

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.5012 of 2017

ORDER :

The revision petitioners (Tenants) are respondents to the eviction petition in R.C.No.73 of 2009 maintained before the Principal Rent Controller, Secunderabad, by the revision respondent (Landlord), in respect of the petition schedule premises bearing Municipal No.1-2-242, 95/ 1, Sarojini Devi Road, Secunderabad, consisting of 1130 sq. feet open area and kiosk of about 326 sq. feet, total admeasuring 120 sq. yards. The Rent Controller after contest, by order, dated 22.12.2012, dismissed the eviction petition. Impugning the same, the Landlord maintained Rent Appeal No.18 of 2013 before the Additional Chief Judge, City Small Causes Court, Hyderabad, and the same was allowed, by judgment, dated 28.08.2017, directing the respondents-Tenants to vacate the petition schedule property and hand over the same within three months from the date of the judgment. It is impugning the same, present revision is maintained.

2. The contentions of revision vis-à-vis the oral submissions of the counsel for the revision petitioners are that the judgment of the appellate Court is contrary to law, weight of evidence and against the probabilities of the case and passed the order of reversing the judgment of the trial Court mechanically without appreciating the evidence on record and erroneously came to the conclusion that the claim of the revision respondent in respect of bonafide requirement for personal occupation and acts of waste and material alterations impairing the value of the petition schedule property. The appellate Court failed to appreciate that the revision petitioners were directed to file an undertaking to the effect that the petitioners and the respondent/

defendant in I.A.No.637 of 2008 in O.S.No.628 of 2008, will not make any permanent structure impairing the material damage to the petition schedule property and the revision petitioners had completed the works in accordance with said undertaking in the letter and spirit and the said suit O.S.No.628 of 2008 filed by the revision respondent for acts of waste and material alterations to the schedule property was dismissed on the ground that the revision respondent failed to establish that the erection of canopy with iron pillars covered by tin sheets, with nuts and bolts will cause damage to the suit schedule property or impair the material value of the suit schedule property and that the canopy constructions are permanent structures by relying the citation of Purushottam Das Bangur and others v. Dayanand Gupta (AIR 2013 465). Aggrieved by the same, the revision respondent filed A.S.No.24 of 2013 before the I Additional Chief Judge, Secunderabad and the said Court also confirmed the judgment of the trial Court. Further, the appellate Court failed to appreciate the judgment/order of trial Court judgment in O.S.No.628 of 2008, R.C.No.73 of 2009 and the appellate Court in A.S.No.24 of 2013 categorically opined that the erection of canopy by iron pillars and tin sheets is a temporary structure fixed with nuts and bolts, as such no damage can be caused to the property and erroneously came to the conclusion that there was no record that the old tank was existing without taking note of the admission of PW.1-revision respondent in O.S.No.628 of 2008 that the excavation of removal of the tank in the Tenanted area took place and that old tank was removed. Further the appellate Court failed to appreciate that the revision respondent is the absolute owner and possessor of 1600 sq. feet mulgi in the ground floor of the Pereira building and that apart the appellate Court ignored to take note of the pleading that the Landlord allotted 638 sq. yards, i.e.,

5742 sft. apart from the above mentioned property of 1600 sft. and the Landlord-revision respondent got right over 3000 sft. in a joint property of over 9000 sft. and sought for setting aside the judgment of the appellate Court by allowing the revision.

3. Coming to the facts, the Landlord-revision respondent filed O.S.No.628 of 2008 seeking permanent injunction restraining the defendant, its staff, agents, men or any one claiming/ acting under them from making any construction/ erection of structures or changing the nature of the suit schedule property with the extent of 125 sq. yards with 320 sft. constructed area and two petrol dispensing units with municipal bearing No.1-2-242, in Pereira Building, 95/ 1, Sarojini Devi Road, Secunderabad and also for costs of the suit along with I.A.No.637 of 2008 under order XXXIX Rules 1 and 2 CPC. On 18.11.2008, the trial Court dismissed I.A.No.637 of 2009 directing the respondent-Tenant to file an undertaking memo to the effect that he will not make any permanent structures in the property impairing material damage to the property and that he will remove the structures raised by him in the petition schedule property on his own costs, if ultimately it is decided that there is damage to the property due to the presence of the structure and also give an undertaking that he will bear the expenses in case there is any action by the Municipal Corporation of Hyderabad, Secunderabad Division, against the petitioner in respect of the temporary shed erected by him. The trial Court framed the following issues in O.S.No.628 of 2008:

1. Whether the defendant made any unauthorized constructions in the suit schedule property impairing material change of schedule property?
2. Whether the said constructions are permanent or temporary?
3. Whether the plaintiff is entitled for permanent injunction as prayed for?

4. To what relief?

3-a). In the course of trial, on behalf of plaintiff-revision respondent, PWs.1 and 2 were examined and defendant himself was examined as DW.1. The finding of the trial Court with regard to issues are that the constructions raised by the defendant-Tenant does not impair any damage to the schedule property materially and cannot be treated as permanent structure and it is a temporary structure by observing that the plaintiff-Landlord failed to establish the erection of canopy with iron pillars covered by tin sheets, with nuts and bolts will cause damage to the suit schedule property or impair the material value of the suit schedule property and that the canopy constructions are permanent structures as the plaintiff-PW.1 in his evidence specifically deposed that no walls are constructed over and above the ground in the Tenanted area and the construction canopy is not touching the office room in the suit schedule property.

4. Aggrieved by the judgment in O.S.No.628 of 2008, the revision respondent-Landlord filed A.S.No.24 of 2013 before the I Additional Chief Judge, City Civil Court, Secunderabad, and the same was dismissed confirming the judgment and decree passed in O.S.No.628 of 2008.

5. Similarly, the revision respondent-Landlord filed R.C.No.73 of 2009((present RC) against the revision petitioners-Tenants for eviction from the premises in question and for delivery of vacant possession of the premises to him. The Rent Control Court framed the following issues:

1. Whether the respondent No.1 has sublet the petition schedule property to the respondent Nos.2 and 3?
2. Whether the respondents denied the title of the petitioner over the petition schedule property, if so, whether it is bonafide denial or not?

3. Whether the petitioner requires the petition schedule property bonafidely for their personal occupation?
4. Whether the respondents have committed acts of waste or material alternations to the schedule property which impairs the value of the property?
5. Whether the respondent Nos.2 and 3 have secured alternative accommodation as claimed by the petitioner?
6. To what relief?

5-a). The Rent Controller, after trial, dismissed the Rent Control Case by order dated 22.12.2012 holding that there is no sub-letting by respondent No.1 to respondent Nos.2 and 3 as alleged by the petitioner; as per the evidence of RW.1, he categorically stated that he never denied the title of the petitioner and as such there is no denial of title of the petitioner over the schedule property by the respondents; there is no bonafide requirement of the petition schedule property on the part of the petitioner; there is no acts of waste on the part of the respondents which impairs the value and utility of the building; and the respondent Nos.2 and 3 have not secured any alternative accommodation as alleged by the petitioner.

6. The revision respondent-Landlord also filed R.A.No.18 of 2013 before the Additional Chief Judge, City Small Causes Court, Hyderabad, against the orders passed in R.C.No.73 of 2009.

6-a). The appellate Court, after hearing both sides, concluded that the trial Court erred in concluding that since the appellant-Landlord acquired different properties under partition suit under a Will etc., he can utilize the same for expanding his business in spite of the fact that they are not partitioned among the appellant and his two sisters specified or demarcating his share in the said properties, particularly when the specified demarcated petition schedule property on which the appellant has exclusive right is available to him and concludes that the

appellant-Landlord established that he requires the petition schedule property for expanding the business of himself and his wife styled as 'Ladder Net Works' and 'Ruby Systems', as such, the respondents are liable to be evicted from the petition schedule property. Further, the appellate Court observed that the appellant/Landlord established that the respondents have changed the structure of the petition schedule property impairing its value and utility and in view of the fact that he established that he requires the petition schedule property for expanding his business and directed the respondents-Tenants to vacate the petition schedule property and hand over the same to the appellant-Landlord within three months from the date of judgment and if the respondents-Tenants fail to vacate the same, the appellant-Landlord is at liberty to initiate the proceedings to evict the respondents from the petition schedule property.

7. Heard both sides and perused the entire material on record. It is the settled position from the constitution Bench expression of the Apex Court in Hindusthan Petroleum Corporation Limited Vs. Dilbahar Singh¹ that the scope of revision is very limited from the wording particularly u/ sec.22 of the *Andhra Pradesh Buildings (Lease, Rent And Eviction) Control Act, 1960* (for short, 'the Act') for the Court may entertain a revision and call for and examine the records relating to the order or proceedings in question for the purpose of satisfying itself as to the legality, regularity or propriety of the impugned order or proceedings and the revision Court cannot re-appreciate the facts for the scope of revision is very limited and it is only where anything is pointed out by drawing attention of the Court of a finding is perverse or illegal or unsustainable to consider the legality or otherwise of such finding by

¹ (2014) 9 SCC 78

going into the fact to that limited extent for re-appreciation and not otherwise. Another latest expression of the Apex Court in Damodar Lal Vs. Sohan devi² page-14 that is quoted with approval in para-6 in Smt. A.P.Leela Vs. M.K.Yadav³ para-6, page-80 that the perversity to mean in nutshell that a finding of fact recorded by a Court by ignoring or excluding relevant material or by taking consideration of inadmissible and irrelevant material or the finding so outrageously defies logic as to suffer from the vice of irrationality or of basis of no evidence on unreliable evidence with no reasonable person would act upon.

8. From the above, now coming to the facts as to the legality or correctness of the impugned reversal findings of the Rent Control Appellate Tribunal in allowing the eviction petition setting aside the dismissal of the same by the Rent Controller concerned, the finding of the lower appellate Court is not correct so far as the acts of waste concerned more particularly from the proceedings covered by that of the suit in O.S.No.628 of 2008 and the appellate Court judgment therein as A.S.No.24 of 2013. Thus, there are no acts of waste to evict on that ground for the lower Appellate Tribunal to allow the eviction petition but for to consider on other grounds of bonafide requirement and availability of alternative accommodation to the Landlord for such bonafide requirement to occupy. The Appellate Tribunal in the reversal finding so far as availability of alternative accommodation to the Tenant to start or shift the business as the case may be concerned, instead of Tenanted premises of the revision respondent/ Landlord, observed that the Rent Controller's conclusion is erroneous from the evidence on record showing the Landlord can utilize for expanding the business from

² (2016) 3 SCC 78

³ 2018 (2) ALT 658

the property acquired in the partition suit under Will though it was not partitioned with his two sisters to demarcate his share viz; for 'Laddar Networks' and 'Ruby Systems'. In fact, there is no partition of the properties as can be seen from the evidence on record before the Rent Controller for appreciation by the lower Appellate Tribunal for the final fact finding Court and once it is un-partitioned property but for joint with other sisters of the Landlord, it cannot be said rightly as sufficient and suitable accommodation of such undivided interest in the property for additional accommodation with no need of eviction of the Tenant in question, leave about the Landlord is the sole arbiter to choose the suitable accommodation for the convenience and there is no evidence as rightly concluded by the Appellate Tribunal of the accommodation is more suitable when compared to that with specific boundaries already fallen to the share as if any, leave apart as P.W.1 stated deposed of 6.20sq.yards allotted premises is there apart from the petition schedule property from the very evidence of P.W.1 as rightly concluded there is a litigation with his uncle for specific performance of the agreement of 1982 that is covered by judgment of June, 2011 and it is also joint property between him and his sisters undivided. Once such is the case and for expanding the business, for the same is required bonafide there is nothing to interfere with the finding of the lower Appellate Tribunal, on that count concerned no perversity in the re-appreciation of the evidence in coming to its conclusion to that extent suffice to say eviction order no way requires interference.

9. Having regard to the above and in the result, the Revision is disposed of while confirming on the ground of bonafide requirement of the premises the order of the lower Appellate Court, dt.28.08.2017 in

R.A.No.18 of 2013 however by granting time to the Revision Petitioners till end of April,2019 to make alternative arrangement by securing any alternative accommodation for the business carrying on in the tenanted premises and to vacate, subject to payment of use and occupation charges double the amount what was stated of the rent in the eviction petition appears to be that of earlier only Rs.2,000/- per month to say now Rs.4,000/- per month. Consequently, miscellaneous petitions, if any, pending in this revision shall stand closed.

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Date:01.05.2018
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Dr. B.SIVA SANKARA RAO J,

