

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.454 OF 2018

ORDER:

This Civil Revision Petition, under Section 22 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short 'the Act'), is filed challenging the order dated 04.12.2017 in R.A. No.69 of 2016 passed by the Additional Chief Judge, City Small Causes Court at Hyderabad, whereby the revision petitioner/ tenant was directed to evict the schedule premises bearing No.2-1-184 (Old No.1213), admeasuring 437 sft., situated at General Bazar, Secunderabad.

The revision petitioner herein is the tenant and the respondent herein is the landlord. The parties will hereinafter be referred to as the 'tenant' and the 'landlord' for the sake of convenience.

The landlord filed R.C. No.117 of 2013 under Section 10(2) (i) and 10(3)(a)(iii)(b) of the Act contending that he purchased the mulgi bearing No.2-1-784 (old No.1213) admeasuring 437 sft. situated at General Bazaar. The said premises was occupied by the tenant on a monthly rent @ Rs.3,200/- per month and continuing as a tenant, having occupied the premises from the erstwhile owners. The landlord purchased the schedule property under registered sale deed dated 28.09.2013. Thereafter on attornment of tenancy by letter dated 07.10.2013, the tenant has to pay the rent an amount of @ Rs.3,200/- per month. But the tenant is irregular in payment of rent, he maliciously sent the rent @ Rs.1600/- through money order dated 08.11.2013 without tendering an amount @ Rs.3,200/- for the month of October 2013,

and the landlord received the same. Immediately the landlord requested the tenant to send future rents @ Rs.3,200/- per month and not Rs.1600/-. But the tenant sent money order of Rs.1600/- only on 10.12.2013, the same was refused by the landlord. Thus, the tenant failed to pay remaining rent amount of Rs.1600/- for the month of October, 2013 and failed to pay rent from October 2013 onwards till the date of filing the petition i.e. in the month of December 2013. Thus, non payment of rent by the tenant for the months of October, November and December 2013 is willful and deliberate, which constitutes the ground to evict the tenant from the schedule premises under Section 10(2)(i) of the Act.

The landlord also sought for eviction of the tenant on the ground that he required the schedule premises to carry on readymade garments business as the landlord gained sufficient experience as a partner in readymade garments business at Ameerpet during 2002-04 for some time, thereafter he has got experience in doing business in ladies dresses and readymade garments. Thus, the requirement of the petitioner is bonafide. It is also contended that he purchased the property only with an intention to keep the tenant evicted and to carry on business and in fact the petitioner agreed to evict the premises and thus the landlord bonafidely requires to start business in the petition schedule premises along with his son, as he was blessed with four sons and three daughters and the elder son is studying at present. Therefore, he requires the schedule premises as per Section 10(3)(iii)(b) of the Act.

The tenant filed counter denying material allegations made in the petition *inter alia* contending that the rent payable for the premises is only Rs.1600/- per month, but not Rs.3,200/- per month as contended by the land lord and that he paid rent @ Rs.1600/- per month to the landlord for the month of October, 2013 and later tendered rent by money order @ Rs.1600/- for the month of November, but the money order was returned with an endorsement of refusal, consequently non payment of two months rent would not constitute willful default for payment of rent and the eviction of the tenant cannot be ordered on the ground of Section 10(2)(i) of the Act. It is further contended that the requirement of the landlord is not true and it is at liberty to get the tenant evicted from the schedule premises and that apart the landlord has no experience to commence readymade garment business and prayed for dismissal of the petition.

During enquiry before the Rent Controller, the landlord himself was examined as P.W.1 and Ex.P.1 was marked on his behalf and the tenant himself was examined as R.W.1 and Exs.R.1 to R.13 were marked on his behalf. Upon hearing argument of both the counsel, the rent controller disbelieved the bonafide requirement of the schedule premises pleaded by the land lord, so also willful default allegedly committed by the tenant and dismissed the petition.

Aggrieved by the order passed by the Rent Controller, the landlord preferred an appeal in R.A. No.69 of 2016 which was allowed by the appellate authority by reversing the finding recorded by the Rent Controller holding that the tenant committed

wilful default in payment of rent @ Rs.3,200/-, invented a different ground that the tenant has secured alternative accommodation without recording any finding as to the bonafide requirement of the schedule premises by the landlord, ordered eviction of the tenant from the schedule premises.

Aggrieved by the order passed by the appellate authority, the present revision is filed under Section 22 of the Act mainly on the ground that the default allegedly committed by the tenant is not willful and in the absence of any finding as to the rent payable for the schedule premises by examining erstwhile landlord of the premises, the finding recorded by the appellate authority that the rent payable for the premises was Rs.3200/- is *ex facie* erroneous. It is also contended that ordering eviction of the tenant from the schedule premises on the ground of securing alternative accommodation is illegal and that the landlord is carrying on business of sale of second hand cars and therefore the requirement of premises by the landlord is not bonafide, but the appellate authority erroneously reversed the finding recorded by the Rent Controller.

During hearing, Sri Vedula Venkata Ramana, learned Senior Counsel appearing for the tenant, contended that when the rent payable for the premises is only Rs.1600/-, paid for the month of October 2013 was accepted by the landlord/ respondent herein, now contend that the rent payable for the premises is Rs.3,200/- and apart from that only the vendor of the landlord is competent to speak about the rent payable for the premises as per the agreement between the vendor of the respondent/landlord and the

tenant as on that date, based on evidence of the landlord, appellate authority concluded that the rent payable for the premises is Rs.3,200/- without any basis. In addition to that ordering eviction on the ground that the tenant has secured alternative accommodation is *ex facie* illegal and prayed to set aside the order passed by the appellate authority/ court below.

Whereas Sri D.V.Sitaram Murthy, learned Senior Counsel appearing for the respondent/ landlord supported the order of the appellate authority in all respects, while contending that rent payable for the premises is only Rs.3,200/- and the vendor of the respondent/ landlord could not be examined as he was suffering from ill health during pendency of the petition before the Rent Controller and consequently non-examination of the vendor of the respondent/ landlord is not fatal and therefore, the order passed by the appellate authority is in accordance with law, cannot be interfered by this Court.

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

- 1. Whether the tenant/ petitioner herein committed default in payment of rent for the months of October, November and December 2013? If so, whether it is willful default and the tenant is liable to be evicted from the premises?***
- 2. Whether the finding recorded by the appellate authority that the tenant/ petitioner secured alternative accommodation and order of eviction on such ground is legally sustainable?***

POINT No.1:

According to the landlord, the tenant/ petitioner herein is continuing in possession as tenant, having obtained the premises on lease from the erstwhile owner of mulgi. The tenancy is month to month. Continuation of the petitioner in occupation of mulgi is not in dispute, but the dispute is only with regard to rent payable for the premises.

According to the landlord, the rent payable for the premises is only @ Rs.3,200/- per month, but not @ Rs.1,600/- per month. The petitioner purchased the schedule property under registered sale deed dated 28.09.2013 and became owner of the mulgi from the date of purchase. The tenancy was attorned by letter dated 07.10.2013 under Section 109 of the Transfer of Property Act directing the tenant in occupation, to pay rent for the premises to the respondent/ landlord herein. He is entitled to recover the rent from the tenant in occupation. As per the letter of attornment of tenancy, the erstwhile landlord pleaded that the rent payable for the premises is Rs.3,200/- and Rs.1,600/- shall be paid in cash and the balance shall be paid by money order as per the practice. But the tenant did not dispute the same by issuing any reply. However, remitted an amount of Rs.1,600/- by money order to the respondent/ landlord, towards rent for the month of October, the same was accepted by the respondent/ landlord. Again for the month of November, 2013, the petitioner remitted an amount of Rs.1600/- by money order dated 10.12.2013. The said money order was refused as the rent payable for the premises is Rs.3,200/-, but not Rs.1600/-. Thus, the tenant allegedly

committed default in payment of rent. Therefore, sought eviction of the tenant on the ground of willful default.

The landlord himself was examined as P.W.1 to establish the rent payable for the premises @ Rs.3,200/- per month. The tenancy is contractual, which ripened into statutory. The erstwhile landlord alone is competent person to speak about the contract between him and the tenant, but not the present landlord, who himself was examined as P.W.1. Obviously, for different reasons the erstwhile landlord was not examined to substantiate the contention to establish that the rent payable for the premises was Rs.3,200/-. Since P.W.1 is not a contracting party and not aware about the terms of the contract between the original landlord and tenant/ petitioner herein. His evidence is not sufficient to establish the rent payable for the premises @ Rs.3,200/-. The landlord, having accepted the rent @ Rs.1,600/- for the month of October, did not raise his little finger to claim alleged balance of Rs.1,600/- payable in cash. Therefore, there is absolutely no evidence to establish that the rent payable for the premises was @ Rs.3,200/- per month, as on the date of filing the petition. Since the burden of proof is on the landlord to prove the rent payable for the premises, but the appellate court, drawing certain inferences due to prevailing market rent for the premises etc., and failure to give reply to the letter of attornment, concluded that the rent payable for the premises was @ Rs.3,200/- per month . The conclusion arrived by the appellate court are based on surmises and assumptions. Such finding is illegal and without any evidence. Thus the perverse finding recorded by the appellate

court is liable to be set aside holding that the landlord failed to establish that the rent payable was @ Rs.3,200/- per month. The rent admitted by the tenant is only @ Rs.1600/- per month. By money order, the tenant remitted the rent for the month October, 2013 and it was accepted by the landlord, but for the month of November, 2013 the landlord did not accept the rent paid through money order dated 08.11.2013. When the landlord refused to receive the rent, the option left open to the tenant is to follow the procedure under Section 8 of the Act and deposited the rent @ Rs.1600/- with the rent controller for the subsequent period i.e. from November 2013 onwards. Therefore, the payment of rent @ Rs.1600/- would not constitute wilful default.

An identical question came up in **S.Sunderam Pillai etc v V.R.Pattabiraman etc.**¹, the Full Bench of the Apex Court while considering the provisions of Tamilnadu Buildings Lease and Rent Control Act, which is in *pari materia* with the A.P. Act, held that the real meaning and content of the word 'wilful' or the words 'wilful default', in the book 'A Dictionary of Law' by L.B. Curzon, at page 361 the words 'wilful' and 'wilful default' have been defined thus:

'Wilful'-deliberate conduct of .l person who is a free agent, knows what he is doing and intends to do what he is doing.

'Wilful default'-Either a consciousness or negligence or breach of duty; or a recklessness in the performance of a duty. In other words, 'wilful default' would mean a deliberate and

¹ AIR 1985 SC 582

intentional default knowing full well the legal consequences thereof.

In Words and Phrases', Volume 11 A (Permanent Edition) at page 268 the word 'default' has been defined as the non-performance of a duty, a failure to perform a legal duty or an omission to do something required. In volume 45 of 'Words & Phrases', the word 'wilful' has been very clearly defined thus: 'Wilful'-intentional; not incidental or involuntary: -

- done intentionally, knowingly, and purposely, without justifiable excuse as distinguished from an act done carelessly; thoughtlessly, heedlessly or inadvertently;*
 - in common parlance word 'wilful' is used in sense of intentional, as distinguished from accidental or involuntary.*
- P. 296 - "Wilful" refers to act consciously and deliberately done and signifies course of conduct marked by exercise of volition rather than which is accidental, negligent or involuntary.*

In Volume III of Webster's Third New International Dictionary at page 2617, the word 'wilful' has been defined thus:

"governed by will without yielding to reason or with out regard to reason; obstinately or perversely self-willed."

The word 'default' has been defined in Vol. I of Webster's Third New International Dictionary at page 590 thus;

"to fail to fulfil a contract or agreement, to accept a responsibility; to fail to meet a financial obligation."

In Black's Law Dictionary (4th Edn.) at page 1773 the word 'wilful' has been defined thus:

"Wilfulness" implies an act done intentionally and designedly; a conscious failure to observe care; Conscious; knowing; done with stubborn purpose, but not with malice.

The word "reckless" as applied to negligence, is the legal equivalent of "willful" or "Wanton".

In view of the definition, if the default is intentional, deliberate, calculated or conscious and with full knowledge of legal consequences flowing there from, then it would be 'willful default'.

In view of the law declared by the Apex Court unless the default of the tenant is wilful, the rent controller cannot order eviction, as discussed above.

Here the rent payable for the premises is only @ Rs.1,600/- per month, as the landlord failed to establish that the rent payable for the premises is @ Rs.3,200/- by examining the original landlord from whom he purchased. The tenant remitted the rent for the month of October 2013 by money order to the landlord and he acknowledged the receipt of the same and again the tenant remitted the rent by money order, the landlord refused to receive the same and demanded payment @ Rs.3,200/-, thereby the petitioner resorted to the procedure under Section 8(5) of the Act to deposit the rent and in such case the default cannot be described as calculated and intentional to get the tenant evicted under Section 10(2)(i) of the Act. Thus, the appellate court committed an error in holding that the rent payable for the premises was @ Rs.3,200/- though the original landlord with whom contractual tenancy commenced and based on the evidence of the subsequent purchaser, during subsistence of tenancy, his vendor and the

present tenant/ petitioner, concluded that the rent payable for the premises is @ Rs.3,200/- which is illegal and the finding is perverse, not based on any material.

On close scrutiny of the entire order of the appellate authority, the finding recorded by the appellate court that the rent payable for the premises is @ Rs.3,200/- not based on any evidence, thereby it is perverse and such perverse findings is liable to be set aside by exercising power under Section 22 of the Act, according the point is answered.

Accordingly, the point is answered in favour of the tenant and against the land lord.

POINT No.2:

The landlord claimed eviction of tenant in occupation of the mulgi under Section 10(3)(a)(iii)(b) of the Act to carry on business of sale of readymade garments along with his son. (vide para 4 of the petition).

The rent controller declined to order eviction of the tenant on such ground. But the appellate authority, while deciding the appeal adverted to evidence on record and concluded that the landlord gained experience in textile business i.e. sale of garments. In paragraph 22 of the order, the appellate court concluded that the family of the landlord is large in size, requires the schedule premises to set up the textile, garments business with the help of his children and discussed evidence on record. At paragraph 24 of the order, the appellate authority recorded a finding that the uncle of the tenant is also running business in the name of Karachi

stores which is situated opposite to the schedule property and it is the contention of the landlord/ respondent herein that the petitioner is also a partner along with his uncle and that his uncle and other family members are living as joint family members and the tenant admitted that his uncle is residing in the second floor and his grandfather gifted second portion to his uncle's wife.

Taking into consideration of these admissions, the appellate court concluded that the tenant is also having alternative accommodation to continue his business and when the comparative hardship of both landlord and tenant is considered, it is towards landlord and the requirement and pressing need of the landlord prevails over the tenant's hardship and ordered eviction on that ground.

It was never the case of the landlord that the tenant secured alternative premises. The question of hardship would arise only in the event, eviction is claimed on the ground of additional accommodation, but not under Section 10(3)(a) (iii) (b) of the Act. The appellate court ordered eviction, though not claimed on the ground of securing alternative accommodation by the tenant. Thus, the order of the appellate court under Section 10(3)(a)(iii)(b) is erroneous on the face of the record.

It is clear from paragraph 5 of contents of the eviction petition that the landlord is carrying on business in sale of garments and intend to carry on garments business with the help of his son. In the eviction petition itself, the landlord specifically admitted that his elder son is prosecuting studies. In such case, question of carrying on business as on the date of filing petition

with the assistance of his son is unbelievable to order eviction of the tenant. The other children are younger to the first son who were prosecuting his studies by the date of filing the petition. Hence, the requirement of the schedule premises for the personal occupation to carry on business is not bonafide and genuine to order eviction of the tenant. It is also clear from the material that the landlord did not file any separate revision for failure of the appellate authority to order eviction on the ground of bonafide requirement under Section 10(3)(a)(iii)(b) of the Act.

Therefore, the finding recorded by the appellate court is hereby set aside holding this point in favour of the tenant and against the landlord.

In view of my findings on points 1 and 2, the order passed by the court below is liable to be set aside.

Accordingly, the revision petition is allowed, setting aside the order dated 04.12.2017 in R.A. No.69 of 2016 passed by the Additional Chief Judge, City Small Causes Court, Hyderabad, in favour of the petitioner/ tenant and against the respondent/ landlord. No costs.

Miscellaneous Petitions, if any, pending in this civil revision petition shall stand closed.

M.SATYANARAYANA MURTHY, J

Date:01.03.2018
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