

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.1082 of 2016

ORDER:

1 This Civil Revision Petition, under Section 22 of the A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960 (for short 'the Rent Control Act'), is filed challenging the order dated 27.10.2015 passed in RCA No.6 of 2010 on the file of the Rent Control Appellate Authority-cum-Principal Senior Civil Judge, Guntur wherein and whereby the order dated 03.11.2009 passed in RCC No.8 of 2009 on the file of the Rent Controller-cum-Principal Junior Civil Judge, Guntur, was set aside.

2 The facts which are relevant for disposal of this Civil Revision Petition are as follows:

The respondent filed RCC No.8 of 2009 against the petitioners on the file of the Rent Controller-cum-Principal Junior Civil Judge, Guntur, under Section 10(1) of the Rent Control Act, for eviction of the petitioners from the petition schedule property on the ground that they committed wilful default in payment of rent. The first petitioner is M/s.Sarma Sports and the second petitioner is its proprietor. The respondent examined himself as P.W.1 and got marked Exs.A.1 and A.2. To demolish the case of the respondent, the second petitioner examined himself as R.W.1, but no documents were marked on his behalf. After having a thoughtful consideration to the oral, documentary evidence and other material available on record, the Rent Controller arrived at a conclusion that though the petitioners have committed wilful default in payment of rent, the remedy available to the respondent is to file E.P., but not the petition under Section 10 (1) of the Rent Control Act and accordingly dismissed the

RCC. Feeling aggrieved by the order dated 03.11.2009 in RCC No.8 of 2009, the respondent preferred RCA No.6 of 2010 on the file of the Rent Control Appellate Authority-cum-Principal Senior Civil Judge, Guntur. The appellate authority, after affording reasonable opportunity to both parties, allowed the appeal. Hence the present revision.

3 The contention of the learned counsel for the petitioners is three fold:- 1) The finding recorded by the Rent Control Appellate Authority that the petitioners committed wilful default in payment of fair rent as fixed by the Rent Controller is not sustainable either on facts or in law as the petitioners challenged that order of the Rent Controller by filing an appeal and a revision, 2) the finding of the Rent Controller that the remedy available to the respondent is to file E.P., is legally sustainable and that aspect was not considered by the Rent Control Appellate Authority in right perspective, and 3) the finding of the Rent Control Appellate Authority that the respondent is entitled to file a petition under Section 10(1) of the Rent Control Act is legally unsustainable.

4 *Per contra*, the learned counsel for the respondent submitted that the Civil Revision Petition is not maintainable in view of concurrent finding of fact recorded by the authorities below that the petitioners committed wilful default in payment of rent. He further submitted that the finding of the Rent Controller that the option left to the respondent is to file E.P., and not a petition under section 10(1) of the Rent Control Act is not legally sustainable. He further submitted that there is no illegality or irregularity or impropriety in

the order of the appellate authority, which warrants interference of this Court.

5 The points that arise for consideration in this Revision Petition are as follows:

1. Whether mere filing of appeal or revision as the case may be would amount to automatic suspension of the order under challenge?
2. Whether the finding of the authorities below that the petitioners committed wilful default in payment of rent is perverse?
3. Whether the respondent is not entitled to file application under Section 10 (1) of the Rent Control Act?
4. Whether there is any illegality, irregularity or impropriety in the impugned order, which warrants interference of this Court while exercising jurisdiction under Section 22 of the Rent Control Act?

Point Nos.1 and 2:

6 Point Nos.1 and 2 are intertwined with each other and hence I intend to decide these two points simultaneously.

7 The learned counsel for the petitioners submitted that the scope of Revision under Section 22 of the Rent Control Act is wider than Section 115 CPC. I am fully agreeing with the said submission. This Court while exercising jurisdiction under Section 22 of the Rent Control Act can set aside the impugned orders passed by the lower authority if there is any illegality or irregularity or impropriety. If the finding recorded by the Rent Controller or the Rent Control Appellate Authority are based on no evidence or based on evidence which is not legally admissible, then those findings can be treated as perverse. In case of perverse findings this court can interfere and set aside the concurrent finding of fact recorded by both the authorities below.

8 The Rent Control Act is a beneficial legislation to both landlord and tenant. In **Ganpat Ram Sharma v. Gayatri Devi**¹, the Hon'ble apex Court held that the object of the Rent Control legislation is undoubtedly to protect the weaker sections of tenants from the unreasonable eviction and unfair rent. That does not mean that the tenant is entitled to continue in the premises even without paying rent by taking a plausible cause.

9 The petition schedule property originally belongs to the father of the respondent, who let out the same to one Raj Kumar nearly 44 years back. The said Raj Kumar used the premises for the purpose of carrying on his business in the name and style of M/s.Sarma Sports (first petitioner). After the death of the original landlord and tenant, the second petitioner, being the Proprietor of first petitioner i.e., M/s.Sarma Sports, and respondent being the legal heir of original landlord came into picture. Originally, the premises was let out on a monthly rent of Rs.16/- and the same has been enhanced from time to time and ultimately the rent payable by the petitioners, in the year 2003, was Rs.850/- per month. The respondent being not satisfied with the quantum of rent, filed RCC No.45 of 2003 against the petitioners under Section 4 of the Rent Control Act for fixation of fair rent at Rs.3,500/- per month. Basing on the oral, documentary evidence and other material available on record, the Rent Controller allowed the RCC No.45 of 2003 on 13.07.2006 by fixing the fair rent at Rs.2,000/- per month. The petitioners, aggrieved by the order of the Rent Controller, preferred RCA No.4 of 2007 on the file of the Rent Control Appellate Authority-cum-Principal Senior Civil Judge, Guntur

¹ (1987) 3 SCC 576

and the same was dismissed on 20.01.2009. The petitioners filed CRP No.1036 of 2009 on the file of this Court challenging the legality of the order passed in RCA No.4 of 2007 and this Court dismissed the said CRP on 27.11.2014 confirming the orders of both the courts below. The petitioners filed O.S.No.1072 of 2002 on the file of the II Additional Junior Civil Judge, Guntur against the respondent seeking perpetual injunction alleging that the respondent and his brother are interfering with their possession and enjoyment of the schedule property. Nothing is placed on record to know the logical end of the suit. Be that as it may the result of the suit would no way tilt the result of the present revision petition.

10 Any order passed by the Rent Controller is appealable in view of Section 20 of the Control Act. In other words, it can be said that Section 20 of the Control Act confers a right on the aggrieved party to prefer appeal against the order passed by the rent controller.

11 The petitioners preferred RCA No.4 of 2007 under Section 20 of the Control Act challenging the order dated 13.7.2006 in RCC No.45 of 2003. In order to appreciate the contention of the learned counsel for the petitioners it is apposite to refer to Sub-Section (2) of Section 20 of the Rent Control Act, which reads as under:

20. Appeal:-

(1)

(2) On such appeal being preferred, the appellate authority may order stay of further proceedings in the matter pending decision on the appeal.

12 A perusal of the above provision, at a glance, clearly demonstrates that the appellate authority has discretionary power to grant stay of further proceedings in the RCC. If no stay is granted by the Appellate Authority or the Revisional Court, as the case may be,

the order passed by the Rent Controller is binding on the parties to the proceedings and legally enforceable.

13 The predominant contention of the learned counsel for the petitioners is that there is no legal obligation on the part of the petitioners to pay the difference rent of Rs.1,150/- to the respondent till logical and legal conclusion of the proceedings between the parties i.e., till disposal of the revision petition. If the argument of the learned counsel for the petitioners is accepted, there is an automatic suspension of the order of the Rent Controller immediately after filing of the appeal followed by revision by the unsuccessful tenant.

14 There is no dispute between the parties with regard to the jural relationship of tenant and landlord. RCC No.45 of 2003 was allowed on 13.07.2006. It is an admitted fact that no stay was granted in favour of the petitioners in RCA No.4 of 2007 till disposal of the appeal. Though CRP No.1036 of 2009 was admitted by this court on 26.2.2009, no stay was granted. However, on 16.6.2010, this Court directed the petitioners to pay 50% of the arrears of rent and to pay rent of Rs.2,000/- per month to the respondent on every succeeding month. It is not in dispute that the order passed in RCC No.8 of 2009 was not suspended during the pendency of the appeal or revision. Accordingly, the order dated 13.7.2006 in RCC No.45 of 2003 has become final enhancing the rent from Rs.850/- to Rs.2,000/- per month.

15 In **S. Sathaiah v. B. Rajamani**², this Court held that where the finding given by the Rent Controller holds good and even with regard to the arrears and the quantum therein, the finding of the Rent

² 1999 (6) ALD 301

Controller holds good till it is set aside by the appellate Court. It was further held that deposit of the arrears of rent as determined by the Rent Controller is a condition precedent for entertaining the appeal and it is indispensable.

16 The order passed by the Rent Controller cannot be legally enforceable for a period of 30 days after excluding the time taken to obtain certified copy of the order. In RCC No.45 of 2003, the Rent Controller passed the order on 13.07.2006. RCA No.4 of 2007 against the order of the Rent Controller was filed. Therefore, after expiry of the appeal time a right was accrued in favour of the respondent. Once such a right is accrued in favour of the respondent-landlord, he can resort to the remedies available to him under the Act. To put it in a different way, immediately after expiry of the appeal time, there is a legal obligation on the part of the tenant to comply with the conditions of the decree suffered by him unless and until the same was stayed or suspended by the appellate or revisional Court as the case may be. It is not in dispute that neither the Appellate Authority nor the Revisional Authority stayed or suspended the order and decree passed by the Rent Controller, at least by imposing certain conditions. In the case on hand, the petitioners have not taken steps to obtain stay or suspension of the order passed by the Rent Controller in the RCC during the pendency of RCA or revision.

17 The learned counsel for the petitioners advanced argument in such a way to justify that the finding recorded by the authorities below are perverse as if there is no legal obligation on the part of the petitioners to pay the difference of rent to the respondent during continuation of the proceedings i.e., appeal and revision. If the

submission of the learned counsel for the petitioners is accepted, an unscrupulous tenant can squat on the premises without paying rent to the landlord by filing appeal, revision etc.

18 In view of the above factual and legal scenario, I am unable to accede to the contention of the learned counsel for the petitioners that there is no legal obligation on the part of the petitioners to pay the difference rent of Rs.1,150/- to the respondent during the pendency of appeal or revision.

19 The word 'rent' is not defined either under the Rent Control Act or the Rules made thereunder. Section 4 of the Rent Control Act deals with determination of fair rent. The word 'rent' is also not defined under Section 4 of the Act.

20 To appreciate the rival contentions is it not out of place to extract hereunder the Section 105 of the Transfer of Property Act:

105. "Lease" defined:-

A lease of immovable property is a transfer of a right to enjoy such property made for a certain time, express or implied or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasion to the transferor by the transferee who accepts the transfer on such terms.

"Lessor", "lessee" "premium" and "rent" defined:- The transferor is called the lessor, the transferee is called the lessee, the price is called the premium and the money, share, service or other thing to be so rendered is called the rent.

21 The above provision clearly indicates that consideration to be paid by the tenant to the landlord in any shape will fall within the ambit of 'rent'.

22 In view of the facts and circumstances of the case, I have no hesitation to hold the word 'rent' as employed in the Rent Control Act

encompasses in it the fair rent fixed by the Rent Controller under Section 4 of the Act. In view of Sub-Section (2) of Section 20 of the Rent Control Act, the order passed by the Rent Controller will be legally enforceable after expiry of period of appeal unless the same is stayed or set aside by the appellate authority. I am unable to accede to the contention of the learned counsel for the petitioners that there is no legal obligation on the part of the petitioners to pay difference of rent of Rs.1,150/- to the respondent.

23 It is not in dispute that the rent was enhanced from Rs.850/- to Rs.2,000/- per month in RCC No.45 of 2003 and the said order was unsuccessfully challenged by the petitioners in RCA No.4 of 2007 and CRP No.1036 of 2009. Even then the petitioners did not choose to pay the difference of rent of Rs.1,150/- to the respondent from the date of allowing of RCC No.45 of 2003 on 13.07.2006 till 16.6.2010 on which date this Court directed the petitioners to deposit 50% of the arrears of rent and to pay Rs.2,000/- per month on every succeeding month even to admit this CRP.

24 Viewed from any angle, I am of the considered view that the petitioners committed wilful default in payment of rent to the respondent.

25 The material placed before the Court clinchingly establishes that the Rent Control Act, after having a thoughtful consideration to the oral and documentary evidence available on record arrived at a conclusion that the petitioners committed wilful default in payment of rent to the respondent. The Rent Control Appellate Authority, after reappraising the evidence available on record, without being influenced by the finding recorded by the Rent Controller, arrived at

an independent conclusion that the petitioners committed wilful default in payment of rent to the respondent. The first appellate court is the final court so far as the finding of fact is concerned. The findings recorded by the Rent Controller and the Rent Control Appellate Authority as to wilful default in payment of rent by the petitioners are based on the evidence much less legally admissible evidence. I am fully agreeing with the finding of fact recorded by the authorities below.

26 In view of the facts and circumstances of the case, I am unable to accede to the contention of the learned counsel for the petitioners that the findings recorded by the authorities below are perverse and liable to be set aside. Accordingly, point Nos.1 and 2 are answered against the petitioners.

Point Nos.3 and 4:

27 These two points are interrelated with each other, hence I am inclined to decide these two points simultaneously in order to avoid recapitulation of facts and evidence.

28 The next contention of the learned counsel for the petitioners is that the respondent has no right to file application under Section 10(1) of the Control Act and the remedy available to him is to file an execution petition for recovery of the alleged arrears of rent.

29 The Rent Controller dismissed RCC No.8 of 2009 on the ground that the remedy available to the respondent is to file an execution petition. The petitioners herein filed RCC No.45 of 2003 under Section 4 of the Rent Control Act. Section 15 of the Rent Control Act deals with execution of orders, which reads as under:

Section 15: Every order made under Section 10, Section 12, Section 13 or Section 14 and every order passed on appeal under Section 20 or on revision under Section 22 and every order as to costs under Section 21 shall be executed by the Controller:

Provided that an order passed in execution under this section shall not be subject to an appeal, but shall be subject to revision under Section 22.

30 In **Malleshwaramma Vs. G.S. Srinivasulu**³, this Court at para Nos.15 and 16 held as under:

15. It is a cardinal principle of interpretation of statutes that the court shall not substitute or omit any of the words used in the statute unless there is ambiguity in it. The court has to interpret the words used in a statute in the context and the purpose for which it is used. In interpreting a statutory provision, the first and foremost rule of interpretation is the literal construction. All that the Court has to see, at the very outset, is what the provision says. If the provision is unambiguous and if, from the provision, the legislative intent is clear, the Court need not call into aid the other rules of construction of statutes. The other rules of construction of statutes are called into aid only when the legislative intent is not clear.

16. In *Padma Sundara Rao v. State of T.N.*, {(2002) 3 SCC 533 : AIR 2002 SC 1334}, the Hon'ble Apex Court in paragraph No. 12 (relevant portion) observed as follows: It is well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said.

31 It is an axiomatic that the Court has to interpret the provisions of the Act in such a manner to achieve the object for which it was enacted. If there is no ambiguity in any particular provision of the Act, the Court neither substitutes nor adds its own words, except to follow the provision by letter and spirit. The Court has to interpret the words of the provision in its sagacity. Any fraction of deviation to the above rule amounts to misinterpretation of the statute which is impermissible under law.

³ 2016 (2) ALD(CrI.) 784 (AP)

32 A perusal of Section 15 of the Rent Control Act, at a glance, clearly demonstrates that any order made under Sections 10, 12, 13, 14, 20 and 22 of the Rent Control Act are executable. If the intention of the Legislature is that the remedy available to the landlord in whose favour the order being passed under Section 4 of the Act is to file execution petition only, the same might have been reflected in Section 15 of the Rent Control Act. In the absence of specific clause in Section 15 of the Rent Control Act, the successful landlord has to resort to other provisions of the Act in order to enjoy the fruits of the order and decree. A fascicular reading of Section 10 (1) in conjoint with Section 15 of the Rent Control Act clearly indicates the intention of the Legislature that the landlord is entitled to file eviction petition if the tenant commits default in payment of rent, which includes fair rent.

33 The learned counsel for the petitioner submitted that the Rent Control Appellate Authority committed grave error while arriving at a conclusion that the petition under Section 10 of the Act is maintainable. He vehemently contended that the finding recorded by the Rent Controller that the petition is not maintainable under Section 10 of the Act is based on sound principles of law.

34 A landlord who obtained decree under Section 4 of the Rent Control Act is legally entitled to file an application under Section 10 (1) of the Act seeking a direction to evict the tenant from the petition schedule property if the tenant commits wilful default in payment of rent. He is also entitled to recover the arrears of rent, by filing a suit, if the claim is not barred by limitation. It is not the case of the petitioners that the respondent filed a civil suit for recovery of the

difference of rent of Rs.1,150/- from him. There is no specific bar or legal embargo under the provisions of the Rent Control Act to file a petition under Section 10(1) of the Act by the landlord against the tenant for eviction for non-payment of the fair rent fixed by the Rent Controller.

35 If the finding recorded by the Rent Controller that the landlord is not entitled to file an application under Section 10 of the Rent Control Act, even if the tenant commits wilful default in payment of fair rent is accepted, certainly it would amount to permitting the unscrupulous tenant to squat on the property without paying rent. The finding of the Rent Controller is contrary to Section 10 of the Rent Control Act. Had the Rent Controller bestowed his attention to the provisions of the Rent Control Act, more particularly, Section 15, the finding would have been otherwise. Any finding recorded by the Court contrary to law is liable to be set aside. The Rent Controller dismissed the petition on erroneous grounds. The finding recorded by the Rent Controller with regard to the maintainability of the petition is not sustainable in law. On the other hand, the Rent Control Appellate Authority considered facts of the case on hand in the light of the various provisions of the Rent Control Act and arrived at a conclusion that the respondent is entitled to file a petition under Section 10 of the Rent Control Act. The appellate authority has assigned reasons much less cogent and valid reasons while recording its findings.

36 Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am fully endorsing the findings recorded by the appellate authority. In view of the various provisions of the Rent Control Act, I am unable to

countenance the submissions made by the learned counsel for the petitioners that RCC No.8 of 2009 is not maintainable. Accordingly, the point Nos.3 and 4 are answered against the petitioners.

37 This Court can interfere with the orders of the appellate authority while exercising jurisdiction under Section 22 of the Act. There is no illegality, irregularity or impropriety in the order under challenge in this revision, which warrants interference of this Court. The Civil Revision Petition lacks merits and bona fides.

38 Accordingly, the Civil Revision Petition is dismissed confirming the order dated 27.10.2015 passed in RCA No.6 of 2010 on the file of the Rent Control Appellate Authority-cum-Principal Senior Civil Judge, Guntur. Consequently RCC No.8 of 2009 is allowed. The petitioners are hereby directed to vacate the petition schedule property and deliver possession of the same to the respondent within two month from today. No order as to costs. Miscellaneous petitions, if any connected to this Civil Revision Petition, shall stand closed.

T. SUNIL CHOWDARY, J.

Date: 31st March, 2017

NOTE:

L.R. Copy be marked : YES / NO
(By order)

Kvsn