

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

Civil Revision Petition Nos.4930 and 4960 of 2018

COMMON ORDER:

C.R.P. No.4960 of 2018 is filed by the petitioners in R.C. No.30 of 2008 before the IV Additional Rent Controller, Hyderabad aggrieved by the order passed by the Additional Chief Judge, City Small Causes Court, Hyderabad in R.A. No.135 of 2016 dated 24.07.2018 affirming the order passed by the Rent Controller in R.C.No.30 of 2008 dated 15.03.2016. C.R.P. No.4930 of 2018 is filed by the respondents in R.C.No.138 of 2013 (i.e., the petitioners in R.C. No.30 of 2008) aggrieved by the order passed by the Additional Chief Judge, City Small Causes Court, Hyderabad in R.A. No.36 of 2017 dated 24.07.2018 affirming the order passed by the Rent Controller in R.C. No.138 of 2013 dated 31.12.2016. Parties shall, hereinafter, be referred to as they are arrayed in C.R.P. No.4960 of 2018.

The petitioners herein filed R.C. No.30 of 2008 seeking permission of the Rent Controller to deposit arrears of rent from January, 2005 to January, 2008, and the future rents @ Rs.1,100/- per month to the credit of the R.C. into the Court. R.C. No.138 of 2013 was filed by the 2nd respondent herein seeking eviction of the petitioners from the schedule premises.

It was the case of the petitioners herein, before the Rent Controller in R.C. No.30 of 2008, that they were the tenants of Mulgi bearing No.20-4-1195 situated at Bilal Market, Lad Bazar, Near Charminar, Hyderabad; the rent was Rs.1,100/- per month payable on or before the 15th of every succeeding month; late Sri Mohd. Imam, the original owner of the petition schedule mulgi,

died in February, 2005 leaving behind no successors or legal heirs; the petitioners paid rent upto December, 2004, but later could not find out who the legal heirs of the deceased-landlord were, resulting in default in payment of rents; the first respondent sent a letter on 08.05.2005 informing the petitioners that late Sri Mohd. Imam had executed a gift deed in her favour during his life time, and the petitioners should pay rents from February, 2005 onwards at the rate of Rs.1,100/- p.m to her; the petitioners gave a reply thereto on 24.05.2005 requesting the 1st respondent to prove her ownership; however, the said letter dated 24.05.2005 was refused and returned; and the 1st respondent remained ex-parte in the proceedings before the Rent Controller.

The 2nd respondent contended before the Rent Controller that late Sri Mohd. Imam was the owner and landlord of 20 mulgies situated at Bilal Market, Lad Bazaar, Hyderabad; he died on 21.02.2005, leaving behind no legal heirs; late Sri Mohd. Imam had made an oral Hiba of all his 20 mulgies, including the petition schedule mulgi, in favour of Jamia Nizamia (2nd respondent) complying with the legal requirements of an offer, acceptance and delivery of possession, including attornment of tenancy on 11.01.2005, in the presence of Shamsheer Khan, Imtiazuddin Ahsan Khan, Mazhar Ahmed and other tenants; late Sri Mohd. Imam introduced the Secretary of Jamia Nizamia and Obaidullah, who was the Accountant of Jamia Nizamia, on 11.01.02005; late Sri Mohd. Imam later executed a memorandum of Hiba on 17.01.2005, and the petitioners were directed to pay rents to Jamia Nizamia; 16 of the 20 tenants were paying rents from the month of February, 2005 to Jamia Nizamia; there were only four

tenants, including the petitioners, who were not paying rent to Jamia Nizamia, inspite of attornment of tenancy; the Secretary of Jamia Nizamia had called upon the petitioners, vide letter dated 28.05.2005, to pay the rents; it was not true to suggest that late Sri Mohd. Imam had executed a gift deed in favour of the 3rd respondent; the petitioners ought to have paid rents to Jamia Nizamia, just as the other tenants were paying; when the owner himself had directed the petitioners to pay the rents to the 2nd respondent, any claim of an unconcerned person ought not to have created any doubt in the mind of the petitioners, specifically when the other 16 tenants were paying rent to the 2nd respondent from February, 2005 itself, which was within the knowledge of the petitioners; and none of the tenants had paid rent to the 3rd respondent at any point of time.

In his counter filed before the rent-controller, the 3rd respondent had contended that all the 20 mulgies were gifted to him by late Sri Mohd. Imam on 05.06.1990, and possession of the said properties were delivered by way of attornment of tenancy; the present rent is Rs.1,100/- per month, exclusive of electricity charges and municipal taxes; the 3rd respondent had filed a Suit for declaration of ownership, and perpetual injunction, against Ahmed Bee, Beejan Bee, Choti Begum and Bhanu Begum before the II Additional Chief Judge, City Civil Court, Hyderabad in O.S.No.400 of 2006, which was transferred to the XVII Additional Chief Judge-cum-III Metropolitan Sessions Judge, Hyderabad; subsequently, the said Suit was decreed on 12.04.2007 and became final; the 3rd respondent was collecting rent from the petitioners exercising his right of ownership till the death of his

paternal uncle; he had also got issued a legal notice to the petitioners, and other tenants, demanding payment of rent; it was false to state that late Sri Mohd. Imam was collecting rent from the petitioners, and late Sri Mohd. Imam has no successors; and as and when the petitioners paid rent to the 3rd respondent, he had issued rental receipts.

PW.1 was examined on behalf of the petitioners and Exs.P1 to P14 were marked. RWs.1 to 4 were examined on behalf of the respondents and Exs.R1 to R53 were marked. Exs.C1 to C11 were also marked as Court documents through RW.3 (witness of the 2nd respondent) to disprove the petitioners evidence. The Rent Controller framed the following questions for consideration:

- (1) Whether there is any bonafide doubt or dispute exists as to the landlord for receiving rents?
- (2) To what relief?

After referring to Sections 9(3), (4) (a) & (b) of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (hereinafter called the Act), and the evidence adduced by the parties, the Rent Controller held that, in cross-examination, PW.1 had admitted that 18 of the 20 tenants were paying rent to the 2nd respondent; RW.4 (rival claimant of ownership i.e., the 3rd respondent) in his cross-examination admitted that, except the petitioners, 19 of the 20 tenants were paying rent to the 2nd respondent; though most of the other tenants were paying rent to the 2nd respondent, the petitioners did not establish how they entertained any doubt regarding ownership; the petitioners claim of having received notice from respondents 1 and 3, putting forth rival claims of ownership, was not tenable as the reply notice given by the petitioners to the 1st respondent was returned un-served with the

endorsement 'not claimed'; the 1st respondent remained ex-parte in the case; the 3rd respondent had issued a paper publication claiming ownership on 06.10.2005, followed by a legal notice on 03.12.2005, long after the 2nd respondent had given notice on 28.05.2005; in their reply notice dated 06.06.2005 the petitioners had informed the 2nd respondent that several persons were claiming ownership of the property without any documentary proof, the record showed that by 06.06.2006, except the 1st respondent, no other person claimed the property; the 1st respondent did not even receive the reply notice given by the petitioners; as such, there was no claim except that of the 2nd respondent on the date of Ex.P5; and the petitioners ought not to have entertained any doubt, as on 06.06.2005, regarding payment of rent to the 2nd respondent as there was no claim of ownership in writing except that of the 2nd respondent.

After referring to Rule 5(1) of the A.P. Buildings (Lease, Rent and Eviction) Control Rules, 1961 (hereinafter called "the Rules"), the Rent Controller observed that, on a conjoint reading of Section 9(3) and Rule 5(1), a tenant, who entertains a bonafide doubt regarding the landlord who should receive the rent, should deposit the rent in the State Bank of Hyderabad, and report the matter to the Controller regarding the circumstances under which he deposited the rent in the bank; he could continue to deposit the rent as such, until the doubt was removed or the dispute was settled by a decision of a Civil Court or until the Controller made an order to the contrary; if really the petitioners had entertained a bonafide doubt regarding the landlord issue, they should first of all have deposited the rent in State Bank of Hyderabad, and should

have reported the matter to the Controller; there was no evidence on record to show that the petitioners had deposited even a single month rent in the State Bank of Hyderabad before filing of the case, or to have continued to deposit the rent in the State Bank of Hyderabad; and the petitioners had evaded payment of rent since January, 2005, without putting forth any valid reason regarding the bonafide doubt of who the landlord was.

With regards the 3rd respondent, the Rent Controller observed that a notification was published by him on 06.10.2005, much after the notice dated 28.05.2005 was issued by the 2nd respondent; the notice, allegedly sent by the 3rd respondent to the petitioners on 03.12.2005, did not see the light of the day; no cogent reasons were shown by the petitioners for not exhibiting the original notice given by the 3rd respondent to them, even if it was issued belatedly; the circumstances in which the petitioners claimed to have a bonafide doubt as to the landlord, who was entitled to receive the rent, was not proved; the petitioners should have paid the rents just like the remaining tenants who were paying rent from February, 2005; the question of any dispute regarding the landlord, who was entitled to receive the rents, was non-existent; the 3rd respondent had filed a declaration Suit against his own sisters on 29.09.2006, by which time the petitioners had already issued a reply notice informing him that respondents 1 and 2 had laid rival claims in writing of ownership over the 20 mulgies, including the petition schedule property; the 3rd respondent had not impleaded respondents 1 and 2 in the Suit filed by him for declaration in O.S. No.400 of 2006, and this was fatal to his claim of ownership over the 20 mulgies.

The Rent Controller observed that the judgment and decree in O.S. No.400 of 2006 dated 12.04.2007 was an ex-parte decree, and did not bind persons who were not parties thereto; the 3rd respondent had declared himself as the successor of late Sri Mohd. Imam, and not as a donee, to claim absolute ownership of the petition schedule property; as per the notices issued to the tenants vide Ex.R13, the 3rd respondent claimed himself as the successor of late Sri Mohd. Imam on his death; in his counter before the Rent Controller, he claimed ownership by way of a gift deed dated 05.06.1990 forgetting entirely his case of being the successor of late Sri Mohd. Imam; if really a gift was executed on 05.06.1990, late Sri Mohd. Imam could not have collected rent vide Exs.C1 to C8; even as on date, the property was not mutated; and the 3rd respondent could not establish ownership of the property by getting a declaration of his ownership in a Court of Law; the claim of the 3rd respondent, over the 20 mulgies, was self-contradictory, specifically as, by the date of the paper notice i.e. 06.10.2005, he should have known if really there was a gift dated 05.06.1990; and, therefore, the gift deed dated 05.06.1990 was unbelievable.

The Rent Controller further held that he could not decide ownership, but could examine the issue in so far as tenancy is concerned; the oral Hiba of late Sri Mohd. Imam, followed by memorandum of Hiba dated 17.01.2005, was believable as, by virtue of the said Memorandum of Hiba, all the 19 tenants, except the petitioners, were paying rent to the 2nd respondent only; further Ex.R4 sale deed dated 30.03.1962 in favour of late Sri Mohd. Imam and Ex.R5 sale deed dated 30.03.1962 and Ex.R.6 sale deed dated 19.10.1994, which were the link documents, were

exhibited through RW.1 (on behalf of the 2nd respondent); and, hence, he believed that, by virtue of the memorandum of oral Hiba (Ex.R2), the deceased late Sri Mohd. Imam had handed over symbolic possession of the properties by handing over the link documents and title deeds to RW.1 (on behalf of the 2nd respondent). The Rent Controller held that there was no bonafide doubt or dispute regarding the landlord who was entitled to receive the rent and, therefore, the petitioners' request for permission to deposit the rents in Court was liable to be rejected. The petitioners were directed to pay rent to the 2nd respondent, and the petition was dismissed with costs to the 2nd respondent throughout.

Aggrieved thereby, the petitioners carried the matter in appeal to the Additional Chief Judge, City Civil Court, Hyderabad in R.A. No.135 of 2016. In his judgment dated 24.07.2018, the Additional Chief Judge held that, in cross-examination, PW.1 had claimed ignorance stating that he did not know late Sri Mohd. Imam introducing the Secretary of the 2nd respondent to all of his tenants, and to have directed them to pay rent to the 2nd respondent; in cross-examination PW.1 had admitted that all the 16 tenants were paying rent to the 2nd respondent; the other tenants had also started paying rent to the 2nd respondent in respect of the 20 mulgies; and except for the tenants, who were agitating, the remaining 19 of the 20 tenants were paying rent to the 2nd respondent; the petition, under Section 9(3) of the Act, was filed in the fourth year after the death of late Sri Mohd. Imam; PW.1 admitted that he had filed the application only on coming to know that the 2nd respondent intended to file an eviction petition; PW.1 admitted, in cross-examination, that, though the 2nd

respondent had threatened to file a case against the tenants, they had not filed any case; he stated that he was depositing monthly rent, in respect of the petition schedule property, in his own bank account, but did not choose to file either the bank pass-book or the bank vouchers in proof of deposit of arrears of rent; he had also deposed that he did not remember the bank account number in which he was depositing the monthly rent; the conduct of the petitioners-tenants revealed that they were taking undue advantage, of the death of late Sri Mohd. Imam, with the malafide intention to avoid payment of monthly rent, and not to pay the property tax which was payable by the tenants; the judgment and decree in O.S. No.400 of 2006 showed that all the defendants therein remained absent, and were set exparte throughout the proceedings, and the said Suit was decreed exparte without adjudication; neither the tenants of late Sri Mohd. Imam nor respondents 1 and 2 were added as parties to the Suit; it was decreed on the strength of an unregistered gift deed dated 09.06.1990, which was per-se inadmissible in evidence; on the strength of an unregistered gift deed, the 3rd respondent could not acquire any kind of right or title over the said property; the judgment and decree in O.S.No.400 of 2006 was not binding upon the tenants or on respondents 1 and 2; the allegation of the 3rd respondent, that he had admitted late Sri Mohd. Imam in Mahaveer Hospital for treatment, and had incurred expenditure on such treatment, could not be believed; RW.4 did not have any source of income, and had to maintain his wife and seven children; and he had also not filed the receipts issued by Mahaveer Hospital.

With regards the paper publication made by the 3rd respondent, the Additional Chief Judge observed that no individual notice was received by the tenants for or on behalf of the 3rd respondent; the petitioners had merely stated that the 3rd respondent had once come, and had requested them to pay the rents to him; it was the case of the tenants that, during the life time of late Sri Mohd. Imam, he used to come and collect the rents, and they used to pay rent to him upto the end of December, 2004, and late Sri Mohd. Imam died on 21.02.2005; it was their admitted case that, except late Sri Mohd. Imam, they never paid rents to anybody else, and even after the death of their father, they continued to pay the rents to late Sri Mohd. Imam only; the 3rd respondent did not file any copy of the notice issued by him, or the postal acknowledgement of any notice issued to the tenants; the 3rd respondent as RW.4 had admitted, in cross-examination, that he did not know whether he had mentioned in the paper publication that late Sri Mohd. Imam had gifted the property to him; he admitted that his name was not mutated till 2013, as the owner of the property in any municipal records; and contrary to his own pleadings and evidence, he had stated that the said gift deed was executed in the year 1991, which was contrary to Ex.R10 gift deed dated 05.06.1990.

The Additional Chief Judge held that, if really the gift deed was executed in his favour, the 3rd respondent did not offer any explanation nor did he substantiate why he had waited till 03.12.2005, when the legal notice was issued to the tenants; and why he did not immediately get issued individual notices to all the tenants claiming ownership and the right to receive the rents; the

3rd respondent had stated that he did not know what was the municipal number of the premises, purchased by late Sri Mohd. Imam in the year 1962; he stated that there were 40 shops in the said building, while it was pleaded that there were 20 shops; he admitted that the gift deed was unregistered and, as per the plan attached to the gift deed, there were 14 shops with 14 tenants; he deposed that, at the time of execution of Ex.R10, there were 18 tenants in the shops; he admitted that he did not issue any notice to the tenants demanding rent from them, after execution of Ex.R10 gift deed; he had also deposed that, after execution of Ex.R10 gift deed, both late Sri Mohd. Imam and himself used to go to the tenants, and collect rents from them; and late Sri Mohd. Imam only issued receipts in his name to all the tenants, and he had not maintained any account with regard to payment of rents.

The Additional Chief Judge held that the evidence of RW.4, representing the case of the 3rd respondent, was full of material contradictions and inconsistencies, and created all sort of doubts in respect of Ex.R10 gift deed; nothing was elicited, from the cross-examination of RW.1 (examined on behalf of the 2nd respondent); RW.1 admitted, in cross-examination, that he was acquainted with late Sri Mohd. Imam since 1999, and especially from 11.01.2005 when the declaration of Hiba (oral gift) was made by him; RW.1 had no prior acquaintance with late Sri Mohd. Imam prior to 1999; Ex.R1 was executed by late Sri Mohd. Imam in the afternoon of 17.01.2005; RW.3 was one of the tenants of the 20 shops; except the petitioners, the other 19 tenants were paying rent to the 2nd respondent; a petition was filed by the 2nd respondent, in R.C. No.138 of 2013, seeking eviction of the tenants which was allowed

on the ground of willful default in payment of monthly rents by the petitioners; pursuant to the oral Hiba, the 2nd respondent was collecting rents from the other 19 tenants as was admitted by all the witnesses; neither the petitioners nor the 3rd respondent had disputed that the counter-foils of the rent receipts did not pertain to the original receipts; and it was evident that it was the 2nd respondent who was collecting rents, from time to time, from the tenants; and nobody had put forth any claim or any objection to the 2nd respondent collecting rent, or payment of rents by the tenants to the 2nd respondent.

The Additional Chief Judge further observed that, on the date of execution of the Hiba, late Sri Mohd. Imam had handed over all the original documents, and the title deeds of the property, to RW.1 who was the Secretary of the 2nd respondent; all these documents were exhibited as Exs.R4 to R8, including two original encumbrance certificates (Exs.R7 and R8) evidencing that late Sri Mohd. Imam had purchased the land with some of the shops, he had thereafter constructed some more shops, and had let out the same to different tenants; despite the petition being filed under Section 9(3) of the Act by the petitioners, the other 19 tenants continued to pay rent to the 2nd respondent; the plea of the petitioners, that Ex.R1 was forged, was not tenable; if really it was true, the other tenants would not have started paying rent to the 2nd respondent; such a contention was belied by the fact that the original documents, i.e Exs.R1 to R8, were in the possession of the 2nd respondent; if late Sri Mohd. Imam had not handed over these documents, there was no explanation how these documents came into their possession; the scribe of Ex.R1 was also examined as

RW.2, who deposed that on 11.01.2005 late Sri Mohd. Imam went to the shop of Mazhar Ahmed along with him, and in the presence of Mohd Rauf, Shamsheer Khan, Imtiazuddin Ahsaf, some other tenants and other persons, made the oral Hiba of his 20 shops to the 2nd respondent; the oral Hiba was accepted by the Secretary of the 2nd respondent; at that time, one Hafeez Ubeidullah, Accountant of the 2nd respondent, was also present; at the request of late Sri Mohd. Imam, all tenants came to the shop and were present at that time, including himself; late Sri Mohd. Imam had informed them and had declared that he had made an oral gift of all the shops in favour of the 2nd respondent, and it was accepted by the Secretary of the 2nd respondent; all the tenants were informed that the rents should be paid to the 2nd respondent; at the time of making oral Hiba, the petitioners herein, who were the tenants, were also present, and had agreed to pay rent to the 2nd respondent; on 17.01.2005 late Sri Mohd. Imam, along with him, went to the shop of Mazhar Ahmed and requested him to take his dictation in Urdu; late Sri Mohd. Imam dictated the memorandum of Hiba which was reduced into writing by him; on the said draft, late Sri Mohd. Imam made certain corrections and, accordingly, he prepared the fair copy; he, thereafter, read it; late Sri Mohd. Imam signed on the same and handed it over to the Secretary of the 2nd respondent; Ex.R1 was the memorandum of Hiba scribed by him, and signed by late Sri Mohd. Imam; RW.3, one of the tenants of late Sri Mohd. Imam, had produced a registered lease deed dated 13.05.2004 (Ex.C11) executed by him in favour of late Sri Mohd. Imam; this lease deed was much after execution of the alleged gift deed in favour of the 3rd respondent by the late Sri Mohd. Imam,

under Ex.R.10; he deposed that he paid rent to late Sri Mohd. Imam earlier to the Hiba-Ex.R1, and after execution of the Hiba, he was paying rents to the 2nd respondent; RW.3 not only filed Ex.C11 lease deed, but also Ex.C1 to Ex.C-8 original rent receipts for the period covering from 2002 to 2009, apart from the electricity bills in Exs.C9 and C10; the 3rd respondent had neither taken any steps against late Sri Mohd. Imam nor had he issued any notice to cancel Ex.C11; further, PW.1 had admitted that many donors have donated the properties to the 2nd respondent; the 2nd respondent possessed vast properties; it was evident, therefore, that there was no need to forge any document, or to bribe the other tenants; RW.3 had filed the registered lease deed-Ex.C11, executed in the year 2004, several years after the alleged gift made in favour of the 3rd respondent in the year 1990; RW.3 deposed that late Sri Mohd. Imam was collecting rents from all the tenants even in the year 1990; it was evident, therefore, that the alleged unregistered gift in Ex.R.10 was never acted upon as late Sri Mohd. Imam continued collecting the rents; there were no merits in the appeal; and the Rent Controller had rightly held that the doubts entertained by the petitioners were not real, genuine or bonafide. In the result, the Appeal was dismissed.

The second respondent herein filed R.C. No.138 of 2013, seeking eviction of the petitioners herein from the schedule premises, claiming that they were the owners of the subject mulgi; the original owner Sri Mohd. Imam had made an oral hiba of his 20 mulgies, including the petition schedule property, in favour of the 2nd respondent; afterwards due attornment of tenancy was done on 11.01.2005 in the presence of Shamsheer Khan,

Imtiyazuddin Ahsan, Mazher Ahmed and some other tenants; the rent was Rs.1100/- per month exclusive of electricity charges; they had addressed a letter dated 28.05.2005, which was received by the petitioners informing them that they had willfully failed to pay the rents after attornment of the tenancy; and the respondents had committed willful default in payment of rent from February, 2005 to April, 2013 at Rs.1100/- per month.

In their counter-affidavit filed before the Rent Controller, the petitioners contended that the 2nd respondent was neither the owner nor were they in possession of the petition schedule mulgies; the petitioners were tenants from 20.04.1995; they were the tenants of Mohd. Imam, and were regularly paying rent from time to time; after the death of Mohd. Imam in February, 2005, they did not pay rent from March 2005 onwards, and had paid rents till December, 2004; the petitioners further stated that they were depositing rent, in their own bank account, from time to time to show their bonafides; the 2nd respondent sent a letter dated 28.05.2005 informing them that the 2nd respondent was the absolute owner of the petition schedule property, vide gift deed executed by late Mohd. Imam, and had demanded payment of rents; they gave a reply in writing calling upon the 2nd respondent to prove his ownership as the first respondent had also claimed ownership over the property, and they had filed RC. No.30 of 2008; and on behalf of the 2nd respondent, P.W-1 was examined and Exs.P-1 to P-20 were marked; on behalf of the petitioners R.W-1 was examined and Exs.R-1 to R-19 were marked.

On the question whether the petitioners had committed willful default in payment of rent, the Rent Controller noted that

RC. No.30 of 2008, filed by the petitioners, went against them; aggrieved thereby they had preferred an appeal to the Additional Chief Judge; Section 9 of the Act prescribed a detailed procedure in case the tenants had a bonafide doubt about the landlord to whom the rent should be paid; Section 9(3) of the Act required the rent to be deposited before such authority, in such manner, as may be prescribed, and to be reported to the controller informing the circumstances under which such deposit was made, and to continue to deposit the rents until the doubt was removed or the dispute was settled by the competent Court; Section 9(4)(a) empowered the controller to whom a report was made, if he was satisfied that a bonafide doubt exists, to permit the tenant to deposit the rents with the same authority; Section 9(3) and 9(4)(a) clearly showed that it was not the Rent Controller before whom the rents were to be deposited, but with some other authority; Rule 5(1) of the Rules required that any tenant, who was desirous of depositing the rents under Section 9, should deposit it in the State Bank of Hyderabad, after obtaining permission for deposit of the rents from the Controller; the authority before whom rents were to be deposited was the State Bank of Hyderabad, in so far as the city of Hyderabad was concerned; Section 9(4)(a) further clarified that, if the controller was satisfied that a bonafide doubt existed regarding the landlord, he should direct the authority to hold such deposit until the dispute was settled; these provisions were required to be complied by the petitioners in order to show their bonafides; no deposits were made with the State Bank of Hyderabad, much less was any information given to the Rent Controller regarding deposit of rents; the object of the Act was to

ensure that the tenant did not keep the rents with him, whatever be the reason; the petitioners admission that they were depositing rents in their own bank account was not in conformity with the law prescribed under the Act; and the bonafides of the petitioners could not be appreciated on the basis of their depositing rent in their own bank account.

The Rent Controller further observed that default in payment of rent was admitted; the petitioners did not follow the procedure prescribed under Section 9 of the Act and Rules 5(1) of the Rules; the crux of the issue was whether the default was willful or not; when the tenant did not follow the procedure envisaged under law, in case he had any genuine doubt regarding the identity of the landlord, the default must be held to be willful; no person can be permitted to claim ignorance of the law; the petitioners had filed RC No.30 of 2008, three years after the doubt allegedly arose regarding who the landlord was; mere filing of RC 30 of 2008 did not establish the petitioners bonafides; the petitioners had committed willful default in payment of rent from February, 2005 to April, 2013 at Rs.1100/- per month; and as no petition was filed, under Section 11(4) of the Act, he was not inclined to consider the future default of rents and to give any finding on it.

The Rent Controller held that the petitioners were liable for eviction. The petition was allowed directing the revision petitioners herein to vacate the petition schedule property, and hand over physical possession of the petition schedule property to the 2nd respondent within three months from the date of the order. Aggrieved thereby the petitioners carried the matter in appeal to

the Additional Chief Judge, City Small Causes Court, Hyderabad in RA. No.36 of 2017.

In his judgment, in R.A. No.36 of 2017 dated 24.07.2018, the Additional Chief Judge held that the admitted facts were that the petitioners were tenants on a monthly rent of Rs.1100/-, exclusive of electricity charges and property tax; late Sri Mohd. Imam was the owner of 20 shops, including the subject shop, by virtue of a registered sale deed dated 22.04.1961; Sri Mohd. Imam died on 21.02.2005 leaving behind no issues, as his wife and only daughter pre-deceased him; the only daughter of Mohd. Imam, i.e., Khalida Begum @ Khaisar Begum died unmarried in the year 2000; the 2nd respondent was a registered charitable and welfare association trust established more than 147 years ago, and had formed an Arabic University for imparting Arabic and Religious education to students free of fees, clothing and hostel facility to the poor students; the 2nd respondent claimed ownership under an oral Hiba dated 11.01.2005, followed by a memorandum of gift in Ex.P-2 dated 17.01.2005; the first respondent, who was said to be a rival landlady, remained ex-parte throughout the proceedings in RC No.30 of 2008; she neither participated in the said proceedings, nor did she advance any defence; the 3rd respondent, in RC. No.30 of 2008, Sri Mohd. Ismail was also arrayed as one of the rival landlords; he filed a suit in O.S. No.874 of 2016 seeking declaration of title in respect of the properties of Mohd. Imam which was pending adjudication; the 3rd respondent, the brother's son of Sri Mohd. Imam, made a claim on the basis of an alleged unregistered gift deed dated 05.06.1990; the 3rd respondent also died after RC No.30 of 2008 was disposed of, but before filing of

the appeal in R.A. No.135 of 2016 dated 27.04.2016; therefore his LRs were added as respondents; the 3rd respondent had filed O.S. No.400 of 2006 before the Additional Chief Judge, City Civil Court, Hyderabad, against his sisters seeking declaration of title, and permanent injunction of the subject property; the said suit was decreed on 12.04.2017 as D-1 to D-4 were set ex-parte; the petitioners had filed RC No.30 of 2008 three years after the death of Mohd. Imam, alleging that respondents 1 to 3 had preferred rival claims for the rents in respect of the schedule property; all the other 19 tenants had been paying rents to them for the past more than 10 years, ever since the death of Mohd. Imam, without there being any hindrance or interference from anybody; and R.A. No.135 of 2016 filed by the petitioners, against the order passed by the Rent Controller in RC No.30 of 2008, was dismissed on merits, directing the petitioners to pay rent to the 2nd respondent.

The Additional Chief Judge observed that it was unnecessary to examine the rival claims, put forth by two different persons to be the landlords, as the same had been settled and answered in R.A. No.135 of 2016 and RA. No.203 of 2016 preferred by the petitioners and the 3rd respondent; it was held therein that there was sufficient attornment of tenancy in favour of the parties, and a jural relationship of landlord and tenant emerged between the parties from 11.01.2005 on the date of declaration of the Hiba, and attornment of tenancy by oral and written legal notices; it was the case of the 2nd respondent that they were the owners of the schedule property on account of the oral Hiba declared by the original owner of 20 shops, including the schedule property, in their favour; they had accepted delivery of possession, and had

caused attornment of tenancy on 11.01.2005, in the presence of Shamsheer Khan, Imtiyazuddin Ahsan, Mazher Ahmed and some other tenants; the original owner Mohd. Imam had delivered, and had handed over the original documents of title, including the registered sale deeds, encumbrances covered by Exs.P-3 to P-7 to the 2nd respondent; on the very same day, Sri Mohd. Imam had informed and declared the oral Hiba, and had directed all the tenants, including the petitioners, to pay rents to the landlord-2nd respondent; and he had introduced the Secretary to all the tenants.

After analyzing the evidence in detail, the Additional Chief Judge observed that, in view of the findings recorded by the Rent Controller in RC No.30 of 2008 upholding the attornment between the parties, a jural relationship of landlord and tenant emerged between the parties; these observations by the Rent Controller was confirmed in R.A. No.135 of 2016 and RA No.203 of 2016 which was exclusively the subject matter of the appeals; as the petitioners had admitted their status as tenants in respect of the subject building, the burden lay upon them to prove that they have not committed willful default in payment of monthly rents from February, 2005 to April, 2013 at Rs.1100/- per month, and even after the proceedings in the RCs and the RAs; R.W-1 admitted that the petitioners were carrying on business in the subject premises at a monthly rent of Rs.1100/-, excluding property tax; all the other tenants of 19 shops were paying rent to the 2nd respondent; RW-1 had admitted, in cross-examination, that he never deposited the rents during the pendency of RC No.30 of 2008 which was dismissed on 15.03.2016; RW-1 admitted in RC No.30 of 2008 that

they had requested the Rent Controller to decide the true owner, among the three rival persons claiming to be the landlords, so as to facilitate the tenants to pay rent to the true owner; RW-1 had consciously pleaded ignorance of the findings of the Rent Controller in RC No.30 of 2008, and whether the Rent Controller had directed the tenants to deposit the rents to the 2nd respondent (educational institution); and RW-1 had also admitted that, at the time of filing the appeal also, they had not deposited the arrears of rents on the ground that stay orders were granted.

The Additional Chief Judge further observed that RW-1 had admitted that, inspite of receipt of notice and inspite of oral demands made by the landlord, he did not pay the rents to the 2nd respondent; this admission, *prima facie*, lead to the conclusion that the petitioner-tenants had committed default, and had intentionally avoided payment of monthly rents for the subject property; if really their acts were bonafide, when they received three sets of notices from three different persons claiming to be the landlords in the year 2005, they ought to have filed the petition under Section 9(3) of the Act in the year 2005 itself; in order to establish their bonafides, and avoid the allegations of willful default in payment of monthly rents, they ought to have sought interim orders, and permission of the Rent Controller to deposit arrears of rent either on the date of first hearing of the application, or atleast after receipt of the notice from the Court; they ought to have deposited the rents in the bank and should have filed proof of the same; for reasons best known to the petitioners, despite receiving notices from three different persons claiming to be the landlords in the year 2005, they waited for more than three years,

and had filed RC No.30 of 2005 seeking permission to deposit the rents; even after filing RC No.30 of 2008, the petitioners did not obtain any interim order to deposit arrears of rent to the credit of the RC; this itself constituted supine indifference on their part in payment of arrears of monthly rent from February, 2005 till date; and they had, *prima facie*, failed to discharge the burden of proof to establish that they were not willful defaulters in payment of monthly rents.

The Additional Chief Judge further observed that RW-1 had admitted, in cross-examination, that he never enquired to whom the other 19 tenants had been paying rents; he did not file any interlocutory application in RC No.30 of 2008 seeking permission of the Rent Controller to deposit arrears of rent in order to establish their bonafides; the future rents were also pending; he also admitted that, during the pendency of RC, he never made any attempt to deposit or tender the rents to the credit of the Rent Controller; even after he received notice from the respondent-landlord, he never replied to the same before filing the present case; and even after the judgment in RC No.30 of 2008, he did not deposit arrears of rent or future rents.

The Additional Chief Judge disbelieved the petitioners contention of having deposited monthly rent into his own bank account, and noted the admission of RW-1, in cross-examination, that he did not remember what his bank account number was. The Additional Chief Judge observed that, while contending that he held a bank account in the State Bank of Hyderabad, Hussaini Alam Branch, the petitioner did not file any document to show that they had been depositing the monthly rents, in respect of the

schedule property to the credit of that account, till the doubt was removed and the dispute was settled by the competent court; no ordinary, reasonable and prudent tenant would invite the allegations of willful default; if he had any confusion, or any genuine doubt, he ought to have filed a petition under Section 8(5) of the Act seeking permission to deposit the rents; he should, atleast, have filed an interlocutory application in RC No.30 of 2008 for depositing arrears of rent and future rents in accordance with law; and the petitioners were willful defaulters in payment of monthly rent.

The Additional Chief Judge observed that, at the fag end of the proceedings before the Rent Controller, the petitioners had filed Ex.R-17 in the name of the 1st appellant with the State Bank of Hyderabad from 13.08.2004; the bank statement disclosed deposit of rents from October, 2005 till October, 2016 at irregular intervals at Rs.1100/- per month; deposit of monthly rents into their own account by the tenants did not constitute either valid tender, or deposit of monthly rents; in case the landlord was not ascertained, the tenants should have followed the procedure under Section 9; in case the landlord was ascertained, and he refused to receive the rents, it was always open to the tenants to take recourse to the provisions of Section 8(5) of the Act; in the present case, although the tenants had resorted to and had taken recourse to the procedure under Section 9(3) of the Act, the said application under Section 9(3) was filed more than three years after the death of the original landlord; the cause of action for initiating proceedings arose on the death of Sri Mohd. Imam; it did not absolve the liability of the petitioners in tendering monthly rent in time; the

procedure adopted by the petitioner was unknown to law, and on the strength of Exs.R-17 and R-18, they could not succeed in the eviction application.

The Additional Chief Judge further noted that, in their cross-examination, the petitioners had admitted that they were wilful defaulters in payment of monthly rent; they again admitted, in cross-examination on 20.12.2016, that they did not tender rent or pay rent or deposit the arrears of rent, from January 2005 till date, to the 2nd respondent or to the credit of RC No.30 of 2008, RC No.138 of 2013 or RA No.135 of 2016; as on date, there was no deposit of rent in any Court, except depositing arrears of rent at the time of registering the appeal; and they ought to have filed an application under Section 9(3) immediately after receipt of three claims from three different persons.

The Additional Chief Judge took note of the judgments in **Rajendra Prasad v. Narsingh Prasad**¹ and **K.P. Janakiram v. K. Suguna Bai**² relied upon by the petitioner to contend that the jurisdiction of the Rent Controller was limited to decide whether denial of the claim of tenant was bonafide; the Rent Controller cannot decide the existence of title with finality; in the absence of a jural relationship of land and tenant between the parties, and when the tenancy and title to the premises was denied, the question of depositing rents did not arise; and, consequently, willful default in payment of monthly rent did not arise. The Additional Chief Judge thereafter held that the observations and findings recorded by the Rent Controller, in RC No.30 of 2008 under Section 9(3) of the Act, and the orders passed under Section

¹ 2005 (4) ALD 45

² 1995(2) ALT 61

9(4)(b) of the Act, stood on a different footing; the Rent Controller had not decided the existence of title with finality, and had incidentally gone into and ascertained who was entitled to receive the rents; the Rent Controller had decided the jural relationship of landlord and tenant between the parties, irrespective of the title dispute; it was crystal clear, and was in fact admitted, that the tenants had not deposited monthly rents from February, 2005 to April, 2013 at the first hearing of RC No.30 of 2008; even post proceedings also, they had not deposited the monthly rents; they had, thereby, committed default in depositing monthly rents; and this invited the eviction orders.

The Additional Chief Judge found no material irregularity or illegality in passing the eviction orders, and observed that the decisions relied upon by petitioner were of no assistance to them. RA No.36 of 2017 was dismissed confirming the orders of the Rent Controller in RC No.138 of 2013 dated 31.12.2016; and two months time was granted to the tenants to vacate the said premises, and deliver possession thereof to the landlord, failing which the 2nd respondent-landlord was at liberty to get the tenants evicted by due process of law, and recover the expenses incurred thereon from the them.

Before us Sri Aadesh Varma, Learned Counsel for the petitioner, while reiterating the contentions urged before the authorities below, submitted that both the authorities had erred in recording a conclusive finding that the 2nd respondent was the landlord; the very fact the petitioners were depositing monthly rent in their bank account showed their bonafides; it was only because the identify of the landlord was not known, that they could not pay

the rents to the landlord within time; the very fact that they had deposited monthly rent in the bank account would show that the petitioners had no intention of committing willful default in payment of rent; and both the authority below erred in declaring the title of the 2nd respondent, and thereafter holding that the petitioners had committed willful default in paying rents to them. Learned Counsel would rely on **K.P. Janakiram**²; **S. Saraswathi v. Y. Laxminarayana**³; **Rajendra Prasad**¹; and **Khursheed Sultana v. Mir Asif Ali**⁴.

The jurisdiction of the High Court u/s.22 of the Act is not as wide as that of an appellate Court, but it is wider than the jurisdiction under Sec. 115 C.P.C. (**K.P. Janakiram**²; **M/s. Sri Raja Lakshmi Dyeing Works v. Rangaswarny Chettiar**⁵; **Helpep Gipdharbhai v. Saiyed Mohmad Mirasahee Kadri**⁶; **Palichetty Latchanna v. Giduthupi Apparao**⁷). The jurisdiction of the Rent Controller, under the Act, is limited and is distinct from that of the jurisdiction of the Civil court. Issues of title cannot be examined by the Rent Controller. In other words, the authority under the Rent Control Act is merely entitled to determine whether there was any jural relationship of landlord and tenant between the parties but not disputes of title. It is only the civil court that has jurisdiction to go into the issue of title. (**S. Saraswathi**³).

The proper remedy, for the person claiming a right of ownership over the demised premises, is to invoke the jurisdiction of Competent Civil Court, and agitate the title dispute. (**Rajendra Prasad**¹). It is not the Law that whenever the landlord establishes

³ 2004 (6) ALD 161

⁴ 2009(1) ALD 593

⁵ AIR 1980 SC 1253

⁶ AIR 1987 SC 1782

⁷ AIR 1983 AP 244

title, and the tenant fails to prove the title pleaded by him, such a person shall be construed to be a tenant under the landlord. His possession could be in any other capacity like a mortgagee or a licensee or even a person in adverse possession. At the most it can be said that the landlord has, *prima facie*, proved his title. (**K.P. Janakiram**²).

Section 9 of the Act relates to the right of a tenant to deposit rent in certain cases and, under sub-section (3) thereof, where any *bona fide* doubt or dispute arises as to the person who is entitled to receive the rent for any building, the tenant may deposit such rent before such authority and in such manner as may be prescribed, and shall report to the Controller the circumstances under which such deposit was made by him and may continue to deposit any rent which may subsequently become due in respect of the building before the same authority and in the same manner until the doubt is removed or the dispute is settled by the decision of a competent Court or by a settlement between the parties or until the Controller makes an order under clause (b) of sub-section (4) as the case may be. Section 9(4)(a) of the Act requires the Controller, to whom a report is made under sub-section (3), if he is satisfied that a *bona fide* doubt or dispute exists in the matter, to direct that, pending removal of the doubt or settlement of the dispute as aforesaid, the deposit be held by the authority concerned. Under Section 9(4)(b), if the Controller is not so satisfied, he shall forthwith order payment of the amount deposited to the landlord. Section 9(5) stipulates that where the Controller passes an order, under clause (a) of sub-section (4), any amount or amounts deposited, under sub-section (3), may be withdrawn only

by the person who is declared by a competent Court to be entitled thereto, or in case the doubt or dispute is removed by a settlement between the parties, only by the person who is held by the Controller to be entitled to the amount or amounts in accordance with such settlement.

The manner of deposit of rent under Section 9(3), in cases where the tenant has a bonafide doubt as to the person who is entitled to receive the rent, is in the manner prescribed by Rules. Rule 5(1) of the Rules provides that a tenant, desirous of depositing the rent under Section 9, shall deposit the same, if the building concerned is in the City of Hyderabad, in the State Bank of Hyderabad, after obtaining permission for the deposit of the rent from the Controller. Rule 5(2) provides that the challan, accompanying the deposit of the rent, shall be in the Andhra Pradesh Treasury Code in Form No.10 in triplicate and shall specify (a) the name and address of the tenant by whom or on whose behalf the rent is deposited; (b) the name and address of the landlords entitled to receive the rent deposited; (c) the rent at which, and the period for which, the rent is deposited; (d) the description of the building in respect of which the rent is deposited; (e) the provision of the Act, including the circumstances under which the rent is deposited; and (f) the head of account to which the rent is credited, namely: "P. II. Deposits and Advances - (Deposits and bearing interest -C. Other Deposit Accounts - Civil Deposits - Personal Deposits -Personal Ledger Account of the Controller or appellate authority, as the case may be".

Rule 5(3) stipulates that one copy of the challan for the deposit of rent, returned by the State Bank of Hyderabad

Controller's Office or treasury as the case may be, after endorsing thereon receipt of the amount deposited, shall be delivered in the office of the Controller or the appellate authority, as the case may be. Rule 5(4) provides that, on delivering one copy of the challan, the Controller or the appellate authority, as the case may be, shall acknowledge its receipt on the back of the challan retained by the tenant and take necessary action for the service of the notice of deposit on the person or persons concerned within seven days of the delivery thereof. The notice of deposit shall be served on the person or persons concerned in one or other of the modes specified in Rule 16. Under Rule 5(6), a tenant against whom an application for eviction has been made before the Controller shall deposit all the arrears of rent due by him, if any, in respect of the building within such reasonable time, not exceeding 15 days, as may be specified by the Controller.

Section 9 of the Act is an enabling provision whereby a tenant, who entertains a reasonable doubt as to who among the landlords is entitled to receive the rent, can approach the Court seeking permission to deposit the rents till the conflicting claims are resolved among various persons claiming to be the landlord. In such proceedings the Rent Controller should confine his examination to whether the tenant had a bonafide doubt, and if the answer to the said question is in the affirmative, the Section 9 application should be ordered. (**Khursheed Sultana**⁴).

It is no doubt true that, in proceedings under the Act, the Rent Controller and the Appellate Authority cannot decide questions of title, as such disputes fall within the province of the competent Civil Court. The Rent Controller, in proceedings under

Section 9 of the Act, is however obligated to enquire whether or not the petitioner-tenant had the bonafide belief that the 2nd respondent was not its landlord, for it is only then would the question of their being permitted to deposit, both the arrears of rent and the monthly rent, in terms of Section 9 of the Act and Rule 5 of the Rules, arise.

It is not in dispute that the subject building, containing 20 mulgies, belonged to Sri Mohd. Imam, and the petitioners herein were paying rent to him, as his tenants, till December, 2004. The 2nd respondent claimed that Sri Mohd. Imam had made an oral hiba (oral gift) of all his 20 shops, including the subject shop, in its favour after due offer, acceptance and delivery of possession by way of attornment on 11.01.2005 in the presence of Shamsheer Khan, Imtiyazuddin Yaseen, Nazeer Ahmed and some other tenants present at that time; Sri Mohd. Imam had informed and declared the said oral hiba, in favour of the 2nd respondent, and had directed all the tenants, including the petitioners, to pay the rent to the 2nd respondent; he had introduced the Secretary of the 2nd respondent to all the tenants; and, subsequently, Ex.P-1 memorandum of hibanama dated 17.01.2005 was executed.

The case of the petitioners, on the other hand, is that there were three rival claims to ownership of the subject property i.e., by respondents 1, 2 and 3. While the 1st respondent herein did not even contest the proceedings before the Rent Controller and was set *ex parte*, the 3rd respondent (the brother's son of Sri Mohd. Imam) claimed that Sri Mohd. Imam had executed an unregistered gift deed, in Ex.R-10 dated 05.06.1990, in his favour. The 3rd respondent had filed OS No.400 of 2006 before the XVII Additional

Chief Judge, City Civil Court, Hyderabad against his sisters and aunt seeking declaration of title in respect of the subject property. All the defendants in the said Suit remained absent, they were set *ex parte*, and the suit was decreed. The 2nd respondent was not a party to the suit. The 3rd respondent has, subsequently, filed O.S. No.874 of 2016 before the IX Additional Chief Judge, City Civil Court seeking declaration of title in respect of the properties of Sri Mohd. Imam which is still pending adjudication.

In his order, the Rent Controller has noted that the 2nd respondent had issued Ex.P-4 notice dated 28.05.2005, and it is only thereafter that the 3rd respondent had published a notification in Ex.P-14 dated 06.10.2005. While taking note of the contention of the 3rd respondent, of having allegedly issued a notice to the petitioners on 03.12.2005, the Rent Controller held that the said notice did not see the light of the day even till the date of the order; as against the 20 mulgies which were let out by Sri Mohd. Imam, tenants of the remaining 19 mulgies were paying rent to the 2nd respondent ever since February, 2005; even as on date, no civil dispute was pending between the rival claimants; even before institution of the suit in O.S. No.400 of 2006, the petitioners had issued a reply notice dated 12.12.2005 to the 3rd respondent's counsel informing him that respondents 1 and 2 had made rival claims of ownership over the 20 mulgies including the petition schedule property, and yet the 3rd respondent did not implead respondents 1 and 2 in the suit filed by him in OS No.400 of 2006; and, while in his notice in Ex.P-13, the 3rd respondent had claimed himself to be the successor of late Sri Mohd. Imam, he had later, in his counter before the Rent Controller, claimed ownership

pursuant to a gift executed in his favour in terms of the gift deed dated 05.06.1990.

The Rent Controller disbelieved the 3rd respondent's claim of a gift having been made by Sri Mohd. Imam in his favour on 05.06.1990, since Sri Mohd. Imam continued to collect rents even thereafter vide Ex.C-1 to C-8; and the property was not mutated in the name of the 3rd respondent. The Rent Controller also held that the oral hiba dated 17.01.2005 of Sri Mohd. Imam, followed by the memorandum of oral hiba dated 17.01.2005, was believable as, pursuant thereto, all the 19 tenants (except the petitioner) were paying rent to the 2nd respondent; further, the sale deed dated 30.03.1962 (Exs.R-4 and R-5) and Ex.R-6 sale deed dated 19.10.1994 executed in favour of Sri Mohammed Imam (which were the link documents), were in the custody of the 2nd respondent; and, therefore, it did appear that, by virtue of the memorandum of oral hiba, Sri Mohd. Imam had delivered symbolic possession of the 20 mulgies, handing over the link documents and title deeds to the 2nd respondent. The Rent Controller also noted that the application, under Section 9(3) of the Act, was filed by the petitioners only on 04.02.2008 i.e. three long years after the demise of Sri Mohd. Imam and, if really their failure to pay rent to any of the respondents was bonafide, they ought to have made an application under Section 9(3) much earlier.

In the appeal, preferred by the petitioner against the order of the Rent Controller, the Additional Chief Judge took note of the fact that, as per the admission of all the witnesses who were examined, the 2nd respondent was collecting rents from the 19 tenants each month, obtaining their signatures on the counterfoils

as evidenced by Ex.R-3 (3 counterfoils - rent receipt books: each book contained counterfoils of rent receipts bearing Nos.1401 to 1499; 1901 to 2000, and 1101 to 1200); each book contained 100 receipts; neither the petitioners nor the first and third respondents had disputed that the counterfoils did not pertain to the original receipts issued to the tenants of the building which was previously owned by Sri Mohd. Imam; the original documents of title of the property of Sri Mohd. Imam was available with the 2nd respondent; the alleged unregistered gift deed dated 05.06.1990 was hit by the provisions of the Stamp Act and the Registration Act, and was inadmissible in evidence; even otherwise the 3rd respondent did not produce any witness including the scribe to prove Ex.R-10 unregistered gift deed dated 05.06.1990; no witness, who was aware of the signature of Sri Mohd. Imam, was produced by the 3rd respondent in support of his claim that the signature on the gift deed was that of Sri Mohd. Imam; on the other hand the scribe of Ex.R-1 (memorandum of hiba) Sri Mohd. Saleem, who was working as the Manager of Femina Sarees, had deposed that, on 11.01.2005, Sri Mohd. Imam had gone to the shop of Mazhar Ahmed along with him, and in the presence of Mohd. Rauf, Shamsheer Khan, Imtiazuddin Ahsaf, some other tenants and other persons, had made the oral hiba of 20 shops in favour of the 2nd respondent; all the tenants of the said market came to the shop of Mazhar Ahamed, and Sri Mohd. Imam informed all of them that he had made an oral gift in favour of the 2nd respondent, and it was accepted by the Secretary of the 2nd respondent; all the tenants were informed that the rent should be paid to the 2nd respondent; and at the time of making the oral hiba, both the

appellants were also present, and had agreed to pay rent to the 2nd respondent. RW-2 had also deposed that, on 17.01.2005, the memorandum was reduced into writing at the dictation of Sri Mohd. Imam; on the said draft Sri Mohd. Imam had made certain corrections and, accordingly, he had prepared a fair copy; and, thereafter, Sri Mohd. Imam had signed on the same, and had handed it over to the Secretary of R-2. On an elaborate analysis of the evidence, on record, the appellate authority concurred with the conclusions of the Rent Controller that, for the limited purpose of determining who the landlord of the petitioners was, it did appear that the 2nd respondent was the landlord and the petitioners were liable to pay rent to him.

On the bonafides of the 3rd respondent's claim of ownership of the subject premises, the appellate authority also noted that RW-3, one of the tenants of the 20 shops, had filed the original lease deed in Ex.C-11 executed in their favour by Sri Mohd. Imam in the year 2004, which is several years after making the alleged gift in Ex.R-10 in the year 1990; and the very fact that, even in 2004, Sri Mohd. Imam had executed the lease deed belied the 3rd respondent's claim of the entire property having been gifted in his favour in the year 1990 itself. The Additional Chief Judge recorded the admission of PW-1 that arrears of rent were payable from January, 2005 till the date of his cross-examination; and in spite of an oral demand and a written notice of demand of rent, and despite receipt of Ex.P-4 notice from the 2nd respondent on 28.05.2005 calling upon him to pay rent, he did not pay rent to either R-1 or R-2.

While at the fag end of the proceedings, the petitioner produced certain bank statements in support of their claim to have deposited the rent in their own bank account, the requirement of Rule 5(1) of the Rules is for deposit of the rent in the State Bank of Hyderabad, as the subject mulgies are located in the city of Hyderabad. Rule 5(4) of the Rules requires one copy of the challan to be delivered to the Controller or the appellate authority who is, thereafter, required to proceed with the hearing of the matter.

In the present case, the requirements of Rule 5 of the Rules has not been complied with as, on the petitioners own showing, rents were deposited not with the State Bank of Hyderabad but in their own bank account, that too infrequently. The very fact that an application under Section 9(3) was filed three years after the demise of Sri Mohd. Imam, and even thereafter the petitioners did not deposit arrears of rent with the State Bank of Hyderabad shows that their claim to have a bonafide doubt, regarding the subject premises being owned by the 2nd respondent, does not appear to be justified. The very fact that all the remaining 19 tenants of the building have, ever since February, 2005, (the month following the oral hiba said to have been made by Sri Md. Imam in favour of the 2nd respondent), paid monthly rent to the 2nd respondent would show that all of them have accepted that the 2nd respondent is their landlord. The petitioners silence for three years after the death of Sri Md. Imam, before approaching the Rent Controller by way of an application under Section 9(3) of the Act on 04.02.2008, and their failure to deposit rents as stipulated under Rule 5 of the Rules, also supports the conclusion of both the Rent Controller and the Appellate Authority that the petitioners failure

to pay rents was not because of any bonafide doubt in their minds regarding who the landlord was.

R.C.No.138 of 2013 was filed by the 2nd respondent herein seeking eviction of the petitioners on the ground of willful default in payment of rent. Section 10 of the Act relates to eviction of tenants and, under sub-section (1) thereof, a tenant shall not be evicted, whether in execution of a decree or otherwise, except in accordance with the provisions of Sections 10, 12 and 13. Under Section 10(2)(i), a landlord, who seeks to evict his tenant, shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied (i) that the tenant has not paid or tendered the rent due by him in respect of the building within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or, in the absence of any such agreement, by the last day of the month next following that for which the rent is payable, the Controller shall make an order directing the tenant to put the landlord in possession of their building and, if the Controller is not so satisfied, he shall make an order rejecting the application. Under the proviso thereto, in any case falling under clause (i), if the Controller is satisfied that the tenant's default to pay or tender the rent was not willful, he may, notwithstanding anything in Section 11, give the tenant a reasonable time, not exceeding fifteen days, to pay or tender the rent due by him to the landlord upto the date of such payment or tender and, on such payment or tender, the application shall be rejected.

The plea of wilful default, in proceedings under Section 10 of the Act, is indirectly linked with the Section 9 petition moved by the tenant. (**Khursheed Sultana**⁴). The proviso, to Section 10 of the Act, specifically provides that, whenever a tenant denies title of the landlord, if such a denial is bonafide, it is incumbent on the part of the Rent Controller to direct the landlord to approach the Civil Court to establish her title and seek eviction of the tenant. (**K.P. Janakiram**²). Under Section 10(i) proviso and Sections 10(2)(vi), 12 and 13, the jurisdiction of the Rent Controller is limited to decide whether denial or claim by the tenant is bonafide or not, and it cannot decide the existence of title with finality. Where the landlord applies for eviction, the only question that the Rent Controller is competent to decide is whether the denial or claim of the landlord's title by the tenant, if any, is bona fide or not and, if it is bona fide, the landlord should be relegated to the Civil Court seeking eviction on one or other of the grounds mentioned in Sections 10, 12 or 13 of the Act. If, however, it is not bonafide, the landlord can be granted eviction by the Rent Controller. (**Rajendra Prasad**¹). In order to establish wilful default, in proceedings under Section 10 of the Act, a supine indifference on the part of the tenant is essential. (**Khursheed Sultana**⁴). If the tenants deny the title of the landlords malafide, in the counter filed in the eviction petition, the same furnishes a ground for eviction. (**Majati Subbarao v. P.V.K.Krishna Rao (deceased) by L.Rs**⁸; **Khursheed Sultana**⁴).

Both the Authorities (Rent Controller and the Appellate Authority) have concurrently held that the petitioners were not

⁸ AIR 1989 SC 2187

justified in their claim of having a bona-fide doubt, as to whether the 2nd respondent was their landlord, for not paying rents to them. Both the authorities were justified, therefore, in holding that the petitioners had committed willful default in payment of rent to the 2nd respondent, and the 2nd respondent was justified in making an application to the Rent Controller seeking their eviction from the subject premises. As noted hereinabove, even if the petitioners had any bonafide doubt regarding ownership of the 2nd respondent over the subject property, they ought to have made an application under Section 9(3) of the Act to the Rent Controller soon after the death of late Sri Mohd. Imam, and ought to have deposited the monthly rent with the State Bank of Hyderabad, in terms of Rule 5 of the Rules. Their silence for three years after the death of Sri Mohd. Imam even to file a petition before the Rent Controller under Section 9 of the Act in February, 2008, and their failure to deposit rent even thereafter in terms of Rule 5 of the Rules, is also proof of their lack of bonafides. As both the authorities below have disbelieved the petitioners' claim to have had a bonafide doubt in this regard, and as the orders of both the authorities are well considered and reasoned, I see no reason to take a view different from what both the appellate authority and the Rent Controller have taken.

Both the Civil Revision Petitions fail and are, accordingly, dismissed. The miscellaneous petitions, if any pending, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

Date:05.10.2018.
MRKR/CS