

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION Nos.829 AND 835 OF 2011

COMMON ORDER:

The revision petitioner-appellant-claim petitioner, aggrieved by the orders, dated 31.12.2010, passed in R.A.S.R.Nos.10586 and 10585 of 2010 on the file of learned Chief Judge, City Small Causes Court, Hyderabad, filed the present revision petitions under Section 22 of A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960 (for short, 'the Rent Control Act').

2. The revision petitioner herein filed E.A. No.49 of 2004 in E.P. No.12 of 2004 in R.C. No.405 of 2002 and E.A. No.51 of 2004 in E.P. No.13 of 2004 in R.C. No.406 of 2002 on the file of learned I-Additional Rent Controller-cum-XIII Junior Civil Judge, Hyderabad, under Rule 23 (7) of A.P. Buildings (Lease, Rent & Eviction) Control Rules, 1961 (for short, 'the Rules') read with Section 151 of the Civil Procedure Code, 1908 (for short, 'C.P.C.'), seeking to set aside the orders passed in E.P. No.12 of 2004 in R.C.No.405 of 2002 and in E.P.No.13 of 2004 in R.C. No.406 of 2002 and the orders, dated 25.06.2004, passed in R.C.Nos.405 and 406 of 2002 and to order restitution of the schedule property in his favour. The Rent Controller, by orders, dated 27.09.2010, dismissed the aforesaid Execution Applications. Aggrieved over the same, the revision petitioner preferred the aforementioned R.A.S.Rs. on the file of learned Chief Judge, City Small Causes Court, Hyderabad.

3. The learned Chief Judge, City Small Causes Court, Hyderabad, at the S.R. stage, on the objection raised by the office as to maintainability of the appeals as against the orders passed in Interlocutory Applications, called these R.A.S.Rs. on bench to hear the learned counsel for the revision petitioner-appellant.

4. The learned appellate Judge, having heard the learned counsel for the revision petitioner-appellant, formulated the point for consideration as to whether the Appeals are maintainable as against the impugned orders, dated 27.09.2010, passed separately in both R.A.S.Rs.

5. The learned Appellate Judge referred to the ruling in **B.Y. Ramulu v. Budhan Saheb Mosque Committee**¹, wherein it was held that though all the orders passed in Interlocutory Applications are not appealable, but the appeal is maintainable if the orders are affecting the rights and liabilities of the landlord and tenant. Thereafter, the learned appellate Judge proceeded with the submissions made before him and having found that the revision petitioner-appellant is a third party to the Rent Control proceedings in both R.Cs. and filed Execution Applications claiming right or ownership over the schedule building by virtue of a registered Will, dated 23.06.1997, whereas respondent No.1 claiming title on the foot of registered Sale Deed, observing that there is a serious title dispute

¹ 2002 (6) ALT 275 = 2002 (3) ALD 377

between both parties and both parties are claiming their title to the schedule property basing on two different documents, and opining that the title cannot be decided either by the Rent Controller or by the Appellate Rent Controller, held that the option left to the revision petitioner-appellant is to file a civil suit for redressal of his grievance, as there is no landlord and tenant relationship between the parties and, therefore, the question of affecting their rights and liabilities does not arise, and on that ground, dismissed the appeals at the S.R. stage opining that the appeals are not maintainable.

6. Aggrieved over the said orders, the present Civil Revision Petitions are filed in the year 2011. They were admitted on 11.03.2011 and interim stay was granted and, since, then these Civil Revision Petitions are pending for disposal.

7. Heard Sri P. Rajasekhar, learned counsel for the revision petitioner, and Sri Shyam S. Agarwal, learned counsel for respondent No.1.

8. Learned counsel for the revision petitioner would submit that the revision petitioner is true landlord of the eviction petition schedule premises and his tenants were unlawfully evicted by respondent No.1/decree-holder by filing eviction petitions against non-existent persons and, thus, the entire proceedings were fraud played upon the revision petitioner-appellant and the rejection of the

appeals, at the stage of S.R., without properly appreciating the contentious facts, affect the rights of the revision petitioner-appellant adversely. Learned counsel would also submit that the lower appellate Court did not properly appreciate the scope and purport of the ruling in **B.Y. Ramulu**'s case (1 supra), in which the Court held that though all the orders passed in Interlocutory Applications are not appealable, but the appeal is maintainable if the orders are affecting the rights and liabilities of the landlord and tenant, which expression was completely ignored by the Court below. It is a case where rights of the parties are affected and, thus, the Court below erred in reading the words 'parties' with reference to the application as 'landlord and tenant' and wrongly held that the revision petitioner-appellant is not a landlord or a tenant with reference to the eviction petitions, as such he cannot maintain the appeals. Learned counsel also, incidentally, would submit that the mandate of Section 20 of the Rent Control Act (Act XV of 1960) is that 'any person aggrieved by an order made by Rent Controller may prefer an appeal', which indicates that not only the landlord or tenant and not only against an order made in the proceeding in eviction petition, any person can prefer an appeal against the order made in any interlocutory proceeding, which affects the rights of the parties thereto.

9. Yet another submission made by the learned counsel is that, though, the tenants were evicted at the institution of the

proceedings by respondent No.1, still, the revision petitioner is not precluded from seeking restitution, and, in case, the right of the revision petitioner is recognized over the E.P. schedule property, nothing prevents this Court to order restitution automatically, as even the law is well settled. Thus, he relies on a decision in **Chaganlal (Died) Sardarilal v. Narasing Pershad**². Learned counsel relied on this decision to substantiate his submission that the appeal is maintainable over an order passed by the Rent Controller and the question as to what orders of the Rent Controller are appealable, under Section 20 of the Rent Control Act, is being decided, while resolving the conflict between the Bench decision of this Court in **Salim Bin Ahmed**, and the decision of the Honourable Supreme Court in **Central Bank of India v. Gokal Chand**. The revision petition therein was filed questioning the order of the appellate authority holding that the document which is relied on by the landlord and described as 'Rental Deed' was inadmissible in evidence for want of registration. The Rent Controller held that the said document was admissible and an appeal was preferred to the appellate authority against the order holding that the document to be admissible. The question was on the premise that no appeal lie to the appellate authority against the order holding that the document was admissible in evidence. In the said context, the present decision was rendered

² 1970 LawSuit (AP) 307

and referred to by the learned counsel drawing attention of the expression of the Honourable Division Bench in paragraph-14 thus:

“14. What is now contended is that though under Section 20 (1) of the Act, the words “any person aggrieved by the order passed by the Rent Controller” appear very wide and may mean that against every order of the Rent Controller, an appeal can be filed by the person aggrieved, the order of the Rent Controller referred to, must really be an order affecting the rights of the parties and not every interim order which may be either procedural or otherwise does not affect the rights of parties. Considering the provision relating to the appeals i.e., Section 25 of the Hyderabad Houses (Rent Eviction and Lease) Control Act (Act XX of 1954) which reads as follows: “(1) Notwithstanding anything contained in any law for the time being in force, an appeal from an order made by the Controller shall lie within thirty days from the date of such order in the city of Hyderabad”. Quamar Hasan, J. in an unreported Judgment in *Hiralal v. Lachi Bai* a case where the Rent Controller refused to give further opportunity to a party to adduce evidence when they failed to produce witnesses the date of hearing and the appeal filed thereon was rejected *limine* as not maintainable observed as follows: “in my view, the interpretation put upon the section by the lower Court is perfectly justified in view of the language of the section. If this contention is to be accepted, then every order which may be passed by the Rent Controller would become appealable for instance orders for adjournments of cases, issuing of summonses to the witnesses etc. “construing the same provisions in *Kanaya Pershad v. Gajapathi Naidu* the then Chief Justice of the High Court held that an order must be a final order determining the rights of parties in order to be appealable, that an interlocutory order framing issues or shifting the burden of proof does not decide the rights of parties and hence is not appealable. It may be seen that Section 25 of the Hyderabad Act

is almost similar to Section 20 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act. In *Lingavva v. Likshminarasamma* where a petition by a third party to be impleaded in the proceedings for eviction before the Rent Controller was dismissed and an appeal was sought to be filed, our learned Brother Narasimham, J was inclined to the view that interlocutory orders are not appealable, though he finally on a concession made by the counsel, held that the third parties who sought to be impleaded cannot be considered to be persons aggrieved by the order which would ultimately be passed by the Rent Controller in the proceedings before him and in that view held that their appeal was not maintainable.”

10. Learned counsel for the revision petitioner, therefore, would contend that the expression “any person aggrieved by the order passed by the Rent Controller” occurring in Section 20 (1) of the Rent Control Act, as interpreted by this Court, would provide that any person aggrieved can prefer an appeal and the present revision petitioner, though, not a party to the main R.C. proceedings and execution proceedings, still, has got right to file appeal against the order passed in execution application by the Rent Controller. Thus, in regard to maintainability of appeals by the revision petitioner, while questioning the orders under challenge, the learned counsel would submit that the appeals are maintainable, which the learned appellate Court did not properly appreciate and the learned appellate Court ought to have registered and decided the controversy therein without disposing them at the stage of admission of appeals.

11. Learned counsel also places reliance in **Hidayathullah v. Appellate Authority (Rent Controller) III Judge, Court of Small Causes, Madras and others**³, **T.K. Sundaram v. Balraj**⁴ and **Sampat Patalia v. Ghulam Fayazuddin and another**⁵. These rulings have been relied on by the learned counsel to substantiate when restitution can be ordered where tenant was wrongly evicted, while answering the submissions made by the learned counsel for respondent No.1 that even execution petitions were terminated and the tenant has vacated the premises, and, therefore, the revision petitioner claiming himself as landlord by virtue of the Will cannot maintain Execution Applications and the appeals over the orders passed in Execution Applications by the Rent Controller.

12. Per contra, learned counsel for respondent No.1, while supporting the order under challenge, would place reliance in **Binodlal Sagarmal, Hyderabad and others v. Prem Prakash Gupta and others**⁶.

13. Learned Single Judge of this Court referred to the various decisions, where the principles were culled out in relation to exercise of jurisdiction under Article 227 of the Constitution of India, and summed up the principles in paragraph No.19 thus:

³ AIR 1986 Madras 30

⁴ AIR 1983 Madras 225

⁵ 1996 (1) ALT 635

⁶ 2003 (5) ALD 222

“19. The revision petition is filed under Article 227 of the Constitution of India. It is no doubt true that under Section 20 of the Rent Act, an appeal against the interlocutory orders passed by the Rent Controller is not maintainable. As held by this Court, a revision under Article 227 of the Constitution is maintainable. But, it is well settled that exercise of jurisdiction under Article 227 of the Constitution cannot be resorted to in a routine manner. In a recent un-reported judgment in C.R.P. No. 1292 of 2003, disposed of on 16-4-2003, after considering Section 115 of CPC and Article 227 of the Constitution, after referring to various judgments of the Supreme Court in *Satyanarayan v. Mallikarjun*, AIR 1960 SC 137, *Mohd. Yunus v. Mohd. Mustaqim*, AIR 1984 SC 38, *Laxmikanth R. Bhojwani v. Pratapsing M. Pardeshi*, (1995) 6 SCC 576, *Sadhana Lodh v. National Insurance Co. Ltd.*, AIR 2003 SCW 930, *Punjab National Bank v. O.C. Krishnan* [107 Comp. Cases 20 (2001)], *Roshan Deen v. Preeti Lal*, AIR 2002 SC 33, I have culled out various principles in relation to exercise of jurisdiction under Article 227. These are

(i) In exercise of power under Article 227 of the Constitution, the High Court cannot assume appellate powers to correct every mistake of law;

(ii) Assumption of excessive jurisdiction or refusal to exercise jurisdiction or any irregularity or illegality - procedural or any breach of any rule of natural justice - are some of the grounds which might warrant exercise of jurisdiction, provided that such illegal assumption, illegality or irregularity results in miscarriage of justice;

(iii) In exercise of powers under Article 227, the High Court will not review or reweigh evidence upon which determination of the inferior Court or Tribunal purports to be based or to correct errors of law in the decision. If elaborate reasons become necessary for the conclusion that the decision or

finding of the lower Court is incorrect or wrong so such an error cannot be treated as apparent on the face of the record;

(iv) If two views are conceivably possible on a question of fact, merely because the High Court feels that its view is correct, the same cannot be a ground for exercising jurisdiction under Article 227. The decision of the lower Court must receive *impri matur*;

(v) If, by a special enactment, the Legislature, in its wisdom, specifies the principles of appeal or revision against the decision or a finding, the power of superintendence under Article 227 cannot be exercised by assuming un-limited prerogative to correct all species of hardship and wrong decision;

(vi) A revision under Article 227 of the Constitution is maintainable only when the remedy of revision under Section 115 is expressly barred by the State enactment and even in such a case, the supervisory jurisdiction of the High Court is confined only to see that the inferior Court or Tribunal proceeded within its parameters and not to correct an error apparent on the face of the record, much less an error of law. The High Court is not an appellate forum under Article 227 and, therefore, it is not permissible to review or re-weigh the evidence;

(vii) When an alternative remedy is available, judicial prudence demands that the High Court should refrain from exercising jurisdiction under Article 227 of the Constitution;

(viii) The High Court in exercise of power under Article 227 of the Constitution is not to pick out any error of law and correct it when justice became the by-product of such erroneous view of law; and

(ix) Whether or not a decision of the lower Court is incorrect or clearly wrong, unless and until gross error resulting in miscarriage of justice is shown, the power under Article 227 cannot be exercised.”

14. Learned counsel for respondent No.1 also placed reliance on a decision of this Court in **K. Shiva Prasad v. C. Sree Ramulu and another**⁷, wherein the learned Rent Controller, at the stage of admission, rejected the application filed under Rule 23(7) of the Rules by a third party, who claimed to be the son of the deceased tenant, and the learned single Judge of this Court, referring to the purport of Rule 23 (7) of the Rules, held to be directory and not mandatory, and having extracted the said provision, refers to twin situations that were available to the Rent Controller and explains it in paragraph Nos.5 to 9 thus:

“5. For proper appreciation of the rival contentions, it is necessary to examine Rule 23(7) of the Rules carefully, which reads as under:

"If such execution is resisted and obstructed by any person other than the person against whom order of eviction was passed, the controller may hold a summary enquiry into the facts of the case and if he is satisfied that the resistance or obstruction was without any just cause and that such resistance and obstruction still continues shall issue a warrant to evict the said person by force and deliver the possession of the building to the person entitled for possession in pursuance of the order of eviction and if he is satisfied that the resistance or the obstruction was occasioned by any person other than the person against who order of eviction was passed claiming in good faith to be in the possession of the building on his own account or on account of some person other than the person against whom order of eviction was passed, he shall make an order disallowing the execution against such person.

⁷ 2002 (6) ALT 406

6. As can be seen sub-rule (7) of Rule 23 of the Rules aims at meeting a situation where the execution of order of eviction is resisted or obstructed by a person other than the person against whom an order of eviction was passed. In such a situation two courses are contemplated under Rule 23(7). If the Rent Controller is satisfied that the resistance or obstruction was without any just cause and that such resistance or obstruction still continues the Rent Controller shall issue a warrant to evict such person by force. On the other hand if the Rent Controller is satisfied that the resistance or obstruction was occasioned by a person claiming in good faith to be in possession of the building the execution shall be disallowed against such person. The specific reference to possession of the building makes it clear that the resistance or obstruction to the execution of order of eviction shall be by a person in possession of the building who is other than a person against whom the order of eviction was passed. In other words Rule 23(7) attracts to the case where a person, other than the person against whom order of eviction was passed, is in possession of the petition schedule premises and causes resistance or obstruction to the execution of the order of eviction. A person who is not in possession of the premises in question cannot maintain a petition under Rule 23 (7) merely on the ground that the landlord ought to have made him a party to the eviction petition.

7. In the instant case it is to be noted that in pursuance of the order of eviction, execution proceedings were initiated and warrant was issued on 16-7-2001 for delivery of possession. The said warrant could not be executed since the premises was under lock and key when the bailiff went to execute the warrant. Thereafter the landlord made application to break open the lock. At that stage the Revision Petitioner made an application purported to be under Rule 23(7) of the Rules.

8. It is interesting to note that in the affidavit filed in support of the said petition, there is absolutely no averment as to the possession or occupation of the Revision Petitioner in respect of the petition schedule premises. Admittedly the premises was let out for non-residential purpose and it was being used by the original tenant who was a Doctor for running his Clinic. According to the landlord after the death of the original tenant his elder son who is also a Doctor by profession has been in occupation and running his clinic in the said premises. Thus the eviction petition was filed against the elder son on the ground of *bona fide* requirement. The elder son contested the petition and having considered the matter on merits the Rent Controller ordered eviction and the said order was ultimately affirmed by this Court. The petitioner in his application under Rule 23(7) merely contended that being the legal representative of the deceased-tenant, he is a necessary party to the eviction petition and that if the execution is allowed it would result in multiplicity of proceedings. As expressed above in the absence of pleading that he is in possession of the premises or that he succeeded to the rights of tenancy he is not entitled to invoke Rule 23(7) of the Rules.

9. So far as the contention of the petitioner that it is mandatory for the Rent Controller to hold summary enquiry while considering the application under Rule 23(7) of the Rules is concerned, it is pertinent to note that the rule itself says that the Rent Controller "may hold a summary enquiry." Keeping in view the scope and object of Rule 23(7) and having regard to its context and the intention of the Legislature, Rule 23(7) shall be interpreted that the summary enquiry contemplated thereunder is only directory, but not mandatory. In the instant case the revision petitioner has not pleaded that he is in possession of the petition schedule premises which is a non-residential premises. He filed the application purported to be under Rule 23(7) merely on the ground that all the legal heirs of the deceased tenant must

be brought on record. The other allegation made by him that the decree-holder in collusion with the elder brother of the Revision Petitioner filed the eviction petition and obtained an order of eviction against his brother was found to be false since the eviction proceedings were contested by the elder brother throughout. The Revision Petitioner has not even pleaded that he was associated with his late father in running the Clinic in the petition schedule premises nor that he is also in occupation of the premises along with his elder brother who is the judgment-debtor. In the circumstances the learned Rent Controller after recording a finding that the petition is not *bona fide* and is vexatious refused to entertain the same. A perusal of the order under revision shows that the learned Rent Controller has addressed to all the aspects in detail and on being satisfied that the application is frivolous and vexatious, held that there are no *bona fides* to number the application. The order is well reasoned and it cannot be said that the petition was rejected without application of mind. As expressed above the requirement of summary enquiry under Rule 23(7) is directory and on a perusal of the order under revision I am satisfied that there is substantial compliance with the requirement of enquiry. Therefore, it cannot be said that the order under revision is invalid on the ground of failure to conduct summary enquiry.”

15. Learned counsel for respondent No.1 relying on the aforesaid decision would submit that the orders under challenge are comprehensive orders and the Court below rightly arrived at the conclusion that it is title dispute over the demised premises and, therefore, held that the claim applications are not maintainable in a rent control proceeding.

16. Learned counsel for respondent No.1 also placed reliance in **B. Vittal v. Ramesh Kumar**⁸ of this Court. While dealing with a claim petition, under Rule 23 (7) of the Rules, the learned single Judge of this Court observed that the revision petitioner, who claimed rights under an agreement of sale, cannot claim *prima facie* valid and *bona fide* title over the disputed premises, until he establishes his title against the respondent in a properly constituted suit and the proceedings under Rule 23 (7) of the Rules are summary in nature and the evidence on record is not sufficient to establish his title to property in question and the petitioner has not filed any affidavit as regards his possession and, therefore, dismissal of the claim petition by the lower Court is sustainable.

17. The observations of the learned single Judge in paragraph Nos.10 to 12, since relevant, are extracted, which are thus:

“10. The revision petitioner now claims the property as a purchaser thereof from the original owner one Sri K. Ganga Reddy. The fact that the said Ganga Reddy was the original owner of the premises and the respondent claims to have purchased the property under registered sale deed from him is not in dispute. What the revision petitioner contends is that initially the agreement was executed by the said Ganga Reddy in his favour way back in 1973 which is far prior to the registered sale deed said to have been executed in favour of the respondent herein and therefore the said sale deed is not binding upon the revision petitioner. The sale agreement dt. 9-11-1973 was not filed in this case. A certified copy of the decree in OS No.1561

⁸ 2000 (5) ALT 705

of 1998 said to have been filed pursuant to the said agreement, has been filed. On the face of the circumstance that sale agreement was dt. 9-11-1973 there arises any amount of doubt as to how the revision petitioner had not pursued the matter till he filed the suit in the year 1998 in O.S.No.1561 of 1998 as nearly 25 years have gone by in between. The revision petitioner has not impleaded the respondent herein in the suit as the subsequent purchaser with notice of the earlier agreement of sale in his favour. The contention of the learned Counsel for the petitioner is that the revision petitioner did not know about the sale in favour of the respondent till such time when he heard about the filing of the execution petitions for dispossession, and he did not know any of the proceedings before the Rent Controller in R.C.No.549 of 1998. Till such time when the revision petitioner establishes his title in a properly constituted suit against the respondent herein, he cannot claim *prima facie* a valid and *bona fide* title over the disputed premises *qua* the respondent.

11. As regards the possession he is very much relying upon the report of the Commissioner who was appointed *ex parte* in the suit O.S.No.1561 of 1998. Here is a case where the Commissioner was appointed *ex parte*. The report submitted by him therefore cannot bind the respondent herein as no other evidence by means of affidavit as observed by this Court in C.R.P.No.2200 of 2000 has been filed in this case. The claim of the revision petitioner that he has always been in possession from 9-11-1973 has not been clearly established in this case.

12. It is now represented across the bar that the revision petitioner has already filed a suit for declaration that the decree in R.C.No.549 of 1978 is not executable as against the revision petitioner who is the owner thereof. The revision petitioner can therefore pursue his remedy and can establish a regular title over the property in question as against the respondent herein in view of the fact that the proceedings under Rule 23(7) of the Rules are

summary in nature and as discussed by me supra the evidence on record is not sufficient to conclude that the revision petitioner is having title over the premises in question and he is claiming in good faith on his own account, his claim cannot be sustained.”

18. Irrespective of maintainability of revision petitions or the debate whether appeals are maintainable, the entire controversy was whether the orders passed at admission stage, rejecting the appeals, are sustainable on the reasons assigned by the Court below.

19. A perusal of the order under challenge would show that, though short, still strikes at the vital point for consideration whether or not to admit/register the R.A.S.Rs. The revision petitioner herein claimed title over the disputed property or the demised premises by virtue of a registered Will, dated 23.06.1997. It is seen from the orders under challenge that respondent No.1 – landlord claimed title on the basis of a registered sale deed. Placed thus, the Court below arrived at the finding that there is serious title dispute between both the parties and both the parties are claiming title over the schedule property on the basis of two different documents and that when there is serious title dispute between the parties, the title cannot be decided either by the Rent Controller or the Appellate Rent Controller and the option left to the revision petitioner-appellant is to file a civil suit to redress his grievance. The learned appellate Court also observed that there is no landlord and tenant relationship between the parties and, therefore,

the question of affecting their rights and liabilities does not arise and the R.As. were, therefore, not maintainable.

20. Thus, it is clear, when the proceedings under Rule 23 (7) of the Rules are summary in nature and when the dispute between the revision petitioner-appellant and respondent No.1–landlord is a title dispute, *ex facie*, the remedy available to the revision petitioner is to establish his title against respondent No.1–landlord in a properly constituted suit and he cannot claim *prima facie* valid title over the demised premises based on a Will, more so agitate the ground that it is always open for him to seek restitution of the tenant, who was already evicted. Therefore, there is no merit in the present revision petitions.

21. The present revision petitions are, accordingly, dismissed.

Miscellaneous Petitions, if any, pending in these revision petitions shall stand closed. There shall be no order as to costs.

A. SHANKAR NARAYANA, J

June 18, 2018.
gbs/MD