

THE HON'BLE JUSTICE SRI T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.319 of 2016

ORDER:

1 This Civil Revision Petition is filed by the tenants under Section 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short, 'the Act'), assailing the order dated 23.11.2015 passed in R.A.No.101 of 2015 on the file of the Additional Chief Judge, City Small Causes Court, Hyderabad, wherein and whereby the order dated 28.04.2015 passed in R.C.No.419 of 2011 on the file of the III Additional Rent Controller, Hyderabad ordering eviction of the petitioners herein from the petition schedule premises and handover the vacant physical possession of the same to the respondent-landlord, was confirmed.

2 The parties to this revision petition will hereinafter be referred to as they were arrayed before the Rent Control Court, to avoid confusion.

3 The facts leading to the filing of the present Civil Revision Petition are as follows:

4 Originally the petition schedule property bearing D.No.19-5-16 situated at Bahadurpura, Hyderabad belongs to one Smt. Rahat Ara, the mother of the petitioners. The petitioners filed the petition under Sections 10-C, 10(2)(i), 10(2)(iii), 10(3)(a)(i)(a) and 10(3)(a)(iii)(b) and Section 12 of the Act, alleging that the respondents committed wilful default in payment of rent from September 2001 to September 2011. The petition schedule property was let out to the respondents in the year 1982 on a

monthly rent of Rs.135/- and the same was enhanced from time to time. By the time of filing of the petition, the rent of the petition schedule property is Rs.245/- p.m. It is the further case of the petitioners that the petition schedule property was required for their *bona fide* purpose.

5 The respondents filed counter denying all the averments made in the eviction petition *inter alia* contending that there is no jural relationship of landlord and tenant between the petitioners and the respondents. The respondents filed R.C.No.240 of 2002 against the petitioners under Section 8 (5) of the Act, seeking permission of the Court to deposit the rent. The Rent Control Court dismissed the same. Feeling aggrieved by the order of the Rent Controller, the respondents preferred R.A.No.316 of 2003 and the same was dismissed. The finding of the Rent Controller in the petition filed under Section 8 (5) of the Act clearly reveals the respondents never committed wilful default in payment of rent. The petitioners filed the present petition by inventing a story that the petition schedule property is required for their *bona fide* purpose. The petition lacks merits and *bona fides* and hence the same may be dismissed.

6 To substantiate the case on behalf of the petitioners, the 8th petitioner examined herself as P.W.1 and got marked Exs.P.1 to P.7. To demolish the case of the petitioners, the first respondent examined himself as R.W.1 and got marked Exs.R.1 and R.2. R.Ws.2 and 3 were examined to establish that the respondents

paid an amount of Rs.14,000/- and Rs.12,000/- to the petitioners in the months of July and August 2011.

7 Basing on the oral, documentary evidence and other material available on record, the Rent Control Court arrived at the conclusion that the respondents committed wilful default in payment of the rent from September 2001 to September 2011 and directed the respondents to vacate the petition schedule property and handover vacant physical possession of the same to the petitioners within two months from the date of order. However, the Rent Controller negated the contention of the petitioners that the petition schedule property is required for their *bona fide* purpose. For one reason or the other, the petitioners / landlords did not choose to file appeal challenging the above said finding of the Rent Controller. Therefore, the finding of the Rent Controller, so far as *bona fide* requirement is concerned, has become final. Feeling aggrieved by the order dated 28.04.2015 in R.C.No.419 of 2011, the respondents preferred R.A.No.101 of 2015. The Rent Control Appellate Authority, after reappraising the oral and documentary evidence, arrived at the conclusion that the respondents committed wilful default in payment of rent and consequently dismissed the appeal. Hence, the present revision petition by the respondents – tenants.

8 The learned counsel for the revision petitioners-tenants strenuously submitted that the Authorities below have not given any finding on R.C.No.240 of 2002 and R.A.No.316 of 2003,

therefore, the finding of the authorities below are not sustainable either on facts or in law. He further submitted that the findings recorded by the authorities below are perverse, therefore, it is a fit case to allow the present Civil Revision Petition.

9 *Per contra*, learned counsel for the respondents-landlords submitted that this Court shall not lightly interfere with the concurrent findings of fact recorded by the Authorities below, in view of the scope of Section 22 of the Act. He further submitted that the authorities below considered the oral and documentary evidence in right perspective and allowed the petition, therefore, it is not a fit case to interfere with the concurrent findings recorded by the authorities below and the present Civil Revision Petition is liable to be dismissed.

10 Basing on the rival contentions, the point that arises for consideration in this Civil Revision Petition is:

“Whether there is any illegality, irregularity or impropriety in the orders passed by the authorities below, warranting interference of this Court while exercising revisional jurisdiction under Section 22 of the Act?”

11 In order to appreciate the rival contentions, this court is placing reliance on the following decision:

*Hindustan Petroleum Corporation Limited vs. Dilbahar Singh*¹ wherein the Hon’ble apex Court held at Para No.45 as under:

45. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority

¹ 2014 (9) SCALE 657

because on re-appreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.

12 Let me consider the facts of the case on hand in the light of the above legal principle.

13 The following admitted facts can be culled out from the pleadings: the respondents / tenants preferred filed R.C.No.240 of 2002 on the file of the Principal Rent Controller, Hyderabad under Section 8 (5) of the Act and the same was dismissed. Thereafter, the respondents preferred R.A.No.316 of 2003 and the Rent Control Appellate Authority dismissed the same. The petitioners/landlords filed O.S.No.1320 of 2002 on the file of the VII Junior Civil Judge, City Civil Court, Hyderabad for recovery of possession of the petition schedule property and other reliefs. The Civil Court dismissed the suit on the ground that the remedy available to the landlords is to approach the Rent Control Court as the admitted rent is Rs.240/- p.m. There is no dispute with regard

to the identity of the petition schedule property. The mother of the respondents let out the petition schedule property to the respondents in the year 1982 on a monthly rent of Rs.135/-. The rent was enhanced from time to time. As on the date of filing of the petition, the rent of the petition schedule property was Rs.245/- p.m.

14 P.W.1 and R.W.1 being parties to the proceedings, the possibility of distortion of the facts, in order to suit their respective claims, cannot be ruled out completely. One way P.W.1 and R.W.1 are interested parties, therefore, the court has to scrutinise their testimony meticulously so as to eliminate the exaggerations thereby to elicit the truth.

15 The first and foremost contention of the learned counsel for the respondents is that there is no jural relationship of landlord and tenant between the petitioners and the respondents. A perusal of Exs.P.6 and P.7 reveals that O.S.No.1320 of 2002 filed by the petitioners was dismissed. In the said judgment the civil court gave a specific finding that the respondents (petitioners herein) are tenants of the petitioners (respondents herein). It is needless to say that the finding recorded by the civil court is binding on the Rent Control Court. It is not in dispute that the respondents have not challenged the finding of the civil court in O.S.No.1320 of 2002. Hence the finding given by the civil Court in O.S.No.1320 of 2002 became final. Having regard to the facts and circumstances of

the case, the respondents are estopped to take a plea that there is no jrual relationship of landlord and tenant between them.

16 As per the averments made in the petition, the respondents committed wilful default in payment of rent. As seen from the testimony of P.W.1, the respondents committed default in payment of rent from September 2001 to September 2011. As seen from the testimony of R.W.1, he paid an amount of Rs.14,000/- and Rs.12,000/- to the petitioners in the months of July and August 2011 respectively. As per the testimony of R.Ws.2 and 3, the respondent paid an amount of Rs.26,000/- to the petitioners in the months of July and August 2011 in their presence. It is needless to say that edifice of the civil suit is based on the pleadings. To put it in a different way, pleadings form bedrock in civil matters. If really the R.W.1 paid Rs.26,000/- to the petitioners, in the months of July and August 2011, as spoken to by the R.Ws.2 and 3, what prevented him to take such a plea in the counter? The counter filed by the respondents is conspicuously silent as to the payment of Rs.26,000/- to the petitioners in the presence of R.Ws.2 and 3. There is no whisper in the testimony of R.W.1 that they paid an amount of Rs.26,000/- to the petitioners in the months of July and August 2011 in the presence of R.Ws.2 and 3. Without there being any pleading and without any whisper in the testimony of R.W.1, R.Ws.2 and 3 deposed as if R.W.1 paid an amount of Rs.26,000/- to the petitioners in the months of July and August 2011. Any amount of oral evidence without pleading is of no avail. The possibility of setting up R.Ws.2 and 3 in order to over the laches on

the part of the respondents, especially to escape from the legal clutches, cannot be ruled out completely. The Rent Control Court as well as the appellate authority considered the testimony of these two witnesses in right perspective and discarded the same. I am fully endorsing with the findings recorded by the authorities below that the oral testimony of R.Ws.2 and 3 is no way helpful to the respondents to substantiate their stand.

17 The next contention of the learned counsel for the respondents is that the authorities below have not considered the orders passed in R.C.No.240 of 2002 and R.A.No.316 of 2003. If the landlord refused to receive the rent, the remedy available to the tenant is to file an application under Section 8 (5) of the Act, seeking permission of the Rent Controller to deposit the rent during the pendency of the proceedings. It is not in dispute that R.C.No.240 of 2002 and R.A.No.316 of 2003 filed by the respondents were dismissed. Mere dismissal of R.C and R.A. would not absolve the obligation on the part of the tenant to pay the rent by choosing any one of the means prescribed under the Rent Control Act to prove his *bona fides*. What prevented the respondents to file an application in R.C.No.419 of 2011 seeking permission of the Rent Controller to deposit the admitted rent? For the reasons best known, to the respondents they have not taken steps to deposit rent into the court during the pendency of the R.C. or R.A. It is needless to say that the devil does not know the human mind. The intention of the parties to the proceedings can be gathered from the facts pleaded and proved. Basing on the facts

pleaded and proved, an irresistible conclusion that can be drawn is that the respondents have not taken any steps to pay the rent for a period of ten years either during the pendency of R.C or R.A. This itself indicates the intention of the respondents. The orders passed in R.C. and R.A are no way helpful to the respondents to substantiate their stand. Basing on the material available on record, the Rent Controller gave a specific finding that the respondents committed wilful default in payment of rent from September 2001 to September 2011 i.e. nearly for a period of ten years. The appellate authority after re-appreciating the oral and documentary evidence available on record afresh, arrived at a conclusion that the respondents committed wilful default in payment of rent.

19 The appellate court is the fact finding final court. This court shall not lightly interfere with the concurrent finding of fact recorded by the authorities below. This court can interfere even with the concurrent finding of fact recorded by the authorities below if the same are perverse. In the instant case, the findings recorded by the authorities below are based on evidence much less legally admissible evidence. In view of the above discussion I am unable to countenance the submissions made by the learned counsel for the respondents that the findings recorded by the authorities below are perverse. There is no illegality, irregularity or impropriety in the orders passed by the authorities below, warranting interference of this court while exercising jurisdiction under Section 22 of the Act.

20 In the result, the Civil Revision Petition is dismissed. The revision petitioners-tenants are directed to vacate the petition schedule premises and handover the vacant physical possession of the same to the petitioners-landlords within a period of two months from today. No order as to costs. Consequently, miscellaneous petitions, if any pending in this Civil Revision Petition shall stand closed.

Date: 30.07.2018
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T.SUNIL CHOWDARY, J.

