

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2343 OF 2017

ORDER:

This Civil Revision Petition, under Section 22 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short 'the Act'), is filed challenging the order dated 06.01.2017 in R.A. No.18 of 2012 passed by the Chief Judge, City Small Causes Court, Hyderabad, whereby the revision petitioner/ tenant was directed to evict the schedule premises bearing No.10.3.148/1/B,(D-24), East Marredpally, Secunderabad.

The revision petitioner herein is the tenant and the respondent herein is the landlord. The parties will hereinafter be referred to as the 'tenant' and the 'landlord' for the sake of convenience.

The landlord is a Church of South India Trust Association (CSITA) Company incorporated under Section 26 of Companies Act, 1913 (now under Section 25 of Companies Act, 1913), own the petition schedule premises bearing Municipal No.10-3-148/1/B, (D-24), filed a petition before the Rent Controller for eviction of the tenant on the ground that it has been providing accommodation to several persons like Pastors and workers who are working in the Churches and also Diocese, and since they are accommodated in a very old premises named 'Widow Home', the said building became dilapidated, a resolution was passed to demolish and reconstruct the building and therefore the petition schedule premises bearing No.10-3-148/1/B(D-24) is required for providing accommodation to some of the pastors working in the institution.

The tenant disputed the right of the landlord to claim eviction of the tenant from the premises on the ground that the landlord is not in occupation of the building and therefore not entitled to claim eviction of tenant in occupation under Section 10(3)(c) of the Act and that apart the landlord did not disclose the properties own and possessed by it in Secunderabad and Hyderabad areas. During enquiry before the Rent Controller, on behalf of the landlord, P.Ws.1 and 2 were examined and Exs.P.1 to P.3 were marked. None were examined on behalf of the tenant. The Rent Controller, upon hearing both the counsel, dismissed the eviction petition.

Aggrieved by the order dated 29.11.2011 passed by the Principal Rent Controller in R.C. No.103 of 2010, the landlord preferred an appeal in R.A. No.18 of 2012 before the Chief Judge, City Small Causes Court at Hyderabad and during pendency of the appeal, the landlord filed an application under Section 11(2) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Rules, 1961 (for short 'the rules') annexing certain documents. The appellate court allowed the petition considering those documents, held that the requirement of the premises by the landlord is bonafide, while ordering eviction of the tenant in occupation of the schedule premises.

Aggrieved by the eviction order passed by the appellate authority while setting aside the order passed by the rent controller, the present revision under Section 22 of the Act is filed on various grounds, mainly on the ground that unless the landlord is in occupation of the part of the main building, is disentitled to

claim eviction of tenant in occupation under Section 10(3) (c) of the Act, but the appellate court on erroneous appreciation of law and fact ordered eviction to provide additional accommodation to the landlord. At the same time, the appellate authority considered various documents, which are filed along with the appeal, under Rule 11(2) of the Rules and based on those documents, without marking them as exhibits, allowed the appeal ordering eviction of the tenant in occupation of the petition schedule premises.

A specific ground was raised in the grounds of revision about filing of eviction petition against one C.D.Reddy and obtaining possession of such premises is sufficient for providing accommodation to the pastors, but the appellate court failed to consider the contentions urged by the tenant and committed an error.

Learned counsel for the tenant filed written arguments mainly on the ground that the appellate authority committed serious irregularity violating Rule 11(2) of the Rules, besides raising the other grounds relying on the judgments of various other High Courts. During hearing, he reiterated the grounds urged in the revision.

Sri J.Prabhakar, the learned counsel appearing for the landlord supported the order in R.A. No.18 of 2012 passed by the Chief Judge, City Small Causes Court, Hyderabad, in all respects, while contending that when the tenant did not enter into the witness box, the Court can draw an adverse inference that the plea raised by the tenant is not true and the appellate authority did

commit no error in ordering eviction of the premises and prayed for dismissal of the revision petition.

Considering rival contentions, perusing the material on record, the point that arise for consideration is,

Whether the order dated 06.01.2017 in R.A. No.18 of 2012 passed by the Chief Judge, City Small Causes Court, Hyderabad, is vitiated by any irregularity? If so, whether the eviction orders passed by the appellate authority be sustained in law?

POINT:

According to Section 22 of the Act, the High Court may, at any time, on the application of any aggrieved party, call for and examine the records relating to any order passed or proceeding taken under this Act by the Controller in execution under Section 15 or by the appellate authority on appeal under Section 20, for the purpose of satisfying itself as to the 'legality', 'regularity' or of propriety of such order or proceeding, and may pass such order in reference thereto as it thinks fit.

The powers of this Court under the special enactment i.e. Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 are wider than the powers under Section 115 of CPC, but this Court cannot re-appreciate the evidence while deciding the revision, if the concurrent fact findings are recorded by the courts below. If for any reason, the Court finds any irregularity or impropriety or illegality in the order passed by the courts below, Section 22 of the Act permits this Court to interfere with such findings.

The Full Bench of the Apex Court elaborately discussed the scope of jurisdiction under Section 22 of the Act and held that the revisional court can interfere with the concurrent findings when the court finds illegality or irregularity or perversity in the orders of the Courts below.

Here in this case one of the irregularity pointed out by the counsel for the tenant is that the appellate authority received additional evidence under Rule 11(2) of the Rules framed under the Act and considered those documents at paragraph 13 of the order under challenge and recorded a finding that the rental agreement dated 11.11.2012 said to be entered by Rev.Dr.N.R.Paul Raj with Smt.Dakshyani goes to show that he has been residing in a rented premises at present agreeing to pay monthly rent of Rs.14,000/- per month. Another rental agreement dated 05.11.2014 produced by the petitioner also goes to show that one of its Church Father by name Sri M.Jayanand is also residing in a rented premises by entering into a lease agreement with one Sri Manne Ajay Kumar agreeing to pay monthly rent of Rs.18,000/-. The other rental agreement dated 25.07.2015 produced by the landlord also goes to show that one of its pastors by name Rev. Sri D.John Jonathan is also residing in a rented premises by entering into a rental agreement with one Sri Lalichaty Srikanth. Similar rental agreement dated 11.08.2015 produced by the landlord also goes to show that Rev. Sri A.Jacob, one of the pastors of the landlord/ trust is residing in a tenanted premises and on the strength of these documents, the contention of the landlord is that he required the petition schedule premises for residential accommodation of

pastors and employees working under its control, accepted the requirement of the landlord as additional accommodation.

When a petition filed under Rule 11(2) of the Rules, which is identical to Rule 27 of Order 41 of CPC, the procedure to be followed by the appellate authority is that if it decides to make further inquiry, it may take additional evidence or require such evidence to be taken by the Controller.

Here the appellate authority decided to make further inquiry and in such case, the documents filed along with a petition under Rule 11(2) of the Rules, are to be marked as exhibits either by making inquiry by the appellate authority or requiring Rent Controller to conduct further inquiry and decide the appeal.

If a petition is filed under Rule 27 of Order 41 of CPC to receive the documents at the appellate stage, the necessary procedure is to be followed by the appellate court under Rule 28 of Order 41 of CPC. Thus, Rule 11(2) of the Rules is identical to Rules 27 and 28 of Order 41 of CPC. But, here the appellate authority, without following the procedure contemplated under Rule 11(2) of the Rules, similar to Rules 27 and 28 of Order 41 of CPC, straight away considered the documents at paragraph 13 of the order under challenge and accepted the contention that some of the pastors are residing in a rental premises entering into the lease agreement with the owners. The procedure adopted by the appellate authority in considering those documents while disposing the appeal is irregular. In **Beebanu vs Abdul Rasheed**¹ the Division Bench of this Court considered the scope of Rule 11(2)

¹ 2002 (2) ALD 474

of the Rules and held that Sub-section (3) of Section 20 of the Act does not confer plenary powers upon the appellate Court. A jurisdiction, is circumscribed by expressions employed therein. The appellate Court, however, has a power to make further enquiry. It can, therefore, accept additional evidence. Its jurisdiction to decide an appeal, is thus not confined only to the materials placed before the Rent Controller. Such further enquiry can be made by the appellate Court either by itself or through the Rent Controller, as provided for under Section 20(3) of the Act read with Rule 11(2) of the Rules. But there cannot be any doubt whatsoever that the power of remand of the appellate Court is limited. It cannot, having regard to its own power of holding further enquiry to enable it to allow the parties to bring on further materials on record, cannot set aside the judgment passed by the Rent Controller. Such a power of remand can be exercised even by the Courts of appeal if the same comes within the Order XLI, Rules 23, 23-A and 25 of the Code. Even in terms of Order XLI, Rule 25, the appellate Court may while retaining the records onto itself may direct the Rent Controller to take further evidence in the event, an appropriate issue had not been framed by the Rent Controller or no evidence thereupon had been adduced. The power conferred upon the appellate Court by reason of Sub-section (3) of Section 20 read with Rule 11 of the Rules, must therefore, be held to be akin to the power conferred upon the appellate Court as envisaged under Order XLI, Rule 25.

Thus it is clear from the judgment of the Division Bench of this Court that the appellate court has to make inquiry or direct

the rent controller to conduct further inquiry if the appellate authority satisfies that the court inquire into further. Instead of making such inquiry as required under Rule 11(2) of the Rules, straight away the documents were received and considered at length without marking them as exhibits, and concluded that the requirement of the premises as additional accommodation is bonafide. Passing an order without following the procedure provided under Rule 11(2) read with Section 20(3) of the Act is an irregularity committed by the appellate authority in disposal of the appeal.

When this Court finds that the order is vitiated by irregularity, this Court can exercise power under Section 22 of the Act and pass appropriate orders. Therefore, in view of the irregularity committed by the appellate authority, the order under challenge is liable to be set aside.

The other grounds raised by the landlord and tenant needs no further examination in this revision in view of the finding recorded above regarding irregularity committed by the appellate authority.

In the result, the civil revision petition is allowed setting aside the order dated 06.01.2017 in R.A. No.18 of 2012 passed by the Chief Judge, City Small Causes Court at Hyderabad, restoring the appeal to its original number in the appeals register, while remanding the matter to the appellate authority to follow the procedure provided under Rule 11(2) of the A.P. Buildings (Lease, Rent and Eviction) Control Rules, 1961 read with Section 20(3) of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 and

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to pass appropriate orders within three months from the date of receipt of a copy of this order. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this civil revision petition shall stand closed.

M.SATYANARAYANA MURTHY, J

Date:02.03.2018
BV

