THE HON'BLE JUSTICE SRI T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.3588 of 2017

ORDER:

1 This Civil Revision Petition is filed under Section 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short, 'the Act'), challenging the order dated 05.06.2017 passed in R.A.No.5 of 2017 on the file of the Chief Judge, City Small Causes Court, Hyderabad, wherein and whereby the order dated 04.11.2013 passed in R.C.No.373 of 2009 on the file of the III Additional Rent Controller, Hyderabad fixing the fair rent for the petition schedule property at the rate of Rs.23,400/- p.m. from the date of filing of the petition with future enhancement of 10% for every two years, was confirmed.

2 The facts leading to the filing of the present Civil Revision Petition, in nutshell, are as follows:

3 One Mr. Osman Bin Saleh was the original owner of the shop bearing D.No.4-1-938/39, admeasuring 390 sq.ft., situated at New Marketing Complex, Tilak Road, Abids, Hyderabad (hereinafter referred to as, 'petition schedule property'). The said Osman Bin Saleh let out the petition schedule property to the petitioners under registered lease deed dated 27.08.1990 for a period of 20 years on a monthly rent of Rs.1,025/- By the time of filing of the petition, the rent of the petition schedule property was Rs.1,840/- p.m. The said lease comes to end by 31.7.2010. The respondents have purchased the petition schedule property from the said

Osman Bil Saleh under a registered sale deed dated 28.03.2008 and the petitioners have also attorned the tenancy. The rent being paid by the petitioners is very meagre. The prevailing rent in the area for similar accommodation is around Rs.75/- per sq.ft., and above. Even if the rent is calculated at Rs.75/- per sq.ft., the monthly rent to be fixed for the petition schedule property of 390 sq.ft., would come to Rs.29,250/-. The rent being paid by the petitioners is very meagre. Hence the respondents filed R.C.No.373 of 2009 under Section 4 (1) of the Act seeking to fix the fair rent to the petition schedule property at Rs.29,250/- per month.

4 The revision petitioners filed counter admitting the jural relationship of landlords and tenants, inter *alia* contending that in the original registered lease deed dated 27.08.1990, entered into between them and the original owner, the enhancement of rent has been stipulated from 01.08.1990 to 31.7.1995 at the rate of Rs.1,025/-, from 01.08.1995 to 31.7.2005 at the rate of Rs.1,535/- and from 01.08.2005 to 31.7.2010 at the rate of Rs.1,840/- p.m. The revision petitioners have been paying the property tax to Greater Hyderabad Municipal Corporation. The revision petitioners paid a goodwill amount of Rs.70,000/- to the original owner, therefore, the petition filed under Section 4 (1) of the Act is not maintainable. It is absolutely incorrect that the petition schedule property may fetch rent at the rate of Rs.75/- per sq.ft. The petitioners have been paying rent as per the

prevailing rents in the locality. The revision petitioners are eking out their livelihood by carrying on business in the petition schedule property, and the terms and conditions of the registered lease deed bind the subsequent transferees i.e., the respondents. The Rent Controller has no jurisdiction to fix the fair rent of the petition schedule property in view of subsistence of a contractual tenancy, by virtue of registered lease deed dated 26.10.1990. Hence the petition may be dismissed.

5 Basing on the above pleadings, the Rent Controller framed the following points:

i. Whether this court has jurisdiction to fix the fair rent when there is agreed rent between the parties?

ii. Whether there are any justifiable grounds for fixation of fair rent for the petition schedule premises and if so, what could be the amount of fair rent for the same?

iii. To what relief?

6 To substantiate the case, before the Rent Controller, the first respondent himself examined as P.W.1 and got marked Exs.P.1 to P.10. To dislodge the case of the respondents, the first petitioner examined himself as R.W.1 and got marked Exs.R.1 to R.24.

7 Basing on the oral, documentary evidence and other material available on record, the learned Rent Controller fixed the fair rent for the petition schedule property at Rs.23,400/- p.m (390/- X Rs.60/-). Feeling aggrieved by the order dated 04.11.2013 in R.C.No.373 of 2009, the petitioners-tenants preferred R.A.No.5 of 2014 on the file of the Chief Judge, City

Small Causes Court, Hyderabad. The Rent Control Appellate Authority, after considering the material available on record, dismissed the appeal confirming the findings recorded by the Rent Controller. Hence the present Civil Revision Petition by the tenants.

8 The learned counsel for the petitioners-tenants submitted that the authorities below ought not to have placed reliance on Ex.P.8 rental deed dated 31.12.2009 in view of non-examination of one of the parties to the document **it**. He further submitted that the Rent Controller discarded Exs.R.4 to R.6 lease deeds on erroneous and untenable grounds. He further submitted that the authorities below, having discarded Exs.R.4 to R.6, ought not to have considered Ex.P.8 for fixation of fair rent. He further submitted that the appellate authority dismissed the appeal in a casual and routine manner, without applying its mind and that itself is sufficient to allow the Civil Revision Petition. He further submitted that the appellate authority has not considered the written arguments as well as relevant case-law submitted by the petitioners.

9 *Per contra*, the learned counsel for the respondents submitted that mere non-examination of a party to the document by itself is not a valid ground to discard Ex.P.8. He further submitted that the authorities below, taking into consideration the locality of the petition schedule property and other attending circumstances fixed the fair rent. He further submitted that the finding recorded by the authorities

below are based on evidence much less legally admissible evidence; therefore the revision is liable to be dismissed in view of the scope of Section 22 of the Act.

10 The point for consideration is: Whether there is any illegality, irregularity or impropriety in the impugned order warranting interference of this Court?

11 To substantiate the arguments, the learned counsel for the petitioners has drawn attention of this court to the following judgments:

Mohammad Ahmad vs. Atma Ram Chauhan[1] wherein the Hon'ble apex Court held at para Nos.21 and 22 as follows:

> 21. According to our considered view majority of these cases are filed because landlords do not get reasonable rent akin to market rent, then on one ground or the other litigation is initiated. So before saying omega, we deem it our duty and obligation to fix some guidelines and norms for such type of litigation, so as to minimise landlord-tenant litigation at all levels. These are as follows:
>
> (i) The tenant must enhance the rent according to the terms of the agreement or at least by ten percent, after every three years and enhanced rent should then be made payable to the landlord. If the rent is too low (in comparison to market rent), having been fixed almost 20 to 25 years back then the present market rate should be worked out either on the basis of valuation report or reliable estimates of building rentals in the surrounding areas, let out on rent recently.
>
> (ii) Apart from the rental, property tax, water tax, maintenance charges, electricity charges for the actual consumption of the tenanted premises and for common area shall be payable by the tenant only so that the landlord gets the actual rent out of which nothing would be deductible. In case there is enhancement in property tax, water tax or maintenance charges, electricity charges then the same shall also be borne by the tenant only.
>
> (iii) The usual maintenance of the premises, except major repairs would be carried out by the tenant only and the same would not be reimbursable by the landlord.
>
> (iv) But if any major repairs are required to be carried out then in that case only after obtaining permission from the landlord in writing, the same shall be carried out and

[1] (2011) 7 SCC 755

modalities with regard to adjustment of the amount spent thereon, would have to be worked out between the parties.

(v) If present and prevalent market rent assessed and fixed between the parties is paid by the tenant then landlord shall not be entitled to bring any action for his eviction against such a tenant at least for a period of 5 years. Thus for a period of 5 years the tenant shall enjoy immunity from being evicted from the premises.

(vi) The parties shall be at liberty to get the rental fixed by the official valuer or by any other agency, having expertise in the matter.

(vii) The rent so fixed should be just, proper and adequate, keeping in mind, location, type of construction, accessibility with the main road, parking space facilities available therein etc. Care ought to be taken that it does not end up being a bonanza for the landlord.

22. These are some of the illustrative guidelines and norms but not exhaustive, which can be worked out between landlord and tenant so as to avoid unnecessary litigation in Court.

M/s. Raval And Co. Vs. K.G. Ramachandran[2] wherein the Hon'ble apex Court held at para No.16 as follows:

16. "......It is clear, therefore, that the Madras Legislature deliberately proceeded on the basis that fair rent was to be fixed which was to be fair both to the landlords as well as to the tenants and that only the poorer classes of tenants needed protection....."

Suresh Gir vs. K. Sahadev[3] As per the principle enunciated in this case, the Court has to take into consideration the location of the house, the plinth area of the building, the lack of certain amenities, normal rent for a residential building of this type and the factum of escalation in rents while fixing fair rent.

Narbada Devi Gupta vs. Birendra Kumar Jaiswal[4] wherein the Hon'ble apex Court held at para No.16 as follows:

16. Reliance is heavily placed on behalf of the appellant on the case of Ramji Dayawala & Sons (P) Ltd., {(1981) 1 SCC 80}. The legal position is not in dispute that mere production and marking of a document as exhibit by the court cannot be held, to be a due proof of its contents.

---

[2] (1974) 1 SCC 424
[3] 1997 (6) ALT 436 (D.B.)
[4] (2003) 8 SCC 745

> Its execution has to be proved by admissible evidence that is by the 'evidence of those persons who can vouchsafe for the truth of the facts in issue'. The situation is, however, different where the documents are produced, they are admitted by the opposite party, signatures on them are also admitted and they are marked thereafter as exhibits by the court. We find no force in the argument advanced on behalf of the appellant that as the mark of exhibits has been put on the back portions of the rent receipts near the place where the admitted signatures of the plaintiff appear, the rent receipts as a whole cannot be treated to have been exhibited as an admitted documents.

H. Siddiqui (dead) by L.Rs. vs. A. Ramalingam[5] wherein the Hon'ble apex Court held at para No.10 as follows:

> 10. Mere admission of a document in evidence does not amount to its proof. Therefore, the documentary evidence is required to be proved in accordance with law. The court has an obligation to decide the question of admissibility of a document in secondary evidence before making endorsement thereon.

12 On the other hand, the learned counsel for the respondents has drawn attention of this Court to the following judgements:

C. Karunakaran vs. T. Meenakshi[6] wherein the Hon'ble apex Court held at para No.5 as follows:

> 5. Mere non-examination of the person for whose need the building was required by itself was no ground to non-suit the landlady. In a number of decisions, [this fact is acknowledged by the first appellate court also], it has been held that it is not necessary to examine the person for whose need the premises are required. It depends on the facts and circumstances of each case.

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

14 There is no dispute with regard to the jural relationship of landlord and tenant between the respondents and the petitioners. The respondents have purchased the petition schedule property under registered sale deed dated 28.03.2008 from the original owner Osman Bin Saleh. The

---

[5] (2011) 4 SCC 240
[6] (2005) 13 SCC 99

said Osman Bin Saleh let out the petition schedule property to the petitioners under a registered lease deed dated 27.08.1990 for a period of 20 years on a monthly rent of Rs.1,025/-. The said lease will come to end by 31.7.2010. By the time of filing of the petition, the rent of the petition schedule property was Rs.1,840/- p.m. As per the testimony of P.W.1, the petition schedule property will fetch a rent of Rs.75/- per sq.ft. As per the testimony of R.W.1 the rent paid by them is just and reasonable. P.W.1 and R.W.1 being parties to the proceedings, the possibility of deposing oral evidence to suit their stand cannot be ruled out completely. The respondents relied on Ex.P.8 rental deed dated 31.12.2009. The revision petitioners relied on Ex.R.4 to R.6 lease deeds to substantiate their stand. For one reason or the other, the respondents did not choose to examine one of the parties to Ex.P.8 rental deed. At the same time, the revision petitioners also did not chose to examine one of the parties to Exs.R.4 to R.6 lease deeds. Neither the petitioners nor the respondents choose to examine the neighbouring owners or tenants of the petition schedule property. The only thing left over to the Court is Exs.P.8 and R.4 to R.6. The Rent Controller simply discarded Exs.R.4 to R.6 and placed reliance on Ex.P.8 while fixing the fair rent. In para No.11 of the order, the Rent Controller simply referred to Exs.R.4 to R.6. In para No.15, the Rent Controller simply made an observation that Ex.R.4 to R.6 disclose the prevailing rent at the time of execution of the said lease deeds. The Rent

Controller has not given any specific finding with regard to the relevancy and probative value of Exs.R.4 to R.6. The appellate authority in para No.12 of the judgment made the following observations:

> "…..this court is of the view that merely P.W.1 expressed his ignorance with regard to the parties and the terms to the document, the said document cannot be discarded by the court, particularly when there are number of the decisions before the appellate court……

15 The above observation of the appellate Court gives an impression to anybody that the Court placed reliance on Ex.P.8 basing on the precedents. The appellate court has not referred to any judgments in order to place reliance on Ex.P.8. The appellate court has not assigned reasons much less cogent and valid reasons for placing reliance on Ex.P.8, which is a vital document in this case. It is needless to say that the court has to assign reasons much less cogent and valid reasons while accepting or rejecting a particular document. The appellate Court simply accepted Ex.P.8 without assigning any reasons.

16 The appellate authority has not referred to any case law cited by the counsel for the respondent revision petitioners to place reliance on Ex.P.8. In para No.12 of the order, the appellate authority made an observation, which reads as follows:

> "……the trial Court gave a reasonable explanation in the Judgment as to why he has not relied on Exs.R.4 to R.6….
>
> "Hence this Court did not consider those documents while fixing the rent."

17 It appears that the appellate authority has not properly perused the judgment of the Rent Controller. The Rent

Controller has not given any specific finding for non-consideration of Exs.R.4 to R.6. The findings of the appellate authority that it need not consider the documents while fixing fair rent. If that is so, what is the purpose of filing of the documents by the parties to the proceedings? If the trial Court passes an order without considering the documents in right perspective, then the aggrieved party can agitate the same before the appellate court. If the appellate court feels that there is no need to consider the documents once again by it, no purpose will be served by preferring the appeal. The approach of the appellate authority in not considering the relevancy or otherwise of Exs.R.4 to R.6 lease deeds is ambiguous and incomprehensible. A careful scanning of the judgment of the appellate authority clearly indicates that it has not considered the material available on record in accordance with law and dismissed the appeal in a slipshod manner.

18 It is needless to say that an appeal is continuation of the suit or proceedings. It is a settled principle of law that the appellate authority has to reappraise the oral and documentary evidence available on record afresh and arrive at its own conclusions without being influenced by the findings recorded by the trial Court.

19 The crucial question that falls for consideration at this juncture is, 'whether, in the above factual scenario, the order passed by the appellate authority is sustainable or not'? In order to resolve the issue this court is placing reliance on

Leela Enterprises, Secunderabad vs. Kumar Sultana @ Kamer Hassan[7] wherein this Court at Para Nos.16, 17 and 37 as under:

> 16. In view of the above discussion, the provisions of C.P.C. are applicable to the proceedings under the Act. Order XLI deals with appeals. Rule 31 of the Order specified what judgment in appeal should contain, viz.; the points for determination; the decision thereon; the reasons for the decision; and where the decree appealed from is reversed or varied, the relief to which the appellant is entitled. The judgment in appeal under Section 20 of the Act is final, subject to revision under Section 22 of the Act and the Appellate Court's judgment as to question of fact cannot be interfered with except when such fact finding is perverse or not based on evidence. When the Appellate Court failed to discharge the obligation under Rule 31 of Order XLI of C.P.C, the judgment is liable to be set aside {vide B.V. Nagesh and others v. H.V. Sreenivas Murthy 2010 (6) ALT 19 (SC) : (2010) 13 SCC 530). When Rule 31 is not complied with, judgment is liable to be set aside and shall be remitted to Court (vide Union of India and another v. Ranchold and others (2007) 14 SCC 326) but in G. Amalorpavam and others v. R.C. Diocese of Madurai and others (13) 2006 (3) ALT 67 (SC) : (2006) 3 SCC 224 expressing contrary view held that where there is an honest endeavour on the Appellate Court to consider the controversy between the parties and there is a proper appraisement of respective cases weighing both sides is clearly manifest by perusal of judgment of the lower Appellate Court, it would be a valid judgment.
>
> 17. In any view, the law is consistent that the Appellate Court has to make an endeavour to decide real controversy on appraisal of evidence with reference to grounds urged before it. Even if respondent did not contest, still it is the duty of Court to decide lis without dispensing with the process of reasoning (vide Balraj Taneja and another v. Sunil Madan and another 2000 (1) An.W.R. 41 (SC) : AIR 1999 SC 3381. Any law in India did not dispense with the process of reasoning. Even if any question is required to be decided based on common law doctrine of justice, equity and good conscience, the Court has to record reasons. Therefore, viewed from any angle, it is the duty of the Appellate Court to record reasons in compliance with Order XLI Rule 31 of C.P.C. read with Rule 22 (8) of the Rules. As the judgment of the Appellate Court is not in compliance with Order XLI Rule 31 of C.P.C. and Rule 22 (8) of the Rules, the same is not legally sustainable. Order 41 of C.P.C. is applicable but still parties under the Act are under obligation to comply with the requirements under sub-ruler (8) of Rule 22 of the Rules. The framers of the Rules perhaps thought that if the procedure in regular suits or appeals is applied, it may lead to certain complications and delay the proceedings. When a special statute provides special procedure, the adjudicating authority shall follow the procedure and not the general procedure. In the present case, the Appellate Court framed the following points for consideration:

[7] 2017 (5) ALD 374

> "1. Whether the orders of the trial Court in R.C. No. 200 of 2007 be set aside?
>
> 2. To what relief?"
>
> 37. In view of the law discussed, when the common law doctrine of justice, equity and good conscience is incorporated in the rules framed under the statute i.e. Andhra Pradesh Buildings (Lease, Rent & Eviction) Control Act, 1960, in the adjudicatory or judicial process, the adjudicating authorities must strictly adhere to the principle........

20 Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, this court is of the considered view that the order passed by the appellate authority is not sustainable either on facts or in law.

21 In the light of the foregoing discussion, this court is of the considered view that this is a fit case to remand the matter to the appellate court with a direction to consider the material available on record afresh and fix the fair rent for the petition schedule property.

22 In the result, this revision is allowed, the order dated 05.06.2017 passed in R.A.No.5 of 2017 on the file of the Chief Judge, City Small Causes Court, Hyderabad, is hereby set aside. The matter is remanded to the appellate authority to consider the material available on record afresh and fix the fair rent for the petition schedule property. No order as to costs. As a sequel, miscellaneous petitions, if any connected to this Civil Revision Petition, shall stand closed.

T. SUNIL CHOWDARY, J.

Date: 20th September, 2018

Kvsn