

THE HON'BLE JUSTICE SRI T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.3367 of 2018

ORDER:

This Civil Revision Petition is filed by the tenant under Section 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short, 'the Act'), assailing the order dated 01.5.2018 passed in R.A.No.3 of 2016 on the file of the Chief Judge, City Small Causes Court, Hyderabad, wherein and whereby the order dated 17.11.2015 passed in R.C.No.249 of 2009 on the file of the IV Additional Rent Controller, Hyderabad ordering eviction of the petitioner herein from the petition schedule premises and handover the vacant physical possession of the same to the respondent-landlord, was confirmed.

2. The parties to this revision petition will hereinafter be referred to as they were arrayed before the Rent Control Court, to avoid confusion.

3. The petitioner filed the petition under Sections 10(2)(i) and 10(3)(c) of the Act, with the following averments. The petitioner is a religious, charitable and educational institution known as 'Arya Samaj' registered under the A.P. Societies Registration Act, 1350 Fasli. The petitioner is the owner of the petition schedule residential premises bearing No.4-3-116, Devi Deen Bagh, Sultan Bazar, Hyderabad (hereinafter referred to as, the petition schedule premises). The petitioner let out the petition schedule premises to late Sri K.S.Chary, who is none other than the father of the respondent, for a monthly rent of Rs.17/- exclusive of electricity charges. As per the terms and conditions of the lease agreement,

the tenant has to pay the rent on or before 10th of every succeeding month. After death of Sri K.S.Chary, respondent continued in the petition schedule premises as tenant. The respondent paid the rent in the month of December, 2007 and obtained the receipt from the petitioner. Thereafter, the respondent failed to pay the rent from January, 2008 to June, 2009 i.e., for a period of 18 months in spite of repeated demands made by the petitioner. Thus, the respondent committed wilful default in payment of the rent. The petitioner-Institution has been running a school in the name of '*Arya Kanya Pathashala*' in the premises bearing No.4-3-127/1, since 1922. There are more than 1,000 students in the school. The petition schedule premises is required for additional accommodation of the school children.

4. The respondent filed counter denying all the averments made in the petition *inter alia* contending that the petitioner intentionally and wilfully refused to accept the rent, and the petition schedule premises is not required to provide playground and other facilities to the children of '*Arya Kanya Pathashala*'. On 05.1.2008, the respondent approached the petitioner and offered the rent but the petitioner refused to receive the same. The respondent, therefore, sent the rent by money orders dated 24.9.2008, 15.10.2008 and 10.12.2008 to the petitioner and they were also refused. Having no other alternative, the respondent filed R.C.No.10 of 2009 under Section 8(5) of the Act seeking permission of the Rent Control Court to deposit the rent and the same was allowed on 06.9.2010.

The petitioner does not require the petition schedule premises. Hence, the petition may be dismissed.

5. To substantiate the stand of the petitioner, before the Rent Control Court, P.W.1 was examined and Exs.P.1 to P.4 were marked. To demolish the case of the petitioner, the respondent examined himself as R.W.1 and marked Exs.R.1 to R.17.

6. Basing on the oral, documentary evidence and other material available on record, the Rent Control Court arrived at the conclusion that the respondent committed wilful default in payment of the rent, and accordingly directed the respondent to vacate the petition schedule premises and handover the vacant physical possession of the same to the petitioner within three months. The Rent Control Court, however, negated the contention of the petitioner that the petition schedule premises is required for providing additional accommodation to the school children. Feeling aggrieved by the order dated 17.11.2015 in R.C.No.249 of 2009, the respondent preferred R.A.No.3 of 2016. The Rent Control Appellate Authority, after reappraising the oral and documentary evidence, arrived at the conclusion that the respondent committed wilful default in payment of rent and consequently dismissed the appeal. Hence, the respondent filed the present revision petition.

7. The contention of learned counsel for the revision petitioner-tenant is that the Authorities below failed to consider that the respondent has not committed wilful default in payment of the rent. She further submitted that the Authorities below failed to

draw a distinction between ‘*default*’ and ‘*wilful default*’ and allowed the petition as if both are one and the same. She further submitted that the findings recorded by the Authorities below are perverse; therefore, it is a fit case to allow the revision petition.

Per contra, learned counsel for the respondent-landlord submitted that this Court shall not lightly interfere with the concurrent findings of fact recorded by the Authorities below, in view of 22 of the Act.

8. Basing on the rival contentions, the point that arises for consideration is:

Whether there is any illegality, irregularity or impropriety in the impugned order, to warrant interference of this Court under Section 22 of the Act?

9. In order to appreciate the rival contentions, this court is placing reliance on the following decision:

Hindustan Petroleum Corporation Limited vs. Dilbahar Singh¹

wherein the Hon’ble apex Court held at Para No.45 as under:

45. 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

¹ 2014 (9) SCALE 657

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.

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

10. There is no dispute between the parties with regard to jural relationship of landlord and tenant. The respondent has not committed any default in payment of the rent up to December, 2007. The entire controversy involved in this revision is: *whether the respondent committed wilful default in payment of the rent from January, 2008 to June, 2009?*

11. In support of their respective claims, on behalf of the petitioner, P.W.1 was examined and on behalf of the respondent R.W.1 was examined. P.W.1 and R.W.1 being the parties to the proceedings, the possibility of distortion of the facts, in order to suit their respective claims, cannot be ruled out. The initial burden, to establish that the respondent committed wilful default in payment of the rent, is on the petitioner. In the cross-examination, R.W.1 admitted that the petitioner issued the receipt-Ex.R.2, towards payment of rent for the month of December, 2007. This itself shows that there is a practice of issuing receipt as and when the respondent paid the rent. Admittedly, no receipt is filed

by the respondent towards payment of the rent for the period from January, 2008 to June, 2009. On 23.12.2008, the respondent got issued legal notice-Ex.R.15 directing the petitioner to furnish his bank account details. The petitioner issued reply-Ex.P.4. Ex.R.3 is the certified copy of the money order dated 24.9.2008 for Rs.243/-. Ex.R.4 is the certified copy of the postal acknowledgement dated 30.9.2008 containing the postal endorsement of '*payee refused*'. Exs.R.5, R.6 and R.9 are the certified copies of money order acknowledgments. Exs.R.7 and R.8 are certified copies of money order receipt and acknowledgement. Ex.R.10 is the certified copy of the money order dated 05.12.2008. Ex.R.11 certified copy of the money order acknowledgement. Exs.R.12 and R.13 are the certified copies of money order and acknowledgement of sending Rs.204/- towards rent from January, 2008 to December, 2008. Exs.R.14 is the certified copy of the money order receipt of sending Rs.324/- on 10.12.2008. Exs.R.15 is the certified copy of the legal notice dated 23.12.2008. A perusal of Exs.R.3 to R.14 shows that for the first time, the respondent attempted to pay the rent to the petitioner by way of money order on 24.9.2008 and subsequent dates. The respondent did not choose to send even that money order to the petitioner for a period of nine months. The counter filed by the respondent is conspicuously silent as to the reasons for not even attempting to pay the rent from January, 2008 to September, 2008. No explanation was offered by the respondent, while examining himself as R.W.1, for the delay of nine months in attempting to pay the rent.

12. To substantiate the argument, learned counsel for the respondent has drawn the attention of this Court to **J.J.Lal Pvt. Ltd., v M.R.Murali**². Relevant portion in paragraph No.22 reads as follows:

22. In the case before us we have the landlord's own statement that rent was being collected from the tenants by the landlords once in two months. Then there is either the absence of notice or a doubt about the service of notice on the tenant from the landlords demanding payment of rent. Additionally there are the facts that a sister of landlord was pressurizing the tenants to make apportionment of rent in her favour and the Municipal Corporation was holding out threat of eviction if arrears as to premises were not directly paid to it. These two events could have reasonably caused a wavering in the mind of tenants to whom to pay. In this state of the facts non-payment of rent for one month in respect of one of the premises and for two months in respect of the other cannot be enough to brand the tenant as 'willful defaulters'.

13. As per the principle enunciated in the case cited supra, mere default in payment of the rent for a period of one or two months would not amount to wilful default, when there is a practice of collecting the rent for two or three months at a time. It is the case of the petitioner that as per the conditions of the lease agreement, the respondent has to pay the rent on or before 10th of every succeeding month. The respondent has not taken the plea in the counter that the petitioner used to receive the rent for two or three months at a time. On the other hand, the recitals of Ex.R.2 clearly established that there was practice of payment of the rent by the respondent to the petitioner on or before 10th of every succeeding month. For the above reasons, the decision in **J.J.Lal Pvt. Ltd.**, is not applicable to the facts of the case on hand. Moreover, the decision arose out of the Tamil Nadu Rent Control Act.

² (2002) 3 SCC 98

14. I am in agreement with the submission made by the learned counsel for the respondent that default simpliciter cannot be equated with the wilful default. Wilful default means committing of default consciously and deliberately. The respondent is very much aware of the mode of payment of the rent i.e., on or before 10th of every succeeding month, since his childhood. The respondent himself had paid the rent at the rate of Rs.10/- per month to the petition schedule premises situated in Sultan Bazar of Hyderabad city, upto December, 2007. Rent of Rs.10/- per month is negligible amount, in view of location of the petition schedule premises. One way, the respondent has been residing in the premises at free of cost. The respondent made an attempt to pay the rent from January, 2008 to September, 2008 in the month of September, 2008, by way of money order. It is not the case of the respondent that he could not pay the rent, even by way of sending money order, to the respondent for a period of nine months, for the reasons beyond his control. Had the respondent established such a plea, there may be some justification in the stand taken by the respondent that default committed by him is '*not wilful*'. The conduct of the respondent in non-payment of the rent for the period from January, 2008 to June, 2009 clearly reveals his intention.

15. The plea taken by the respondent that the petitioner intentionally and wilfully refused to receive the rent is not substantiated by any evidence much less legally admissible evidence. Had it been the intention of the petitioner to evict the

respondent from the petition schedule premises, on one pretext or the other, it might have resorted to such an unwarranted practice much prior to 2008. The possibility of taking this type of pleas, in order to overcome the laches on the part of the tenant, with an ulterior motive to escape from the legal consequences cannot be ruled out completely. By any stretch of imagination, it cannot be presumed that the act of the petitioner in refusing to receive the money order would amount to waiver of the right accrued in its favour under the provisions of the Act. The act of the petitioner in refusing to accept the money order, in the month of September, 2008, is perfectly justified. Therefore, I am unable to accede to the contention of the learned counsel for the respondent-tenant in this regard.

16. Basing on the facts pleaded and proved by the petitioner, the irresistible conclusion that can be drawn is that the petitioner consciously and deliberately failed to pay the rent for a period of eighteen (18) months i.e., from January, 2008 to June, 2009, which act of the respondent would certainly fall within the ambit of '*wilful default*' as enumerated under Section 10(2)(i) of the Act.

17. The other contention of learned counsel for the respondent is that the respondent has paid the rent in pursuance of the order in R.C.No.10 of 2009; therefore, the respondent has not committed any default in payment of the rent. The finding recorded by the Authorities below, on this aspect, is not sustainable either on facts or in law.

18. R.C.No.10 of 2009 filed by the respondent under Section 8(5) of the Act was allowed on 06.9.2010. The learned counsel for the petitioner strenuously submitted that mere deposit of the rent in R.C.No.10 of 2009 by the respondent would not debar the petitioner from taking the plea of wilful default in payment of the rent. To substantiate the argument, learned counsel for the petitioner has drawn the attention of a Full Bench decision of this Court in **Mohammed Izhar Ali v Smt.Olive Founseca (died) per L.Rs³**, wherein the reference was answered in paragraph No.49 as follows:

49. Therefore, the reference has to be and is answered accordingly in the following terms:

(1) Though Section 8 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 is directory and optional, a tenant taking advantage and benefit of the said provision has to strictly and mandatorily comply with the procedure prescribed under Rule 5 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Rules, 1961.

(2) While deposit of rent in terms of the provisions of the Act and the Rules amounts to valid tender of rent to the landlord, the failure to comply with Sub-rule (3) of Rule 5 requiring delivery of a copy of the challan for the deposit of rent in the office of the Controller or the appellate authority, as the case may be, so as to enable the Controller or the appellate authority to cause maintenance of proper accounts under Sub-rule (5) and give notice of deposit to the person or persons concerned within seven days of such delivery of copy of the challan in one or the other of the modes specified in Rule 16 (paying within a reasonable time the prescribed fee as per Rule 17 for service of such notice, if the tenant himself did not serve such notice directly on the landlord or the advocate appearing for the landlord) under Sub-rule (4), amounts to wilful default in making valid payment or lawful tender of the rent by the tenant to the landlord;

(3) Sub-rule (1) and/or Sub-rule (3) of Rule 5 of Rules do not prescribe any time limit for depositing rent after obtaining permission for such deposit from Rent Controller under Section 8(5) of the Act. A perusal of Sub-rules (2) and (3) of Rule 5 of Rules, however, shows that after obtaining permission a tenant has to deposit rent every month and as required under Sub-rule (3) of

³ 2008 (4) ALT 147 (F.B.)

Rule 5 of the Rules shall deliver rent challan in the office of Rent Controller or appellate authority as the case may be. A perusal of Section 10(2)(i) of the Act would show that in the absence of any agreement, rent has to be paid by the last day of month next following that for which rent is payable or if there is agreement of tenancy within 15 days after expiry of time fixed in the agreement. This indicates some guidance as to reasonable time for deposit of rent. Thus, where a tenant obtains an order to deposit rent, same shall be deposited at least by the last day of the month following that for which rent is payable and rent challan shall be delivered in the office of Controller within a reasonable time so that Rent Controller can take necessary action for service of notice of deposit under Sub-rule (4) of Rule 5 of the Rules within seven (7) days of such delivery. In the absence of compliance in so depositing rent and delivering challan in the office of Controller, tenant shall be deemed to have committed wilful default, as per conclusions on question Nos.1 and 2 above.

(4) There is no conflict between Section 10(2)(i) and Section 10(2) proviso on one hand and Rule 5 on the other.

19. In the instant case, there is no whisper in the testimony of R.W.1 that he informed the petitioner about deposit of the rent in R.C.No.10 of 2009. The fact remains that the respondent has not taken any steps to intimate the petitioner about depositing of monthly rent in R.C.No.10 of 2009. The respondent had deposited the monthly rent in R.C.No.10 of 2009 from the date of its filing. The default period commenced from January, 2008 and ended by June, 2009. It is needless to say that deposit of the rent in R.C.No.10 of 2009 is without any prejudice to the right of the petitioner. Mere deposit of the rent by the respondent-tenant in the petition filed under Section 8 of the Act would not prevent the petitioner from taking the plea of '*wilful default*'. As per the principle enunciated in **Mohammed Izhar Ali**, non-compliance of the procedure contemplated under Sub-rule (4) of Rule 5 of the A.P. Buildings (Lease, Rent and Eviction) Control Rules, 1961 would amount to wilful default. Rule 5(4) prescribes that the

notice of deposit shall be served on the person concerned within seven days of the deposit. Admittedly, the respondent has not followed the procedure, as contemplated under Rule 5(4) of the Rules.

20. Having regard to the facts and circumstances of the case and also the principle enunciated in **Mohammed Izhar Ali**, this Court is of considered view that the respondent committed wilful default in payment of the rent. The findings recorded by the Authorities below are supported by evidence much less legally admissible evidence; therefore, I am unable to countenance the submission made by the learned counsel for the respondent that the findings recorded by the Authorities below are perverse. There is no illegality, irregularity or impropriety in the orders passed by the Authorities below, warranting interference of this Court under Section 22 of the Act.

21. In the result, the Civil Revision Petition is dismissed. The revision petitioner-tenant is directed to vacate the petition schedule premises and handover the vacant physical possession of the same to the respondent-landlord within a period of two months from today. No order as to costs. Consequently, miscellaneous petitions, if any pending in this Civil Revision Petition shall stand closed.

T.SUNIL CHOWDARY, J.

Date: .8.2018
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