

THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

CIVIL REVISION PETITION NO. 1833 OF 2018

ORDER:

Heard the learned counsel for the petitioner and the learned counsel for the respondent.

2. The petitioner is the tenant whereas the respondent is the landlord. The respondent herein filed RCC.No.33 of 2011 for eviction of the petitioner/tenant the ground of wilful default and when the said application was allowed by order dated 20.6.2014 by the learned Rent Controller-cum-Principal Junior Civil Judge, Nellore, the petitioner herein preferred R.C.A.No.4 of 2014 before the Rent Control Appellate Authority-cum-Principal Senior Civil Judge, Nellore. The said appeal was dismissed by order dated 6.2.2018. Challenging the same, the petitioner preferred the present Civil Revision Petition.

3. The respondent herein filed petition Under Section 10(2) of A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 before the Rent Controller. In the petition, it is stated that the schedule property originally belongs to his father who leased out the property to the petitioner herein under a lease khararnama. As per the said khararnama, the lease period is for five years from 13.6.1995 to 12.6.2000 and it was agreed to extend the said period by another period of five years upto

11.6.2005 with enhancement of Rs.100/- per month on the existing rent. Though the initial rent was Rs.450/- it was enhanced to Rs.550/- as on the date of filing of the petition. The respondent paid a sum of Rs.5,000/- as advance and undertook to pay the rent regularly on first of every month for the succeeding months. The tenant has to pay the electricity charges of the petition schedule property. But the petitioner herein committed default in paying the rents regularly and she has been paying the rents according to her own convenience. The tenant was maintaining a hand book and taking signature of the landlord as an acknowledgement of payment of rents. It was also alleged that the tenant installed flour mill in the petition schedule property violating the terms of lease khararnama and by virtue of installation of the flour mill, the property got damaged and the life span of the building had come down due to vibrations. The father of the respondent herein died in the year 2003 and after his death, the respondent herein became the absolute owner of the petition schedule property. The petitioner herein, as tenant, filed R.C.C. No. 5 of 2004 against the landlord before the Rent Controller, Nellore, seeking permission to deposit the rent of the petition schedule property. In spite of several demands made by the respondent herein, when the petitioner was not

vacating the premises, the petition was filed seeking an order to evict from the petition schedule property by the petitioner.

4. The petitioner herein filed a counter affidavit admitting the execution of lease khararnama by the father of the respondent herein on 13.6.1995 and the period of lease of five years was also admitted. The payment of Rs.550/- p.m. as rent as on the date of filing of the petition was also admitted. It was also stated that an amount of Rs.5,000/- was paid as an advance at the time of entering into lease khararnama, but, the contention of the respondent herein with regard to installation of the flour mill contrary to the lease khararnama, was denied. The other allegation that the petitioner herein committed default in payment of rent, was also denied. It was further stated that the petitioner used to do oil rotary business in the name of "Bindu Oil Rotary" and at the time of taking the petition schedule property on lease, the father of the respondent herein did not raise any objection. When the respondent herein and his other brothers were trying to evict the petitioner herein from the petition schedule property, the petitioner filed a suit for permanent injunction and the same was allowed. The entire family of the petitioner herein is dependent on the business only and the business is located in a small room situated in a very small lane in Chennuruvari Street,

Stone House Pet area, Nellore, which is a non-residential area. The respondent herein is having other properties in Pappula street and Usman Saheb Pet. The respondent is also doing medical business. The allegation that the petition schedule property is in a dilapidated condition due to vibration of the flour mill, is also denied. The petition was filed only to harass the petitioner herein. Though the petitioner requested the respondent herein to execute a fresh agreement, it was postponed on one pretext or the other.

5. On the said pleadings, learned Rent Controller-cum-Principal Junior Civil Judge, Nellore framed a single issue as to whether the petitioner/landlord is entitled to evict the respondent/tenant from the petition schedule shop room.

6. The petitioner/landlord examined himself as PW1 and got marked Ex.P1 for proving the death of his father. The respondent/tenant examined herself as RW1 and also examined RW2 on her behalf.

7. Learned Rent Controller-cum-Principal Junior Civil Judge, Nellore, on the basis of oral and documentary evidence came to the conclusion that the failure of the tenant to produce the notebook in which the landlord was acknowledging the receipt of rents, clearly shows the default committed by the tenant/respondent in payment of rents. On the ground of

bonafide requirement, the plea of the petitioner/landlord was disbelieved. The petition was ultimately allowed only on the ground of non-payment of monthly rents. When an appeal was preferred, the appellate authority, by relying on Section.114 of Indian Evidence Act, dismissed the appeal mainly on the ground that the tenant/petitioner herein failed to produce the note book containing the evidence of payment of rents.

8. Learned counsel for the petitioner herein vehemently submitted that since the petitioner has been continuing in the premises for nearly 35 years, she should be allowed to continue at least on enhanced rent.

9. Learned counsel for the respondent herein did not agree for the continuation of the petitioner/tenant.

10. When the learned counsel for the petitioner/tenant was directed to file an affidavit agreeing to vacate the petition schedule premises, the petitioner/tenant filed an affidavit seeking 24 months for vacation of the premises, which is virtually an untenable request. In those circumstances, this Court is not inclined to consider the affidavit to proceed with the main case.

11. As per the averments made in the counter to the main petition, the petitioner herein admitted the existence of a lease Khararnama executed for a period of five years from 13.6.1995

to 12.6.2000. It appears that it was extended by another five years on payment of enhanced amount of Rs.100/- on monthly rent. It is admitted by the petitioner/tenant that the lease period has expired and the lease khararnama did not contain the permission to run an oil mill business. The period of lease thus expired by the year 2005 and the tenant has been continuing in the premises on payment of monthly rent of Rs.550/-. Now the tenant offered to pay Rs.5,000/- p.m. but the learned counsel for the respondent/landlord, on instructions, did not agree for the same.

12. The crucial point involved in the present Civil Revision Petition is with regard to the default committed by the petitioner/tenant in payment of monthly rent and a clear averment was made in the petition filed for eviction of the petitioner by the landlord that the tenant has been maintaining a note book and the landlord has been acknowledging the receipt of payments in the said note book. Though, in her evidence as RW1, the tenant admitted the said fact and wanted to produce the said note book, she failed to produce the said note book. In view of the same, an adverse inference was drawn coupled with the application filed by the tenant seeking permission in R.C.C.No.5 of 2004 for deposit of the rents. In view of the concurrent findings recorded by the Rent

Controller-cum-Principal Junior Civil Judge, Nellore as well as the Rent Control Appellate Authority-cum-Principal Senior Civil Judge, Nellore, this Court is not inclined to interfere with the said orders and the Civil Revision Petition is accordingly, dismissed, upholding the orders of the Rent Controller-cum-Principal Junior Civil Judge, Nellore and Rent Control Appellate Authority-cum-Principal Senior Civil Judge, Nellore. The petitioner herein/tenant is given two months time to vacate the premises and if the petitioner/tenant did not deliver the possession of the petition schedule property to the respondent herein, it is open to the respondent/landlord to take the possession of the schedule premises through due process of law.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

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A. RAMALINGESWARA RAO,J

Date: 9.4.2018

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