

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.431 OF 2018

ORDER:

This revision petition is filed under Section 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short 'Rent Control Act') challenging the order dated 6th December, 2017 in I.A.No.28 of 2017 in R.A.No.17 of 2017 passed by the Additional Chief Judge (FAC), City Small Causes Court, Hyderabad, allowing the application filed under Section 20(2) of the Rent Control Act for suspending operation of eviction order dated 06.01.2017 passed in R.C.No.11 of 2015 by the Principal Rent Controller, Secunderabad directing the petitioner to deposit 50% of the enhanced rent from the date of filing the petition and continue to pay the same till disposal of appeal.

2. Aggrieved by the impugned order, the present revision petition is filed on the ground that in the absence of any specific provision under Section 20(2) of the Rent Control Act requiring the petitioner/tenant to deposit rent at enhanced rate, the Court below is not justified in passing the impugned order to deposit the enhanced rate of rent, while exercising jurisdiction under Order 41 Rule 5 C.P.C. by the appellate Court is illegal and when there is a specific provision in the Rent Control Act, the Court cannot invoke the provisions of C.P.C. and pass such order, issuing a direction to deposit rent at 50% of rent enhanced rate.

3. During hearing, learned counsel for the petitioner reiterated the contentions placing reliance in **Nagindas Ramdas v**

Dalpatram Ichharam alias Brijram and others¹, Astratlal v The Principal Rent Controller, Hyderabad and another² and Atma Ram Properties (P) Ltd. V Federal Motors (P) Ltd.³ . Relying on the above judgments, counsel for the petitioner distinguished the principles laid down in **Atma Ram's case** referred supra and mainly relied on the judgment of the Division Bench of this Court in **Astratlal's** case referred supra, wherein it was specifically held that when there is a specific provision under the Rent Control Act, the Courts cannot invoke the power under C.P.C. to issue such direction and thereby the impugned order passed by the Court below is erroneous on the face of record and prayed to set aside the same.

4. Learned counsel for the respondent supported the impugned order in all respects and prayed to dismiss the revision.

5. The petitioner filed petition under Section 20(2) of the Rent Control Act, which deals with power of the Court to grant stay of all further proceedings in the matter pending decision in the appeal. sub-section (1) deals with right of the aggrieved person to file an appeal and Sub-section (2) deals with to grant stay. According to sub-section (2) of Section 20 of the Rent Control Act, on preferring appeal, the appellate authority may order stay of further proceedings in the matter, during pendency of the appeal. But no powers are conferred on the Court to issue any other direction like payment of rent at enhanced rate etc. Therefore, Section 20(2) of the Rent Control Act cannot be equated as Order XLI Rule 5 C.P.C.

¹ (1974) 1 SCC 242

² (1978) 2 ALT 102

³ (2005) 1 SCC 705

6. In the facts of the case, the petitioner filed an appeal against the eviction order passed by the Rent Controller and which is pending for adjudication before the appellate authority. It is also an admitted fact that the respondent also filed petition under Section 4 of the Rent Control Act and the Court determined the fair rent payable for the premises @ Rs.20,640/- @ Rs.80/- per sq. feet per month. Aggrieved by the order passed under Section 4 of the Rent Control Act, the tenant preferred appeal, which is subject matter of another appeal. But the appellate Court issued a direction to deposit 50% of the rent at enhanced rate i.e. subject matter of another appeal pending before the Court. The said direction to the extent of depositing the rent is challenged in the revision.

7. In **Atram Ram Properties's** case referred supra, wherein the facts disclosed that the tenant whose possession is held to be illegal on ordering eviction by the Court below under the provisions of the Delhi Rent Control Act, preferred appeal and pending appeal sought stay under Order XLI Rule 5 C.P.C. Under the Delhi Rent Control Act, there are no provisions for grant of stay on entertaining appeal under the Delhi Rent Control Act. Considering the circumstances, the Apex Court laid down certain principles in para 19 of the judgment, which are as follows:

(1) while passing an order of stay under Rule 5 of Order 41 of the Code of Civil Procedure, 1908, the appellate Court does have jurisdiction to put the applicant on such reasonable terms as would in its opinion reasonably compensate the decree-holder for loss occasioned by delay in execution of decree by the grant of stay order, in the event of the appeal being dismissed and in so far as those proceedings are concerned. Such terms, needless to say, shall be reasonable;

(2) in case of premises governed by the provisions of the Delhi Rent Control Act, 1958, in view of the definition of tenant contained in clause (l) of Section 2 of the Act, the tenancy does not stand terminated merely by its termination under the general law; it terminates with the passing of the decree for eviction. With effect from that date, the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have vacated the premises. The landlord is not bound by the contractual rate of rent effective for the period preceding the date of the decree;

(3) the doctrine of merger does not have the effect of postponing the date of termination of tenancy merely because the decree of eviction stands merged in the decree passed by the superior forum at a latter date.

8. The facts of the present case are distinguishable from the above judgment of the Apex Court, as in the present case, the appeal is governed by A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960, where there is a specific provision for grant of stay i.e., Section 20(2) of the Rent Control Act and the tenant even after passing eviction order, shall continue to be tenant till he is evicted from the schedule premises. Therefore, his possession after passing the eviction order and during pendency of the appeal is legal and not liable to pay mesne profits or damages for use and occupation of the schedule premises, after eviction. Therefore, the principle laid down in **Atma Ram Properties's** case referred supra, has no direct application to the present facts of the case.

9. Learned counsel for the petitioner while contending that when there is specific provision in the Rent Control Act, the Court cannot invoke the powers under Order XLI Rule 5 C.P.C., while passing an interim order and placed reliance in **Astratial's** referred supra, wherein the Division Bench of this Court at the end of para

14 held that the Rent Controller is not a Civil Court though he performs functions similar to a civil Court and belongs to the judicial cadre. It is not open to him to follow the procedure laid down in the code of Civil Procedure by passing the procedure laid down in the Rent Control Act or the rules made thereunder except to the extent indicated to the proviso to Rule 22. It is bound by the procedure prescribed by the Act and the rules made thereunder. Then it is clear from the ratio decidendi laid down in the judgment, the Rent Controller is bound to follow the procedure prescribed under the special statute i.e. Rent Control Act and cannot invoke procedure prescribed under Order XLI Rule 5 C.P.C. Even otherwise, the Apex Court in another judgment in **Arasmeta Captive Power Company Private Limited and another v Lafarge India Private Limited**⁴ while dealing with the interpretation of law on Lord Halsbury in Quinn principle held as follows:

“...there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all.” [Emphasis supplied]

In *Krishena Kumar v. Union of India and others*[9], the Constitution Bench, while dealing with the concept of ratio decidendi, has referred to *Caledonian Railway Co. v. Walker's*

⁴ (2013) 15 SCC 414

Trustees[10] and Quinn (supra) and the observations made by Sir Frederick Pollock and thereafter proceeded to state as follows: -

“The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise to the decision. The ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting of a pre-existing rule of law, either statutory or judge-made, and a minor premise consisting of the material facts of the case under immediate consideration. If it is not clear, it is not the duty of the court to spell it out with difficulty in order to be bound by it. In the words of Halsbury (4th edn., Vol. 26, para 573) “The concrete decision alone is binding between the parties to it but it is the abstract ratio decidendi, as ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and which when it is clear it is not part of a tribunal’s duty to spell out with difficulty a ratio decidendi in order to bound by it, and it is always dangerous to take one or two observations out of a long judgment and treat them as if they gave the ratio decidendi of the case. If more reasons than one are given by a tribunal for its judgment, all are taken as forming the ratio decidendi.” [Emphasis added]

10. This principle has no direct application except to the extent of distinguishing the preposition of law laid down in **Atram Properties’s case** referred supra and the facts of the Division Bench of this Court under Rent Control Act.

11. It is an admitted fact that the landlord filed eviction petition, so also for determination of fair rent under Section 4 of the Rent Control Act, which ended in favour of the landlord fixing fair rent at Rs.20,640/-. The tenant also filed another appeal, no stay petition was filed and no interim direction was issued, but it is pending for adjudication before the appellate authority. Therefore, as on today, rent payable for the premises is Rs.20,640/- per

month. Hence, issue of such direction is contrary to the law laid down by the Division Bench of this Court. But the landlord is at liberty to claim rent at enhanced rate of Rs.20,640/-, in the absence of any stay before the Court and in case, the petitioner failed to pay rent at enhanced rate without obtaining any interim order, the petitioner has to reap the consequences of default at enhanced rate. As such the order passed by the appellate Court is liable to be set aside while permitting the petitioner to work out remedies under law.

12. In view of my foregoing discussion, the order dated 6th December, 2017 in I.A.No.28 of 2017 in R.A.No.17 of 2017 passed by the Additional Chief Judge (FAC), City Small Causes Court, Hyderabad is contrary to Section 20(2) of the Rent Control Act and it is hereby set aside while leaving it open to the parties to work out their remedies and that the landlord may invoke Section 11 of the Rent Control Act during pendency of the appeal also.

13. With the above direction, the civil revision petition is allowed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this petition shall stand closed.

M. SATYANARAYANA MURTHY,J

21.02.2018
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