

THE HON'BLE JUSTICE SRI T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.3705 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.6 of 2014 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.273 of 2010 on the file of the III Additional Rent Controller, Hyderabad ordering eviction of the petitioners herein from the petition schedule property and handover the vacant physical possession of the same to the respondents herein within two months from the date of order of the Rent Controller, 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 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/- per month. 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. Even if the monthly rent is calculated on much lower side 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/-, as per the valuation certificate. The respondents are having shops adjoining to the petition schedule property. The shops of the respondents and the petition schedule property form integral part of the same building. The respondents require the petition schedule property for additional accommodation to expand their business activity. If the petitioners are directed to vacate the demised premises, the hardship likely to be suffered by the petitioners will not outweigh the hardship suffered by the respondents. Hence the respondents filed R.C.No.273 of 2010 under Section 10(3)(c) of the Act seeking to evict the petitioners from the petition schedule property and handover vacant possession of the same to them.

4 The revision petitioners filed counter admitting the jural relationship of landlords and tenants, inter *alia* contending that the respondents have suppressed the factum of 2nd and 3rd floors over the petition schedule property, and the petition schedule property is a separate building; therefore, the petition filed under Section 10(3)(c) of the Act is not maintainable. The petitioners are eking out their livelihood by carrying on business in the petition schedule property. If the

petition is allowed, it will cause much hardship to the petitioners when compared to the respondents. It is absolutely incorrect to say that the petition schedule property may fetch rent at the rate of Rs.75/- per sq.ft. The petitioners have been paying the rent as per the prevailing rents in the locality. Hence, the petition may be dismissed.

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

- i. Whether the personal requirement of the petition schedule premises claimed by the petitioners is *bona fide* or not?
- ii. 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.8. To disprove the case of the respondents, Petitioner Nos.1 and 2 examined themselves as R.Ws.1 and 2 and got marked Exs.R.1 to R.91.

7 Basing on the oral, documentary evidence and other material available on record, the learned Rent Controller arrived at a conclusion that the respondents require the petition schedule premises for additional accommodation i.e., expansion of their business activity and allowed the petition. Feeling aggrieved by the order dated 04.11.2013 passed in R.C.No.273 of 2010, the petitioners preferred R.A.No.6 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 appellate authority, without applying its mind to the facts of the case on hand, dismissed the appeal in a casual manner. He further submitted that the authorities below have not given a specific finding with regard to the relative hardship likely to be caused to the parties to the proceedings, while ordering eviction of the petitioners, which itself is sufficient to allow the revision. He further submitted that the authorities below failed to consider that the respondents have purchased an independent building i.e., petition schedule property. He further submitted that the finding recorded by the authorities below, so far as additional accommodation is concerned, is based on assumptions and presumptions; therefore, it is a fit case to allow the Civil Revision Petition.

9 *Per contra*, the learned counsel for the respondents-landlords submitted that this Court, while exercising the jurisdiction under Section 22 of the Act, can give a specific finding basing on the material available on record. He further submitted that simply because the appellate authority has not given a specific finding on one aspect that itself is not a sufficient ground to allow the revision. He further submitted that the finding of the authorities below that the petition schedule property and the shops owned by the respondents form integral part of same building is supported by evidence

much less cogent and convincing evidence available on record. He further submitted that mere non-examination of the 2nd petitioner itself is not a valid ground to dismiss the petition. He further submitted that the findings recorded by the authorities below are based on evidence, much less legally admissible evidence; therefore, this is not a fit case to allow the Civil Revision Petition.

10 The point that arises 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:

Irene vs. V.S. Venkataraman¹ wherein the Hon'ble apex Court held at para No.5 as follows:

“.....Excepting the statement of one of the landlords, no other evidence was adduced to show that the premises in occupation of the landlords were, in any manner, inadequate to satisfy their requirement or there was such an increase in their activities as could not be accommodated in the space already available with them.”

12 As per the principle enunciated in the case cited supra, the landlord has to establish that the petition schedule premises is required for additional accommodation for expansion of their business activities.

13 Per contra, the learned counsel for the respondents has drawn attention of this court to ***Gulshera Khanam vs. Aftab Ahmad***² wherein the Hon'ble apex Court held as follows:

¹ (2010) 15 SCC 711

“... .. In rent matters, the landlord is the sole judge to decide as to how much space is needed for him to start or expand business activity.”

14 The learned counsel for the petitioner has also drawn attention of this court to ***M/s.Rawalmal Naraindas vs. B. Amarnath***³ and ***Gangaram vs. N. Shankar Reddy***⁴.

15 To substantiate the argument, the learned counsel for the respondents has drawn attention of this court to the following judgments:

B. Kandasamy Reddiar vs. O.Gomathi Ammal⁵, ***Sri Srinivasa Enterprises, Secunderbad vs. Narayandas***⁶ and ***Penugonda Rajeswari vs. Jaladi Anasuyamma***⁷.

16 The following principle can be deduced from the above case law:

“The criterion to be taken into consideration by the court while deciding the petition filed under section 10 (3) (c) of the Act is oneness of the building and not the oneness of ownership of two different buildings, one occupied by the landlord and the other by the tenant.

A practical test which can be applied to find out if two adjoining buildings form part of the same building or two different buildings would be to see whether one of the two buildings can be sold by the landlord and the purchaser inducted into possession of the premises sold without the landlord’s possession and enjoyment of the premises in his occupation being affected.

² (2016) 9 SCC 414

³ AIR 1999 SC 1838

⁴ AIR 1989 SC 302

⁵ AIR 2001 SC 1931

⁶ 2013 (3) ALD 777

⁷ 1998 (3) ALD 273 (DB)

C. *Karunakaran vs. T. Meenakshi*⁸ 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.

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

18 There is no dispute with regard to the jural relationship of landlord and tenant between the respondents and the petitioners. The respondents purchased the petition schedule property under registered sale deed dated 28.03.2008 from the original owner-Osman Bin Saleh. The 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 came to an end by 31.7.2010. The respondents filed R.C.No.273 of 2010 under Section 10(3)(c) of the Act seeking eviction of the petitioners from the petition schedule property contending that they require the petition schedule property for additional accommodation i.e., expansion of their business activity.

19 Section 2(iii) of the Act defines 'building'. In order to ascertain the exact meaning of 'building' as deployed under the Act, one has to read sub-section (iii) of Section 2 in juxtaposition of Clause (c) of sub-section (3) of Section 10 of the Act. The respondents have taken a specific plea in the

⁸ (2005) 13 SCC 99

petition that they are having two shops on both sides of the petition schedule property, but they require the petition schedule property for additional accommodation in order to expand their business activity. In such circumstances, the court has to record a specific finding whether the shops owned by the respondents forms integral part of the petition schedule building or not. Without giving a specific finding on this aspect, any order passed by the Rent Controller is unsustainable either on facts or in law.

20 In order to appreciate the rival contentions, this Court carefully scanned the oral and documentary evidence available on record as well as the orders passed by the authorities below. In para No.14 of the order, the Rent Controller, after considering the facts and case law, arrived at a conclusion that the petition schedule premises and other two mulgies of the respondents are situated in one building. Whether this finding is based on evidence available on record, much less legally admissible evidence, or not, has to be considered by the appellate authority. 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. It is apposite to refer to the relevant portion in para No.10 of the judgment passed by the appellate authority, which is as under:

“.....The learned trial Judge while disposing R.C.273/2010 already concluded that the Judgments cited by the appellants herein does not come to the rescue of the appellants and that the Judgments cited by the respondents come to the rescue of the respondents. This court is of the view that the said Judgments need not be referred or analysed for this appeal, as this court concurs with the observations of the trial Court on the said judgments, as admittedly the petition schedule property is part and parcel of the same building in which the respondents have their shops on either side of the petition schedule property.”

21 A perusal of the above para clearly reveals that the appellate authority, without considering the oral and documentary evidence available on record, simply concurred with the findings recorded by the Rent Controller. The appellate authority also made an observation that there is no need to refer or analyse the judgments cited by the counsel for the petitioners. These observations of the appellate authority clearly indicate that it has dismissed the appeal without applying its mind to the facts of the case as well as case law submitted by the counsel for the petitioners. The appellate authority may be under impression that the duty of the appellate court is only to concur with the findings of the trial Court.

22 In para No.13 of the judgment, the appellate authority made the following observations:

“..... no additional evidence is required to be adduced by the respondents to show that their business is expanding in view of the expansion in all round business in twin cities of Hyderabad and Secunderabad and admittedly the petition schedule property is located at Tilak Road, Abids, Hyderabad.”

23 A perusal of the above clearly indicates that the appellate authority proceeded on the premise that the landlord need not prove that the petition schedule premises is required for additional accommodation to expand their

business activity. In the same para, the appellate authority made the following observations:

“.....it can be presumed that the business of the respondents is also expanding and as such they require additional accommodation.”

24 Suffice it to say that the parties have to let in oral and documentary evidence to substantiate their stand. The findings recorded by the court, basing on presumptions and assumptions, are not sustainable under law. A perusal of the record clearly reveals that the appellate authority allowed the appeal basing on assumptions and presumptions. The appellate authority has not properly considered the provisions of the Indian Evidence Act. The appellate authority ought to have given a specific finding on each and every issue framed by the trial Court. Therefore, on the point of additional accommodation, the findings recorded by the appellate authority are not sustainable on facts, as well as law.

25 The Rent Controller or the appellate authority has to consider under which provision of law the petition was filed. In the present case, the petition was filed under Section 10 (3) (c) of the Act. To consider the legality of the findings arrived at by the Rent Controller as well as the appellate authority, it is apposite to refer to the proviso (c) to Section 10 (3) of the Act, which reads as under:

“Provided that, in the case of an application under clause (c), the Controller shall reject the application if he is satisfied that the hardship which may be caused to the tenant by granting it will outweigh the advantage to landlord.”

26 The learned counsel for the petitioners has drawn the attention of this Court to the following judgments:

T.S. Sethuraman vs. J. Nagalakshmi⁹, B. Kandasamy Reddiar vs. O Gomathi Ammal¹⁰ and Bega Begum vs. Abdul Ahad Khan¹¹.

27 On the other hand, the learned counsel for the respondents has drawn the attention of this court to ***Marisetty Ramesh vs. Perla Subba Rao¹².***

28 The following principle can be deduced from the above case law:

“The Court has to weigh the relative hardship, which is likely to be caused to the tenant with the likely advantage of the landlord on the basis of the available material on record.

29 The appellate authority lost sight of the proviso to sub-clause (c) of sub-section (3) of Section 10 of the Act and decided the appeal. The appellate authority has not given any specific finding with regard to the hardship likely to be caused to the petitioners-tenants if the petition is allowed or the hardship likely to be caused to the landlords-landlords if the petition is dismissed.

30 The crucial question that falls for consideration at this juncture is ‘whether in such circumstances the order passed by the appellate authority is sustainable? In order to resolve the issue this court is placing reliance on ***Leela Enterprises,***

⁹ 1997 LawSuit (Mad) 814

¹⁰ AIR 1998 SC 3235

¹¹ AIR 1979 SC 272

¹² 1999 (6) ALD 330

Secunderabad vs. Kumar Sultana @ Kamer Hassan¹³

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 appraisal 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:

"1. Whether the orders of the trial Court in R.C. No. 200 of 2007 be set aside?

¹³ 2017 (5) ALD 374

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.....

31 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.

32 The learned counsel for the respondents submitted that the revisional court can give a specific finding even in the absence of finding recorded by the appellate authority. To substantiate the argument, the learned counsel for the respondents has drawn attention of this court to **Gulshera Khanam** case (7 supra) wherein the Hon'ble apex Court held at para No.31 as under:

".....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 as to 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 reappreciate or reassess 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."

33 On the other hand, the learned counsel for the petitioners has drawn attention of this Court to **Hindustan**

Petroleum Corporation vs. Dilbahar Singh¹⁴ wherein the

Hon'ble apex Court held at para No.43 as under:

43. 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 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.

34 If this Court gives a finding on the above three aspects, it may cause prejudice to one of the parties to the proceedings. This court while exercising jurisdiction under Section 22 of the Act, cannot act as a court of first appeal. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am unable to accede to the contention of the learned counsel for the respondents that this court can give a specific finding basing on the material available on record even in the absence of findings recorded by the authorities below.

¹⁴ (2014) 9 SCC 78

35 Having regard to the facts and circumstances of the case, 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 record a specific finding on the following aspects.

a) Whether the shops of the respondents situated on both sides of the petition schedule shop form integral part of one building, or not?

b) Whether the hardship likely to be caused to the petitioners/tenants by an order of eviction will outweigh the advantage caused to the respondents/landlords, or not?

c) Whether the respondents require the petition schedule shop for additional accommodation to expand their business activity, or not?

36 In the result, this Civil Revision Petition is allowed and the order dated 05.06.2017 passed in R.A.No.6 of 2014 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 above three aspects independently and without being influenced by any of the observations made by the Rent Controller or this Court and pass orders afresh. No order as to costs. As a sequel, miscellaneous petitions, if any pending in this Civil Revision Petition, shall stand closed.

T. SUNIL CHOWDARY, J.

Date: 20th September, 2018
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