

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No. 1538 OF 2017

ORDER:

The unsuccessful petitioner in E.A.No. 21 of 2016 in E.P.No. 12 of 2016 in R.C.No. 58 of 2012 on the file of the Additional Rent Controller, Secunderabad (for short, 'the executing Court'), preferred this revision under Article 227 of the Constitution of India aggrieved by the order dated 14-03-2017, whereby the petition filed under Rule 23 (7) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Rules, 1961 (for short, '1961 Rules'), was dismissed.

The petitioner filed petition under Rule 23 (7) of 1961 Rules, alleging that she is the tenant in occupation of the property in ground floor of building bearing No. 7-2-1004 situated at Station Road, Moosakhan Bazaar, Secunderabad, having obtained the property on lease in the year 1970 through her husband late Chitti Babu who carried on business in her name on her behalf in the schedule annexed to the petition during his lifetime. She lost her husband in the year 1991. Thereafter, her sons continued to extend their help in the business being carried on in the premises on her behalf and virtually they were running business on her behalf. One of her sons namely Chalapati Rao died in the year 2004 leaving behind him his son Trivikram to succeed his estate and now he is looking after the footwear, imitation jewelry and bangles business on her behalf due to her old age and health condition and as she needs support for her survival.

Originally, the property belongs to one Ch.Venkateswarlu and he orally leased out the property to the petitioner. During subsistence of the lease, the said Venkateswarlu died and his children, who succeeded the estate of Venkateswarlu, continued to collect rent for the property from the petitioner.

While the matter stood thus, respondent No. 1 purchased the property from the heirs of the deceased Venkateswarlu. Based on the sale deed, respondent No. 1 filed R.C.No. 58 of 2012 against her two sons *i.e.* respondent Nos. 2 and 3 who are no way concerned with the leasehold rights in the property. In fact, respondent Nos. 2 and 3 were not the tenants in occupation of the property. Her two sons, who are living separately, colluded with respondent No. 1 with a *mala fide* intention to get her evicted from the property developing an unholy alliance and filed the petition, though she is continuing in possession and enjoyment of the property as a tenant, for unlawful gain. The petitioner is still continuing as tenant in the premises. Respondent No. 1, admitting the relationship of landlord and tenant in his petition, contended that the petitioner is no more and her sons succeeded her estate including the lease and therefore arrayed them as parties to R.C.No. 58 of 2012 though in fact she is alive. As long as the petitioner is alive, her sons will not become tenants and filing such petition suppressing the fact that she is alive is nothing but obtaining decree by playing fraud on the Court. Thereby, the eviction order is nonest in the eye of law. The petitioner further contended that the allegation made in para No. 2 of the petition is sufficient to conclude that she is the tenant in occupation of the premises on payment of monthly rent of Rs.1,200/- exclusive of water and electricity consumption charges. Thus, admission of respondent No. 1 is suffice to conclude that the petitioner is the tenant who is alive but in collusion with respondent Nos. 2 and 3 obtained the eviction order fraudulently. After obtaining the order in R.C.No. 58 of 2012, respondent No. 1 filed a petition for execution of the order *i.e.* to evict the tenant in occupation, thereby the petitioner came to know about the proceedings, resisted the delivery of property in execution proceedings and filed the present petition to dismiss the execution petition as she is the real tenant in occupation of the property.

Respondent No. 1 filed counter affidavit contending that in the earlier suit O.S.No. 796 of 2011 filed against respondent No. 2, respondent No. 2 admitted that he was the tenant and that he pleaded tenancy agreement with Ch.Venkateswarlu. The petitioner never raised any claim over the schedule property at any time during pendency of R.C.No. 58 of 2012 and R.A.No. 253 of 2013 before two different Courts, her sons also did not disclose about her existence as on the date of their examination and therefore she is not entitled to raise any objection at the stage of execution of the order.

Respondent Nos. 2 and 3 have deposited arrears of rent due and payable by them to the credit of R.A.No. 253 of 2013 and continuously deposited rent during pendency of the proceedings, the petitioner never tendered rent or deposited rent to the credit of any proceedings and the petitioner was never in possession and enjoyment of the property since 1990.

It is further contended that the schedule property was sublet to R.K. Fashion Wear from whom respondent Nos. 2 and 3 are collecting rent @ Rs.14,000/- per month which is admitted by respondent No. 3 in his cross-examination. Basing on such admission, eviction was ordered and the same was affirmed by the appellate Court in appeal. The present petition is an invention as a ruse to drag the matter with an intention to sublet again claiming huge amount of Rs.25,000/- per month as rent; therefore, the petitioner is disentitled to claim any relief in this petition and prayed for dismissal of the same.

Respondent No. 2 filed a separate counter affidavit on his behalf and on behalf of respondent No. 3 admitting that the petitioner is their mother and she is the tenant in occupation of the schedule premises bearing No. 7-2-1004 in ground floor at Station Road, Secunderabad, having obtained the same on lease to run the business with the help of their brother's son namely Trivikram. They also asserted that in the counter affidavit filed by them in R.C.No. 58 of 2012,

they contended that there was no jural relationship of landlord and tenants between respondent No. 1 and them and that rent receipts were issued in the name of their mother only who is carrying on business. They also denied the death of their mother but respondent No. 1 did not take any steps to implead her as a party to the eviction petition and obtained an order and succeeded even in the appeal. Therefore, the order is not binding on her and prayed to pass appropriate order.

During inquiry, the petitioner herself was examined as P.W.2 besides examining her grandson as P.W.1 and got marked Exs.P1 to P17. None were examined on behalf of the respondents and no documents were marked.

Basing on the above pleadings, the trial Court framed the following points for consideration:

- "1. Whether there are any bonafides on the part of the claim petitioner in making the claim petition?
2. Whether the claim petitioner is in the possession of petition schedule premises either actual, physical, or symbolic?
3. Whether the claim petitioner proved that she is having trade license and physically able to run the business in the petition schedule premises?
4. Whether the execution petition filed by the respondent No. 1 can be disallowed?
5. To what relief?"

Upon hearing argument of both counsel, the trial Court came to conclusion that she was not in possession and enjoyment of the property at any time, her evidence is suffice to conclude that she sublet the premises to her grandson i.e. P.W.1 to run business in the name and style of M/s. Satish Footwear collecting Rs.12,000/- or Rs.13,000/- per month and thereby she is

disentitled to obstruct or resist delivery of property in execution of the order in R.C.No. 58 of 2012 and dismissed the petition.

Aggrieved by the order dated 14-03-2017, the present revision is filed on various grounds mainly on the ground that the trial Court failed to consider the scope of inquiry and the admissions made by respondent No. 1 in the eviction petition. Even according to the conclusion arrived at by the trial Court, the petitioner sublet the premises to P.W.1 and therefore her possession cannot be disputed since she is the tenant who allegedly sublet the premises. In such case, the conclusion arrived at by the trial Court that the petitioner was not in actual possession and enjoyment of the property as tenant since 1990 is false on the face of record. Apart from that, the voluminous documentary evidence produced before the Court from 1987 to 2007 would establish that the petitioner is the tenant in occupation of the property. Ex.P4 is receipt dated 20-09-2007 issued by Ch.Venkateswarlu, the original landlord, acknowledging receipt of rent from the petitioner but the trial Court, on erroneous appreciation, arrived at such conclusion and finally prayed to set aside the order and dismiss the execution petition by allowing this revision.

Respondent No. 1 filed counter affidavit denying material allegations while admitting that the property originally belongs to Ch.Venkateswarlu, who died, and that he purchased the same from the legal-heirs of Venkateswarlu under registered document No. 784 of 2011 dated 28-05-2011. It is also contended that the legal-heirs of Venkateswarlu have attorned the tenancy of respondent No. 2 and directed respondent No. 2 to pay rent to respondent No. 1 and the same was informed to respondent Nos. 2 and 3. Respondent No. 1 also filed O.S.No. 796 of 2011 on the file of the Court of I Additional Junior Civil Judge, City Civil Court, Secunderabad, against the original owner Ch.Venkateswarlu claiming perpetual injunction restraining the said Venkateswarlu and other

persons claiming through him from interfering with his possession and enjoyment of the property. In the said suit, respondent No. 3 asserted that he was the tenant in occupation. During the entire proceedings before both the Courts below, none of the respondents raised any contention that the petitioner was alive and that she was not in occupation of the premises at any time while denying that there was no relationship between the parties and did not suppress anything and prayed for dismissal of the revision petition.

During hearing, Sri D.Madhava Rao, learned counsel for the petitioner, would contend that the petitioner is the original tenant even according to the admission of respondent No. 1 in the eviction petition but conveniently impleaded her sons as legal-heirs of the petitioner as if she died. Thus, filing petition against the sons of original tenant alleging that she has died is nothing but playing fraud on the Court and order obtained by such deceit is nonest in the eye of law and the same is liable to be set aside. The trial Court did not appreciate the admission in the rent control petition in proper perspective but, on the simple ground that the petitioner was unable to identify the signatures, concluded that she was not in possession and enjoyment of the property at any time since 1990. Such conclusion is contrary to the admission made in the eviction petition and when the admission is judicial admission, the petitioner is not required to prove the subsisting relationship of tenant and landlord between her and respondent No. 1. Therefore, the order under challenge is unsustainable and it is contrary to the settled principles of law. If, for any reason, the order is sustained, it would amount to encouraging fraudulent and collusive orders. He prays to dismiss the execution petition accepting the obstruction or resistance of the petitioner to the execution.

Whereas Sri M.Pratap Singh, learned counsel for respondent No. 1, would contend that this Court, while exercising jurisdiction under Article 227 of the

Constitution of India, cannot reappraise the evidence and the fact findings recorded by the trial Court cannot be disturbed and placed reliance on ***Hindustan Petroleum Corporation Limited Vs. Dilbahar Singh***¹. He would further contend that when the trial Court came to the conclusion that there was no subsisting relationship of tenant of landlord between the petitioner and respondent No. 1, such fact finding cannot be disturbed. Apart from that, the petitioner has to prove that she is in possession, otherwise she is disentitled to resist or obstruct the execution based on the principles laid down in ***K.Shiva Prasad Vs. C.Sree Ramulu and another***² and prayed for dismissal of the petition confirming the order passed by the trial Court.

Considering rival contentions and perusing the material available on record, the sole point that arises for consideration is that

"Whether the petitioner is the tenant in occupation of the premises and entitled to obstruct delivery of possession under Rule 23 (7) of 1961 Rules?"

As the petition is filed under Rule 23 (7) of 1961 Rules, it is for the petitioner to establish that there exists relationship of tenant and landlord between her and respondent No. 1 and in possession of the property. Rule 23 of 1961 Rules deals with resistance or obstruction of execution of orders passed by the Rent Controllers under the Act and sub-rule (7) thereof deals with resistance or obstruction of execution of orders passed under the Act. It is apposite to extract sub-rule (7) of Rule 23 of 1961 Rules for better appreciation. Accordingly, it is extracted hereunder:

"If such execution is resisted and obstructed by any person other than the person against whom order of eviction was passed, the Controller may

¹ AIR 2014 SC 3708

² 2002 (6) ALT 406

hold a summary enquiry into the facts of the case and if he is satisfied that the resistance or obstruction was without any just cause and that such resistance and obstruction still continues; shall issue a warrant to evict the said person by force and deliver the possession of the building to the person entitled for possession in pursuance of the order of eviction, and if he is satisfied that the resistance or the obstruction was occasioned by any person other than the person against whom order of eviction was passed claiming in good faith to be in the possession of the building on his own account or on account of some person other than the person against whom order of eviction was passed, he shall make an order of disallowing the execution against such person."

A bare reading of sub-rule (7) of Rule 23 of 1961 Rules, it is clear that a third party to eviction order alone is entitled to resist or obstruct the execution of order passed under the Act for eviction of tenants in occupation. A summary inquiry is contemplated under 1961 Rules and accordingly conducted a summary inquiry by the Rent Controller. Here, the contention of respondent No. 1 is that the petitioner was not the tenant and her sons *i.e.* respondent Nos. 2 and 3 are continuing as tenants consequent upon her death and thereby she is not entitled to raise such objection. Learned counsel for the petitioner would contend that judicial admissions in the eviction petition are suffice to conclude that the petitioner is the tenant but, for different reasons, it is alleged that she died and respondent Nos. 2 and 3 succeeded the tenancy of the premises, though she is alive. Therefore, the petitioner is the real tenant and the question of succeeding right of tenancy by respondent Nos. 2 and 3 does not arise. The entire basis for the claim is the judicial admission made in the eviction petition by respondent No. 1 which is extracted hereunder for better appreciation:

"The respondents are the tenants of the mulgi No. 7-2-1004 situated at Station Road, Moosakhan Bazaar, Secunderabad. The previous landlord has let out the aforesaid mulgi to the mother of the respondents herein by name Smt. Ammanna, and the receipts are passed in her name. After the death of Smt. Ammanna, the respondents herein has

became the tenants of the schedule mentioned property/mulgi on a monthly rent of Rs.1,200/- exclusive of water and electricity consumption charges. The respondents also agreed to pay the municipal tax for the portion under his occupation....."

The admissions in para No. 2 of the eviction petition extracted above made it clear that the original tenant is Smt. Ch.Ammanna, the petitioner herein and mother of respondent Nos. 2 and 3, she obtained the premises on lease from the father of the vendors of respondent No. 1 herein and also admitted that receipts were issued in the name of Ammanna, the petitioner herein. Therefore, there is absolutely no quarrel with regard to the relationship of tenant and landlord between the petitioner and the father of the vendors of respondent No. 1 during his lifetime and later between the petitioner and the children of Ch.Venkateswarlu but it is alleged that respondent Nos. 2 and 3 succeeded the tenancy right consequent upon the death of Smt. Ch.Ammanna which is factually a lie. When the original tenant Smt. Ch.Ammanna, the petitioner herein, is alive, question of succeeding right of tenancy by respondent Nos. 2 and 3 does not arise and it is nothing but an invention, obviously for different reasons.

An admission in pleadings is a judicial admission and the petitioner, who is asserting subsisting tenancy, need not prove the relationship of tenant and landlord even after tenancy was attained under Section 109 of the Transfer of Property Act, 1882, in view of Section 58 of Indian Evidence Act, 1872. It is settled law that admission is the best piece of evidence in view of the principle laid down in ***Sita Ram Bhau Patil Vs. Ramachandra Nago Patil***³, wherein it was held that

"Admission is the best piece of substantive evidence that an opposite party can rely upon, though not conclusive, is decisive of the matter, unless successfully withdrawn or proved erroneous. Admission may in

³ AIR 1977 SC 1712

certain circumstances, operate as an estoppel. The question which is needed to be considered is what weight is to be attached to an admission and for that purpose it is necessary to find out as to whether it is clear, unambiguous and a relevant piece of evidence, and further it is proved in accordance with the provisions of the Evidence Act. It would be appropriate that an opportunity is given to the person under cross-examination to tender his explanation and clear the point on the question of admission."

In view of the above, the law on the admissions can be summarized to the effect that admission made by a party, though not conclusive, is a decisive factor in a case unless the other party successfully withdraws the same or proves it to be erroneous. Even if the admission is not conclusive, it may operate as an estoppel. Law requires that an opportunity be given to the person who has made admission under cross-examination to tender his explanation and clarify the point on the question of admission. Failure of a party to prove its defence does not amount to admission nor it can reverse or discharge the burden of proof of the Plaintiff.

In ***Nagubai Ammal and others Vs. B. Shama Rao and others***⁴, wherein the Apex Court held that

*"Admission made by a party is admissible and best evidence, unless it is proved that it had been made under a mistaken belief. While deciding the said case reliance has been placed upon the judgment in **Slatterie Vs. Pooley**, wherein it had been observed "What a party himself admits to be true, may reasonably be presumed to be so."*

In view of the law declared by the Apex Court referred above, admission is the best of piece of evidence. In view of the admission in para No. 2 of the eviction petition regarding jural relationship of tenant and landlord between the petitioner and respondent No. 1, the petitioner need not be called upon to prove the same. At best, she is required to prove her existence as on the date of filing

⁴ AIR 1956 SC 593

her application for the reason that she allegedly died leaving behind respondent Nos. 2 and 3. To establish that she is alive, she has produced her Aadhar Card marked as Ex.P17 and Household Supply Card marked as Ex.P1 so also rent receipts marked as Exs.P3 and P4 dated 25-04-2006 and 20-09-2007 respectively. In addition to production of documents, she herself entered into witness box and examined herself asserting that she is alive. Therefore, the allegation that respondent Nos. 2 and 3 succeeded the tenancy right of Smt. Ch.Ammanna, the mother of respondent Nos. 2 and 3, consequent upon her death is a bare lie. Conveniently, respondent Nos. 2 and 3 though filed counter affidavit in the eviction petition, they simply denied the subsisting relationship of landlord and tenants between respondent No. 1 and them. They further denied the death of their mother while asserting that their mother is still alive which fact clearly shows that the petitioner has no knowledge about the case. Thus, respondent Nos. 2 and 3 herein disputed the very death of Smt. Ch.Ammanna, their mother, while asserting that she is alive. Even then, respondent No. 1 did not take any steps to implead her. Therefore, the very filing of the petition with false allegation that the original tenant Smt. Ch.Ammanna died is a serious fraud or deception of a material fact in view of their own admission in para No. 2 of the eviction petition and thereby the order, if any, passed in evicting respondent Nos. 2 and 3 herein is not binding on the petitioner who is the real tenant.

The trial Court dismissed the petition on the grounds that the petitioner failed to prove her possession as on the date of filing the petition and when she is out of possession, she is not entitled to claim any relief under Rule 23 (7) of 1961 Rules and that basing on the ignorance pleaded by the petitioner on certain aspects when rent receipts *etc.*, were confronted to her but the witness was aged 85 years by the date of filing the petition and that too she is a semi-illiterate and at the age of 85 years, it is difficult for any person to recollect several aspects

and identify the signatures *etc.*,. Therefore, inability to identify the signatures on rent receipts by itself is not a ground to conclude that she was not in possession of the property by the date of filing the petition. Taking advantage of the finding recorded by the trial Court, learned counsel for respondent No. 1 would contend that to claim benefit under Rule 23 (7) of 1961 Rules, it is the duty of the petitioner to prove that she is in possession and enjoyment of the property as on the date of filing the petition, otherwise she is disentitled to claim relief under the above Rule and in support of the said contention, he placed reliance on **K.Shiva Prasad** (2nd *supra*), wherein this Court while deciding an identical case held that there must be a pleading and proof that the petitioner is in possession and enjoyment of the property as on the date of filing the petition. In the facts of the above judgment, one of the legal-heirs of the deceased tenant filed an application under Rule 23 (7) of 1961 Rules alleging that he is also one of the legal-heirs of the deceased even without averment as to possession or occupation of schedule property as on the date of filing the petition. Therefore, considering the facts and circumstances of the case, this Court held that there must be an averment as to possession or occupation of the petitioner in respect of schedule property and he, being one of the legal-heirs of the original tenant, cannot claim benefit under Rule 23 (7) of 1961 Rules when eviction petition was filed against other legal-heirs of the original tenant. Based on the facts and circumstances of the above case, this Court declined to grant relief. The above judgment is distinguishable on facts. Here, the original tenant is alive but filed the application against the sons, who are not the tenants, alleging that she died and respondent Nos. 2 and 3 succeeded the estate of the deceased including the leasehold rights in the property which is *ex facie* false but the executing Court did not distinguish the facts on hand with the facts of the decision in the above judgment. Apart from that, the petitioner is claiming that she is in

occupation of the property, carrying on business with the help of her grandson Trivikram (P.W.1). However, respondent No. 1 contended that she sublet the schedule premises to her grandson who is actually carrying on business. Even assuming for a moment that this contention is true and correct, the original tenant is the petitioner and her grandson is the sub-tenant and respondent No. 1 has to file eviction petition against the tenant and sub-tenant but not against third parties *i.e.* the sons of the petitioner during her lifetime. Apart from that, voluminous documentary evidence produced before the executing Court including rent receipts would establish that she is in occupation of the property as tenant and paid rent to the landlord but for the reasons best known to respondent No. 1, the petitioner was not impleaded as a party to the petition and sought eviction against her sons during her lifetime and continued the proceedings despite the fact that the petitioner is alive on the date of filing counter by her sons. Therefore, the order obtained by respondent No. 1 is nothing but playing fraud on the Court and such decree is not executable against the person who is in possession either effective or constructive. In a similar situation in ***Gongunta Krishna Murthy Vs. Bommisetti Narasimha Rao***⁵, this Court held that an eviction order was obtained against the person allegedly in possession of the property but various respondents were found in possession in the property since long time and without impleading those persons who are in possession and for removal of huts in existence since longtime, it amounts to obtaining a decree by playing fraud. The same principle can be applied to the present facts of the case since the persons in possession were not impleaded and obtained an order of eviction by filing rent control petition and therefore, the order is nonest in the eye of law.

⁵ 1987 (2) APLJ (HC) 162

In **Jagjivanlal Vs. Leelavathi Rai**⁶, this Court made it clear that it is open to the decree holder to make an application to remove the obstruction. It is open to the obstructer to file an application to protect his premises. It is also open to the Court to hold a summary enquiry on the basis of the report of the bailiff, even if no application is filed either by the decree-holder or by the judgment-debtor. Thus, it is evident from the law declared by the Courts that the Court can either by the parties who filed application under Rule 23 (7) of 1961 Rules or even the Court on its own motion may make an inquiry and pass appropriate orders and if the Court finds that the claim of a particular person is genuine, the Court can dismiss the execution petition. The power of the Court under Rule 23 (7) of 1961 Rules though limited, it is the duty of the Court to make a summary inquiry as to who is the real tenant and in possession of the property in view of gamut of sub-rule (7) of Rule 23 of 1961 Rules which is wide enough to clothe the Court with a power to examine even in the execution proceedings whether the decree could be executed and the principle of the executing Court cannot go behind the decree cannot be extended to in view of the statutory powers so specially conferred on the Court. Therefore, the doctrine under the Code of Civil Procedure (for short, 'C.P.C.') has no room or scope to be extended in view of the maxim "*generalia specialibus non derogant*".

In **Jagjivanlal Vs. Leelavathi Rai and others**⁷, this Court had an occasion to deal with a similar issue and when the bailiff, who was entrusted with the warrant of eviction, went to execute the order, the petitioner allegedly obstructed him claiming that he was the tenant of the premises in his own right and not as a judgment debtor. Thereupon, the bailiff returned the warrant. When the matter was taken up by the court, the decree-holder wanted that the warrant of execution to be reissued since there was no application but the Court

⁶ 1978 (2) An.W.R. 357

⁷ 1980 (1) RCR (Rent) 46

held that it is open to the Court to hold a summary inquiry on the basis of the report of the bailiff even if no application is filed either by the decree-holder or by the judgment debtor and dismissing the application without such an inquiry is illegal.

In ***Ravu Elizebeth Rose Vs. Anguluri Munemma***⁸, this Court held that when a third party resisted delivery of property in execution of an order passed under the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short, 'the Act'), claiming to be in *bona fide* possession of the building and when the Court finds that the claim is genuine, the remedy to the decree-holder is to file a suit for eviction and not entitled to recover possession in the guise of eviction order obtained under the Act and the third party who claimed to be in possession of the property is entitled to retain the possession and the Court directed to redeliver possession of the property while permitting the decree-holder to approach the Court by separate proceedings.

In ***Amtul Quayyum Humsira Vs. Munawar Fathima and another***⁹, this Court is of the view that

"Where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution. Cm jurisdictio data est, ea eoque concessa esse videntur, sine quibus jurisdictio explicari non potuit. Thus, an Act which empowered justices to require persons to take an oath as special constables, and gave them to inquire into an offence, impliedly empowered them to apprehend the persons who unlawfully failed to attend before them for those purposes. Otherwise, the jurisdiction could not be effectually exercised. Where an inferior Court is empowered to grant an injunction, the power of punishing disobedience to it by commitment is impliedly conveyed by the enactment, for the power would be useless if it could not be enforced. And it is laid down that where a

⁸ 2002 (3) ALD 713

⁹ 2001 (6) ALD 205

statute empowers a justice to bind a person over, or to cause him to do something, and the person, in his presence, refuses, the justice has impliedly authority to commit him to jail till he complies. An Act which authorizes the making of by-laws, impliedly authorizes the annexation of a reasonable pecuniary penalty for their infringement, recoverable (in the absence of other provision) by action or distress."

"In the same way, when powers, privileges, or property are granted by statute, everything indispensable to their exercise or enjoyment is impliedly granted also as it would be in a grant between private persons."

After elaborate discussion of the law declared by various Courts with reference to Rule 23 (7) of 1961 Rules and Section 47 of C.P.C. equating Rule 23 (7) of 1961 Rules with proceedings under Order 21 Rules 97 and 99 of C.P.C., it was concluded that the rule which deals with resistance or obstruction occasioned to any person other than the person against whom an order of eviction was passed claiming in good faith to be in possession of the building on his own account or on account of some person other than the person against whom the order of eviction was passed. That means any third party to the decree or eviction order in good faith claiming to be in possession can lay claim under Rule 23 (7) of 1961 Rules. In the instant case, the petitioner is admittedly the tenant of the property who allegedly died leaving behind respondent Nos. 2 and 3 who succeeded the right of tenancy in the property and obtained the eviction order. Therefore, the undisputed fact is that there is relationship of tenant and landlord between the petitioner and respondent No. 1 or his predecessor in title and respondent No. 1 became the landlord and entitled to collect rent by virtue of attornment. It is the contention of learned counsel for respondent No. 1 that in the earlier proceedings, her sons alone claiming to be the tenants got the suit dismissed but the plea raised by respondent Nos. 2 and 3 in the earlier proceedings and in the present proceedings is not relevant and would not bind the petitioner who is the admitted tenant of the premises. When

the petitioner is able to establish that she is paying rents to the landlord and possession either actual or constructive coupled with an admission made in para No. 2 of the eviction petition would suffice to conclude that she is the tenant in occupation of the premises and the order obtained against her sons without impleading her does not bind on her.

In **Ramesh Kumar Jain Vs. Ghansyamdass Rathi**¹⁰, an identical question came up for consideration and this Court, having considered the facts and circumstances of the case and comparing Rule 23 (7) of 1961 Rules with Order 21 Rule 58 of C.P.C. or Order 21 Rules 97, 99 and 101 of C.P.C., is of the view that the person, who is not a party to the eviction order, can file an application under Rule 23 (7) of 1961 Rules subject to satisfying the conditions and the executing Court has to make an inquiry as to who is in possession and in what capacity and if the Rent Controller finds that the obstruction is illegal, the Rent Controller can order removal or obstruction or delivery of the property. If the Rent Controller finds that the petitioner in good faith resisted the execution, the Rent Controller can dismiss the execution petition.

In **Koneru Aruna Kumari Vs. Shaik Ali**¹¹, this Court held that the very fact of enquiry and disallowing the execution petition goes to show that even third parties or the tenant can file a petition under Rule 23 (7) and it cannot be canvassed that the petition shall be filed only by the decree-holder landlord. No landlord decree-holder will file an application to get the execution disallowed. In this case, the case of the petitioner is that the eviction order has been obtained against a person who is not at all a tenant. In that connection, he relied upon a decision of this Court in **R.Lilavathi Vs. Dandu Bala Narasaiah**¹². In that case, an eviction petition was filed against a dead person and after obtaining eviction

¹⁰ 2011 (5) ALD 354

¹¹ AIR 1991 AP 191

¹² 1978 (2) An.W.R.317

order, the same was executed against the dead person's family members and the landlord raised a contention that he is unable to redeliver the premises and, it was let out to third parties after taking delivery. The High Court ordered eviction of the third party who is residing at the time of passing the order and ordered redelivery to the petitioner. In the said judgment, this Court placing reliance on ***Busching Schmitz Vs. Menghant***¹³ observed that an act of the Court should not prejudice a party and that whenever it is brought to the notice of the Court, that it has been made a party to a thoroughly illegal and void order, either by misrepresentation of facts, or by playing fraud upon it, it should have the power to rectify the wrong. The Court cannot say that while it can be a party to a wrong law or wrong order, it has no power to remedy the same. Basing on the said principle, this Court concluded that the Court can rectify its own wrong or illegal order. In the present case, the order was passed by the trial Court without impleading the real tenant who is alive in view of the allegations made in para Nos. 2 and 3 of the eviction petition and respondent No. 1 failed to take steps to implead the original tenant but prosecuted and conveniently obtained an order of eviction. In such case, the order of eviction obtained against third parties who are not at all the tenants is not binding on the real tenant who is alive as on the date of filing the petition and in possession either actual or constructive.

In ***Arastu Talimi Trust Vs. Syed Shah Shujauddin Quadri***¹⁴, this Court equated the power of the Court under Rule 23 (7) of 1961 Rules with Order 21 Rule 97 of C.P.C. and concluded that sub-rule (7) of Rule 23 of the Rules does not specifically mention as to who can file an application under the said provision. What it contemplates is if execution of an order passed under the Act is resisted and obstructed by any person other than the person against whom the order of eviction was passed, the Rent Controller may hold a summary enquiry

¹³ MANU/SC/0344/1977

¹⁴ 2001 (1) ALD 325

into the facts of the case. It further contemplates that after an enquiry, if the Rent Controller finds that the resistance or obstruction is without any just cause and that such resistance and obstruction still continues, he shall issue a warrant to evict the said person by force and deliver the possession of the building to the person entitled for possession in pursuance of the order of eviction and if he is satisfied that the resistance or the obstruction was occasioned by any person other than the person against whom the order of eviction was passed claiming in good faith to be in possession of the building on his own account or on account of some person other than the person against whom the order of eviction was passed, he shall make an order disallowing the execution against such person. The consistent law declared by this Court in catena of perspective pronouncements is that when a third party is in *bona fide* possession on her own account or through any person other than the party to the eviction order, the Rent Controller has to make an inquiry and pass appropriate orders and if the Court is satisfied with the claim filed under Rule 23 (7) of 1961 Rules, the Rent Controller is bound to dismiss the execution proceedings. In the present case, as discussed in the earlier paras, the petitioner is the real tenant and during her lifetime, an eviction petition was filed against her sons as if she is no more and such order is nothing but an order passed on misrepresentation or playing fraud on the court. Whether there is a relationship between respondent No.1 and respondent Nos. 2 and 3 is not germane in this petition as the petitioner is admittedly the tenant of the premises by the date of filing the petition and during her lifetime, her sons are not entitled to claim any right of tenancy and the eviction order obtained against her sons is not binding on the petitioner who is admittedly the tenant of the said premises having obtained from the predecessor in title of respondent No. 1 and continued as such. Therefore, the inability to identify the rent receipts is of no consequence in view of the recitals in eviction

petition but the Rent Controller gave much weight to her inability to identify the rent receipts and other circumstances when she was aged more than 85 years by the date of her examination. Thus, the trial Court committed a grave error in dismissing the petition filed under Rule 23 (7) of 1961 Rules totally ignoring the admissions in the eviction petition while highlighting evidentiary admissions *etc.*, ignoring judicial admissions of respondent No. 1 in the petition. As discussed above, the judicial admissions estop respondent No. 1 to contend otherwise as respondent No. 1 himself admitted that the petitioner obtained the premises on lease from his predecessors in title and the tenancy was attorned to respondent No. 1. In such case, respondent No. 1 cannot be allowed to obtain an eviction order misrepresenting the fact that she is alive and take delivery of possession through process of the Court by executing the eviction order. The executing Court did not consider the judicial admissions though the petitioner is not required to prove that she is the tenant in view of Section 58 of the Act of 1872 and gave much preference to the evidentiary admissions and thereby committed an error. Consequently, the eviction order is not executable against this petitioner who is the admitted tenant and continuing in possession either actual or constructive and the same is liable to be set aside.

Learned counsel for respondent No. 1 would contend that the powers of this Court under Section 22 of the Act are limited, this Court cannot interfere with the fact findings recorded by the Rent Controller and placed reliance on ***Hindustan Petroleum Corporation Limited*** (1st *supra*) in support of his contentions. No doubt the revisional powers of this Court under Section 22 of the Act are limited but the present petition is filed under Article 227 of the Constitution of India and the powers of this Court under Article 227 of the Constitution of India cannot be equated with the powers under Section 22 of the Act. Such powers under Article 227 of the Constitution of India can be exercised

in various circumstances, more particularly where sub-ordinate Courts or Tribunals did not exercise their powers and passed any orders against the principles of natural justice. Hence, the principle laid down in the above judgment cannot be applied to the present facts of the case.

The jurisdiction of this Court under Article 227 of the Constitution of India is supervisory in nature. When Court exceeds its jurisdictional limits, this Court can exercise the power on judicial side since exercise of such power is permissible to keep the subordinate Courts and Tribunals within their jurisdictional limits. When subordinate Courts or Tribunals failed to exercise their jurisdiction conferred on them, this Court can interfere with such findings and therefore the order under revision is liable to be set aside as it was passed by the executing Court ignoring the admissions (judicial) on record and transgressed its limits of power.

In the result, the civil revision petition is allowed setting aside the order dated 14-03-2017 in E.A.No. 21 of 2016 in E.P.No. 12 of 2016 in R.C.No. 58 of 2012 on the file of the Additional Rent Controller, Secunderabad, while allowing E.A.No. 21 of 2016 in E.P.No. 12 of 2016 in R.C.No. 58 of 2012. Pending miscellaneous petitions, if any, shall stand closed in consequence. No costs.

M.SATYANARAYANA MURTHY, J.

Date: 29-06-2017.

JSK