HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

<u>C.R.P. Nos.5194, 5200, 5281 and 5228 of 2017</u>

<u>COMMON ORDER</u>:

The revision petitioner in all the four revisions is the tenant—1st respondent in R.C. No.130 of 2009 on the file of the Principal Rent Controller-cum-XII Junior Civil Judge, Hyderabad. The R.C. No.130 of 2009 is filed by Smt.Mankanwar Kasat—1st respondent herein, for the relief of eviction of petitioner herein for willful default in payment of rents, willful default in payment of taxes, premises required for commencement of business by the owner and for her livelihood and for her college going daughter. On contest, by an order dated 28.02.2012, the trial Court has allowed the R.C. No.130 of 2009. Aggrieved thereby, the tenant—1st respondent had filed R.A. No.112 of 2012 before the Chief Judge, City Small Causes Court, Hyderabad by showing his family members as respondents 2 to 10 as not necessary parties and the same was dismissed on 10.08.2017 confirming the order dated 28.02.2012 passed in R.C. No.130 of 2009 by the Principal Rent Controller-cum-XII Junior Civil Judge, Hyderabad.

2) The Original land lady, Smt.Mankanwar Kasat is the 1st respondent to R.A and the Purushhottamdas Ramani-- is the appellant to R.A. During pendency of R.A. No.112 of 2012, one Dinesh Kumar, who purchased the property, from the R.C petitioner—Smt.Mankanwar Kasat, was impleaded as

respondent No.11 to R.A. No.112 of 2012 as per orders dated 22.06.2016 in I.A. No.79 of 2016 whereas the other respondents 2 to 10 endorsed as not necessary parties in the appeal as referred supra. The Appellate Tribunal has dismissed the appeal confirming the order of the Principal Rent Controller-cum-XII Junior Civil Judge, Hyderabad on 10.08.2017. Aggrieved thereby, the RA appellant—Purushhottamdas Ramani maintained the CRP No.5228 of 2017.

3) The CRP No.5281 of 2017 was filed by Purushhottamdas Ramani aggrieved by the order dated 22.06.2016 passed in IA No.78 of 2016. During pendency of RA No.112 of 2012 filed by RC petitioner, Dinesh Kumar impleaded as R-11, to receive additional evidence viz., sale deed dated 31.03.2105 and rectification deed dated 30.01.2016 obtained by him from the RC 1st petitioner Smt.Mankanwar Kasat, and that petition since allowed without passing order that was filed under Section 45 of Indian Evidence Act to compare the hand writing of Omprakash Kasat, husband of RC 1st petitioner—Smt.Mankanwar Kasat, to receive as additional evidence of the same therefrom.

4) The Civil revision petition Nos.5200 and 5194 of 2017 were also filed by self same Purushhottamdas Ramani i.e., petitioner herein. Against closing the petitions filed by him

viz., I.A. No.97 of 2017 to receive documents as additional evidence which are the certificates extracted copy of ledger account regarding deposit of rents and some rent receipts that were even earlier handed over not filed in saying double payment made and that is crucial in deciding the appeal, thereby to exhibit the same by recalling RW.1 with reference to additional counter filed on 05.01.2017 from the impleadment of RC 2nd petitioner during pendency of appeal and the other is I.A. No.484 of 2015 under Section 45 of Indian Evidence Act, to compare the hand writing of Om Prakash Kasat, husband of Mankanwar Kasat, to receive as additional evidence. By impugning the closure of the two petitions by the appellate Court without passing any orders saying main appeal is disposed of. Thus, all the four revisions maintained by self same Purushhottamdas Ramani (tenant) 1st respondent in RC, arraying his family members as respondents 2 to 10 and endorsed as not necessary parties in the appeal.

5) Before coming to the three revisions against I.As viz., CRP Nos.5281, 5200 and 5194 of 2017 supra, coming to the main revision CRP No.5228 of 2017, the contentions in the grounds of revision are that the lower appellate Court has committed a serious error in dismissing the appeal without assigning reasons and the impugned order is in ignorance of the evidence on record, both the Courts passed an order of eviction.

6) The Courts ought to have determined the points for consideration as contemplated by Rule 8 (2) of the A.P. Building (Lease, Rent and Eviction) Control Act, 1960, but simply confirmed the order extracting the pleadings by narrating the facts, law and points for determination and without any discussion in arriving finality in the order passed for eviction or for its confirmation by appellate Court, thereby both orders are perverse and unsustainable; those disposals were non application of mind and in a slip short manner.

7) The observations of the lower appellate Court are that there is no record placed by tenant for payment of rent for the period under default or he committed willful default is by non—appreciation of the facts on record and by non-consideration of the evidence adduced, the appellate Court failed to see that the original land lady sold the property to respondent No.11 under registered sale deed dated 31.03.2015 having received the consideration by the original land lady and the appellate Court should have considered that the tenant already paid rents, from the contention and failed to consider the same and the transferee is not entitled to arrears of rent due before transfer unless there is contract to the contrary even under Section 109 of Transfer of Property Act apart from no assignment of the right to recover any rents or amount of taxes in the registered sale deed apart from the rental amounts already collected by the original land lady even allowing before execution of the registered sale deed or

any other rectification deed even mentioned as if there are any arrears, it is of no significance the Courts below failed to appreciate the fact that the 1st respondent—tenant tendered the rents on the very first date of the hearing of the matter and in such an event, the cause of action should vanish from the landlady accepted the payment waving any cause of complaint for default much less willful default to make a ground for eviction there from and there are no findings recorded in this regard by the Courts below.

8) Coming to the non-payment of municipal taxes alleged, the land lady in the eviction petition did not disclose any municipal taxes due by the date of filing of eviction petition and no particulars were given showing actual amount due and payable for the premises in question covered by portion bearing No.4-4-22 and the tax receipt of website of GHMC dated 23.06.2007 covered by Ex.P4 besides Ex.P5—demand notice of the landlady, only the liability of payment of property tax with the tenant. However that does not form part of even rents much less to say any arrears of rent and there is no contract between the parties to pay property tax to the landlady but for a separate and distinct liability for any property tax due even, if at all, any property tax, the tenant has to pay, it does not form part of rent, the question of seeking eviction much less without any assignment of the property tax liability in the event of non-payment to enforce by land lady much less subsequent to transferee of the

original land lady to make it a ground for eviction on the bald allegation of three years property tax due, that too, without giving any evidence of property tax is within the meaning of rent, if at all, if such a finding cannot be given otherwise and the very purpose of seeking eviction is the original land lady is widow, it is wanted for business purpose but pending appeal, landlady sold the property to said Dinesh Kumar-respondent No.11 and the Principal Rent Controller and lower appellate Tribunal, thereby exhausted their jurisdiction and even without application of mind in passing order of eviction instead of dismissing the RC Petition vis-à-vis otherwise the appeal; by allowing the appeal of the tenant rather than dismissal in confirming the eviction petition.

9) From the above, coming to the three other revisions concerned, it is also the contest that the two applications, to receive additional evidence were dismissed without application of mind and even the application of the land lady is without basis for additional evidence and thereby all the revisions are liable to be allowed.

10) Whereas it is the submission of the learned counsel for respondent No.11, the present landlord, the vendee of the original land lady, since amended the revision petition as per I.A No.79 of 2016 dated 22.06.2016 during pendency of the appeal and the R.A Order dated 10.08.2017 was amended at para No.11 instead of respondent No.11 printed as

respondent No.1, as per order dated 31.08.2017 in I.A No.428 of 2017; that the order of the lower Court passing the eviction even no way requires interference on the concurrent findings to the extent that there was willful default and the C.R.P.No. 5228 of 2017 is liable to be dismissed and consequently, the other three revisions, the relief therein practically infructuous therefrom apart from no merits even to sit against.

11) Heard both sides at length and perused the material on record.

12) Before Rent Controller, RC No.130 of 2009 was maintained by original land lady as sole petitioner, she came to the witness box as PW,1 and placed reliance upon Exs.P1 to P8 viz., Ex.P1—rough sketch of the schedule property, Ex.P2—rent receipt book, Ex.P3—release deed dated 04.02.2009, Ex.P4—Property tax bill issued by MCH in the name of Omprakash Kasat, dt.23.06.2007, Ex.P5—CC of the order in R.C. No.104 of 1983, dt.11.07.1989, Ex.P6—letter from IDBI Bank dt.17.07.2009 to the petitioner, Ex.P7—Payment dividend voucher dt.06.09.2010 of Agrasen Cooperative Bank in the names of the petitioner, Ex.P8—Result card of common proficiency test in CA of Aarti Kasat (daughter of the land lady).

13) The respondent No.1—Purushhottamdas Ramani, came to the witness box as RW.1 and relied upon five documents viz., original rent receipt dt.13.05.1997, Ex.R2—C.C. of Form

A of Register of Firms in the name of the M/s.Ramani Cloth Stores, Exs.R3 to R5:Positive photographs three in number.

14) The schedule property is mulgi bearing No.4-4-22 admeasuring 300 Sq.yds situated at Sulthanbazaar, Hyderabad, which is not in dispute. In the eviction petition, the pleadings of the landlady are that one Jamnadas, father of the respondents 1 to 3 and husband of 4th respondent was originally a tenant of the premises in question under original lease and after his death, respondents 1 to 4 and their family members, who are other respondents 5 to 10 are continuing in the schedule mulgi with the same terms of lease. The property belongs to one Muralidhar Kasath who during his life time executed a will dated 22.06.1981 bequeathing the lease premises mulgi and another bearing No.4-4-23 in favour of his third son i.e., the husband of the petitioner by name Omprakash kasath, (who died on 24.01.1999) and since then the husband of the petitioner become absolute owner of the property and the respondents are paying rents to the husband of the sole petitioner at Rs.160/- p.m. originally and later, having enhanced from time to time at Rs.1500/- p.m. payable on or before 10th of each succeeding month, other than electricity consumption charges and taxes. After the death of husband of the petitioner, leaving behind the sole petitioner and two daughters being landlords, the respondents were paying rents to the petitioner and she was

issuing receipts in the name of M/s.Ramani Cloth Stores showing the name of her husband Omprakash Kasat as owner. Her two daughters also executed the release deed dated 04.02.2009, releasing their share in the property bearing Nos.4-4-22 and 4-4-23 in favour of the petitioner and thus, the petitioner became the absolute owner of the property.

15) In that background of her title, the sole petitioner contended so far as the eviction petition reliefs concerned, that the respondents are irregular in payment of rents and whenever rent paid receipts were obtained by respondent No.1 and lastly, the respondents paid rent from April, 2008 till June, 2008 under receipt dated 31.03.2009 and failed to pay thereafter from July, 2008 to March, 2009 of Rs.13500/- (Rs.1500/- per month) and also failed to pay the property tax. The further averments are that she is a widow and the mulgi is required for commencement of business of readymade salwar, suits, Kurthas, for her livelihood and for her two daughters of whom one is college going daughter and the mulgi is suitable for the said business.

16) The main contest of the respondents mainly by 1st respondent is while denying the petitioner's averments by putting the strict proof of the so-called will and title of her husband and so-called relinquishments in claiming absolute rights of the sole petitioner and any default in payment of

rent and entitlement of eviction on any of the grounds or any requirement of the premises for the business or any property tax due much less any liability to pay property tax, it is averred that the respondents have no knowledge about the will executed by Muralidhar Kasat in favour of husband of the petitioner. After the death of Muralidhar Kasat, his sons have created troubles to the partnership business in collecting rent, as such the respondents filed RC under Section 9 (3) of the Act for deposit of rent, which was allowed on merits and the matter was settled on enhancement of rent from Rs.160/- p.m. to Rs.1000/- p.m. Now that was enhanced to Rs.1500/- p.m. and rent receipts are issuing in the name of partnership firm M/s.Ramani Cloth Stores and the allegation of irregular in payment of rent is false. The petitioner used to collect rents at her wish and will but passed the rent receipts in different dates intentionally by collecting every month and subsequently, intentionally refused to even pass receipts.

17) The respondents have paid the rents of Rs.13,500/- on 07.05.2009 i.e., the date of first hearing of the case, hence the so-called arrears of July, 2008 to March, 2009 that was accepted, thereby there is no willful default and not liable for eviction apart from that they have other premises besides first floor of the entire property for any such business, if at all requires.

18) In the additional counter filed by respondent after amendment of the eviction petition, it is stated that the petitioner has got other premises bearing No.4-4-22 and 4-4-23, 1st floor and rearside mulgi that was let out by the petitioner to Arun and Anil apart from another property of mulgi bearing No.12-1-334/17/1, Lallapet, Secunderabad, thereby not entitled to eviction on any of the grounds.

19) Undisputedly from the factual matrix, pending appeal, the sole petitioner sold the property to 11th respondent is R.A. No.112 of 2012, thereby the grounds of eviction won't service for the requirement of her carrying business, but for if at all any willful default in payment of rent and the so-called non-payment of property tax if will form part of rent. The definition of rent does not form part of, much less inclusive of, property tax or water charges or electricity charges, much less anything payable to the landlady for not even any such agreement as inclusive of amenities and form part of rent, undisputedly.

20) So far as willful default in payment of rent is concerned, on the first hearing of the RC on 07.05.2009, admittedly Rs.13,500/-, the amount due for the months of July, 2008 to March, 2009 paid and the landlady received that is not even in dispute and that was also found by the Rent Controller in answering point No.1 at para No.7 of the order dated 28.02.2012.

21) Once the rent is accepted without protest even after filing of the eviction petition, it amounts willful default or not is also a finding required to be given. However, in point No.1 what the Rent Controller observed is even the petitioner admits about receiving of rent on first hearing, the respondents themselves also admit the same. RW.1 in his cross examination for the first time stated that double payments were made, however not filed any document with regard to double payments. In Ex.P2—rent receipt book, except receipt No.51, there were no arrears of rent mentioned in earlier receipts. But Rent controller observed that in the rent receipt No.51, the respondents paid rent only for April, 2008 to June 2008 amounting to Rs.4,500/- on 31.03.2009 and as on that date, there are no arrears. Undisputedly prior to filing of eviction petition, there was no legal notice given much less by pointing out any arrears and even from that the collecting of rents every month or in lumpsum for few months, as observed in para No.8 of the order of the rent controller even clear. So far as the period from July 2008 to March, 2009 as on the date of filing of the eviction petition that was paid on first hearing date that was accepted, not on protest and even to say that does not amount to waiver of the cause of action accrued from subsequent receiving, leave about the correctness.

22) Once there is an application in I.A. No.97 of 2014, during pendency of appeal with reference to rent receipts

showing regularly paying rent every month but intermittently, the lower appellate Court should not have closed the petition without either allowing or dismissing as the case may be, that too, when the same is also required to consider from the evidence on record including from the evidence of RW.1 as also discussed by Rent Controller in para Nos.7 and 8 in answering point No.1, however, without referring to it, in coming to the conclusion that as if there is willful default, even earlier taking of rent not in regular on practice.

23) Apart from it, on the receipts which are sought to be received as additional evidence in I.A. No.97 of 2017 and another application earlier to it filed in I.A. No.484 of 2015 to send the cheque dated 20.05.1998 in question for the purpose of comparison of handwriting of Omprakash Kasat, late husband of sole petitioner, regarding the advance amount of Rs.3,000/- paid on 13.06.1997 that is with the landlady and also the subsequent payments in saying the total Rs.28,000/- deposited amount paid by M/s.Ramani Cloth Stores to be adjusted as the case may be.

24) The lower appellate Court instead of closing the application should have been passed an order on merits, that too having allowed I.A. No.78 of 2016 of the landlord, the subsequent vendee, from the original sole petitioner—landlady to receive the sale deed and rectification deed and even allowed by an order dated 22.06.2016 no additional

evidence received or adduced after allowing the application pending appeal.

25) Leave it as it is, so far as the willful default, the said finding of the rent controller, from the above, not sustainable for the lower appellate Court to confirm. Coming to the property tax answering para No.2, particularly from para No.9, it is observed that in the earlier R.C. No.104 of 1983 there was a reference about the liability to pay property tax to the Municipal Department directly by the tenant that is covered by Ex.P5—RCC order in saying RW.1—R1 in his cross examination also not denied regarding the liability for payment of property tax but for saying he does not know whether they have to pay property tax, whereas in the course of arguments, developed a version of landlady to pay and Ex.P4—rent receipt, showing the arrears of Rs.1,21,223/- with penalty on 01.04.2007, the tenant, thereby failed to pay in holding those constitute willful default and thereby liable for eviction. The Rent Controller did not advert to the aspect of property tax even with any liability from the above finding is a ground for eviction or not, for same form part of rent or not, for saying as if it is also willful default of payment of rent.

26) So far as M/s.Ramani Cloth Stores non impleadment as one of the respondents—tenant on point No.3 of the rent controller is concerned, it no way requires interference. The point Nos.4 & 5 of the rent controller is concerned, beneficial

requirement of the petitioner—landlady—widow for her business, that no way survives from the landlady alienated pending appeal filed by tenant to the 11th respondent—Dinesh Kumar.

27) Thus so far as R.A. No.112 of 2012 from the respondent No.11, Dinesh Kumar, came on record in the appeal findings with regard to willful default in payment of rent and property tax concerned, the lower appellate Court in R.A. No.112 of 2012 at para No.6 observed that as on the date of filing of the eviction petition for the rental arrears from July, 2008 to March, 2009 and property tax fallen due as also found by rent controller. Even the appellant tenant contended that they are paying rents regularly but not filed any proof of payment of rents from June, 2008 to March, 2009, though allegedly not committed any willful default and not liable for eviction.

28) The lower appellate Court totally ignored the factum of payment of arrears of rent from June, 2008 - March 2009 on the first hearing of 07.05.2009, that was exhibited by the landlady and also there was a finding to the effect of said payment in the point No.1 for consideration by the Rent Controller whether despite the belated payment tantamounts to willful default or not and considered by the lower appellate tribunal in confirming the finding of the rent controller in saying in para No.6 that the tenant committed willful default

in payment of rents from July, 2008 to March, 2009. Another crucial aspect required to consider is once on the first hearing of the rent control eviction case, the amount was paid on 07.05.2009 and the landlady accepted the same and there is alienation of the property in favour of the Dinesh Kumar pending appeal, and the said Dinesh Kumar is impleaded as 11th respondent to the appeal; however, the sale deed, no way mentions any assignment of the arrears liability but for in the rectification deed executed subsequently that were even allowed to rely as additional defence in I.A. No.78 of 2016 dated 22.06.2016 not marked by adducing any evidence by said Dinesh kumar pending appeal nor marked by consent by the Court. The finding of the lower appellate Court without considering the same is thus unsustainable.

29) Further even though the lower appellate Court recording the findings of non-payment of property tax is a willful default, liable for eviction from para no.7 of the order, in confirming the order of the Rent Controller, same is unsustainable for without giving a finding as to how the non-payment of municipal tax to the municipality tantamounts to willful default in payment of rent, that too, this amount is not even payable to landlady and any amount beyond rent is when part of the rent and that too, without evidence from any facts and circumstances or any documents as to that to be considered as part of rent. Thereby, the lower appellate Court's said finding is also unsustainable.

30) No doubt, for this Court while sitting in revision, as held by the Constitution Bench in ***Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh***[1] there is a limitation that the High Court can re-appreciate the facts only to the limited extent as to any finding impugned is outcome of perversity or irrational or irregular or illegal or unsustainable in so ascertaining the correctness or not of the said finding under the Act by going to the limited extent of the factual matrix. From this, even from the limited scope of the revision from the Constitution Bench expression with reference to the wording of Section 22 of the Act, the findings of the lower appellate Court are liable to be set-aside and the matter requires to be remanded to the lower appellate Court by allowing C.R.P. No.5194 of 2017 and by allowing the petition in I.A. No.97 of 2017 permitting the appellant in R.A. No.112 of 2012 to adduce further evidence with reference to it and also by permitting the 11th respondent—transferee landlord to adduce his further evidence with reference to the order allowing I.A. No.78 of 2016 dated 22.06.2016 and then to decide the appeal in R.A. No.112 of 2012 afresh with such additional evidence to be adduced on fresh merits.

31) So far as CRP No.5200 of 2017 to send the cheque dated 20.05.1998 for an expert opinion concerned, this Court found no reason to allow the petition but for left open to the lower appellate Court, if copy of documents received within its

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[1] 2014 (9) SCC 78

power under Section 73 of Indian Evidence Act, to decide the petition. With these observations, the revision is disposed of.

32) Accordingly and in the result, the CRP Nos.5200 and 5281 of 2017 are disposed of and CRP Nos.5194 and 5228 of 2017 are allowed and the matter is remanded to the lower appellate Court with a direction to restore R.A. No.112 of 2012 by setting aside the earlier dismissal appellate decree and order dated 10.07.2017 and by allowing the I.A. No.97 of 2017, permitting the appellant—tenant to adduce further evidence with reference to the documents referred therein and also by permitting the 11th respondent—transferee landlord to produce his additional evidence as per orders in I.A. No.78 of 2016 and the I.A.No.484 of 2015 is directed to be disposed of on merits and from all the above to give fresh disposal of the appeal R.A. No.112 of 2012 preferably within six months from the date of receipt of this column order. No order as to costs in all the four revision petitions.

33) Consequently miscellaneous petitions, if any pending in these revisions shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date:20.03.2018
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HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

C.R.P. Nos.5194, 5200, 5228 and 5281 of 2017

Date:20.03.2017

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