

THE HON'BLE JUSTICE SRI T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.2112 of 2016

ORDER:

This Civil Revision Petition is filed by the petitioners-proposed respondent Nos.2 and 3, under Section 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short, 'the Act'), assailing the order dated 18.3.2016 passed in R.A.No.171 of 2015 on the file of the Additional Chief Judge, City Small Causes Court, Hyderabad, wherein and whereby the order dated 07.9.2015 passed in I.A.S.R. No.2427 of 2015 in R.C.No.259 of 2012 on the file of the Principal Rent Controller, Hyderabad, dismissing the petition filed by the petitioners under Order I Rule 10 of CPC, was confirmed.

2. Heard the learned counsel for both the parties.

3. The first respondent filed R.C.No.259 of 2012 against the second respondent under Sections 10(3)(a)(iii)(b) of the Act, for eviction and recovery of the petition schedule Mulgi bearing Municipal No.5-7-560, situated at Nampally, Hyderabad (for short, the petition schedule Mulgi). During the pendency of the Rent Control Case, the petitioners filed I.A.S.R.No.2427 of 2015 under Order I Rule 10 of CPC to implead them as respondent Nos.2 and 3 in the Rent Control Case. The first respondent-landlord filed counter opposing the claim of the petitioners. The second respondent-tenant also filed counter. The Rent Control Court, after affording reasonable opportunity to both parties, dismissed the petition on merits. Feeling aggrieved by the order dated 07.9.2015 passed in I.A.S.R.No.2427 of 2015, the petitioners

preferred R.A.No.171 of 2015 on the file of the Court of the Additional Chief Judge, City Small Causes Court, Hyderabad. The Appellate Authority, after considering the material available on record, dismissed the appeal. Hence, the petitioners filed the present revision petition.

4. Learned counsel for the petitioners strenuously submitted that the Authorities below failed to consider the averments made in the affidavit on correct lines. He further submitted that the Appellate Authority, without considering the decisions cited by the petitioners, dismissed the petition on assumptions and presumptions. ***Per contra***, learned counsel for the first respondent submitted that the petitioners will not fall within the definition of ‘tenant’ as defined under the Act. He further submitted that the petitioners filed the petition with an ulterior motive to drag on the proceedings.

5. Now the point that arises for consideration in this revision petition is:

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

6. It is an admitted fact that the mother of the first respondent let out the petition schedule Mulgi to one Mohd. Ahmed Ali in the year 1950, for commercial purpose. He continued as tenant in the petition schedule Mulgi till his death. The second respondent is the son of late Mohd. Ahmed Ali. The first respondent filed R.C. No.259 of 2012 against the second respondent. The petitioners,

who are claiming to be the daughters of original tenant-late Mohd. Ahmed Ali, filed the petition to implead them as respondent Nos.2 and 3 in R.C.No.259 of 2012. To substantiate the argument, learned counsel for the petitioners has drawn the attention of this Court to the decision of the Hon'ble apex Court in **Smt.Gian Devi Anand v Jeevan Kumar**¹, wherein it was held at paragraph Nos.36 and 37 as follows:

36. Accordingly, we hold that if the Rent Act in question defines a tenant in substance to mean a tenant who continues to remain in possession even after the termination of the contractual tenancy till a decree for eviction against him is passed', the tenant even after the determination of the tenancy continues to have an estate or interest in the tenanted premises and the tenancy rights both in respect of residential premises and commercial premises are heritable. The heirs of the deceased tenant in the absence of any provision in the Rent Act to the contrary will step into the position of the deceased tenant and all the rights and obligations of the deceased tenant including the protection afforded to the deceased tenant under the Act will devolve on the heirs of the deceased tenant. As the protection afforded by the Rent Act to a tenant after determination of the tenancy and to his heirs on the death of such tenant is a creation of the Act for the benefit of the tenants, it is open to the Legislature which provides for such protection to make appropriate provisions in the Act with regard to the nature and extent of the benefit and protection to be enjoyed and the manner in which the same is to be enjoyed. **If the Legislature makes any provision in the Act limiting or restricting the benefit and the nature of the protection to be enjoyed in a specified manner by any particular class of heirs of the deceased tenant on any condition laid down being fulfilled, the benefit of the protection has necessarily to be enjoyed on the fulfilment of the condition in the manner and to the extent stipulated in the Act.** The Legislature which by the Rent Act seeks to confer the benefit on the tenants and to afford protection against eviction, is perfectly competent to make appropriate provision regulating the nature of protection and the manner and extent of enjoyment of such tenancy rights after the termination of contractual tenancy of the tenant including the rights and the nature of protection of the heirs on the death of the tenant. Such appropriate provision may be made by the Legislature both with regard to the residential tenancy and commercial tenancy. It is, however, entirely for the Legislature to decide whether the Legislature will make such provision or not. In

¹ AIR 1985 SC 796

the absence of any provision regulating the right of inheritance, and the manner and extent thereof and in the absence of any condition being stipulated with regard to the devolution of tenancy rights on the heirs on the death of the tenant, the devolution of tenancy rights must necessarily be in accordance with the ordinary law of succession.

37. In the Delhi Act, the Legislature has thought it fit to make provisions regulating the right to inherit the tenancy rights in respect of residential premises. The relevant provisions are contained in Section 2(1)(iii) of the Act. With regard to the commercial premises, the Legislature in the Act under consideration has thought it fit not to make any such provision. **It may be noticed that in some Rent Acts provisions regulating heritability of commercial premises, have also been made whereas in some Rent Acts no such provision either in respect of residential tenancies or commercial tenancies has been made.** As in the present Act, there is no provision regulating the rights of the heirs to inherit the tenancy rights of the tenanted premises which is commercial premises, the tenancy right which is heritable devolves on the heirs under the ordinary law of succession. The tenancy right of Wasti Ram, therefore, devolves on all the heirs of Wasti Ram on his death.

7. As per the principle enunciated in the case cited supra, right of tenancy is heritable unless there is a specific bar in the Act to implead the legal representatives of the deceased-tenant.

8. The fact remains that the mother of the first respondent filed R.C.No.542 of 1996 for eviction of the second respondent from the petition schedule Mulgi on the ground of personal requirement and that petition was dismissed by the Rent Control Court.

9. The present R.C. No.259 of 2012 was filed in the year 2012. From 2012 to 2016, the petitioners have not evinced any interest to file the petition under Order I Rule 10 of CPC. I have carefully scanned the affidavit filed by the petitioners, line by line, in order to ascertain whether they have mentioned any reason much less cogent and valid reasons for non-filing of this petition at the earliest point of time.

10. The reason mentioned by the petitioners is that their brother-second respondent informed about filing of the R.C. by the first respondent against him only, without impleading the petitioners. The second respondent is the brother of the petitioners. If really the petitioners have any interest or semblance of interest in the petition schedule Mulgi, what prevented the second respondent to inform the same immediately after receipt of notice in the R.C. In view of the facts and circumstances of the case, I am of the considered view that the second respondent got filed the present petition through the petitioners with an intention to drag on the proceedings.

11. In order to appreciate the contention of learned counsel for the petitioners, it is not out of place to extract hereunder Section 2(ix) of the Act, which reads as follows:

2. Definitions

(ix) 'Tenant' means any person by whom or on whose account rent is payable for a building and includes the surviving spouse, or any son or daughter, or a deceased tenant who had been living with the tenant in the building as a member of tenant's family up to the death of the tenant and a person continuing in possession after the termination of the tenancy in his favour, but does not include a person placed in occupation of a building, by its tenant or a person to whom the collection of rents or fees in a public market, cart-stand or slaughter-house or of rents for shops has been framed out or leased by a local authority.

12. A perusal of the above Clause, at a glance, postulates two conditions: (1) the legal heirs have resided in the petition schedule premises till the death of the original tenant, and (2) they have been continuing in the same premises, even after the death of

original tenant. Establishment of the above conditions is *sine qua non* to allow the petition filed under Order I Rule 10 of CPC.

13. For better appreciation of rival contentions, it is not out of place to extract hereunder relevant portion from paragraph No.2 of the affidavit filed by the petitioners:

2. I submit that I came to know from my brother i.e., respondent No.2 herein, that the first respondent filed above R.C. for eviction/fixation of fair rent against second respondent without making us as party in the above R.C. Our father died leaving behind 7 daughters and 2 son including us. During life time of our father, all legal heirs assisted the business run by our father. After death of our father all legal heirs are running the business and paying rents in the name of deceased in respect of petition schedule premises.

14. A perusal of the record reveals that the petitioners assisted their father in the business during his life time. Being the children, assisting the father is not at all equivalent to doing of business along with the father. It is not the case of the petitioners that they did the business along with their father in the petition schedule Mulgi. The Rent Control Court as well as the Appellate Authority observed that the petitioners have not placed any material to show that they are carrying on the business along with the second respondent. The Rent Control Court as well as the Appellate Authority considered facts and circumstances of the case in the light of Clause (ix) of Section 2 of the Act and the principle enunciated in **Navneet Rai v Otmal**² and **Tribhuvan Dutt v Jainarayan**³, and rightly dismissed the petition.

15. The learned counsel for the petitioners submitted that the Authorities below have not followed the procedure as contemplated

² AIR 1995 Rajasthan 119

³ AIR 2009 Rajasthan 174

under Section 24 of the Act. This point was not urged either before the Rent Control Court or the Appellate Authority. It is needless to say that any point, which was not urged before the Authorities below, cannot be urged, for the first time, in the revision. Section 24 of the Act deals with the procedure to be followed by or against the legal representatives of the deceased-parties to the proceedings. In the instant case, the petitioners will not come within the definition of “tenant” as defined under Section 2(ix) of the Act. In such circumstances, the petitioners are not entitled to file application under Order I Rule 10 of CPC. Viewed from any angle, the petitioners are neither necessary nor proper parties to the proceedings.

16. This Court can set aside the findings of the Authorities below if the same are perverse or there is manifest error in the order. The findings recorded by the Authorities below are supported by material available on record. Viewed from any angle, I am unable to accede to the contention of learned counsel for the petitioners that the findings recorded by the Authorities below are perverse. There is no illegality, irregularity or impropriety in the impugned order warranting interference of this Court.

17. In the result, the civil revision petition is dismissed. Miscellaneous petitions, if any pending in this Civil Revision Petition shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 08.8.2018
YS