

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.983 OF 2019

O R D E R:

1. This Revision is filed under Section 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short 'the Act') challenging the order dt.29.03.2019 in RA.No.105 of 2017 of the Additional Chief Judge, City Small Causes Court, Hyderabad (the 'Appellate authority') confirming the order dt.15.04.2017 in RC.No.207 of 2014 of IV Additional Rent Controller, City Small Causes Court, Hyderabad for short 'the Rent Controller').

2. The respondent had filed the said eviction petition against the petitioner alleging that he is the owner of the RC schedule property; that it was granted on lease to respondent on an oral agreement with an understanding to enhance the rent every year by 10% in the month of May; that the respondent was passing rental receipts whenever rents are paid; that as per the understanding between the parties, the rent was payable on or before 18th day of each English Calendar Month; that the rent at the time of filing the eviction petition was Rs.2,500/- per month; and in August, 2012, the respondent had requested the petitioner to vacate the RC schedule property for his bonafide family needs. He also contended that the petitioner committed willful default in payment of rents from November, 2012 to August, 2014.

3. Petitioner admitted the existence of jural relationship of landlord and tenant between the respondent and himself, but

contended that rent was enhanced from time to time but not at 10% every year. He alleged that there was no practice of issuing rental receipts and in May, 2012, the rent was Rs.2,500/- per month exclusive of electricity and water charges. He contended that he had sent the rent for the month of November, 2012 on 17.11.2012 and of December, 2012 on 18.12.2012 through money orders, and that the said money orders were refused. He further contended that he had issued a legal notice on 24.01.2013 to the respondent to furnish bank account number, but he did not give any reply. He also alleged that he had already paid rent up to September, 2014.

4. Before the Rent Controller, the respondent examined himself as PW1 and got marked Exs.P1 to P6. Petitioner examined himself as RW1 and marked Exs.R1 to R3.

5. By order dt.15.04.2017, the Rent Controller allowed the RC. He held that the rent at the time of filing of eviction petition in May, 2012 was Rs.2,500/- per month; that petitioner admitted in his cross-examination that he did not file any document showing payment of rent from November, 2012 to April, 2014; that petitioner also admitted that prior to the deposit of rents in an application filed under Section 11 (I.A.No.22 of 2015), he had withheld payment of rents for four years and the said application had been allowed on 29.08.2015; after the said order was passed, petitioner made first deposit on 07.09.2016 of the rent for the month of November, 2012 and thereafter he appeared to be

depositing the rents regularly. The Rent Controller also held that petitioner's allegation that he sent a notice dt.24.01.2013 to the respondent for furnishing bank account number is not proved because no office copy of the said legal notice has been filed by him. He also held that the respondent was aged about 58 years and his health condition, after he underwent an operation for hernia in 2009, was such that he was not in a position to climb the steps up to 4th floor where his other residential apartment was located. He also accepted the evidence of the respondent that the apartment of the respondent at Secunderabad had only two rooms, and that he had grown up son and daughter who require proper accommodation for their personal use, and the RC schedule property, which is admittedly in the ground floor portion along with first floor portion of the plaint schedule property, would be convenient to the respondent. It held that the need of the respondent for the RC schedule premises is bonafide and the petitioner cannot dictate to the respondent regarding his requirement of the RC schedule property. It therefore allowed the eviction petition.

6. Challenging the same, petitioner filed RA.No.105 of 2017 before the Additional Chief Judge, City Small Causes Court, Hyderabad.

7. The Appellate Authority also dismissed the appeal by a reasoned order dt.29.03.2019. He reviewed the evidence on record and on the aspect of willful default in payment of rents

from November, 2012 to August, 2014, which was alleged to be withhold by the petitioner, he held that in his cross-examination petitioner had stated that prior to depositing of rents pursuant to orders passed in I.A.No.22 of 2015, he had withheld the rents for 2 ½ years. It therefore held that the petitioner, who knew the residential address of the petitioner, did not explain what difficulties he faced for sending the rent to the respondent at his residence in Secunderabad. It also noted the admission of the petitioner that he did not file any document to establish that he paid monthly rent from November, 2012 to April, 2014 and had not deposited monthly rent even though he himself had filed O.S.No.385 of 2013 for injunction *simpliciter* against the respondent. It observed that it was the obligation of the petitioner to follow the procedure laid down under Section 8 of the Act, if the respondent was not issuing receipts for the rents paid, and he cannot claim that he had a right to withhold the monthly rents for years together. It also confirmed the findings recorded by the lower Court on the aspect of bonafide requirement of the landlord and his family for use of RC schedule premises by them personally. It held that the apartment in the 4th floor at Secunderabad where the respondent is residing is no longer suitable for use by the respondent since the respondent, through Ex.P4 medical certificate, had proved that he undergone hernia operation and he is unable to climb the stairs.

8. Challenging the same, this Revision is filed.

9. Though counsel for the petitioner sought to contend that both the Rent Controller as well as the Appellate Authority committed serious errors of fact and law in directing eviction of the petitioner from the RC schedule property, since the petitioner himself as RW1 admitted that prior to filing I.A.No.22 of 2015 under Section 11 of the Act, he had withheld payment of rents for four years, and since petitioner had not filed any documents to show that he paid rents from November, 2012 to April, 2014, the willful default in payment of rents stood established and the deposit by the petitioner from 07.09.2016 by withholding rent for about four years cannot come to the aid of the petitioner.

10. Likewise, even on the issue of bonafide requirement of the RC schedule premises by the respondent, admittedly the respondent had a grown-up son and a daughter who require proper accommodation for their personal use and the fact that the respondent had underwent hernia operation in 2009 is established by Ex.P 4 medical certificate. So he would be unable to climb stairs or lift any weights. The two room apartment in 4th floor which the petitioner had in Secunderabad would therefore not be suitable for the respondent to continue to reside.

11. Both the Courts have thus rightly held that bonafide requirement of the respondent is also proved and it is not for the petitioner to dictate to the respondent where he should live.

12. Since both the Rent Controller and Appellate Authority have properly appreciated the evidence on record and directed the petitioner's eviction and the said findings do not suffer from any infirmity or error, I see no reason to interfere with the orders of eviction passed by the Rent Controller as confirmed by the Appellate Authority.

13. Accordingly, this Civil Revision Petition fails and it is dismissed. Petitioner is granted four months time from today to vacate the RC schedule property. He shall also deposit all arrears of rent, if any, to the credit of the RC within six (06) weeks from the date of receipt of a copy of this order. Petitioner shall file an undertaking before the Court below within two (02) weeks from the date of receipt of a copy of this order that he shall pay the arrears of rent, if any, and also vacate the RC schedule premises within a period of four (04) months from the date of this order. No order as to costs.

14. Consequently, miscellaneous petitions pending if any shall stand dismissed.

M.S. RAMACHANDRA RAO, J

09th September, 2019.

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