

HON' BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.5591 of 2017

ORDER:

Heard both sides at length. The appellate Court order which is the subject matter of impugment in the revision from para-9 of the order dated 03.10.2017 reads as follows:-

In the result, while retaining the RA file for final hearing, in the interests of Justice and to decide this appeal comprehensively it is expeditious to direct the learned Principal Rent Controller, Secunderabad to hear the arguments of both sides and then record the findings in respect of Point No.2 to 5 also within a period of one month from the date of receipt of the orders and record, and remit the findings to this Court, for deciding this appeal in accordance with the law. Both the learned counsel are hereby directed to advance their respective arguments forthwith before the trial Court without availing much time. The registry of this Court is directed to communicate the orders and transmit the lower Court record to the trial Court within two days."

2. In fact, coming to the background in the eviction petition filed by the Landlord against the Tenant of the premises covered by the petition schedule, the contention in the original counter of the tenant is that the Mulgi in question was let out whereas, an additional counter plea is raised later inconsistent to the previous plea saying vacant site is let out and it is outside the purview of the Rent Control Act (for short, 'the Act') to maintain rent control case. In respect of the so called destructive pleas, leave about the defendant/respondent is entitled to take inconsistent pleas but not the plaintiff but for election among the inconsistent pleas ultimately if at all for plaintiff from the settled law; those inconsistent pleas supra of the respondent/tenant concerned, there is evidence confronting with reference to the inconsistent pleas also borne by record undisputedly.

3. The Rent Controller relying upon the subsequent or additional counter plea held the Controller has no jurisdiction saying it is a vacant site and the provisions of the Act have no application. The same was impugned in the appeal before the lower appellate tribunal by the Landlord. It is in the course of hearing the appeal, the impugned order passed by the appellate tribunal referred supra.

4. The learned counsels of both sides drawn attention of the Court to Order XIV Rule 2 and Order XX Rule 5 CPC respectively. Both the provisions are to be read together and not one excluding the other or in isolation to the other. It is not even a case invoking Order XIV Rule 2CPC by application to decide as a preliminary issue the jurisdiction aspect so only to give finding and in the absence of which, even from the Order XIV Rule 2 CPC giving of findings on all issues, once evidence is recorded is the requirement, leave about giving of one finding is sufficient without need of giving findings on other issues, if it is so comprehensive which include on the other issues from the very wording of Order XX Rule 5 CPC and not in exclusion of giving finding on jurisdiction only from the above. Leave it as it is, unless there is a specific special provision under the Rule making power of Section 30 of the Act, the general provisions of CPC are applicable to the matters under the Act, is not in dispute including from the two expressions placed reliance in the course of hearing the revision i.e. by a Division Bench in Beebanu Vs. Abdul Rasheed¹ and relying upon it by a subsequent single judge expression in Xavier Emenual Vs. Ratan Raj Kumar². These two expressions clarify the position of the provisions of CPC that unless there is a specific provision in the Rule making power particularly even from Rule 11 of the Rules framed under the Act that apply. In this regard

¹ 2012 2 ALD 424

² (2005) 2 ALT 486

covering area there are no specific Rules for the appellate Court on specific procedure other than the provisions of Order XLIII or Order XLI CPC.

5. Without going into further discussion, even the two expressions discussed on the scope of application of Order XLI including on the scope of remand with reference to Section 107 CPC, if at all for any additional evidence required by the appellate Court by directing the Rent Controller to conduct further enquiry, record additional evidence including from Section 20(3) of the Act for sitting against on the scope of the revision. Here Order XLI Rule 33 CPC reads as under:-

The appellate court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have tiled any appeal or cross-suits or where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees.

6. From this undisputedly from the application of the provision even to the appeal before the lower Controller/ appellate Tribunal, even the finding given on one aspect of point for consideration or issue by the tribunal, as the case may be, the appellate Court or tribunal, where the entire matter is at large in the appeal can decide for giving findings on all issues, instead of directing the Rent Controller specifically to give a finding on other points for consideration and submit for its further consideration to decide. Thereby the appellate Court's order directing the Rent Controller to give findings on points Nos.2 to 5 of the Rent

Controller for consideration is set aside by directing the appellate Court to give its own findings from the material available on record on all the points for consideration and dispose of the appeal preferably within two months.

7. Having regard to the above and in the result, the Revision is allowed. Consequently, miscellaneous petitions, if any, pending in this revision, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date:07.11.2017
vvr

