

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.120 OF 2011

ORDER:

This revision petition is filed under Section 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short 'the Rent Control Act') questioning the judgment and decree dated 01.11.2010 passed by the Senior Civil Judge-cum-Rent Control Appellate Tribunal, Mangalagiri in R.C.A.No.1 of 2008 confirming the findings recorded by the Principal Junior Civil Judge-cum-Rent Controller, Mangalagiri in R.C.C.No.2 of 1999 vide order dated 04.07.2002.

2. The petitioner herein is the tenant and the respondent is the landlord. The parties hereinafter referred to as tenant and landlord.

3. The landlord filed eviction petition under Section 10(2)(i), (3)(a)(i), (a) (iii) (b) of the Rent Control Act for eviction of the tenant from the schedule premises on two grounds. The first ground is that the tenant committed willful default in payment of rent @ Rs.920/- per month from August, 1995 onwards despite legal notice dated 08.12.1998 got issued by the landlord demanding payment of arrears of rent. It is also contended that the landlord is Vysya by caste and having experience in various businesses, the premises is required for his own business as he did not possess any other non

residential premises of his own within the municipal limits of Mangalagiri and sought eviction of the tenant from the schedule premises.

4. The tenant filed counter while admitting the relationship of landlord and tenant, but disputed the quantum of rent payable for the two mulgies while raising a specific contention that initially Item No.1 was obtained i.e. one room in the year 1995 on monthly rent of Rs.920 and Item No.2 was obtained on lease on monthly rent of Rs.530/- and rent shall be paid on or before 7th of succeeding month as per English calendar. Whenever, the tenant paid rent, the landlord used to obtain signatures on the piece of paper being maintained by him for the purpose of accounting.

5. The tenant specifically admitted that for the last time, the landlord received Rs.920/- and Rs.530/- separately in the month of July, 1998 and at that time, the landlord demanded the tenant to vacate the schedule premises and deliver vacant possession as per oral understanding between the landlord and tenant, but the tenant refused to vacate the same and started creating troubles to the landlord is not true. The tenant admitted that he received legal notice dated 08.12.1998 through counsel for the landlord and issued reply on 19.01.1999. Thus, the landlord was in the habit of collecting rent from the shop of the tenant and that the tenant was not tendering rent at the place of the landlord and

that in the absence of any other practice, it is the duty of the landlord to come to the shop of the tenant and collect rents as agreed within the stipulated time. Therefore, non payment of rent for any period would not constitute willful default as the landlord did not collect the rent from the tenant at his shop. As such on the ground of willful default, the tenant cannot be evicted from the schedule premises and requirement of premises is not bona fide and prayed for dismissal of the eviction petition.

6. During enquiry before the Court below, on behalf of the landlord, PWs.1 and 2 were examined and marked Exs.A.1 to A10. On behalf of the tenant, RWs.1 and 2 were examined and marked Exs.B.1 to B.11.

7. Upon hearing argument of both counsel, the Rent Controller ordered eviction of the tenant. Aggrieved thereby, the tenant preferred appeal challenging the eviction order passed by the Rent Controller, the Appellate authority on elaborate consideration of the evidence on record concluded that the tenant committed willful default in payment of rent from August, 1998 onwards and consequently dismissed the appeal confirming the eviction order passed by the Rent Controller.

8. The tenant being unsuccessful through out, preferred the present revision petition on various grounds. The main ground urged before this Court is that the rent payable for

the premises is 1450/- and not Rs.920/- per month and thereby the provisions of Rent Control Act have no application to the building in occupation and apart from that the eviction order passed by the Rent Controller, which was confirmed by the appellate authority, are erroneous for the simple reason that both the authorities lacks inherent jurisdiction to pass such orders. The order of eviction on the ground of willful default in payment of rent is not based on any material and at the same time, the landlord did not disclose details of the property, which he owned and possessed within the Mangalagiri Municipality area, where the schedule premises is situated to claim eviction of the tenant, who is in occupation of non residential premises. Both Rent Controller and Appellate authority failed to appreciate the evidence in proper perspective and requested to set aside the orders passed by the Courts below.

9. During hearing learned counsel for the tenant reiterated the grounds urged in the petition disputing the findings recorded by the Courts below.

10. On considering rival contentions and perusal of the material available on record, the points that arise for consideration are:

- 1) *Whether the rent payable for the premises is Rs.1450/- for both the items, if so whether the Rent Controller is competent to pass order under Section 10(2)(1), 10(3)(iii)(b) of the Rent Control Act?*

2) *Whether the tenant committed willful default in payment of rent from the month of August, 1998 till the date of filing the eviction petition, if so the tenant is liable for eviction?*

POINT No:1

11. The first and foremost contention raised by learned counsel for the tenant is that the rent payable for the premises is Rs.1450/- per month for both the items, but not Rs.920/- per month as contended by the landlord, thereby, the Court below lacks inherent jurisdiction to entertain and the order for eviction of the tenant in occupation of the premises.

12. According to Section 32(c) of the Rent Control Act as amended by Act 17 of 2005, if the rent payable for the premises does not exceeds Rs.3,500/- in the areas covered by municipal corporations in the State and does not exceed Rs.2,000/- per month in other areas, the Rent Control Act has no application. The amendment is prospective in operation and this provision does not effect the proceedings pending as on the date of its coming into force before the civil Courts or appellate Courts.

13. RCC was filed in the year 1999 and by that date, the building fetching Rs.1,000/- in the areas of municipalities are alone governed by the provisions of the Rent Control Act, the Court below and the appellate Court concluded that the rent payable for the premises is only Rs.920/- per month. There

was a legal correspondence between the parties demanding payment of rent. Ex.B.1 is the rent receipt issued by the landlord on 03.08.1998 and Ex.B.2 is the MO receipt dated 23.08.1998. These two documents clearly establish that the rent payable for the premise is Rs.920/- per month, which is in vernacular language i.e. Telugu.

14. Ex.B.1 bears the signature of the landlord across the revenue stamp. This document itself suffice to conclude that the rent payable for the premises is Rs.920/- per month as on the date of filing the eviction petition. Even in the legal correspondence between the parties i.e. Exs.A.1, A2 and A3 corresponding to Exs.B.5, B.3 and B.7, the consistent case of the landlord from the beginning is that the rent payable for the premises was only Rs.920/- per month. Even in the reply notice, the tenant did not dispute the rent. Ex.B.2-MO receipt was returned as refused by the landlord. The tenant sent notice requiring the landlord to furnish his bank account to deposit rent to the credit of RCC. Therefore, voluminous evidence produced before the Court established that the rent payable for the premises was only Rs.920/- for items 1 and 2 and the appellate Court while deciding Point No.2 recorded a finding that rent payable for the premises is Rs.920/- per month and held that the Rent Controller had jurisdiction to entertain the petition and pass appropriate orders. This fact finding cannot be interfered while exercising power under Section 22 of the Rent Control Act. Hence, the concurrent

fact findings recorded by both the Courts regarding jurisdiction of Rent Controller against the tenant cannot be interfered. Accordingly, the point is answered.

POINT No.2:

15. Admittedly, the tenant paid rent for the month of July, 1998 through Ex.B.1. Thereafter, he remitted by money order on 23.08.1998 i.e. Ex.B.2. After sending Ex.B.2-money order, the tenant issued legal notice – Ex.A.1 on 08.12.1998 and the landlord issued reply notice-Ex.A.2 on 09.01.1999. This correspondence would go to show that the tenant remitted the rent by money order and the reason for sending the money order is that the landlord did not collect the rent as per usual practice at his shop. Even otherwise, when the landlord failed to specify the bank name and account enabling the tenant to deposit rent to the credit of RCC, the course left open to the tenant is to file application under Section 8(5) of the Rent Control Act. But here, the tenant did not file any such application under Section 8(5) of the Rent Control Act and failed to pay rent for the period from August, 2008 onwards. Therefore, non payment of rent by the tenant, even assuming for the moment that the landlord failed to comply the demand made by the tenant to specify the account number and bank name to deposit the rent, it is the duty of the tenant to tender entire arrears of rent and continue to deposit rent during pendency of the petition. But obviously

for different reasons, the tenant did not deposit the rent resorting to the procedure under Section 8(5) of the Rent Control Act. This Court time and again held that deposit of rent and failure to intimate to the landlord enabling the landlord to withdraw the amount also would constitute willful default within Section 10(2)(i) of the Rent Control Act. Since the obligation of the tenant to pay or tender the rent cannot be said to have been discharged unless and until the landlord is given with the information along with the particulars enabling them to withdraw the amount, and if not, the same is willful default as held by the Apex Court in **N.D.Thandani (dead) by LRs v Arnavaz Rushtom Printer and another**¹. The same view was expressed by this Court in **Shamlal Tiwari v Najmunnisa Begum @ Zainabunnisa Begum and others**².

16. In the present case, the tenant resorted to file petition under Section 8(5) of the Rent Control Act, but failed to file any application and deposited rent to the credit of RCC, strictly adhering to the compliance of Section 8(5) of the Rent Control Act. Therefore, failure to deposit rent having resorted to the procedure under Section 8(5) of the Rent Control Act, amounts to willful default in payment of rent.

17. Mere default is not sufficient to order eviction of a tenant and it must be willful. The word willful is not defined

¹ 2004(3) ALD(SC) 1

² 2009(1) ALT 303 (S.B>.)

in the Rent Control Act, but it means consciously and deliberately failing to pay rents, amounts to willful default vide **Rakapalli Rajarama Gopalarao v Naragani Govinda Sehrarao**³ and **In Re, Young and Harston**⁴ .

18. The expression 'willful' excludes casual, accidental, bona fide or unintentional acts or genuine inability. It is to be noted that a wilful act does not encompass accidental, involuntary, or negligence. It must be intentional, deliberate, calculated and conscious with full knowledge of legal consequences flowing therefrom. The expression 'wilful' means an act done with a bad purpose, with an evil motive as held in **State of Orissa and others v Md.Iliyas**⁵ . Applying the above principle, it is clear that the tenant paid rent for the month of July, 1998. The tenant shall pay rent on or before 7th of succeeding month and he remitted rent by money order vide Ex.B.2, dated 23.08.1998 and thereafter issued notice on its refusal, calling upon the landlord to specify the bank account and bank name to deposit rent payable for the premises in compliance of Section 8(5) of the Rent Control Act, but he did not choose to file any application under Section 8(5) of the Rent Control Act with regard to the rent payable in credit of the petition under Section 8(5) of the Rent Control Act. Therefore, it is clear that the tenant is aware of the ill-consequences that flow from such default in payment of

³ AIR 1989 SC 2185

⁴ (1885) 31 Ch.D. 168

⁵ 2006(1) SCC 275

monthly rent for the building and having opted to deposit rents after due compliance of procedure prescribed under Section 8 of the Rent Control Act, did not deposit the rent nor paid to the landlord and such default would obviously be willful.

19. An identical question came up in **S.Sunderam Pillai etc v V.R.Pattabiraman etc.**⁶, the Full Bench of the Apex Court while considering the provisions of Tamilnadu Buildings Lease and Rent Control Act, which is in *para materia* with the A.P. Act, held that the real meaning and content of the word 'wilful' or the words 'wilful default', in the book 'A Dictionary of Law' by L.B. Curzon, at page 361 the words 'wilful' and 'wilful default' have been defined thus:

'Wilful'-deliberate conduct of .l person who is a free agent, knows what he is doing and intends to do what he is doing.

'Wilful default'-Either a consciousness of negligence or breach of duty; or a recklessness in the performance of a duty. In other words, 'wilful default' would mean a deliberate and intentional default knowing full well the legal consequences thereof.

In Words and Phrases', Volume 11 A (Permanent Edition) at page 268 the word 'default' has been defined as the non-performance of a duty, a failure to perform a legal duty or an omission to do something required. In volume 45 of 'Words & Phrases', the word 'wilful' has been very clearly defined thus: 'Wilful'-intentional; not incidental or involuntary: -

⁶ AIR 1985 SC 582

- done intentionally, knowingly, and purposely, without justifiable excuse as distinguished from an act done carelessly; thoughtlessly, heedlessly or inadvertently:

- in common parlance word 'wilful' is used in sense of intentional, as distinguished from accidental or involuntary.

P. 296 - "Wilful" refers to act consciously and deliberately done and signifies course of conduct marked by exercise of volition rather than which is accidental, negligent or involuntary.

In Volume III of Webster's Third New International Dictionary at page 2617, the word 'wilful' has been defined thus:

"governed by will without yielding to reason or with out regard to reason; obstinately or perversely self-willed."

The word 'default' has been defined in Vol. I of Webster's Third New International Dictionary at page 590 thus;

"to fail to fulfil a contract or agreement, to accept a responsibility; to fail to meet a financial obligation."

In Black's Law Dictionary (4th Edn.) at page 1773 the word 'wilful' has been defined thus:

"Wilfulness" implies an act done intentionally and designedly; a conscious failure to observe care; Conscious; knowing; done with stubborn purpose, but not with malice.

The word "reckless" as applied to negligence, is the legal equivalent of "willful" or "Wanton".

20. In view of the definition, if the default is intentional, deliberate, calculated and conscious with full knowledge of legal consequences flowing there from, then it would be 'willful default'. In the present case, as discussed in the earlier paras, the tenant failed to deposit rent though opted the procedure under Section 8 of the Rent Control Act.

Therefore, such default would constitute willful default to order eviction of the tenant in occupation. As such, the Court below and appellate authority rightly recorded concurrent fact findings that the tenant committed willful default in payment of rent and ordered eviction, which warrants no interference by this Court while exercising power under Section 22 of the Rent Control Act. According, the point is answered.

21. In view of the foregoing discussion, the tenant committed willful default in payment of rent and the concurrent findings recorded by the Courts below cannot be disturbed in view of the limited jurisdiction that conferred on this Court and consequently, the revision petition is liable to be dismissed.

22. In the result, the revision petition is dismissed confirming the judgment and decree dated 01.11.2010 passed by the Senior Civil Judge-cum-Rent Control Appellate Tribunal, Mangalagiri in R.C.A.No.1 of 2008 confirming the findings recorded by the Principal Junior Civil Judge-cum-Rent Controller, Mangalagiri in R.C.C.No.2 of 1999 vide order dated 04.07.2002. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this petition shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

01.03.2018
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