THE HON'BLE JUSTICE SRI T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.5501 of 2017

ORDER:

1 This Civil Revision Petition is filed under Section 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short, 'the Act'), challenging the order dated 21.8.2017 passed in R.A.No.108 of 2016 on the file of the Additional Chief Judge, City Small Causes Court, Hyderabad, wherein and whereby the order dated 26.12.2015 passed in R.C.No.154 of 2010 on the file of the IV Additional Rent Controller, Hyderabad ordering eviction of the petitioner herein from the petition schedule property and handover the vacant physical possession of the same to the respondent herein within three months from the date of order, was confirmed.

2 For the sake of convenience, the parties to this Civil Revision Petition will hereinafter be referred to as they were arrayed before the Rent Controller, to avoid confusion.

3 The facts leading to the filing of the present Civil Revision Petition, in nutshell, are as follows:

4 The petitioner had purchased the petition schedule property – house bearing D.No.16-2-677/1/C and G (Old house bearing D.No.16-2-677/1), opposite to Tirumala Towers, Judges Colony, Malkajgiri from one Abdul Latif under a registered sale deed dated 13.11.2006 (Ex.P.1). The said Abdul Latif informed to the respondent about the sale of the petition schedule property in favour of the petitioner. In the month of January 2007, the petitioner personally met the respondent and informed about the purchase of the petition schedule property by him for which the

respondent agreed to pay the rents to him. However, the respondent neither paid the rent nor vacated the petition schedule property. In the month of January 2008, the son of the respondent created nuisance and manhandled the petitioner. Thereupon, the petitioner lodged a complaint (Ex.P.2) to the SHO, Chandrayanagutta P.S. on 31.01.2008. The petitioner lodged another complaint (Ex.P.3) on 12.8.2008 against the respondent. The respondent filed O.S.No.5334 of 2009 on the file of the Court of the XIX Junior Civil Judge, City Civil Court, Hyderabad seeking perpetual injunction against the petitioner and the original owner Abdul Latif and the same was decreed. The petitioner got issued a legal notice (Ex.P.6) dated 23.12.2009 and the same was received by the respondent. On 01.03.2010 the respondent issued a reply (Ex.P.11) with false and frivolous allegations. The respondent intentionally committed default in payment of rent @ Rs.1,800/- p.m. The petitioner purchased the petition schedule property for the purpose of setting up clinic by his son who is a Medico. The petitioner required the petition schedule property for his personal and *bona fide* requirement. Hence, the petition.

5 The respondent filed counter denying all the averments made in the petition including the alleged purchase of the petition schedule property by the petitioner from the original owner Abdul Latif. The respondent has been in possession and enjoyment of the petition schedule property as tenant of Abdul Latif. The petitioner filed the petition with false and frivolous allegations. The respondent requested the original owner to sell the entire property to him in the year 1996 itself. But the original owner did not agree

for the proposal of the respondent. The petitioner lodged false complaints against him and his family members on 12.8.2008 and 18.10.2009. Having no other alternative, the respondent filed O.S.No.5334 of 2009 against the petitioner and Abdul Latif, which was decreed. The petitioner owns and possesses commercial and residential premises other than the petition schedule property. The petitioner has not made out any case seeking eviction of this respondent from the petition schedule property for his *bona fide* and personal requirement. In the absence thereof, such a claim has to be dismissed and rejected *in limine*.

6 To substantiate the case, before the Rent Controller, the petitioner himself examined as P.W.1 and got marked Exs.P.1 to P.12. P.Ws.2 and 3 were examined to prove the negotiations between the petitioner and the respondent. To dislodge the case of the petitioner, the respondent himself examined as R.W.1 and got marked Exs.R.1 to R.21. R.W.2 was examined to prove that the respondent has not committed default in payment of rent.

7 Basing on the oral, documentary evidence and other material available on record, the learned Rent Controller arrived at a conclusion that the respondent committed default in payment of rent and the petitioner required the petition schedule property for his personal requirement and accordingly allowed the petition. Aggrieved by the order of the learned Rent Controller dated 26.12.2012, the respondent preferred R.A.No.154 of 2010 on the file of the Additional Chief Judge, City Small Causes Court, Hyderabad. The appellate authority, after reappreciating the oral and documentary evidence available on record, arrived at a

conclusion that the respondent committed wilful default in payment of rent and the petitioner required the petition schedule property for his personal occupation and accordingly dismissed the appeal. Hence the present Civil Revision Petition by the respondent – tenant.

8 The learned counsel for the respondent / tenant (petitioner herein) strenuously submitted that the findings recorded by the authorities below are perverse and such findings can be set aside by this Court while exercising revisional jurisdiction under Section 22 of the Act. He further submitted that the authorities below misconstrued the scope of Section 10 (3) (a) (iii) of the Act and allowed the petition on assumptions and presumptions, which is not permissible under law. He further submitted that the authorities below failed to consider that till filing of the R.C.C, the respondent was not aware of the purchase of the petition schedule property by the petitioner and that fact was not considered by the authorities below in right perspective. He further submitted that the authorities below failed to observe that the respondent paid rent to the original owner and hence the petition itself is not maintainable under law.

9 *Per contra,* the learned counsel for the petitioner / land lord (respondent herein) submitted that the findings of the authorities below are based on evidence, much less legally admissible evidence; therefore, it is a fit case to dismiss the Civil Revision Petition. He further submitted that the revisional court shall not lightly interfere with the concurrent findings of fact recorded by the authorities below. He further submitted that the respondent is not

legally entitled to urge in this Civil Revision Petition for the first time that the petitioner has not strictly adhered to the procedure as contemplated under Section 10 (3) (a) (iii) of the Act, without taking such plea in the counter.

10 Basing on the rival contentions, the point that arises for consideration in this Civil Revision Petition is:

> "*Whether there is any illegality, irregularity or impropriety in the orders passed by the authorities below, warranting interference of this Court while exercising revisional jurisdiction under Section 22 of the Act?*"

11 The following admitted facts can be culled out from the pleadings. One Abdul Latif is the original owner of the petition schedule property. The said Abdul Latif let out the petition schedule property to the respondent on a monthly rent of Rs.1,800/- in the year 1996. The petitioner purchased the petition schedule property from Abdul Latif under Ex.P.1 registered sale deed dated 13.11.2006. The petitioner lodged Exs.P.2, P.3 and P.4 complaints against the respondent dated 31.01.2008, 12.8.2008 and 18.10.2009 respectively. The respondent filed O.S.No.5334 of 2009 on the file of the Court of the XIX Junior Civil Judge, City Civil Court, Hyderabad seeking perpetual injunction against the petitioner and the original owner Abdul Latif and the same was decreed. Ex.R.21 is the C.C of the Judgement in O.S.No.5334 of 2009. Legal notices were exchanged between the parties prior to filing of the petition. Ex.P.6 is the quit notice, Ex.P.11 is the legal notice, Ex.P.8 is the reply notice, Ex.P.9 is the postal receipt and Ex.P.10 is the un-served postal cover.

12 The crucial question that falls for consideration at this juncture is whether the respondent has committed default in payment of rent from January 2007 to April 2010.

13 To substantiate the argument, the learned counsel for the petitioner has drawn the attention of this Court to the ratio laid down in the following decisions:

Hindustan Petroleum Corporation Limited vs. Dilbahar Singh[1] wherein the Hon'ble apex Court held at Para No.45 as under:

> "45. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on re-appreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity."

The same principle was reiterated by this Court in **Shankaramma v. Mohammed Abdul Hameed**[2]. As per the principle enunciated in the case cited supra, if the tenant paid the rent to the transferor (original landlord), the transferee landlord is not

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[1] 2014 (9) SCALE 657
[2] 2005 LawSuit (AP) 883

entitled to claim rent prior to the transfer in view of the proviso to Section 109 of the Transfer of Property Act.

14 As per the principle enunciated in the cases cited supra, if there is any illegality, irregularity or impropriety in the impugned orders, this court can set aside the same by exercising jurisdiction under Section 22 of the Act.

15 Let me consider the facts of the case on hand in the light of the above legal principle.

16 The contention of the learned counsel for the respondent is that the respondent paid the rents regularly to the original owner without knowledge of purchase of the petition schedule property by the petitioner. As per the testimony of R.W.1 he handed over the cheques to one Taher Ahmed by taking receipts Exs.R.1 to R.7. Exs.R.8 to R.13 are bank receipts. Exs.R.14 to R.20 are statements of account of the respondent. It is relevant to mention here that the said Taher Ahmed was one of the attestors of Ex.P.1 sale deed under which the petitioner purchased the petition schedule property from the original owner – Abdul Latif. The learned Rent Controller as well as the appellate authority arrived at a conclusion that the alleged signatures of Taher Ahmed on Exs.R.1 to R.7 are not tallying with his admitted signature on Ex.P.1. In view of Section 73 of the Indian Evidence Act, the Court is empowered to compare the admitted signature with the disputed signature of a person in order to arrive at a just and reasonable conclusion. The finding recorded by the authorities below on this aspect is supported by evidence, much less, legally admissible

evidence. If really the respondent handed over the cheques under Exs.R.1 to R.7 rent receipts to Taher Ahmed, what prevented him to examine him as his own witness or at least as a court witness in order to prove Exs.R.1 to R.7? Non-examination of Taher Ahmed creates any amount of doubt on the stand taken by the respondent. In the cross examination, R.W.1 in unequivocal terms deposed that the bank statement filed by him only shows that the rent was deducted from his account but does not reflect to which specific account the said amounts were credited. If really the respondent paid the rent to the original owner, what prevented him to call for the bank statement of the original owner? This is one of the circumstances, which casts a cloud on the version of the respondent. In the absence of such correlation, much reliance cannot be placed on the self-serving testimony of R.W.1. The Rent Controller as well as the Rent Control Appellate Authority arrived at a conclusion that the respondent failed to establish that he paid rent to the original owner for the period January 2007 to April 2010. I am fully endorsing the findings recorded by the authorities below on this aspect.

17 The next contention of the learned counsel for respondent is that the respondent came to know about the purchase of the petition schedule property by the petitioner after receiving Ex.P.6 - quit notice dated 23.12.2009. It is the contention of the petitioner that the respondent, in the presence of mediators, accepted to pay the rent to him. If the testimony of R.W.1 is taken into consideration he came to know about the purchase of petition schedule property by the petitioner after receipt of Ex.P.6. The

petitioner filed the petition in the month of April 2010. As observed earlier, the respondent filed O.S.No.5334 of 2009 on the file of the Court of the XIX Junior Civil Judge, City Civil Court, Hyderabad seeking perpetual injunction against the petitioner and the original owner Abdul Latif and the same was decreed. If really the respondent has no knowledge about the purchase of the petition schedule property by the petitioner, how he filed the above suit against the petitioner, is not properly explained by him.

18 Let me consider the material available on record on this aspect. It is needless to say that the parties to the proceedings may distort true facts in order to suit their claim. The court has to scrutinise the testimony of the parties to the proceedings, who are interested witnesses, meticulously so as to eliminate the exaggerations. The possibility of distortion of facts by the petitioner and the respondent in order to suit their claim cannot be ruled out completely. As seen from the testimony of P.W.1 he supplied photocopy of Ex.P.1 sale deed to the counsel for the respondent in O.S.No.5334 of 2009. Of course, the respondent had denied the same in the cross examination.

19 In the cross examination, R.W.1 in unequivocal terms, deposed that from July 2007 onwards, the electricity charges demand notices were issued in the name of the petitioner. His testimony further reveals that he paid the electricity charges in the name of the petitioner. Basing on the admission made by the respondent, the court can safely arrive at a conclusion that the respondent has been paying electricity charges in the name of the petitioner from July 2007 onwards. Had it been the case of the

respondent that he does not know the petitioner prior to 2007, there may be some justification in the stand taken by him. Per contra, in the cross examination the respondent categorically deposed that he knows the petitioner since long time. The admission made by the respondent in the cross examination clearly indicates that he knows the petitioner even much prior to the filing of the suit O.S.No.5334 of 2009. If that is so, what prevented the respondent to approach the petitioner in the month of July 2007 itself in order to ascertain how the electricity demand notice was issued in the name of the petitioner instead of Abdul Latif, who was the original owner? Having prior acquaintance with the petitioner, the respondent cannot plead that he filed the suit without verifying with the petitioner about his right of alleged interference with the possession and enjoyment of the petition schedule property by the respondent.

20 As seen from the testimony of P.Ws.2 and 3, in the month of January 2007, the petitioner, in their presence, had informed the respondent that he purchased the petition schedule property under Ex.P.1 registered sale deed on 13.11.2006 from the original owner Abdul Latif. In the cross examination R.W.1 admitted that he came to India in the month of January 2007.

21 In the cross examination of these two witnesses nothing was elicited to show that due to previous animosity with the respondent these witnesses came to the court to depose false against the respondent. In the absence of animosity, there is no need for P.Ws.2 and 3 to come to the Court and depose false against the respondent in order to help the petitioner. In one way P.Ws.2 and

3 are independent witnesses, whose testimony cannot be discarded on flimsy grounds. P.Ws.2 and 3 categorically deposed that when the petitioner informed the respondent about the purchase of petition schedule property by him from the original owner, in their presence, the respondent agreed to pay the rents to the petitioner. The evidence of P.Ws.2 and 3 is cogent, convincing and consistent with each other. The testimony of these two witnesses is fully corroborating with the testimony of P.W.1.

22 The material available on record clinchingly establishes that the respondent came to know about purchase of the petition schedule property by the petitioner in the month of January 2007. The respondent having knowledge about the said fact, ought to have paid the agreed rent to the petitioner. But for the reasons best known to him, the respondent did not choose to pay the rents to the petitioner. The fact remains that the respondent did not pay even a single pie to the petitioner towards rent from January 2007 till filing of the petition by the petitioner in the month of April 2010. Basing on the material available on record, this Court can safely arrive at a conclusion that the respondent had committed default in payment of rents to the petitioner. The Rent Controller as well as the appellate authority arrived at a conclusion that the respondent committed wilful default in payment of rent to the petitioner. I am fully agreeing with the findings recorded by the authorities below. Having regard to the facts and circumstances of the case, this court is of the considered view that the ratio laid down in **Shankaramma** case (2 supra) is no way helpful to the case of the respondent.

23 The predominant contention of the learned counsel for the respondent is that the petitioner has not specifically pleaded material facts in the petition as contemplated under Section 10 (3) (a) (iii) of the Act, that itself is a valid ground to dismiss the petition even without going into the merits of the case. To substantiate the argument, the learned counsel for the respondent has drawn the attention of this Court to **Boddu Narayanamma v. Sri Venkatarama Aluminium Co.,**[3] wherein the Hon'ble apex Court held at Para No.24 as follows:

> "…….In our view, a building having residential and non-residential portions and let out under a composite lease has to be categorised as either a residential or a non-residential building having regard to its nature, accommodation, dominant purpose of lease, primary use of the building and other relevant circumstances on the facts of each case. On such determination, the suit/petition of the landlord has to be decided under Sub-clause (i) or Sub-clauses (ii) or (iii) of Clause (a) of Section 10(3) of the A.P. Act, as the case may be. It may be noticed here that under Section 10(3)(a) of the A.P. Act, the relief is granted with reference to the nature of the building and not with reference to the purpose for which it is let."

24 As per the principle enunciated in the case cited supra, the dominant purpose of the lease has to be taken into consideration.

25 The learned counsel for the petitioner has drawn the attention of this court to the following decisions:

Runkana Balaji (Tenant) v Manyam Lakshmikantham[4] wherein this Court held at para No.9 as follows:

> 9. In an unreported judgment in Urimi Kamakshamma v. Bolem Seethamma (C.R.P.No.4975 of 1997 Dt.23.1.2002) I have adverted to this aspect of the matter and held that:
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> …….. When a landlord has several dependant sons and seeks to evict the tenant from non-residential premises for commencing business by one of his sons, the mere fact that during the pendency of the Rent Control proceedings, one

[3] 1999 (6) ALD 6 (SC)
[4] 2002 (2) An.W.R.597 (A.P.)

> of the sons started business in a non-residential premises which fell vacant upon the vacation of the premises by another tenant, in my considered opinion, does not act as a bar to evict the tenant under Section 10 (3) (a) (iii) of the Act."

B. Ataullah v. K. Nisar Ahmed[5] wherein this Court held at para No.7 as follows:

> In Venkati Penchalaiah v. Md. Muniruddin 1980 (1) A WR 164, it is held as follows:
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> "A mere assertion on the part, of the landlord that he requires the non-residential accommodation in the occupation of the tenant for the purpose of commencing a new business is not enough and decisive. The truth of the assertion and its bona fide character must be established to the satisfaction of the Court. The bona fide requirement need not be of absolute necessity. It is enough if the requirement is reasonable. There is no yardstick for measuring the genuineness of the plea of bona fide requirement. Each case necessarily depends upon its own facts. What is necessary for the Court to determine is whether the landlord genuinely needs the premises for commencing a new business and whether he makes the demand honestly and in good faith. In other words, the landlord should not be actuate by any oblique motive of realising some other extraneous purpose. The Court must therefore be necessarily satisfied in the first instance as to the absence of any oblique motive or mala fide on the part of the landlord before it is satisfied as to the positive existence of bona fide requirement of the premises by the landlord. The claim of bona fides asserted by the landlord can be demolished by the tenant by proving some positive facts like letting out some other premises in the occupation of the landlord subsequently or pressing the tenant for enhancement of the rent for the premises in question. Once the Court is satisfied that the landlord requires the premises bona fide for starting a new business. It is not for the Court to probe into the reasons that prompted the landlord for choosing that particular business or question the prudence or soundness of the proposed venture."

26 As per the principle enunciated in the cases cited supra, the court has to consider whether the landlord requires the premises for his *bona fide* requirement or not.

27 The learned counsel for the respondent strenuously submitted that the petitioner himself has admitted that the other tenants vacated way back in the year 2007, in such circumstances, the requirement of the premises for personal

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[5] 2001 (5) ALT 103

occupation of the petitioner i.e. *bona fide* requirement has no legs to stand. The respondent has not produced any evidence to establish that the other portion of the petition schedule property is kept vacant as on the date of filing of the petition. The respondent is residing in one portion and running kirana business in one shop. Originally the respondent has taken the petition schedule property for residential purpose. If the building was taken for residential purpose, Section 10 (3) (a) (iii) of the Act cannot be pressed into service as the same deals with non-residential building. The petitioner filed the petition under Section 10 (2) (i), 10 (2) (vi), 10 (3) (a) (i) (a) and 10 (c) of A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960. In the petition, the petitioner categorically pleaded that he required the petition schedule property for establishment of clinic by his son. There is no specific pleading in the counter that the building in question is non–residential building and the petitioner has not furnished the particulars as contemplated under section 10 (3) (a) (iii) of the Act. Moreover, the respondent has not taken a specific plea about non-compliance of Section 10 (3) (a) (iii) of the Act in his counter. Whether the respondent took the building for residential purpose or non-residential purpose is purely a question of fact. The respondent has not urged this point even before the appellate authority. However, for the first time, the respondent urged before this court that the petition is bereft of the basic ingredients of Section 10 (3) (a) (iii) of the Act.

28 The learned counsel for the respondent has drawn the attention of this court to the ratio laid down in **Duggi Veera Venkata**

Gopala Satyanarayana v. Sakala Veera Raghavaiah[6] wherein the Hon'ble apex Court held at para Nos.7 and 9 as follows:

> 7. The point was not taken in any of the courts below, nor has it been taken in the special leave petition. For the first time, it has been raised in the argument before us. Mr. P.P. Rao, learned Counsel appearing on behalf of the appellant, has produced before us a copy of the memorandum of Civil Revision Petition that was filed in the High Court. We do not, however, find that the point has been specifically taken in the grounds of revision. It is not disputed that the point was not also argued before the High Court.
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> 9. In view of the facts stated above, particularly of the fact that the point was not raised at any stage of the proceedings, we do not think that we shall be justified in interfering with the order of eviction.

29 The point urged by the learned counsel for the respondent is purely a question of fact but not law. A party to the proceedings is not entitled to urge for the first time before the revisional court a question of fact without pleading in the original petition supported by oral and documentary evidence.

30 Having regard to the facts and circumstances of the case and also the principle enunciated in **Duggi Veera Venkata Gopala Satyanarayana** (6 supra), I am of the considered view that the respondent is not entitled to urge the above point before this Court.

31 As seen from the testimony of P.W1, his son completed MBBS course and is intending to set up clinic in the petition schedule property. Merely because the petitioner is having another building that itself is not a valid ground to dismiss the petition in view of Section 10 (3) (a) (i) (b) of the Act. It is not the case of the respondent that the son of the petitioner is not a Medico. The material available on record clinchingly establishes that the

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[6] AIR 1987 SC 406

petitioner needed the petition schedule property for his *bona fide* requirement.

32 The Rent Controller, basing on the material arrived at a conclusion that the petitioner required the petition schedule property for his *bona fide* requirement. The appellate authority, without being influenced by the findings recorded by the Rent Controller, reappreciated the entire material available on record and arrived at a conclusion that the petitioner requires the premises for his *bona fide* requirement.

33 Whether the petitioner requires the petition schedule property for his *bona fide* requirement or not is a purely question of fact. The appellate authority is the fact finding final authority. The findings recorded by the appellate authority are based on evidence much less legally admissible evidence. In such circumstances, I am unable to countenance the averments made by the learned counsel for the respondent that the findings recorded by the authorities below are perverse and therefore this is a fit case to entertain this revision petition while exercising jurisdiction under Section 22 of the Act in view of the ratio laid down in **Dilbahar Singh** case (1 supra). There is no illegality, irregularity or impropriety in the orders passed by the authorities below, which warrant interference of this Court while exercising jurisdiction under Section 22 of the Act. Hence there are no grounds much less valid grounds to interfere with the well considered orders of the authorities below and accordingly this Civil Revision Petition is liable to be dismissed as devoid of any merit.

34 In the result, the Civil Revision Petition is dismissed, confirming the order dated 21.8.2017 passed in R.A.No.108 of 2016 on the file of the Additional Chief Judge, City Small Causes Court, Hyderabad. No order as to costs. The respondent is herby directed to vacate the petition schedule property and handover vacant physical possession to the petitioner within two (02) months from today. As a sequel, miscellaneous petitions, if any pending in this Civil Revision Petition, shall stand closed.

T. SUNIL CHOWDARY, J.

Dt:15--06—2018
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