

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.5433 OF 2011

ORDER:

This revision petition is filed under Section 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short 'the Rent Control Act') questioning the judgment and decree dated 14.10.2011 passed by the Principal Senior Civil Judge, Guntur in R.C.A.No.29 of 2004 reversing the findings recorded by the Principal Junior Civil Judge-cum-Rent Controller, Guntur in R.C.C.No.23 of 2001 vide order dated 13.09.2004.

2. The petitioner herein is the tenant and the respondent is the landlord. The parties hereinafter referred to as tenant and landlord.

3. The landlord filed eviction petition under Section 10(2)(i) of the Rent Control Act for eviction of the tenant from the schedule premises on the ground of willful default alleging that the he is the owner of the schedule premises and the tenant obtained the premises on lease on a monthly rent of Rs.900/- excluding electricity consumption charges for the purpose of running provisional stores under the name and style of Sri Veeranjaneya Kirana Merchants. As per the terms of oral lease, the rent shall be paid on or before 5th of every succeeding month. The tenant committed default in payment of rent from December, 1995 till the end of March, 2001 amounting to Rs.56,700/-. The default committed by the tenant is willful as the tenant failed to pay rent despite legal notice dated 19.02.2001. The tenant issued reply notice on 28.03.2001 with false allegations. Therefore, the landlord prayed for eviction of the tenant.

4. The tenant filed counter denying material allegations while admitting obtaining the premises initially on monthly rent of Rs.375/- per month and denied that now the rent payable for the premises is Rs.900/- per month while contending that he purchased the property under the agreement of sale for Rs.1,10,000/- and he paid advance of Rs.90,000/-, the balance of sale consideration i.e. Rs.20,000/- to be paid at the time of execution of registered sale deed, thereby, he became the owner of the property and that the tenant need not pay rent for the premises. As such the default, if any, committed is not willful and prayed to dismiss the petition.

5. During enquiry before the Court below, on behalf of the landlord, she herself examined as PW.1 and marked Exs.A.1 and A.10 and on behalf of the tenant, RWs.1 to 4 were examined and marked Exs.B.1 to B.9.

6. Upon hearing argument of both counsel, the Rent Controller dismissed the petition holding that the default committed by the tenant is not willful. Aggrieved by the impugned order, landlord preferred RCA before the appellate authority, in turn the appellate authority held that the default committed by the tenant is willful and that the alleged purchase of the property under agreement of sale would not exonerate the tenant from payment of rent in view of the recitals of the agreement and it would not confer title to immoveable property and ordered eviction holding that the default committed by the tenant is willful.

7. Aggrieved by the eviction order passed by the appellate authority, the present revision petition is filed on the ground that the

rent payable for the premises was not Rs.900/-, it was only Rs.375/- per month and that the default allegedly pleaded in the eviction petition is not willful, but the appellate authority on erroneous appreciation of facts and law committed an error in ordering eviction and prayed to set aside the same.

8. During hearing learned counsel for the tenant reiterated the contentions raised in the petition and whereas counsel for the landlord supported the order under challenge in all respects.

9. Considering rival contentions and perusing the material available on record, the points that arise for consideration is:

Whether non payment of rent in view of the alleged agreement of sale entered into by the wife of the tenant constitute willful default, if so, the eviction order passed by the appellate authority in RCA be sustained?

10. Initially the monthly rent was Rs.375/- and present monthly rent @ Rs.900/- is not in dispute. Failure to pay rent for the months of December, 1995 to March, 2001 is also not in dispute. The only defence set up by the tenant is that he purchased the property under the agreement of sale for Rs.1,10,000/- and paid advance of Rs.90,000/-, balance consideration of Rs.20,000/- to be paid at the time of registration and that the tenant also filed O.S.No.364 of 1995 before the Principal Senior Civil Judge, Guntur. Ex.B.5 is the agreement, which is the basis for the claim of the tenant that the default is not willful. Thus, the case of the tenant is clear that in view of the agreement of sale i.e Ex.B.5, he did not pay rent for the premises from December, 1995 to March, 2001 @ Rs.900/-.

Though, the tenant denied the rent payable for the premises, but he admitted in his evidence that initially the rent was Rs.375/- per month and agreed to enhance rent and the present monthly rent payable for the premises is Rs.900/- per month. Thus, the landlord established that the rent payable for the premises was Rs.900/- per month as on the date of filing RCC.

11. Non payment rent for the period from December, 1995 to March, 2001 is only due to Ex.B.5-agreement entered into by the tenant with the landlord, but that is subject matter of other suit. However, even as per the recitals of Ex.B.5, the vendor agreed to deliver vacant possession of the property on the date of execution of the registered sale deed and it is not possessory agreement of sale. According to Section 54 of the Transfer of Property Act, agreement to sell will not confer any right or interest over the immoveable property on the purchaser. Therefore, the tenant being vendee under Ex.B.5 will not get any title to the property and not entitled to claim any interest in the property except to claim specific performance of agreement of sale. Even assuming for a moment, the tenant purchased the property under agreement of sale, still the occupation of the premises as a tenant is deemed to be continuing.

12. Therefore, the tenant is still liable to pay rent for the premises in view of the recitals of Ex.B.5, wherein the landlord allegedly agreed to deliver vacant possession of the property on the date of execution of registered sale deed and ExB.5 is only non possessory agreement and further agreed to evict the tenants in occupation and deliver possession. This itself suffice that the tenant

is not continuing in possession, not as the purchaser of the property under agreement of sale, but only as tenant. Therefore, the tenant is under legal obligation to pay monthly rent as agreed. Failure to pay rent for such a long period amounting to Rs.56,700/- despite legal notice Ex.A.1, amounts to deliberate calculated default in payment of rent. In view of the facts of the case, non payment of rent for the premises for the period from December, 1995 to March, 2001 constitute willful default is a ground to order eviction of the tenant under Section 10(2)(i) of the Rent Control Act. The appellate authority rightly ordered eviction reversing the findings recorded by the Rent Controller, which warrants no interference by exercising power under Section 22 of the Rent Control Act.

13. In the result, the civil revision petition is dismissed confirming the findings recorded by the Principal Senior Civil Judge, Guntur in R.C.A.No.29 of 2004, dated 14.10.2011. There shall be no order as to costs.

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

JUSTICE M. SATYANARAYANA MURTHY

01.03.2018
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