

HONOURABLE Dr. JUSTICE B.SI VA SANKARA RAO

C.R.P. Nos229, 235, 256, 261 OF 2016

COMMON ORDER:

The Civil Revision Petition Nos.229 and 235 of 2016 are filed by Sri Narendra P.Chottai and Sri Vijay P.Chottai, who are the tenants of mulgi bearing No.15-9-623 of ground floor admeasuring 195 Sq.ft and mezzanine floor admeasuring 211 Sq.ft situated at Siddiamber bazaar, Hyderabad that belongs to revision respondents 1 to 3 viz., Govinddas Permananddas, Sudhir Madanmohandas and Sunil Madanmohandas. The landlords (supra) maintained eviction petitions in R.C Nos.372 and 371 of 2009 for the two premises between the self same landlords and tenants (supra) under Section 10 (2) (i) of A.P Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short 'the Act') on the ground of willful default in payment of rent from March, 2009 to August, 2009 for a period of six (6) months at the rate of Rs.859/- p.m., totaling to Rs.5,154/- each. In fact, prior to the filing of the two eviction petitions, the said landlords against self same tenants filed R.C.Nos.475 and 476 of 2008 for fixing of fair rent. The Civil Revision Petition Nos.256 and 261 of 2016 respectively are outcome of the result of two fair rent applications and the appeals maintained there against. Whereas C.R.P. Nos.229 and 235 of 2016 are outcome of eviction petitions and the appeals are maintained there against.

2) At request of both sides, four revisions are taken up for common disposal and heard both sides at length. Perused the material on record.

3) The four revisions maintained by the tenants in the factual matrix supra in passing the orders of fair rent fixation

enhancing from original rent and also against passing orders of eviction.

4) It is necessary to mention that originally the landlords maintained eviction petitions against the tenants for the said premises viz., mulgi bearing No.15-9-623 and also the rear side portion of it mazzanine portion admeasuring 195 Sq.ft and 211 Sq.ft respectively. While pending eviction petition in R.C No.651 of 1996, there was a settlement arrived between landlords and tenants to continue the lease. The said R.C was thereby ended in dismissal by virtue of the settlement and consequently registered lease deeds respectively between the landlords and tenants supra were executed on 20.07.1999 to continue the tenants in the respective premises as lessees for twelve (12) years from 01.11.1999 to 30.10.2011 fixing rent periodically and the same rent continued for some more period and from 01.11.2007 to 31.10.2010 it was fixed at Rs.859/- p.m. to each portion. There is a clause for renewal after said twelve years period on mutual terms. The said registered lease deeds particularly from clause (7) stipulates that in the event of lessees committing default in payment of rent for continuous period of six months or contravening any terms of this lease deed, the lessors have right to take legal action for eviction. There is also a mention that the tenants have deposited three months rent i.e., Rs.1,800/- (3 X Rs.600/-) with landlords towards refundable deposit as advance. It is, thereby, from 01.11.2007, the monthly rent of each of the two premises is at Rs.859/-. The two fair rent applications i.e., R.C. Nos.474 and 475 of 2008 filed were to fix monthly rent at Rs.15,000/- to each of the two premises. It is during pendency of

fair rent applications, the two eviction petitions were filed by landlords as referred supra.

5) In opposing the fair rent applications, the contest of the tenants were that what was the rent agreed mutually covered by the lease deed is fair and practically from 01.11.2007, as per the terms of the lease deed rent of Rs.859/- p.m. for each premises is paying and it requires no enhancement and the claim of Rs.15,000/- p.m. to fix as a fair rent is exorbitant, baseless and unsustainable among other grounds including on maintainability.

6) Coming to the contention of tenants in eviction petitions, the eviction petitions as a second round of litigation were filed with a malafide intention and after filing of the fair rent applications, the landlords developed malafide intention and on receiving notices in fair rent applications from the landlords in saying interested to receive the agreed rents, the tenants have suspected the same foul play in them, in obtaining six Demand Drafts of Corporation Bank viz., four Demand Drafts dated 20.07.2009 for the months of March to June, 2009 and two Demand Drafts dated 24.08.2009 for the months of July to August, 2009 and the same were received by respondents. The said Demand Drafts covered by certificate of posting and thereby, there is no default on their part much less willful default. From perusal of the lease deed terms right to file eviction arises only if there is a continuous default in payment of rent for six months in contravention of clause (7) of the lease deed. It is also the contention of the revision petitioners that the landlords did not file any rejoinders disputing the DDs sent through certificate of posting, if not received by them. The Rent Controller allowed the fair rent applications on 07.05.2013 by enhancing the rent from Rs.859/-

p.m. to Rs.11,700/- and Rs.12,660/- p.m. respectively for the two premises respectively supra.

7) It is important to note that, the Apex Court after struck down the Section 32 of the Act originally as unconstitutional vide ***Motor General Traders and another vs State of A.P and others***¹ held that Section 32 (b) of the Act which exempting buildings constructed on or after 26.08.1957 from operation of Act, is violative of Article 14 of the Constitution of India. In order to fill up the lacuna by said expression, since Section 26 of the Act with non-abstante clause empowers the Government notwithstanding anything contained in this Act, the Government may, by notification in the Andhra Pradesh Gazette, exempt, subject to such conditions and terms, if any, as they may specify in the notification, any building or class of buildings from all or any of the provisions of this Act, invoking the same issued G.O.Ms.No.636, dated 29.12.983 by giving enforcement to it from 26.10.1983, the date when Section 32 (b) of the Act was struck down by the Apex Court in Motor General Traders supra as unconstitutional.

8) As per said G.O.Ms.No.636, the Government exempts from operation of the provisions of the Act viz., a) Buildings for a period of 10 years from date on which the construction is completed and the buildings monthly rent of which exceeds Rs.1,000/-. Needless to say, as per G.O.Ms.No.636, exemption has no application as none of the two premises are constructed within 10 years to the date of fair rent application and eviction petitions and for rent of them is not exceeding any of it above Rs.1,000/- p.m., for the agreed rent of Rs.859/- p.m. that was sought for enhancement by fixing fair

¹ AIR 1994 SC 121

rent. However, the fact remains while said G.O Ms.No.636 in force that was issued pursuant to the power of the Government in exempting the buildings within the criteria supra on two counts, there is an amendment in the general legislative power of the State to Section 32 of the Act by amended Act 17/2005 w.e.f., 28.05.2005 as per which, the Act has no application to certain buildings viz.,

a) to any building belonging to the State Government or the Central Government, or Cantonment Board or any local authority;

b) to any building constructed or substantially renovated (as per explanation-1 substantial renovation is a case where not less than 75% premises is built new) either before or after the commencement of this Act for a period of 15 years from the date of completion of such construction or substantial renovation (as per explanation-2 date of completion of construction shall be from the date of completion as intimated to the concerned authority or of assessment of property tax, whichever is earlier and where the premises have been constructed in stages the date on which the initial building was completed and an intimation thereof was sent to the concerned authority or was assessed to property tax, whichever is earlier).

c) to any building the rent of which as on the date of commencement of Andhra Pradesh Buildings (Lease, Rent and Eviction) Control (Amended) Act, 2005 exceeds Rs.3,500/- p.m. in the areas covered by the Municipal Corporations in the State and Rs.2,000/- p.m. in other areas.

9) New Amendment by Act 17/2005 which came into force w.e.f. 28.05.2005. In pending matters, it was contended

by the tenants that in view of the amended Section 32, pending suits cannot be adjudicated by Civil Courts and decrees already passed cannot be executed for those become *coram non judice*.

10) When the matter referred to Division Bench by a Single Judge of this Court on 31.03.2016, the Division Bench felt from the earlier expressions of the Apex Court and another judgment of Full Bench of this Court in **G.Anjaneeya Prasad vs Vinod Kumar**² that the issue needs to be decided by Full Bench vide observation for reference dated 23.08.2006 and the Five Judge Larger Bench of this Court took up the matter in **Ramvilas Bajaj vs Ashok Kumar**³ and decided at 4:1, the majority held that buildings whose monthly rent between Rs.1,000/- to Rs.3,500/- got within the purview of Municipal Corporation, by the Amended Act, 2005 from its reading with earlier G.O Ms.No.636 and where suits filed in Civil Court for eviction of tenants and eviction ordered and appeal filed and at that stage amendment came into force and where tenants taken plea that the Court which passed the decree by virtue of amendment become *coram non-judice*. Where *coram non-judice* concerned as the amendment is prospective in operation. The amended Act does not effect the eviction proceedings pending as on date of its coming into force before Civil Court or appellate Court or revision Court or execution Court and those cases have to be decided without reference to and application of the Amended Act provisions. The learned single Judge, however, took a contra view saying after amendment came into force on 28.05.2005 persons paying rent not exceeding Rs.3,500/- p.m. within municipal areas and Rs.2,000/- p.m. in other

² S.A. No.532 of 2002 dated 06.01.2005

³ 2007 (4) ALD 137

areas would come within the definition of 'tenant' under the Act and even any Civil Court decree passed in a civil suit before the amendment came into force such persons are entitled to protection under the Act. Even after the amendment, if they continue in possession in the building let out as after the amendment such tenants cannot be evicted in execution of a decree passed earlier in view of the protection under Section 10 (1) of the Act. Thus, after the amendment came into force, civil Courts have no jurisdiction to pass decree for eviction or to execute the same in respect of buildings, whose rent is within the limits prescribed by the amendment and any decree passed is a nullity and appellate Court has no jurisdiction to pass decree even though amendment was not in force when suit filed or decree passed therein, but even introduced pending appeal provided, the tenants continue to remain in possession by the date of amendment.

11) On the principal of provisions of the Act is a special law and Transfer of Property Act, Civil Court jurisdiction is a general law, from the general law shall yield to special law and Civil Court becomes *coram non judice* and its jurisdiction to execute the decree for eviction stands oosted. Thus, person against whom decree for eviction has been made would also come within the definition of tenant under the Act and enjoys benefits of Section 10 (1) of the Act where he continues to remain in possession of the property and delivery not given. To determine the question at issue it is unnecessary to question whether Section 32 (c) is retrospective in operation or not.

12) When matter came up before the Apex Court against the larger bench expression in batch of matters, the three judgment

bench of the Apex Court decided the same that is reported in **Noorunnissa Begum vs Brij Kishore Sanghi**⁴ holding that, Section 26 of the Act by which exemption granted by State Government under G.O No.636 dated 29.12.1983 has overriding effect over rest of the provisions of the Act from a *non-abstante* clause to Section 26 of the Act.

13) Section 32 of the Amended Act by Act 17/2015 brings the remedial provision relating to certain classes of buildings which were subject matters of execution under Section 26 of the Act granted by G.O. No.636 in the year 1983 and such class of buildings enjoying the benefit of exemption from operation of the Act since 1993 cannot be said to have lost the benefit of exemption by way of amended Act Section 32 in 2005.

14) Part of Section 32 is held prospective in operation and some part is retrospective. Sections 26 and 32 are in two different folds. Section 32 relates to non-applicability of the Act to a class of buildings, whereas Section 26 deals with power of the State to exempt any building or class of buildings to which the Act is applicable. There is no clash between Sections 26 and 32 of the Act. Therefore, the question of overriding of one over another does not arise. Clause (a) of G.O.Ms.No.636 dated 29.12.1983 has become redundant. However, clause (b) of G.O.Ms.No.636 still holds good. The suit(s)/ appeal(s)/ revision(s) or execution case(s) which are pending for determination under the General Law are not affected by amended Section 32 and will continue to be decided in accordance with General law.

⁴ AIR 2015 SC 2322= 2015 (4) ALD 155 SC

15) The majority of judgment dated 30.04.2007 passed by the High Court in Ramvilas Bajaj (supra) is upheld insofar as it relates prospective operation of Section 32 (c) and it dictates on the pending proceeding. The findings of the majority decision wherein regarding to clause (b) of G.O Ms.No.636 declaring said part of G.O as redundant, is declared as bad in law and is set-aside.

16) Thus, from the finality reached by the three judgment bench expression of the Apex Court in interpreting G.O.Ms.No.636 issued under Section 26 of the Special Power of the State Government exempting the building from the Act and Section 32 of the Act the general amendment with prospective operation of exempting certain class of buildings, while saying both are independent and varying in two different folds, it was held from application of both G.O. Ms.No.636 (a) of buildings for a period of 10 years from the date of which construction completed is redundant from the subsequent legislation by amended Act 17/2005 to Section 32 (b) also speaks the Act shall not apply to any buildings constructed or substantially renovated either before or after commencement of this Act for a period of 15 years from date of completion of such construction or substantial renovation as the case may be.

17) Whereas clause (b) of G.O Ms.No.636 dated 29.12.1983 deals with the aspect of buildings, the monthly rent of which exceeds Rs.1,000/- are exempted from the provisions of the Act from that time onwards and the amended Act 17/2005 clause (c) which is prospective in operation speaks to any building the rent as on the date of commencement of the Act exceeds Rs.3,500/- in municipal

areas and Rs.2,000/- in other areas is exempted from the operation of the Act.

18) Coming back to the facts that R.C Nos.474 and 475 of 2008 were filed seeking enhancement of rent from Rs.859/- p.m. each for two premises between the same parties from the rent w.e.f., 01.11.2007 since fair rent fixed by enhancing the same to Rs.11,700/- and Rs.12,616/- p.m. respectively from the date of fair rent application, by virtue of which once the fair rent fixed is in the municipal area above Rs.3,500/- p.m. pursuant to the prayer in the fair rent application, the orders passed fixing fair rent from the date of petition filed on 29.12.2008. The order of fixation of fair rent in the two applications were on 07.05.2013 since fixed from the date of petition in both petitions filed on 29.12.2008, by the date of filing the eviction petitions in R.C. Nos.372 and 371 of 2009 either by then fair rent not fixed and the rent was at Rs.859/- p.m.. Once fair rent fixed not from the date of order passed on 07.05.2013 or subsequent to the date of eviction petitions filed by landlords vide R.C. Nos.372 and 371 of 2009 filed on 29.09.2009. No doubt, R.C. Nos.474 and 475 of 2008 were filed by the landlords on 29.12.2008 and the same were allowed on 07.05.2013 fixing the fair rent in respect of petition schedule premises at the rate of Rs.12,600/- and Rs.11,700/- p.m. respectively and tenants are hereby directed to pay the same from the date of filing of petition with future enhancement of 10% per two years and further directed to pay the arrears of rent within one month from the date of these orders. Impugning the same, the tenant maintained two appeals vide R.A. Nos.88 and 89 of 2013. Therein the landlords also filed cross objections respectively, vide Cross Objections SR Nos.3723 and 3724 of 2013 and the appellate

authority in R.A. Nos.88 and 89 of 2013 with respective cross objections having heard and allowed in part and fixed the fair rent at Rs.10,550/- (211 Sq.ft X 50=Rs.10,550/-) and Rs.9,750/- (195 Sq.ft X 50=Rs.9,750/-) p.m. respectively with a benefit of future enhancement at the rate of 10% for every two years on the existing rate of rent and the appellants are liable to pay the fixed fair rent from the date of filing the fixation of fair rent petition by the respondents before the trial Court. Aggrieved by the same, the tenants maintained the two revisions vide C.R.P. Nos.256 and 261 of 2016. Deciding the revisions in relation to fair rent to determine the fate of the eviction petitions on maintainability, if the fair rent is above Rs.3,500/- p.m. dates back to the fair rent applications, it is just to decide the revisions covered by the fair rent applications.

19) The contentions in the grounds of two revisions impugning the said fair rents fixed by the Tribunal, are that the fair rent could not have been fixed over and above the jurisdiction of the rent controller of Rs.3,500/- p.m. apart from that there is already court fixed the rent pursuant to the terms of lease as such the question of fixing fair rent does not arise and the Rent Controller and the Appellate Authority misread the judgment of the Apex Court in ***M/s.Ravi and Co vs K.G.Ramachandran and others***⁵ and the Rent Controller and Appellate Authority would be incompetent to fix fair rent at the rate of prevailing market value as on the date of petition for same would be detrimental to the purpose and object of the rent Act; the beneficial legislation for tenant and that too, when there is a lease agreement in the year 1999 for a period of 12 years covered by

⁵ 1974 (1) SCC 424

the registered lease terms and fixing of fair rent further does not arise.

20) Learned counsel for the revision petitioners/ tenants reiterated the grounds in the two revisions. Whereas learned counsel for the respondents supported the impugned orders fixing fair rent. Heard both sides at length.

21) A perusal of the provisions of the Act including G.O Ms.No.636 issued under Section 26 of the Act in the year 1983 and the Amended Act 17/2005, Section 32 no way prohibited the fixation of fair rent over and above, Rs.3,500/- in municipal area and Rs.2,000/- in non-municipal area. What Sections 4 and 5 of the Act speak are the controller shall, on application by the tenant or landlord of a building, fix a fair rent for such building after holding such enquiry as the controller deems fit and in so fixing shall have due regard to prevailing rates of rent in the locality for the same or similar accommodation in similar circumstances during 12 months prior to 05.04.1994, rental value as entered in the property value assessment of concerned local authority relating to said period and to the circumstances of the case including any amount paid by tenant by way of premium or any other like sum in addition to the rent after 05.04.1994 and the controller may in fixing fair rent for residential building later, if rate of rent or rental value does not exceed Rs.25/- p.m. increase not exceeding 12 ½% on such rate/ rental value and if exceeds Rs.25/- p.m. does not exceed Rs.50/- p.m. lumpsum, an increase not exceeding 18.3% on such rate rental value, if the rental value exceeds Rs.50/- p.m. an increase is not exceeding 37.14% on such rate/ rental value in case of non-residential building, rent/ rental value not exceeding Rs.50/- p.m. increase not exceeding

57.14% thereon and if exceeds Rs.50/- p.m. an increase not exceeding 75% thereon and the building constructed after 5.04.1994 increase shall not exceed 75% and 50% respectively.

22) This Court in **Jupudi Parthasarathy Vs Kondapalli Rajeshwari**⁶ observed under Section 4 and 5 of the Act for increase in fair rent from time to time that Rent Controller has jurisdiction to fix fair rent as on date of application but also periodically increase in rent to offset time gap between the application and date of adjudication and in **D.V.Konda Reddy rep. by his G.PA Sri D.V.Ramana Reddy vs Smt. R.V.Ramana Kumari**⁷, it was held that rent control Act stipulates parameters for fixation of fair rent, thereby Rent Controller has got jurisdiction to fix fair rent higher than Rs.1,000/- p.m. covered by G.O. Ms.No.636. If such is the case and the same was also the proposition **B.Sai Anand Prasad vs Sai Kirana General Stores**⁸ holding distinction between existence of jurisdiction as on the date of fair rent application of rental value not exceeding Rs.1,000/- and enhancement of reasonable fair rent above Rs.1,000/- thereafter at best says then jurisdiction is different.

23) Once such is the analogy, the fair rent is fixed in the fair rent application above Rs.3,500/- p.m.. There is no bar merely because of ceiling of Rs.3,500/- to apply the Act, but for to say once the same is fixed above Rs.3,500/-, thereafter the remedy is to approach the Civil Court for any relief.

24) Here coming to Ex.A2—lease deed dated 20.07.1999 for 12 years from 01.11.1999 to 31.10.2011 concerned, even the lease period already expired by 31.10.2011 apart from the agreement fixing

⁶ 2008 (6) ALD 398

⁷ 2006 (4) ALT 641

⁸ 2005 (6) ALD 238 = 2005 (6) ALT 185

rent no way even a bar in fixing of fair rent but for at best to say during the period of subsistence of the lease, tenant cannot be evicted. In this regard in **Modern Hotel, Gudur rep. by M.N.Narayanan vs K.Radhakrishnaiah and others**⁹, the Apex Court held that where the lease is for 30 years in the absence of any clause from the contractual tenancy subsisting under the provisions of the Act, eviction from such tenancy during subsistence of lease is impermissible. If the rent is duly paid to continue the lease, is one thing and if he committed default from the stipulation with a clause to seek for eviction is different. In the case on hand even the lease is fixed for 12 years from 01.11.1999 concerned, apart from lease is expired by 31.10.2011, though subsisting by the time of fair rent application in 2008 and eviction application in 2009 respectively, clause (6) speaks in case of continuous default of payment of rent for six months, the landlord is entitled to seek for eviction of the tenant irrespective of the lease period fixed is for 12 years. Thus, from that expression, even once the contractual terms of lease governed and the clause can be enforced, it is to be seen whether there is any willful default in payment of rent or not. In fact, if coming to the merits, the question of willful default in non-payment of rent of six months is criteria, as even there is a default of rent within that period, cannot be considered as willful default, including from the very clause stipulated between the parties governed by the lease deed and from the expression of modern hotel (supra).

25) In the said expression referring to earlier expressions in **M/s.Sarwan Kumar Onkar Nath vs Shri Subhas Kumar**

⁹ AIR 1989 SC 1510

Agarwala¹⁰ and **Mohd. Salimuddin vs Misri Lal and another**¹¹

also came up for consideration in interpreting the scope of Section 7 of the Act and it was observed referring to the earlier two expressions by the Apex Court that once Section 7 of the Act speaks any receiving of amount over and above one month rent as advance including as refundable deposit is null and void and once such is the case, irrespective of tenants claiming in the counter to the eviction petition are entitled to adjustment of the amount lying with landlord who collected for not entitled bound to refund immediately, available to adjust the same and once such is the case, if the amount is adjusted of what is the advance collected over and above one month rent, there can be no default and if still there remained any amount that could be considered as default to say i.e., willful default or not to determine therefrom.

26) The other judgment of this Court in **Kanuboina Venkata Ramanaiah vs Palukuru Rukminamma**¹² interpreted Section 7 of the Act which stipulates only one months rent, the landlord is having entitled to receive as advance and not anything beyond in any form, he shall give automatic adjustment of any arrears of rent from the excess amount he is having whether tenant made any claim to that effect or not before considering the tenant as defaulter or not, for to decide after such adjustment. By referring to the above, the expression of the Apex Court in M/s.Sarwan Kumar Onkar Nath (supra) and modern Hotel (supra) and also earlier expression of the Apex Court, in **Adapa Santharam and another vs Saith Nathmal Manik Chand**¹³ it was held that despite such

¹⁰ 1987 SC 2302

¹¹ AIR 1986 SC 1019

¹² 1997 (3) ALT 511

¹³ 1995 (3) ALT 853

adjustment there is amount fallen due on the facts in holding that there is a willful default. Again in another subsequent expression of this Court in **Rayapuraju Venkatarama Rao (died) by LRs vs Gangadharam Nair (Gangadharan Nambiar)**¹⁴ by interpretation of Section 7 of the Act referring to some of the expressions supra, it was held that a tenant is entitled to adjustment of whatever the amount received as advance by landlord for not entitled to over and above one month rent as advance to consider on such adjustment if still willful defaulter or not.

27) The Apex Court in **Chordia Automobiles vs S.Moosa**¹⁵ deciding the case under T.N.R.C.18 of 1960 as to what is meant by willful default, particularly at page No.288 para No.8 observed that, willful default means an act consciously or deliberately done with open defiance and intent not to pay the rent on facts for that case on hand, the amount of rent defaulted firstly is on account of fact that the agent of the landlord did not come to collect the rent for some reason. Further, notice of default contained disputed rent. This fact coupled with the fact that eviction suit was filed before maturing a case of willful default in terms of Explanation to the provisio of Section 10 (2). Once the dispute of rent admittedly was genuine, we find conduct of the appellant throughout in the past being not of a defaulter or irregular payer of rent, for that conclusion referred the earlier expression of the Apex Court in **S.Sundaram Pillai and others vs V.R.Pattabiraman and others**¹⁶.

28) Here from the above coming back to the facts, three months rent taken as advance of Rs.1800/- for each of the premises

¹⁴ 2012 (1) ALD 564

¹⁵ AIR 2000 SC 1880

¹⁶ 1985 (1) SCC 591

at the time of entering the lease deed respectively dated 20.07.1999 (Ex.A2) is by the time of eviction petition the agreed rent was Rs.859/-. Once such is the case, the lease deed as referred supra stipulates any non-payment of rent for continuous period of six months, the landlord entitles to seek eviction of tenant irrespective of subsistence of lease period stipulated for a period of 12 years from 20.07.1999. Thus, practically from the latest stipulation to construe as willful default to seek eviction from the understanding that there must be default of six months rent. The eviction petitions filed showing rent from March, 2009 to August, 2009 for six months committed default at Rs.859/- p.m. totally Rs.5,154/-, if the advance amount of Rs.1800/- but for one month rent to adjust for remaining not entitled to hold by landlord of the amount of the tenant, it falls short. Apart from it, the tenant has shown after receiving the fair rent application summons by suspecting fowl play sent the amounts obtained by DDs some of them on 20.07,2009 and the others on 24.08.2009 under certificate of posting. The DDs obtained and paid the rents including for four months from March, 2009 to June, 2009 on 20.07.2009 if DDs shown sent and received not in default. Leave about, the other two months rent of July, 2009 and August, 2009 sent on 24.08.2009. The evidence on record shows by certificate of posting, the DDs obtained were submitted the evidence that is later obtained from the Bank regarding DDs infavour of Landlords. There is nothing to show the said DDs were cause cancelled by the tenant, once the tenant obtained the DDs and shown by certificate of posing and there is a presumption including for certificate of posting from the expression of the Apex Court in **Samitridevi & another vs Sampuran Singh & another**¹⁷ saying there is a presumption in

¹⁷ 2011 (3) SCC 556

normal course of business including for sending notice under certificate of posting for service. However drawing of such presumption would depend on facts of each case. Copy of certificate of posting produced before the Court. There is nothing attributed against the tenant of obtaining DDs and willfully with holding.

29) Coming to the earlier conduct, even which is material as referred supra in the earlier expression of the Apex Court in considering willful default or not, despite landlord earlier filed eviction petitions, compromised and entered 12 years lease and received three months advance and later not collecting rents from tenant stating chosen sent by DDs and the DDs sent were by certificate of posting, there is nothing against the conduct of the tenant, earlier from any notice of the landlord pointing of earlier non-payments are willful defaults that also a criteria. Once such is the case, the presumption can be drawn in favour of sending and receiving, though there is nothing to show that the landlord encashed the same and equally tenant claimed not encashed and landlord since saying not received. The presumption shows can be drawn to say as received from the previous conduct of the parties also within the judicial discretion to contra.

30) The Courts below committed mistake in this regard and not properly drawn the presumption from the certificate of posting in the facts as discussed supra. Once that is the case, there is no willful default. The expression in ***Pattan Khan vs Syed Pasha***¹⁸ placed reliance by the landlord saying petitioners/ tenants never paid rents regularly and from payment in irregular intervals, despite notice issued for by then there was amount due of Rs.105/- how

¹⁸ 1975 APLJ 318

several months rent held in the factual scenario as willful default. However, what to consider as willful default once defined by the Apex Court including also to judge from conduct of the parties, the factual matrix of that case has no application to the present facts. Coming to another judgment of this Court in **Devatha Radha Krsihan Murthy vs Vallabhaneni Subba Rao**¹⁹ it was observed that once there is an agreement to pay rents regularly, the delay in payment, mere acceptance of it has no bar to seek eviction from the willful default. Here even the decision has no application to the present facts for the reason the agreement stipulates to constitute right of eviction for continuous period of six months default, to consider as willful default as discussed supra.

31) Thus on facts, there is nothing to hold that there is a deliberate and willful default in non payment of rents to constitute willful default apart from on adjustment of the advance collected over and above one month rent, there is no willful default much less to enforce the lease premises under clause (6) of the lease deed of the continuous period of six months default after said adjustment with reference to the factual matrix.

32) However, in the present facts so far as fair rent is concerned, for this Court while sitting in revisions, from perusal of entire material on record, what the lower appellate Court arrived at, no way requires interference much less to reduce within the limited scope of revision as to any illegality, impropriety or correctness of the said findings fixing fair rent within the meaning of Section 22 of the Act that what is the scope of law on powers of the revision laid down by the Apex Court in **Hindustan Petroleum Corporation Limited vs**

¹⁹ 1986 (1) APLJ 145

Dilbahar Singh²⁰, that revision Court is not a Court of appeal for second time re-appreciation of entire facts afresh, but to go through only to the relevant facts to decide as to any illegality or irregularity or impropriety of the order impugned in the revision.

33) Here from that scope of jurisdiction, limited to the revision Court, once the conclusion arrived by the Rent Controller and re-appreciated afresh by the 1st appellate Court with reference to the prevailing rental value in the locality for similarly placed premises and from the judicial notice required to be taken of increase in the land values as per the settled expressions of the Apex Court and for this Court in this regard, there is nothing to reduce the fair rent fixed by the lower Court but for to modify and reduce every two years increase of 10% to every three years increase of 10% also from the expression in **M/s.Andhra Tiles and Marbles Industries vs TM Nagarani²¹**.

34) Thus the very eviction petitions are not maintainable from the above conclusions by virtue of the fair rent fixation orders of rent above Rs.3,500/- p.m. that dates back to the fair rent applications, which were filed prior to the filing of the eviction petitions.

35) Even coming to the other merits of the eviction petitions, apart from the very eviction petitions are not maintainable but for remedy is before Civil Court as concluded supra, there is no willful default as held by the rent controller to confirm in the revisions, for there is no basis to the lower appellate Court to give a reversal finding as concluded supra.

²⁰ 2014 (9) SCC 78

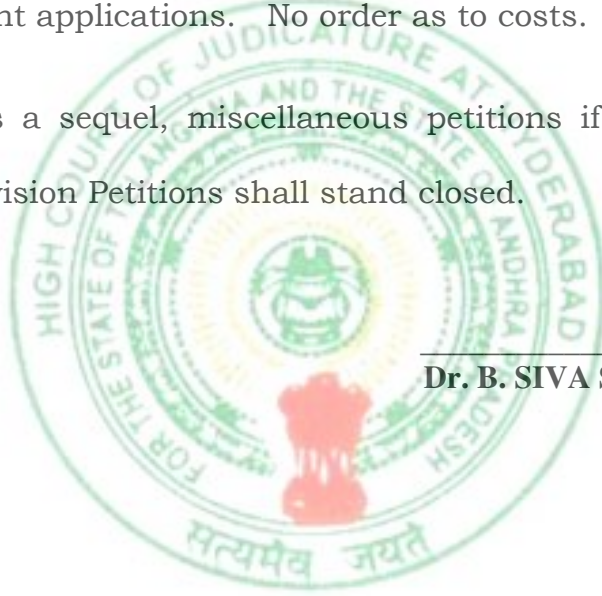
²¹ CRP Nos.3516 and 3570 of 2016 dated 07.11.2016

36) Accordingly and in the result, all the four revision petitions are allowed in part while confirming the fair rent fixed by the lower appellate Court, the 10% increase for two years is modified and reduced to 10% increase for every three years and while reversing the eviction orders passed by the lower appellate Court and restored the dismissal orders passed by the Rent Controller holding no willful default and also for the very eviction petitions for want of jurisdiction before Rent Controller are not maintainable but for remedy is to approach civil Court from the fact that fair rent fixed above Rs.3,500/- p.m. including by the revision orders supra dates back to fair rent applications. No order as to costs.

37) As a sequel, miscellaneous petitions if any pending in these Civil Revision Petitions shall stand closed.

Dt.24.01.2017
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Dr. B. SIVA SANKARA RAO, J



HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. Nos229, 235, 256, 261 OF 2016



Date: 24.01.2017

Knl