

HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

Civil Revision Petition No.6289 of 2017

ORDER

The revision petitioner-tenant by name Smt.Saloni Devi Jaiswal is the 1st respondent among two respondents including her daughter-in-law by name Smt. Reena Jaiswal(W/ o R.W.1-Shyam Sunder Jaiswal in R.C.No.32 of 2010 on the file of the Principal Rent Controller-cum-XII Junior civil Judge, Hyderabad. Impugning the eviction order dt.02.11.2015 in the RC supra, she being unsuccessful, maintained appeal in R.A.No.19 of 2016 vide order dt.14.09.2017 of the Additional Chief Judge, City Small Causes Court, Hyderabad against the landlady Smt. B.Rukkamma(since died) rep. by the GPA Smt. B.Uma Rani-P.W.1,and Smt. Reena Jaiswal supra and against said concurrent findings, present revision is filed.

2. The contentions in the grounds of revision are that the order of the lower appellate Court confirming the order of the learned Rent Controller ordering eviction of the Revision petitioner-tenant holding as the landlady is having bonafide requirement in respect of the property bearing Municipal No.4-1-509/ 2, situated in Troop Bazar, Hyderabad, and also the tenant secured alternate accommodation, is illegal, arbitrary, high handed, unreasonable and in ignorance of the several points referred in the written arguments and not based on the proper appreciation of the facts of the case. The observation of the Court below that no ordinary prudent person would pay the

amount of goodwill and security deposit to the landlady without obtaining any proper document, is absurd. The Revision petitioner-tenant filed Exs.R.20 to R.25 receipts, which bear the signature of P.W.1/Landlady and both the Courts below did not even peruse them and compare with the admitted signatures of P.W.1 available in the Court record. Admittedly, the Revision Petitioner-Smt.Saloni Devi alone is the tenant in the schedule property even as per the findings of both the Courts and hence terming her along with the R.3 together as two tenants clearly exposes the non-appreciation. Further R.W.1 who is son of the tenant deposed as GPA. The discussion of the lower appellate Court regarding alleged absence of pleading in respect of payment of good will amount Rs.2,50,000/- is erroneous, as admittedly there is no dispute in regard to payment of security deposit of Rs.1,50,000/- under Exs.R.20 to R.25. Further it is wrong on part of the lower appellate Court is the observation that none of the receipts under Exs.R.20 to R.25 contain the signature of R.W.2 Sri Mukesh Jaiswal. It is a matter of common prudence that the payer does not sign the receipt. The lower appellate Court has also not appreciated the admitted fact that though P.W.1-landlady admitted in her cross examination that in the year 1993-94 she had an account in General Post Office, Abids, Hyderabad and also in banks, but she refused to give the particulars or any other document where her signature of such period was available, in spite of the tenant serving a notice for such information under Ex.R.17 and the landlady refusing to

furnish under Ex.R.18 coupled with, the order of the High Court dt.28.08.2015 passed in C.R.P.No.1323 of 2015 to draw adverse inference against the landlady for not producing and not making available the contemporaneous signatures of P.W.1 for comparison with the signatures on Ex.R.20 to R.25 and the entire discussion in that regard in the impugned judgment is hence vitiated by illegality and impropriety. The lower appellate Court made a lengthy discussion in that regard but did not even refer to Ex.R.17 and R.18 nor even the said order of the High Court and thus the impugned order is liable to be set aside on this ground also. Instead of drawing adverse inference against the landlady for playing fraud and also giving false evidence and trying to mislead the Court, the Courts below falsely drew adverse inference against the tenants. Particularly in view of the order of the learned Rent Controller dt.11.07.2013 passed in I.A.No.183 of 2013 to send the documents in Exs.R.20 to R.25 along with admitted signatures of P.W.1, Smt. B.Uma Rani-landlady to the Forensic Science Laboratory for comparison and report and subsequent failure of her to make available her signatures, makes out a clear case of drawing adverse inference against her and more particularly in view of the decision of the Apex court in AIR 1968 SC 1413 and also 2011(2) ALT 563, where under the law was laid down that when a party is in possession of the best evidence and withholds it, Court has to draw adverse inference against the said party. In fact, there cannot be any inconsistency said to be on part of the tenant, as, from the beginning the tenant has been

contending that she paid goodwill amount to the landlady and construction of schedule property was made with said amount and that in view of the same it was agreed that the tenant shall be entitled to continue to occupy the premises as long as she pays rents with periodical enhancement, which she has been following. The observations of the lower appellate Court made in para No.26 are incorrect as the petitioner approaching the Court cannot take contradictory pleas like respondent nor can make false statements. The observations of the Courts below in regard to securing alternate accommodation by the tenant and particularly made in para No.27 of the judgment are also absurd, as admittedly the tenant has not purchased any property and the documents filed by the landlady showing purchase of property by the daughter-in-law of the tenant can under no circumstances amount to securing alternate accommodation by the tenant. The observation of the lower appellate Court that the sale deed stands in the name of the R.3, is sufficient to hold that the appellant has secured alternate accommodation, is not only absurd, but also baseless. The documents Exs.P.3 to P.9 relied upon by the landlady in respect of securing alternate accommodation by the tenant admittedly not related to the tenant. So far as the ground of bona fide requirement of the landlady to seek eviction of the tenant is concerned, the discussion of the lower appellate Court is only in regard to the choice of the landlady without the right to seek such relief is quite irrelevant in the present context and the decisions relied

upon are not at all applicable to the facts of the present case. In the absence of discussion of information and particulars of business and in the background of P.W.1 not having any experience to run business can under no circumstances be sufficient to order eviction on that ground. There is no observation of the Courts below that the personal bonafide requirement of the landlady is genuine and worth consideration and hence the order and judgment are illegal and not supported by any material on record and are against the pleadings and evidence, hence to set aside the concurrent findings devoid of merits by allowing the revision.

3. the learned counsel for the revision petitioner reiterated the revision grounds whereas, the counsel for the landlady supported the concurrent findings of the Courts below. Heard both sides and perused the material on record.

4. In fact, the landlady filed the eviction petition on the grounds of alleged willful default in payment of rent, bonafide requirement to run alleged business, securing alternative accommodation and sub-letting the property etc. Findings of both the Courts below in ordering eviction are on the grounds of bonafide requirement and also from securing by tenant an alternative accommodation.

5. So far as bonafide requirement of the landlady and securing alternative accommodation by tenant in ordering eviction on its correctness by concurrent findings while sitting in

revision concerned, the landlady proved from perusal of the record in her showing that the tenant secured alternate accommodation bearing Shop No.13 in Rama Krishna Estate, Jawahar Nagar, Hyderabad, and Ex.P.7 Registered sale deed dt.28.07.2001 stands in the name of R.3-wife of R.W.1 and Exs.P.3 to P.9 are sufficient to hold that the appellant secured alternate accommodation. With regard to the contention of the appellant that the trial Court bestowed the burden on the appellant to prove that the petition schedule property was not bona fide required by the landlady for personal use concerned, as laid down in the decisions Singareni Collieries Company Co-operative House Building Society Ltd., rep. by its Secretary S.Madhava Reddy(2011) 2 ALD 741, that the land lord/landlady is at liberty to choose his/her requirement which may be beneficial, suitable and convenient to her and the tenant cannot dictate terms to her/him in that regard. In Mohd. Seqawath Ali Bhakshi Vs.Shaik Mohd. Iqbal(2011) 5 ALT 803 also it was held that when the landlord/lady requires the premises bonafide to start business with source of capital, she/ he may sought eviction of the tenant.

6. Basing on the above principles and having regard to the evidence of P.W.1-landlady and the material on record, the appellate Court rightly and concurrently held that the landlady proved her case that she is not in occupation of any other non-residential premises in the schedule building and that the petition schedule property is required by her for her bonafide occupation.

The landlady also right from the beginning canvassed that she intends to open electrical goods business in the petition schedule property and the demised property area is very famous for retail and wholesale market in the electrical and sanitary goods and thereby she intends to carry on business of electrical goods in order to support herself as she is without shop and she wants to settle herself in the life. The question of previous experience for P.W.1 or financial capacity to establish or run the proposed business are immaterial to the appellant. It is not unusual for P.W.1 who is an educated person, qualified Post-Graduate in Public Management, to commence the business and therefore the finding given by the trial Court in this regard also correct. Thus, so far as said concurrent findings in ordering eviction concerned, there is nothing to interfere, but for to consider whether any advance and goodwill amount of the tenant is lying with the landlady and if so, till exhausting of the said amounts towards rents, the tenant cannot be evicted as contended to consider.

7. In this regard, the order of the lower appellate Court dt.14.09.2017 confirming the order of the Rent Controller on the plea of the tenant in regard to the payment of goodwill of Rs.2,50,000/- and advance amount of Rs.1,50,000/-; so far as the payment of goodwill is not borne out by the record to order but for the advance amount. Thus prima facie there is no dispute as regard to payment of Rs.1,50,000/- towards refundable advance, but for in respect of payment of Rs.2,50,000/- towards goodwill. The evidence of R.W.1 in his cross-examination is that at the time

of settlement of tenancy in the year 1993 an amount of Rs.3,95,000/- was settled towards deposit of the petition schedule property and that there is no deposit amount paid to the landlady and that the entire amount of Rs.3,95,000/- was paid towards goodwill by his wife(R.3). But in support of the same there is no document filed. R.W.1 further deposed in his cross-examination that all the amounts were paid in the name of his wife R.3 but her name is not mentioned in Exs.R.20 to R.25, but his brother-in-law's(R.W.2) name was mentioned. On perusal of Exs.R.20 to R.25, none of the receipts contain the signature of his brother-in-law Mukesh Jaiswal. No doubt, it is the person who received to acknowledge and not who paid to sign and keep with for no purpose. Further, R.W.1 stated that his brother-in-law used to make the payments. The details and proof of signatures of the executants of Exs.R.20 to R.25 were not considered by the Courts below and simply relied on the plea of the landlady of Exs.R.20 to R.25 are created and fabricated documents for the purpose of the case. From the record, it is clear that, during the pendency of the petition, the revision petitioner filed an application also to send the documents viz., Exs.R.20 to R.25 to the Handwriting Expert for comparison of the signature of the landlady B.Uma Rani and the said application was allowed and the documents were sent to the fingerprint expert who sent back the same for want of contemporaneous signatures pertaining to the relevant period of Exs.R.20 to R.25, therefore they issued a notice for production of documents and the reply was given simply that such documents

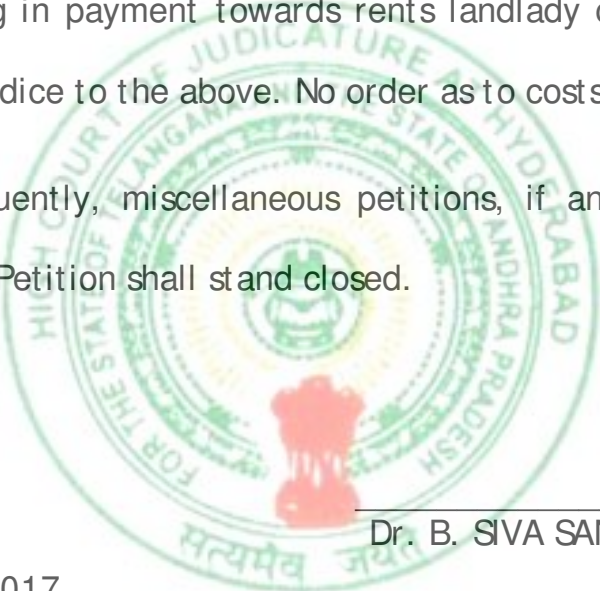
are not available. Thus, the said application was ended in dismissal. The landlady having the knowledge if not in actual custody of contemporaneous record with a malafide intention, failed to produce the same and even failed to furnish the information sought for. Particularly in view of the order of the learned Rent Controller dt.11.07.2013 passed in I.A.No.183 of 2013 to send the documents in Exs.R.20 to R.25 along with admitted signatures of P.W.1, Smt. B.Uma Rani-landlady to the Forensic Science Laboratory for comparison and report and subsequent failure of her to make available her signatures, makes out a clear case of drawing adverse inference against her and more particularly in view of the decision of the Apex court in AIR 1968 SC 1413 and also 2011(2) ALT 563, where under the law was laid down that when a party is in possession of the best evidence and withholds it, Court has to draw adverse inference against the said party. In fact, there is no any inconsistency on part of the tenant, as, the tenant has been contending that she paid goodwill amount to the landlady and construction of schedule property was made with said amount and that in view of the same it was agreed that the tenant shall be entitled to continue to occupy the premises as long as she pays rents with periodical enhancement, which she has been following. Further, R.W.2-Mukesh Jaiswal also deposed in corroboration to the evidence of R.W.1 that his brother-in-law(R.W.1) informed him about the terms and conditions of the tenancy which he negotiated with the 2nd respondent and the landlady demanded Rs.2,50,000/- towards

goodwill and Rs.1,50,000/- towards advance by way of a cheque and further informed about payment of Rs.2,50,000/- towards goodwill. Thus, even there is no direct evidence produced by the party to prove the contents of Exs.R.20 to R.25, the above facts clearly establish to draw adverse inference against the landlady having denied the signatures when sought for furnishing information of bank account particulars of her to get contemporary relevant signatures of her available to compare for the reason, had she furnished it could have been proved of the signatures that of her in establishing the factum of the payment of the goodwill that is also entitled along with the amount of advance for refund if not to adjust. However, the fact remains that that does not enable the tenant to continue till exhausting of the amounts towards rents for not even a case of from the beginning out of the amounts rent is adjusting. Thus, but for to say the tenant is entitled for refund of the said amounts while vacating there is nothing to interfere with the order of the eviction but for to grant sufficient time to secure alternative accommodation for the present business to continue somewhere by shifting as the other available alternate accommodation of the daughter-in-law is different apart from same is still not shown in existence much less also suffice to the continuation of the present business.

8. Accordingly and in the result, the revision is allowed in part by granting time for eviction till end of October, 2018 and in the meantime out of the amount of Rs.1,50,000/-+2,50,000/-

after deducting whatever arrears due, the tenant in continuing subject to liability of double the amount of the earlier rent towards use and occupation charges to adjust out of the said amounts for the landlady to pay the balance refundable after adjustment of any rents and use and occupation charges by the time of vacating. Failing which the landlady entitles to vacate by execution and the tenant is also entitled to execute for the recovery of the amount by virtue of this order as an executable degree without need of filing any separate suit. Whatever the amounts lying in payment towards rents landlady can withdraw, without prejudice to the above. No order as to costs.

Consequently, miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.



Dr. B. SIVA SANKARA RAO, J

Date:22.11.2017
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