

HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

Civil Revision Petition No.5363 of 2017

ORDER :

The revision petitioner by name Pam Prasad was the respondent-tenant to the eviction petition in R.C.No.347 of 2011 maintained before Principal Rent Controller, FAC, I Additional Rent Controller, Hyderabad, by the revision respondent Arun Kumar, in respect of the eviction petition schedule bearing No.2-1-337/ 3/ 2, ground floor Mulgi-1 at Nallakunta, Hyderabad. The Rent Controller after contest by order, dated 07.11.2013, ordered for eviction allowing the petition granting three months time to vacate, failing which to execute. It is from the contest covered by the evidence of the landlord-PW-1 with reference to Exs.P.1 to P.5 and the tenant-RW-1 with another witness Srinivas with reference to Exs.R.1 to R.19. Impugning the same, the tenant maintained Rent Appeal No.4 of 2014 and the same was ended in dismissal on 02.06.2017, confirming the eviction order in RC supra by granting three months time to vacate, else to evict therefrom. It is impugning the same, present revision is maintained.

2. The contentions of revision vis-à-vis the oral submissions of the counsel for the petitioner are that the concurrent findings of the Courts below are unsustainable being contrary to law and without even any willful default, much less any personal requirement or alleged change of user for not proved. Any of the grounds so also the alleged alterations and any reference in the Board as 'Vijay Add's' or 'Vijay Arts' in carrying on the business makes no difference, much less to say there is any change of business, which is the sale of radium cutting and for the legal notice covered by Ex.P.2 issued by the landlord, he did not allege the alleged change of user or irregular payment of rent or any alterations,

much less to damage the existing structures or any personal requirement and those are later developed for purpose of eviction petition without basis. The landlord is admittedly having including from his evidence in cross-examination as PW.1, five mulgies which are vacant and can be used for his so-called business, if any, of alleged personal requirement with no need of seeking eviction of the tenant and even the so-called photos covered by Exs.P.3 and P.4 of the schedule property no way show any damage or change of user, even the landlord as PW.1 admitted of no arrears due from the tenant and the finding of the Tribunals below of irregular payment tantamount to willful default is incorrect and though under Ex.P.1 original lease deed was entered in 1999 May, subsequently it was extended from time to time orally and the terms of Ex.P.1 are no way relevant as it was only for 11 months and later no such document executed, much less with any specific terms. After Ex.P.2 notice, the landlord refused to receive rents, which made the tenant to send through money order to say he is not the defaulter in his endeavour in payment of rent regularly and sought for setting aside the concurrent findings unsustainable in dismissing the eviction petition, by allowing the revision.

3. The additional grounds urged with additional memo are that the landlord did not file even a scrap of paper to show he is owner of the mulgi and falsely claiming by filing R.C. case and he is encroacher and occupier. The tenant in fact filed, pending the appeal, application under Order XLI Rule 27 read with Rule 11(2) of Rent Control Act in I.A.(S.R.) No.364 of 2015 to receive documents, which are issued by the Municipal Authorities of GHMC, Circle No.9, letter, dated 05.09.2014, mentioning the premises 2-1-337/3 covered by the eviction petition schedule no way stands in the name of the eviction petitioner to claim

as owner, but he is only an occupier and he suppressed these facts and filed the eviction petition by playing fraud on the Court in claiming as if owner and not even filed any proof even after his cross-examination in disputing his ownership and both Courts failed to consider the same for no landlord-tenant relationship in subsistence for eviction petitioner not only to seek for eviction on any grounds and the appellate Tribunal did not even consider the documents petition and once again under R.T.I. Act, the Deputy Commissioner, Circle 16, GHMC, Amberpet, issued letter No.325, dated 28.06.2017 saying the eviction petitioner is not the owner of the property and he is in custody by occupation by payment of tax and thereby the revision is to be allowed by setting aside the eviction order with concurrent findings of the Tribunals below.

4. There is interim stay of eviction pending the revision as per orders in C.R.P.M.P.No.6956 of 2017, dated 13.10.2017 which is in force by extension until further orders. The landlord as respondent to the revision, no doubt, sought for vacating the stay in the course of hearing of the main revision. It is his submission that the concurrent findings are supported by reasons and leave about the additional evidence petition filed pending appeal no way relevant and it is of no significance even specific order of allowing or disposal not passed when disposed of along with main revision petition for nothing to refer once from Ex.P.1-lease, it establishes the relationship of landlord and tenant he is estopped from questioning the same and thereby liable to be evicted on all the grounds. It is thus sought for dismissal of the revision by confirming the eviction orders passed by the Rent Controller, confirmed by the appellate Tribunal.

5. Heard the rival contentions and perused the material on record.

6. The order of the Rent Controller with reference to the evidence supra speaks the tenancy was entered, covered by Ex.P. 1-lease originally for 11 months from 01.05.1999 at Rs.1,200/- per month rent and at that time respondent deposited an amount of Rs.1,50,000/-, interest free refundable at the time of vacating and after expiry of 11 months at the request of the tenant the landlord is continuing by extending the lease periods orally on same terms and the rent later was enhanced to Rs.2,200/- per month. As per eviction petition averments, the tenant without prior permission and without notice to the landlord, is going to change the nature of the business though he was running originally Ajay Arts and he was irregular in payment of the monthly rents and he is making alterations effecting the structures of the schedule property despite repeated requests not to alter by un-heading and for the request to vacate not responding and the petition schedule property is required by the son of the landlord named Anand Kumar to run his office, who is dealing with real estate business and the schedule property is suitable for the same since near to the petitioner's residence.

7. The contention of the respondent/tenant is while admitting the tenancy saying even he was requesting for renewal of lease, the landlord is postponing by asking him to continue by payment of rents and thereby not liable for eviction. He is saying he did not change the nature of business for which the premises is taken referred in the rent agreement. The landlord collects rent as per his choice and the tenant has been obtaining receipts when he comes and collects rents. The landlord's son is not running any real estate business but for set up an idea to evict him if possible from the Mulgi in question. It is also contended of there is a vacant mulgi available to the petitioner/landlord and the petitioner/

landlord is residing in a rented house at Krishna Classic apartment G.3 of Nallakunta since many days. The petitioner/ landlord preferred to allot the respondent/tenant an electric meter pertaining to one S.Yellaiah but the respondent/tenant is paying rent for the legal notice issued to the respondent and to one K.S.Mahalakshmi and Mohd. Majeeduddin with false contentions. The petitioner/ landlord stopped taking rents later from which he was sending Money Orders. The allegations of respondent committing nuisance is false and baseless. The tribunal pursuant to the pleadings and from the evidence referred supra held that the relation of landlord and tenant not in dispute from the very counter of the respondent/tenant and once the premises let out for a particular purpose tenant not entitled to change for another purpose.

8. No doubt, the respondent/tenant contends that he was from the beginning running business with name and style of '*Ajay Arts*' however he did not file proof. The Ex.P.1 rental agreement refers to '*Ajay Adds*'. Whereas, Exs.P.3 and P.4 photos shows name changed as '*Ajay Adds*'. It is therefrom ordered eviction in answering point No.1. No doubt, said finding of the tribunal is untenable for mere change in the name from '*Ajay Arts*' to '*Ajay Adds*', it will not change the activity much less a ground to evict. Whereas, coming to the Point No.2 as to irregular in payment of rents, the tribunal held that as per the contention of the respondent/tenant that the petitioner/landlord whenever comes at his choice, collects rents and passes the receipts and after Ex.P.2 legal notice, respondent failed to collect rents for which he was sending by Money Orders. Exs.R.1 to R.6 are the rent receipts issued for the year 1999 by the petitioner/ landlord to respondent/tenant. Exs.R.7 to R.17 are the M.O.acknowledgments from January, 2011 to November,2011.

Ex.P.1-rental agreement, dated 01.09.1999, clause(2) speaks of rent payable of each month before 1st of next calendar month and these Exs.R.1 to R.7 shows not adhered to it. It is referred to Exs.R.1 to R.5 saying it discloses of rent paid before 15th of each calendar month. Whereas, under Ex.R.6 it was paid on 26.11.99 and Exs.R.7 to R.17 shows the rents paid every month by next month between 14th to 29th. When such is the case, it shows the landlord accepted the M.Os. without protest and these M.Os. were from January to November, 2011. Whereas, the legal notice was dated 06.10.2010 and the landlord did not return even a single Money Order. Thus, it is only to see whether there were any willful default prior to the giving of legal notice, dt.06.12.2010. Exs.R.1 to R.6 of the year 1999 in between 1999 November, to 2011 January, there is no any recorded proof. It is not even the case of the landlord that in the integral period tenant committed default. It is only to see from the legal notice what his contest is but the legal notice is not before the Court that was marked as Ex.P.2 before the lower Court.

9. In this regard, what the tribunal held of there are irregular payments and thus the respondent/tenant is liable for eviction but that conclusion also not tenable without adverting to the other evidence with reference to the legal notice and the petition averments specifically as to in what period there was default.

10. Coming to points 3 to 5 in relation to alterations, nuisance and bonafide requirement, as rightly pointed out by the tribunal but for a bald pleading of causing nuisance of there is no basis much less any evidence to substantiate of alleged nuisance to make a ground for eviction and the bonafide requirement concerned, the legal notice issued by the landlord not only to the respondent/tenant but to other

tenants on 06.10.2010 with generally vague allegations. As per the tenant, the landlord was demanding exorbitant rents and enhancement of deposit from 1.5lakhs to 3lakhs and rent to increase to Rs.5,000/- which he did not accede thereby it is made a ruse to evict if possible without any bonafide requirement. In Ex.P.2 legal notice, there is no whisper with regard to the demand for enhancement but for about deposited amount lying with the petitioner/ landlord taken at the time of execution of Ex.P.1 agreement of lease. It is observed that the petition schedule property is adjacent to the residential premises of the landlord and once it is his contention of suitable to the real estate business of his son, in the cross-examination of P.W.1, there is no any suggestion by respondent in support of counter of any other mulgi available or vacant to occupy. Thus, the bonafide requirement to the business of the son is genuine and liable to be evicted.

11. The appellate tribunal observed that once the tenant admitted about landlord and tenant relationship and he was inducted as a tenant by the eviction petitioner, he cannot dispute the relationship much less by saying to file additional evidence in this regard for any entitlement to blow hot and cold having been estopped.

12. Even according to the respondent/tenant, he is denying as a tenant though there is no fresh lease having been originally inducted under original Ex.P.1 lease agreement even after its expiry period continues.

13. Coming to the bonafide requirement of the son of the petitioner for real estate business, once the owner chooses one mulgi convenient, the tenant cannot dictate terms and the tenant did not adduce any

evidence to show that there are other mulgies lying vacant to support his counter vague averments and thereby the bonafide requirement for the business of the son to justify and trial Court is right in its conclusion in this regard, hence nothing to interfere.

14. Now coming to the revision, once there are concurrent findings and bonafide requirement of the premises in question when stated convenient and nothing to show that other mulgies are lying vacant and once inducted as per Ex.P.1 lease agreement even though it is for 11 months continued subsequently as a tenant, he is estopped from denying landlord-tenant relationship by virtue of Sec.116 of the Indian Evidence Act, though the finding of the appellate tribunal and the Rent Controller are not correct, so far as changes in use that causes damage to the property or any willful default. Said concurrent findings so far as the bonafide requirement is sustainable. Thereby the revision can be dismissed to that extent.

15. Accordingly and in the result, though the findings of the Rent Controller and Appellate Tribunal on the ground of change in user and willful default are not sustainable since sustainable on the ground of bonafide requirement for nothing to interfere in this regard on the concurrent findings of the two Courts below, the revision is thereby dismissed however by granting time of 11 months to vacate on or before end of November, 2018 by securing any alternate accommodation subject to payment of use and occupation charges at Rs.3,000/- per month.

16. Consequently, miscellaneous petitions, if any, pending in this revision shall stand closed.

Date: .12.2017

Dr. B.SIVA SANKARA RAO J,

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