

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.261 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the Order dt.16.12.2016 in I.A.No.306 of 2016 in R.C.No.291 of 2010 passed by IV Additional Rent Controller at Hyderabad, dismissing the petition filed under Rule 7(5) of Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 and Rules, 1961).

The petitioner filed RC No.291 of 2010 under Section 4 of AP Buildings (Lease, Rent and Eviction) Control Act, 1961 (for short ' Rent Control Act') before the Rent Controller for fixation of fair rent on various grounds. But, the respondents filed Counter denying the jural relationship of landlord and tenant between them and the petitioner questioned the maintainability of the petition under Section 4 of Rent Control Act.

When the matter came up for cross examination of RW.1, the petitioner herein, filed I.A.No.306 of 2016 to receive the documents set out in the list, alleging that the respondents denied the jural relationship of landlord and tenant between them by filing Counter. It is also contended that the petitioner applied for certified copies of the

documents in earlier litigation in O.S.No.415 of 1981 and obtained the same recently, hence, he could not file the those documents earlier and requested the Court to receive the documents.

The respondents filed Counter denying material allegations of the affidavit *inter alia* contending that the documents cannot be received at this stage without any specific pleadings in the petition with regard to earlier litigation, and also raised several contentions, which are not relevant for deciding the present petition.

After hearing both the counsel, the Rent Controller concluded that in the absence of any pleading with regard to earlier litigation in O.S.No.415 of 1981 and the compromise recorded therein, the documents cannot be received by exercising power under Rule 7 (5) of Rules under Rent Control Act and dismissed the petition.

Aggrieved by the Order passed by the Rent Controller, the present petition is filed raising several contentions, mainly contending that the documents in O.S.No.415 of 1981 on the file of II Additional Judge, City Civil Court, Hyderabad, are relevant to decide the real controversy between landlord and tenant, the jural relation between them, to establish the relationship of landlord and tenant for the mulgi 49 and the Court cannot decide the relevancy

at this stage and, prayed to set aside the Order passed by the Rent Controller and receive the documents shown in the petition.

During hearing, Smt Manjiri S. Ganu, learned counsel for petitioner, would contend that the Court cannot decide the relevancy and admissibility of the documents at the stage of receiving the documents by exercising power under Rule 7 (5) of Rules under Rent Control Act, placed reliance on a judgment of this Court in *CRP No.4922 of 2004*, dt. *29.03.2006* and *Nawab Singh v. Inderjit Kaur*¹, in support of her contention. She also contended that the petitioner was prevented by a good cause and thereby, the Court can condone delay in filing a petition to receive the documents without deciding the relevancy and admissibility of the documents and prayed to allow the petition.

Sri B. Venkata Rama Rao, learned Senior Counsel, would contend that in the absence of any pleadings, which are required under Section 28 read with Rules 3 of Rent Control Act, the documents cannot be received; Rule 7 (1) of Rules under Rent Control Act, mandates that every application under the Act shall in addition to the particulars necessary to support it contain also the particulars prescribed in Rule 3 so far as they may be applicable and

¹ AIR 1999 SC 1668

every application for eviction under Section 10 shall also state the grounds on which the application is made accompanied by the agreement of tenancy, if any, rent receipt and a copy of the notice issued to the tenant; Rule 7 (4) of the Rent Control Act mandates that the parties shall produce at the first hearing of the case, all the documentary evidence of every description in their possession or power on which they intend to rely, and which has not already been filed and all documents which the Controller has ordered to be produced and the Controller shall receive the documents so produced.

He also further contended that unless a good cause is shown for non production of the documents, the Court cannot receive the documents set up in the list.

The petitioner filed main RC under Section 4 of Rent Control Act, for fixation of fair rent in the year 2010. The second respondent filed Counter immediately thereafter, denying the relationship of landlord and tenant between them, but the petitioner proceeded with the enquiry/trial and examined their witnesses. When the matter came up for cross examination of Rw.1, the petitioner filed the present petition under Rule 7 (5) of the Rules under Rent Control Act, alleging that they received the certified copies of the documents recently.

It is evident from the record that the petitioner proceeded with the enquiry/trial and examined the witnesses on his behalf, but did not raise any little finger to produce the documents set out in the list earlier though the petitioner is aware of the earlier proceedings allegedly and did not take any steps to file additional pleadings under Order 8 Rule 9 of CPC, more particularly, when the respondents denied the jural relationship of landlord and tenant between them.

According to the rules referred above, it is the duty of the petitioner to disclose all the particulars to substantiate the claim of the petitioner in the petition itself, but till today, the petitioner neither amended the petition appropriately nor filed any application under Order 8 Rule 9 CPC to file additional pleadings to substantiate his contention that there is subsisting jural relationship of landlord and tenant between them and absolutely, there is no pleading with regard to factum of filing the suit and the compromise recorded by the Court in the pleadings. In the absence of any pleadings with regard to earlier litigation either in the petition or in the subsequent pleading if filed by way of rejoinder, the documents cannot be received. Even if they are received and marked, it cannot be looked into for any purpose since the Court cannot travel beyond the pleadings to record findings. The petitioner placed

reliance on a judgment in CRP No.4922 of 2004 dt. 29.03.2006, wherein this Court relying on the earlier judgment in Nawab Singh's case (1 supra) held that the documents can be received as secondary evidence and extracted the principle in para No.3 of the Apex Court Judgment and granted leave to adduce secondary evidence in the said petition. But here, it is not the question to produce secondary evidence under Section 65 (a) of Evidence Act. But, it is a case where the petitioner wanted to introduce new documents and requested the Court to receive the same as evidence without any pleadings. Rule 7 (5) of the Rules under Rent Control Act is identical to Order 7 Rule 14 and Order 8 (1)a of CPC. But, there is a slight difference regarding requirement to satisfy the Court. Under Order 7 Rule 14 and Order 8 (1)a of CPC, the petitioner has to satisfy the Court that the petitioner was prevented by sufficient cause, but as per Rule 7 (5) of the Rules under Rent Control Act, the petitioner has to satisfy that he was prevented by a good cause and therefore, there is difference between "sufficient cause" and "good cause".

However, it is curious to note that the petition is bereft of cause, muchless good cause, to receive the documents except stating that the petitioner applied for certified copy of the Plaint, Written Statement and Compromise petition and received the same recently and

thereby they could not file earlier. But, filing of an application and date of receipt of the copies were not disclosed anywhere except making a bald allegation that the petitioner/society has applied for certified copies of Plaint, Written Statement and Compromise petition etc., and the same are received recently and the said cause is said to be a good cause. Therefore, the cause shown by the petitioner for failure to produce the documents, as required under Order 7 Rule 4 of CPC, is not a good ground. The principle laid down in the two judgments pertains to receiving of secondary evidence, which is totally different from Rule 7 (5) of the Rules under Rent Control Act.

The learned counsel for the petitioner contended that the Court cannot decide the relevancy at the stage of receiving the documents. Rule 7 (6) of the Rules under Rent Control Act enables the Court to reject any document if the Courts feels that they are irrelevant or inadmissible, which includes the stage of receiving the documents under Rule 7 (6) of Rent Control Act, which is identical to Order 13 Rule 3 of CPC. Therefore, the Rent Controller is vested with such power to reject any document at any stage on the ground of irrelevancy and inadmissibility. Failure to receive the documents set out in the list on the ground that there is no pleadings regarding the factum of filing the earlier suit and the compromise, the documents cannot be

received and looked into and the Rent Controller rightly dismissed the petition, by exercising power under Rule 7 (6) of the Rules under Rent Control Act while declining to receive the documents by exercising power under Rule 7 (5) of Rent Control Act.

The power of this Court under Article 227 of the Constitution of India is supervisory in nature and such power can be exercised only when the subordinate Courts passed an Order without exercising the discretion that is vested on the Court or exercising discretion in excess of the power conferred on the Court or exceeding the jurisdiction illegally. But here, the order passed by the Rent Controller is by strict adherence to Rule 7 (5) and (6) and Rule 3 and Section 28 of Rent Control Act. Therefore, I am not inclined to exercise the power under Article 227 of the Constitution of India to interfere with the Order under challenge, as I find no error in the order passed by the Rent Controller and therefore, the present Petition is liable to be dismissed.

Accordingly, the Civil Revision Petition is dismissed.

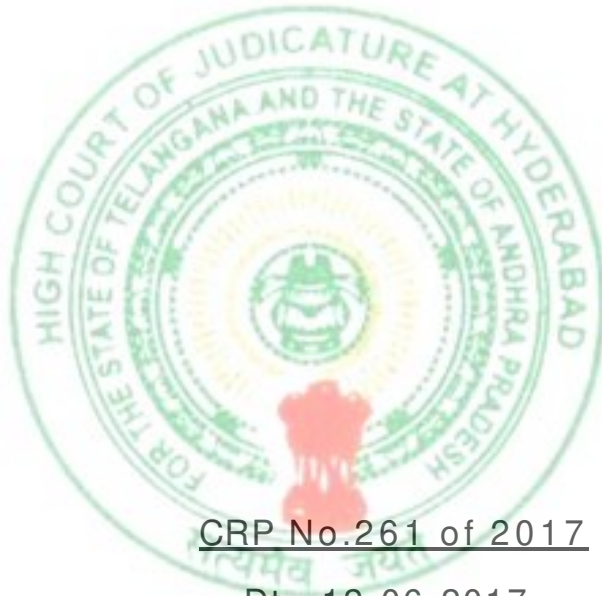
As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 12-06-2017.

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



CRP No.261 of 2017

Dt. 12-06-2017

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