardian and Next Friend, F.W.***

Gillman Vs. Sri Rajah Setrucherla Somasekhararaz Bahadur and Ramabhadraraz Bahadur²⁹, a Full Bench of Madras High Court for the first time considered the common law doctrine and held in para No. 26 as follows:

"If justice, equity and good conscience do require us in India to go so far a field as the English Courts in order there to seek for and thence to import into India principles of equity we can certainly be pardoned to go so far a field as the Irish Courts for the same purpose. We in India are not absolutely bound by the decisions of either set of Courts, as we are by the decisions of the Judicial Committee of the Privy Council; but without resorting to the decisions of the Irish Courts, I say with all deference, that the lien contended for in the present case is not importing into India any novel principle of equity based on unsound analogy and rejected as unsound by judges of such eminence as Bowen and Fry, L.JJ. and not followed by an equally eminent judge as the late Lord Justice Cotton in Falcke Vs. Scot Imp. Insurance Co.; nor is it at all at variance with the Transfer of Property Act of the Indian Legislature and with the policy of the Government as disclosed in its legislative enactments, at any rate, such of them as are in force in this presidency."

Following the principle, A Larger Bench consisting of nine judges of the Apex Court in ***Superintendent and Remembrancer of Legal Affairs, West Bengal***³⁰ considering the applicability of common law of England to India

²⁹ (1903) 13 MLJ 83

³⁰ 1966 LAWS (SC) 1220

observed that the next question is, how far and what extent the common law of England relating to the prerogatives was accepted as the law throughout India. India at the relevant time comprised Provinces and Natives States. As bhashyam Ayyangar, J., pointed out in (102) ILR 25 Sad 457 (supra), "the prerogatives of the Crown in India – country in which the title of the British Crown is of a very mixed character may vary in different provinces, as also in the Presidency towns as distinguished from the mufasil. The determination with anything like legal precision, of all the prerogatives of the British Crown in India is by no means as easy task." It is well known that the Common Law of England was applied as such in the original sides of the High Courts of Calcutta, Bombay and Madras, and that in the mufasil Courts the principles embodied in the common law were invoked in appropriate cases on the ground of justice, equity and good conscience. It cannot therefore, be posited that either the entire body of common law of England relating to prerogatives of the Kind or even the rule of construction as forming part of that law was accepted as law in every part of the country. It has to be established whenever a question arises as to what part of the common law was accepted as the law in a particular part of the country. The decision of the Privy Council in 73 Ind App 271 (supra) in support of the contention that the common law of England was accepted as the law of our country in that regard. In that case, the question was whether the Crown was not bound by Section 222 (1) and S. 265 of the City of Bombay Municipal Act, 1888, which gave the municipality power to carry water-mains for the purposes of water supply through across or under any street and into, through or under any land "whatsoever within the city.", When the Municipal Corporation wanted to lay water-mains through the land belonging to the Government of Bombay the Government did not agree except on some conditions. Thereafter, the dispute between the parties was referred to the High Court. Ultimately, setting aside the

order of the High Court the Privy Council held that the rule that no statute bound the Crown was the Crown was expressly or by necessary implication made bound thereunder applied to the Crown in India and that there was no such express intention or necessary implication in the said section. Indeed, the High Court also accepted that principle, but on the construction of the relevant provisions it came to the conclusion that there was such a necessary implication thereunder. On the application of the principle, there was no contest before the Privy Council: The Privy Council expressly stated so at page No. 274 of IA), when it observed: "The High Court held, following previous decisions of its own, that the principle to be applied for the decision of the question whether or not the Crown is bound by a statute is not different in the case of Indian Legislation from that which has long been applied in England. The parties concurred in accepting this view, and their Lordships regard it as correct. "The decision made on a concession made by the parties even though the principle conceded was accepted by the Privy Council without discussion, cannot be given the same value as one given upon a careful consideration of the pros and cons of the question raised. Further, no argument was raised before the Privy Council that the Common Law of England had legal force only in the said three Presidency towns and not in the rest of the country, for that case happened to be one that arose in the City of Bombay. The observations of the Privy Council that the principles obtaining in England also governed the Crown in India are rather wide. Nor any argument was raised before the Privy Council making a distinction between substantive branches of common law and mere rules of construction. It is not possible to predicate what the Privy Council would have said if that distinction had been placed before it. Be that as it may, this decision cannot be taken as finally deciding the question that is raised before us. After elaborate

consideration of principles laid down in various decisions, the Apex Court summed up in para No. 21 as follows:

"Some of the doctrines of common law of England were administered as the law in the Presidency Towns of Calcutta, Bombay and Madras. The Common Law of England was not adopted in the rest of India. Doubtless some of its principles were embodied in the statute law of our country. That apart, in the Muffasil, some principles of common Law were invoked by Courts on the ground of justice, equity and good conscience. It is, therefore, a question of fact in each case whether any particular branch of the Common Law become a part of the Law of India or in any particular part thereof. The aforesaid rule of construction is only a cannon of interpretation; it is not a rule of substantive law. Though it was noticed in some of the judgments of the Bombay High Court, the decisions therein mainly turned upon the relevant statutory provision. One decision even questioned its correctness. There is nothing to show that it was applied in other parts of the country on the ground of justice, good conscience and equity. In Madras, it was not considered to be a binding rule of law, but only as a simple cannon of construction. In Calcutta, there was a conflict: one Bench accepted the construction and the other rejected it. The Privy Council gave its approval to the mainly on the concession of Advocates and that decision related to Bombay City. It is, therefore, clear that the said rule of construction throughout India and even in the Presidency towns it was not regard as inflexible rule of construction. In short, it has not become a law of the land."

In view of the law discussed, when the common law doctrine of justice, equity and good conscience is incorporated in the rules framed under the statute i.e. Andhra Pradesh Buildings (Lease, Rent & Eviction) Control Act, 1960, in the adjudicatory or judicial process, the adjudicating authorities must strictly adhere to the principle. This Court come across many revisions but none of the officers followed Rule 22 (8) of the Rules. Though the doctrine of justice, equity and good conscience is not workable in the State during the present days, the adjudicating authorities are bound by rule as long as it is continuing as a rule on the statute. In the present case, both the Rent Controller and the Appellate Court did not adhere to Rule 22 (8) of the Rules and decided. Even otherwise, concurring with the finding of the Rent Controller, which is not based on any data

for fixation of fair rent while disbelieving the evidence on record, without applying its mind by the Appellate Court and without arriving at an independent conclusion is an apparent error and against the principle of justice, equity and good conscience.

Viewed from any angle, the Rent Controller and the Appellate Court under the Act are bound by Rule 22(8) and provisions of C.P.C, more particularly Order XLI Rule 31 of C.P.C by the Appellate Court, while adjudicating appeal under Section 20 of the Act, in the absence of any express or implied bar from applying the provision of C.P.C to the proceedings under the Act.

In the present case, the impugned judgment is nothing but a slipshod consideration with utmost haste and framing of such point for consideration extracted above would indicate that the Presiding Officer did not apply mind. Framing such point and reproducing the order of the Rent Controller itself suffice to hold that the judgment passed by the Appellate Court is not in accordance with law since it did not consider the basic requirements under Rule 22 (8) of the Rules i.e. justice, equity and good conscience and Order XLI Rule 31 of C.P.C. while pronouncing the judgment but one view is that when Appellate Court accepted the findings of Rent Controller, the Appellate Court need not record specific reasons as held by the Apex Court in ***Nopany Investmetns (P) Limited Vs. Santokh Singh (HUF)***³¹, wherein the Apex Court discussed about the necessity of recording reasons in the first appeal and held that in case of reversal, the first appellate Court ought to give some reason for reversing the findings of the trial Court whereas in case of affirmation, the first appellate Court accepts the reasons and findings of the trial Court. This view though appears to be correct, but still in the present case the Rent Controller did not accept the evidence of witnesses examined and disbelieved the evidence on record on the

³¹ (2008) 2 SCC 728

ground that the evidence of P.W.2 coupled with Exs.X1 to X4 cannot be taken into consideration for fixing fair rent of the premises since the premises occupied by P.W.2 is at Mahatma Gandhi Road, near Paradise, whereas the subject property is at Hill Street and thereby rent payable for two different premises cannot be equated, similarly disbelieved the evidence of R.W.2 by recording reason in para No. 26 of the order placing reliance on the principle laid down in ***Liza Arulandam Vs. A.S.Sulochana***³², wherein the Apex Court held that in accordance with the principles set out in sub-sections (2) to (5) of the Act, the fair rent for the residential shall be at 9% and for non-residential building the fair rent to be 12% gross return per annum on the total cost of the building in question. Following the principle laid down in ***Mohammed Ahmed and another Vs. Atma Ram Chauhan and others***³³, wherein it was held that the rent so fixed should be just, proper and adequate, keeping in mind location, type of construction, accessibility with the main road, parking space facilities available therein *etc.*, the Rent Controller in para No. 28 of the order fixed fair rent at Rs.25/- per square foot and total Rs.4,500/- per month. The conclusion of the Rent Controller that square foot fetches Rs.25/- per month as rent is not based on any data. None of the witnesses spoke anything about the rent being fetched by the premises in their occupation. This finding of the Rent Controller is based on presumptions and assumptions and such finding was affirmed by the Appellate Court, without recording any reason, placing reliance on ***Ratan Arya Vs. State of Tamilnadu and another***³⁴, wherein the Apex Court held that Court can take judicial notice of enormous manifold increase of rents throughout the country, particularly in urban area. No doubt the Court can take judicial notice about increase of rent abnormally throughout the country. However, fixing of fair rent must be based on

³² AIR 1990 (SC) 2289

³³ 2011 (4) SCC (Civil) 79

³⁴ AIR 1986 SC 1444

some data or evidence on record when the Rent Controller or the Appellate Court has to fix fair rent for the premises. Here in this case, the evidence adduced by both parties was disbelieved by the Rent Controller and fixed fair rent at Rs.25/- per month per square foot and the Appellate Court mechanically, by applying the principle laid down by the Apex Court in **Ratan Arya** (13th *supra*) which permits the Courts to take judicial notice of manifold increase of rents, affirmed the finding. Thus, the finding recorded by the Appellate Court confirming the order of the Rent Controller is erroneous on the face of the record. Therefore, the judgment of the Appellate Court is liable to be set aside on this ground alone.

The Rent Controller marked the documents produced by third party P.W.2 as Exs.X1 to X4 and at the same time the documents produced by R.W.2 examined on behalf of the tenants were also marked as Exs.X1 and X2. The procedure adopted by the Rent Controller is contrary to Rule 115 of the Andhra Pradesh Civil Rules of Practice and Circular Orders which contemplates marking of documents produced by third parties in X series and distinct numbers are to be given to such documents. If no such distinct numbers are given, reference of those documents while discussing the facts may lead to complications.

It is brought to the notice of this Court that the appeal filed by the landlady against the very same order of the Rent Controller is still pending but without deciding the appeal filed by the landlady, the Appellate Court with utmost haste decided the appeal filed by the tenants and it is against the normal practice of deciding both appeals arising out of one judgment by both parties to rent control proceedings and it creates any amount of suspicion. The judgment of the Appellate Court is not in consonance with Rule 22 (8) of the Rules and therefore it is liable to be set aside.

The civil revision petition is accordingly allowed setting aside the judgment dated 21-03-2017 in R.A.No. 90 of 2013 on the file of the Court of Chief Judge, City Small Causes Court, Hyderabad, while remanding the matter to decide the same along with R.A.No. 212 of 2013 filed by the landlady against the same order having dissatisfied with the quantum of fair rent fixed by the Rent Controller. Pending miscellaneous petitions, if any, shall stand closed in consequence. No costs.

M.SATYANARAYANA MURTHY, J.

Date: 18-07-2017.

Note:

L.R. copy to be marked.

B/O

JSK

