

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CIVIL REVISION PETITION No.4211 of 2015

ORDER:

At the request of both the learned counsel, the matter was heard and is being disposed of.

This civil revision petition is filed questioning the judgment and decree, dated 26.08.2015, passed in R.A.No.13 of 2014, by the Principal Senior Civil Judge, Ranga Reddy District, who is the appellate authority, confirming the order, dated 16.09.2014, passed by the Rent Controller, in R.C.No.10 of 2013, on the file of the Principal Junior Civil Judge, Ranga Reddy District.

This court has heard Sri K.V.Rajendra Prasad, learned counsel for the petitioner and Sri D.Ramana Reddy, learned counsel for the respondent.

Learned counsel for the petitioner points out that the application for eviction is filed on two grounds, viz., (a) willful default in payment of rents; and (b) personal occupation of the premises by the husband of the respondent/landlady, who is a tailor by profession. Learned counsel points out that apart from this litigation, there is another suit O.S.No.356 of 2011 filed by the petitioner against the respondent/landlady for injunction. He relies on the certified copy of the judgment passed in the said suit, which is *inter se* the same parties. In that suit during course of examination of the landlady, she admitted that the plaintiff is regularly paying the rents. Relying on this admission, the learned counsel for the petitioner argues that there is no willful default in payment of rents.

Learned counsel for the petitioner also relies upon the evidence of PW 1, wherein she states that there are three mulgies which are still kept vacant as on February, 2014. The learned counsel submits that the respondent's husband could have occupied any of the said mulgies for his tailoring business. Therefore, his contention that the need for personal occupation and use of the subject mulgi is not proved in this case. The learned counsel submits that both the grounds on which the application is filed for eviction are not borne out by the record. Therefore, he questions both the findings of the Rent Controller and also the first appellate court.

In reply thereto, the learned counsel for the respondent states that the counsel for the petitioner did not read all the facts that are borne out by the record. He draws the attention of this court to the judgment of the trial court in paragraph No.7, wherein the present revision petitioner himself admits that the suit mulgi is the only mulgi with two roads corner. He also admits that the husband of the landlady is a ladies tailor. He also admits that as per Ex.P1 rental deed, the rent is to be enhanced by 8% p.a. on the existing rent, but he did not enhance the rent nor did he file any rental receipt subsequent to March, 2014 to show the payment of enhanced rent. Therefore, the learned counsel for the respondent argues that willful default is borne out by the record. In addition, the learned counsel for the respondent also submits that the trial court also went into the evidence of PW 2, who was examined subsequent to PW 1. In the cross examination of PW 2, the trial court noticed that initially three mulgies were in fact vacant, but later the same were let out. This part of the evidence weighed with the trial court, according to the learned counsel. Therefore, the learned counsel submits that both the grounds are made out. The learned counsel submits that the concurrent findings

of fact cannot be set aside on the basis of this simple argument and something more is necessary to set aside the concurrent finding of fact.

This court, after hearing both the learned counsel, and after perusing the two judgments, notices that the courts below came to the conclusion that there is a willful default in payment of rents. This finding is found in penultimate paragraph No.8 of the judgment of the trial court, wherein the trial court held that as per the rental agreement, the rent has to be enhanced at 8% p.a. on the existing rent, and that RW 1 admitted that he did not enhance the rent. It is also worthwhile noticing that the petitioner stated in his evidence that he did not file any rental receipt after March, 2014 to prove the payment of rent. Therefore, the trial court came to the conclusion that this admission for not enhancing the rent is corroborating the contention of the landlady and there is willful default on the part of the petitioner/tenant.

As far as personal use and occupation is concerned, the trial court relied on the evidence of PW 2 who deposed that the three vacant mulgies are let out subsequently to others. This part of the evidence is not touched upon by the learned counsel for the petitioner. The trial court relied upon the evidence of PW 2 who was examined six months after the examination of PW 1. In his evidence, PW 2 has categorically stated that all the mulgies as on the said date were let out and that he is capable of doing of tailoring work even that date. This part of evidence will also not touched upon by the learned counsel for the petitioner.

In addition, this court notices that the provisions of the Rent Control Act, more so, Sec.10-C was amended as Section 10-C(1)(c), according to which when the age of the landlord is more 65 years, immediate orders for eviction can be passed, subject to satisfaction of the

Rent Controller about the necessity of the premises by the landlord. Admittedly, the landlady is aged over 60 years and her husband is aged even more. The trial court noticed the provision of law and held that the petitioner is liable to be evicted.

This court notices and comes to the conclusion after hearing both the learned counsel that the order passed by the Rent Controller does not suffer from any infirmities whatsoever. Even the first appellate court in the opinion of this court did not commit any error. This court notices that enhanced rent has not been paid. This is the specific finding of the lower appellate court. In addition, the lower appellate court also noticed that the husband of the landlady, who is a tailor by profession, could not attend his tailoring work at a long distance, therefore, he desires to do tailoring business in the subject multi. The lower appellate court came to the conclusion that there is a *bona fide* requirement. This is also a clear finding.

This court does not find any reason to interfere with the order. Accordingly, the civil revision petition is dismissed. In the circumstances, no costs.

As the order is dictated in the presence of both the learned counsel, the revision petitioner is directed to vacate the premises within a period of two months from the date of this order.

Pending miscellaneous applications, if any, shall stand closed in consequence.

D.V.S.S.SOMAYAJULU,J

Date: 30.11.2018
Dsr