

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION Nos.285 and 326 of 2018

COMMON ORDER:

These two Civil Revision Petitions are filed under Section 22 of AP Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short ' the Act'), challenging the Orders dt.04.12.2017 in R.A.No.70 of 2016 and I.A.No.141 of 2017 in R.A.No.70 of 2016 passed by Additional Chief Judge, City Small Causes Court, Hyderabad.

Dissatisfied with the quantum of fair rent fixed by the Rent Controller in R.A.No.70 of 2016, CRP No.326 of 2018 is filed. During pendency of the appeal in R.A.No.70 of 2016, the respondent herein/landlord filed I.A.No.141 of 2017 under Order 41 Rule 27 of CPC read with Rule 11 of the Rules framed under the Act, to receive the additional evidence in the appeal.

Both R.A.No.70 of 2016 and I.A.No.141 of 2017 in R.A.No.70 of 2016 were heard and passed two separate orders, which are now under challenge in these revisions.

The petitioner herein is the tenant and the respondent herein is the landlord. Landlord filed petition under Section 4 of the Act, for fixation of fair rent @ Rs.150/- per sqft, alleging that the respondent herein is the owner of the property having purchased the same from the original landlord of the petitioner herein/tenant under registered sale deed dt. 28.09.2013 and later the tenancy was assumed directing the tenant to pay monthly rent to the landlord. The rent payable for the premises similarly located is ranging from 150 to 200 per sqft per month as the mulgi is situated in highly commercial locality, but the agreed rent payable is only Rs.3200/- per month and therefore, the rent being paid by the

respondent for the premises in General Bazar near Tobacco Market, M.G. Market Road, is too low and requested the Rent Controller to fix fair rent @ Rs.150/- per sft for the entire premises of built up area i.e., 437 sft bearing No.2-1-184 (old No.1213).

The respondent/petitioner herein/tenant filed Counter denying the material allegations *inter alia* contending that the original owner T. Krishna Murthy inducted this petitioner/tenant on monthly rent of Rs.250/- initially and it was increased from time to time and as on the date of filing petition, the rent payable was Rs.1600/-. The carpet area of the premises is not 437 sft and that the building in question is old one without any amenities for better beneficial enjoyment of the premises and therefore, the premises similarly located with the same amenities would not fetch monthly rent @ 150 per sft and that the rent being paid by the petitioner/tenant is on par with the prevailing market rate and prayed for dismissal of the petition.

During enquiry, on behalf of respondent herein/petitioner, Pws. 1 and 2 were examined and Exs. P.1 to P.4 were marked. Cws. 1 to 3 were examined as court witness on summoning and Exs. C.1 to C.3 were marked. On behalf of the petitioner herein/tenant, he himself was examined as Pw.1 and marked Exs. R.1 to 14.

Upon hearing both the counsel, the Rent Controller fixed fair rent at Rs.3000/- based on evidence.

Dissatisfied with the fair rent fixed by the Rent Controller, the landlord/respondent herein preferred an appeal before the Additional Chief Judge, City Small Causes Court, Hyderabad, on various grounds. But the Appellate Court re-appreciated the evidence, while dismissing I.A.No.141 of 2017 in R.A.No.70 of 2016, fixed fair rent for the premises at

Rs.100 sft, which comes to Rs.43,700/- per month together with periodical enhancement at @10% for every year, on the existing rent.

Aggrieved by the fixation of fair rent, CRP No. 326 of 2018 is filed by the tenant mainly on the ground that the fixation of fair rent based on the documents produced by the respondent herein in a petition filed under Order 41 Rule 27 of CPC read with Rule 11(2) of the Rules framed under the Act, is an error on the face of the record and if those documents are received and marked as exhibits, the Court can consider those documents. When an adduction on additional evidence at the appellate stage is declined, none of the documents filed along with the petition filed under Rule 11 (2) of the Act cannot be taken into consideration and therefore, the judgment of the Appellate Court is based on extraneous material.

Though Cws.1 to 3 were examined, they did not produce any iota of evidence to establish the prevailing rent in the open market for similarly situated building. Therefore, the rent fixed by the Appellate court is excessive and prayed to set aside the same. The appellate Court, passed a cryptic order in I.A.No.141 of 2017, allowed the petition filed by the landlord despite objection raised by the counsel for the tenant/petitioner herein.

The order dt.04.12.2017 in I.A.No.141 of 2017 passed by the appellate Court is erroneous. Since the documents filed along with the petition filed under Order 41 of Rule 27 CPC read with Rule 11 (2) of the Rules framed under the Act though received, the procedure to be followed is either under Order 41 Rule 28 of CPC or under Rule 11 (2) of the rules framed under the Act to take further evidence by the Appellate Court itself or such evidence be taken by the Rent Controller. Instead of following such procedure, straight away considered the

documents filed along with the petition and passed the impugned Order in R.A.No.70 of 2016 fixing fair rent at Rs.100/- per sft which comes to Rs.43,700/-.

During hearing, Sri Vedula Venkata Ramana, learned Senior Counsel for the petitioner mainly contended that when additional evidence was received allowing I.A.No.141 of 2017, the course open to the Appellate Court is under Rule 11(2) of the Rules framed under the Act or under Order 41 Rule 28 of CPC. But, without following such procedure, the Appellate Court straight away considered additional evidence produced in contravention of the procedure under Rule 11 (2) of the Rules framed under the Act or under Order 41 of 28 CPC, i.e., Lease and License Deeds dt. 16.01.2016 and 20.04.2015 respectively along with certified copy of Order dt. 29.06.2015 in R.C.No.52 of 2012.

Sri D.V.Seetharama Murthy, learned Senior Counsel appearing for the respondent/landlord contended that the Appellate Court passed the order in accordance with law and when the Appellate Court received additional evidence under Rule 11 (2) of the Rules framed under the Act or under Order 41 Rule 27 CPC, the Court can take into consideration of those documents and pass appropriate orders in accordance with law. Therefore, the Order passed by the appellate Court cannot be faulted on the sole ground of irregularity on the objection raised by the learned counsel since the documents are public documents.

Considering rival contentions and perusing the material on record, the point that arise for consideration is:

“whether the procedure adopted by Additional Chief Judge, City Small Causes Court, Hyderabad, in dismissal of R.A.No.70 of 2016 while allowing I.A.No.141 of 2017 is in accordance with law and if so, the orders are liable to be set aside?”

Point: The respondent herein/landlord filed petition under Section 4 of the Act, for fixation of fair rent for the mulgi in question. The tenancy is not in dispute. Of course, there is a dispute with regard to rent payable for the premises. During pendency of the appeal, the landlord/respondent herein filed an application under Order 41 Rule 27 CPC r/w Rule 11 (2) of the Rules framed under the Act, to receive additional evidence viz.; Lease and License Deeds dt.16.01.2016 and 20.04.2015 respectively along with certified copy of Order dt. 29.06.2015, which were marked in R.C.No.62 of 2012.

When documents were received as additional evidence, the procedure to be followed by the Court is to consider those documents as part of evidence after compliance of procedure under Order 41 Rule 28 or Rule 11(2) of the rules framed under the Act. Instead of marking the documents by examining any witness either by the Appellate Court itself or directing the Rent Controller to record the evidence and send the deposition to the Appellate Court along with documents, straight away considered those documents even without marking them as exhibits in the Appellate Court. The procedure adopted by the Appellate Court is perverse and on this ground alone, the Order in R.A.No.70 of 2010 is liable to be set aside since the order is based on additional evidence and it is irregular consideration of those documents while arriving at such conclusion. Therefore, the Order in R.A.No.70 of 2016 is liable to be set aside on the sole ground.

Section 22 of the Act conferred power on the High Court to call for and examine the records relating to any order passed or proceeding taken under this Act by the Rent Controller in execution under Section 15 or by the appellate Authority on appeal under Section 20 for the purpose of satisfying itself as to the legality, regularity or of propriety of

such procedure or proceeding and pass such order in reference thereto as it thinks fit. Thus, the revisional jurisdiction conferred on the High Court is wider than the revisional jurisdiction conferred under Section 115 of CPC.

The powers of this Court under Section 22 of the Act are wider when the Subordinate Courts commits any irregularity or illegality in the order passed under the control of High Court and the High Court can interfere with such findings and reverse the order. The power under Section 22 of the Act can be exercised only when the order is perverse and on consideration of impermissible or irrelevant material or perverse. The Apex Court in *Vallampati Kalavathi v Haji Ismail*¹ held that the High Court cannot interfere with the order under Section 22 of the Act unless the revisional authority find that the findings suffer from any inherent defect or based on inadmissible or irrelevant material or perverse and the same is followed by this Court in *M. Narasimha Rao v S. Sirama Hanumantha Rao (died) by LRs*².

In *Mohammed Abdul Rahman and other v. B. Manorama*³, this Court is of the view that in exercise of revisional jurisdiction under Section 22 of the Act, the High Court cannot re-appreciate the evidence and therefore, the order passed by the Rent Controller in R.A.No.70 of 2016 based on the lease or license deed and the Order dt. 29.06.2015 in R.C.No.62 of 2012 without marking them as exhibits by following the procedure under Rule 11 (2) or under Order 41 Rule 28 CPC is clear irregularity and the order is in contravention of the rules referred supra and on account of such irregularity, this Court can exercise power under Section 22 of the Act to set aside the Order.

¹ AIR 2001 SC 1441

² 2008 (3) ALD 340

³ 2008 (4) ALT 702

The other revision is filed against an Order in I.A.No.141 of 2017 filed under Order 41 Rule 27 r/w Rule 11 (2) of the Rules framed under the Act to receive the documents as additional evidence. Challenging I.A.No.141 of 2017 filed under Order 41 Rule 27 of CPC read with Rule 11 of the Rules framed under the Act on the sole ground that it is a cryptic order.

No doubt, though the Order is running into three paras, the Appellate Court did not record any reason for receiving documents as additional evidence. If it is a petition filed under Order 41 Rule 27 CPC, the Court himself satisfy itself about the grounds under Order XLI (41) Rule 27 (1)(a) (aa) or (b) of CPC and unless the Court satisfies that the petitioner established any of the three grounds, the Court cannot receive the said documents as additional evidence.

Rule 11(2) of the Rules framed under the Act is identical to Order 41 Rule 27 CPC. According to which, if the appellate authority decides to make further enquiry, it take as additional evidence or requires such evidence to be taken by the Rent Controller. But, none of the circumstances contained under Order 41 Rule 27 CPC are found in sub Rule 2 of Rule 11 of the Rules framed under the Act. Therefore, it is for the satisfaction of the appellate authority either to take additional evidence by itself or to require such evidence to be taken by the Rent Controller. But, the appellate Court passed cryptic order without considering the objections raised by the petitioner herein, except stating that the objections raised by the tenant to receive the additional evidence are not sustainable, nothing was mentioned. Therefore, the Order is contrary to the requirement of an Order following the Rule 22 (8) of the rules framed under the Act.

According to Rule 22 (8) of the Rules framed under the Act, the Controller or Appellate Court shall record a brief note of the evidence adduced by the parties and witness who attend, and upon the evidence so recorded, and after consideration of any documentary evidence produced by the parties, a decision shall be given in accordance with justice, equity and good conscience by Controller or Appellant Authority. The decision given shall be reduced to writing. If any party duly summoned under Sub Rule 8 of Order 22 of the rules, the controller or appellate Court is requires to pronounce judgment in accordance with justice, equity and good conscience upon consideration of evidence on record. But framing of the point for consideration is not contemplated, such framing of points and reasoning for the decision is not dispensed with by the rules under the Act.

The general rules applicable to the orders are equally applicable to the orders under Rent Control Act. What an Order shall contain normally is not specified anywhere but the order must be reasoned one since the judgment or order in its final shape usually contains in addition to formal parts:

“ (i) A preliminary or introductory part, showing the form of the application upon which it was made, the manner in which and the place at which, the writ or other originating process was served, the parties appearing any consent, waivers, undertakings or admissions given or made, so placed as to indicate whether they relate to the whole judgment or order or only part of it, and a reference to the evidence upon which the judgment or order is based; and

(ii) A substantive or mandatory part, containing the order made by the Court" as has been said in Halsbury's Laws of England (4th Edition, Volume 26 P. 260).”

Thus, in view of the requirements of an order or judgment referred above, order pronounced on the bench shall contain the reasoning since the judge speaks with authority by his judgment. The strength of a judgment lies in its reasoning and it should therefore be convincing. Clarity of exposition is always essential. Dignity, convincingness and

clarity are exacting requirements but they are subservient to what, after all, is the main object of a judgment, which is not only to do but to seem to do justice. In addition to these cardinal qualities of a good judgment, there are the attributes of style, elegance and happy phrasing which are its embellishments. In the words of Former Chief Justice of the Supreme Court Sabyasachi Mukharji, the requirement of a good judgment is reason. Judgment is of value on the strength of its reasons. The weight of a judgment, its binding character or its persuasive character depends on the presentation and articulation of reasons. Reason, therefore, is the soul and spirit of a good judgment. Equity, justice and good conscience are the hallmarks of judging. One who seeks to rely only on principles of law, and looks only for the decided cases to support the reasons to be given in a case or acts with bias or emotions, loses rationality in deciding the cases. The blind or strict adherence to the principles of law sometimes carries away a judge and deviates from the objectivity of judging issues brought before him as per the judgment of this Court in *M/s. Leela Enterprises, rep. by its Proprietor, K. Surender and another v. Smt Kamar Sultana @Kamar Hassan*⁴.

The Apex Court in *Joint Commissioner of Income Tax, Surat, Vs. Saheli Leasing and Industries Limited* (Civil Appeal No. 4278 of 2010) laid down the following A to G guidelines indicating what the judgment should contain:

- a) It should always be kept in mind that nothing should be written in the judgment/order, which may not be germane to the facts of the case; It should have a co-relation with the applicable law and facts. The ratio decidendi should be clearly spelt out from the judgment/order.
- b) After preparing the draft, it is necessary to go through the same to find out, if anything, essential to be mentioned, has escaped discussion."
- c) The ultimate finished judgment/order should have sustained chronology, regard being had to the concept that it has readable, continued interest and one does not feel like parting or leaving it in the

⁴ 2017(5) ALT 75

midway. To elaborate, it should have flow and perfect sequence of events, which would continue to generate interest in the reader.

d) Appropriate care should be taken not to load it with all legal knowledge on the subject as citation of too many judgments creates more confusion rather than clarity. The foremost requirement is that leading judgments should be mentioned and the evolution that has taken place ever since the same were pronounced and thereafter, latest judgment, in which all previous judgments have been considered, should be mentioned. While writing judgment, psychology of the reader has also to be borne in mind, for the perception on that score is imperative.

e) Language should not be rhetoric and should not reflect a contrived effort on the part of the author.

f) After arguments are concluded, an endeavour should be made to pronounce the judgment at the earliest and in any case not beyond a period of three months. Keeping it pending for long time, sends a wrong signal to the litigants and the society.

g) It should be avoided to give instances, which are likely to cause public agitation or to a particular society. Nothing should be reflected in the same which may hurt the feelings or emotions of any individual or society."

In view of the law laid down by the Courts consistently, the order must be reasoned and it shall contain the minimum requirement as stated above, but the Court did not record any reason for arriving such conclusion much less sufficient reason. In the absence of any reason for arriving such conclusion, the Order challenged in this revision cannot be sustained under law.

In the present case, the appellate Court took into consideration the said documents as additional evidence without marking them as exhibits contrary to Sub Rule 2 of the Rule 11 of the rules framed under the Act or under Rule 28 of Order 41 of CPC and committed an error in considering the additional evidence, which is a serious irregularity, which warrants interference of this Court while exercising power under Section 22 of the Act. Hence, the orders passed by the Appellate Court in R.A.No.70 of 2016 and I.A.No.141 of 2017 in R.A.No.70 of 2016 are liable to be set aside.

Accordingly, these two Civil Revision Petitions are allowed setting aside the Orders dt. R.A.No.70 of 2016 and I.A.No.141 of 2017 in

R.A.No.70 of 2016 while remanding the matters to the appellate Court to pass reasoned orders in both the petitions following the procedure under Rule 11 (2) of the Rules framed under the Act or under Order 41 Rule 28 CPC, restoring the appeal to its original number, and decide in accordance with law within four months from the date of receipt of a copy of this Order.

As a sequel, miscellaneous applications pending, if any, in these cases, shall stand closed.

M. SATYANARAYANA MURTHY, J

Dt: 01-03-2018
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THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION Nos.285 and 326 of 2018

Dt. 01.03.2018

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