THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.1650 OF 2019

ORDER :

This Revision is filed under Section 22 of the A.P. Buildings (Lease, Rent and Eviction Control) Act, 1960 **(for short 'the Act')** by the petitioners challenging the order dt.30.04.2019 in R.A. No.5 of 2014 of the Chief Judge, City Small Causes Court, Hyderabad, confirming the order dt.04.11.2013 in R.C. No.373 of 2009 passed by the III Additional Rent Controller, Hyderabad **(for short 'the Rent Controller')**.

2. Petitioners herein are tenants of respondents.

The Plea of the Respondents/Landlords

3. The respondents filed the said R.C. No.373 of 2009 under Section 4(1) of the Act for fixation of fair rent of the R.C. schedule property which is a shop (No.L-2) bearing Municipal No.4-1-938/39 admeasuring 390 square feet situated at New Marketing Complex, Tilak Road, Abids, Hyderabad.

4. It is the contention of the respondents that they purchased the said property under registered sale deed dt.28.03.2008; that petitioners are tenants in it on a monthly rent of Rs.1840/- excluding Electricity Consumption Charges and Water Charges; that petitioners had been in occupation thereof for more than 34 years and are doing business in cloth under the name and style of "*Suiting Shop*". It is contended by the respondents that the above mentioned monthly rent was being paid by the petitioners from 01.08.2005, without any increase, even though the rental value of similar mulgies in the area increased many fold. Respondents alleged that previous landlord Osman Bin Saleh was their uncle who was suffering from certain mental ailments and the petitioners exploited his handicap and obtained his signature on the lease deed dt.27.08.1990, the contents of which were not disclosed.

5. It is contended that the said individual died on 09.02.2004 and his legal heirs then sold the R.C. schedule property to the respondents under the above sale deed.

6. They contended that the prevailing market rent in the area for similar accommodation is Rs.75/- per square feet and if the same is taken into account, the monthly rent would be Rs.29,250/- per month. They prayed that the Rent Controller fix monthly rent at the said rate from the date of the R.C.

<u>The Plea of the Petitioners/Tenants</u>

7. Counter-affidavit was filed by the petitioners opposing the said application.

8. While admitting the tenancy between the parties, they contended that on 27.08.1990, they had entered into a registered lease deed with Mr. Osman Bin Saleh, the uncle of the petitioners and under the said deed, the shop was let out to them for 20 years from

01.08.1990 to 31.07.2010; that on 21.05.2008, the uncle of respondent sent a notice to them informing about the sale deed dt.28.03.2008 executed in favour of petitioners and asking the petitioners to pay the rents in March, 2008 to him and future rents from April, 2008 by attorning the tenancy in favour of respondents; that in the light of the Lease Deed executed by the uncle of respondents on 27.08.1990 for a period of twenty (20) years from 21.08.1990 to 31.07.2010, the respondents cannot maintain the application for fixation of fair rent.

9. They also denied that the prevailing rent in the locality is Rs.75/- per Sq.ft. According to them, the property is situated in a bye-lane and there are no other amenities given to the petitioners by the uncle of respondents, and there is also no parking provided by the landlords to the R.C. Schedule property. They contended that, the terms of the Lease Deed dt.27.08.1990 are binding on the subsequent transferees like the respondents.

10. The Rent Controller then framed the following issues :

> *"1. Whether this Court has jurisdiction to fix the fair rent when there is agreed rent between the parties ?*
>
> *2. Whether there are any justifiable grounds for fixation of fair rent for the petition schedule premises and if so what could be the amount of fair rent for the same ?*
>
> *3. To what relief ?"*

11. Before the Rent Controller, the respondents examined R.W.1, and marked Exs.P.1 to P.10; and petitioners examined R.W.1, and got marked Exs.R.1 to R.24.

The order of the Rent Controller in RC.No.373 of 2010

12. By order dt.04.11.2013, the Rent Controller allowed the R.C., and fixed the fair rent at Rs.60/- per Sq.ft., i.e., Rs.23,400/- (390 Sq.ft. x Rs.60/-). He directed the petitioners to pay fair rent at that rate from the date of filing of the R.C. He also stated that there would be future enhancement @ 10% for every two (02) years, and also directed the petitioners to pay arrears of rent within one (01) month from the date of the order.

The order of the Appellate Authority in RA.No.5 of 2014

13. This order of the Rent Controller was challenged by petitioners in R.A.No.5 of 2014 before the Chief Judge, City Small Causes Court, Hyderabad.

14. The said appeal was dismissed by the Appellate Authority on 05.06.2017.

The CRP.No.3588 of 2017

15. Challenging the same, the petitioners filed Civil Revision Petition No.3588 of 2017 before this Court.

16. By order dt.20.09.2018, the said Civil Revision Petition was allowed; the order dt.05.06.2017 passed in R.A.No.5 of 2017 on the file of Chief Judge, City Small Causes Court, Hyderabad was set aside; and the matter was remanded back to the Appellate Authority to consider the material available on record afresh and fix the fair rent for the R.C. Schedule Property.

17. In the body of the order, this Court held that the Appellate Authority should have considered relevancy or otherwise of Exs.R.4 to R.6 - Lease Deeds; and because of non-consideration of the same, the Appellate order cannot be sustained.

The order dt.4-11-2013 in RA 5 of 2014 after remand

18. After remand, the Chief Judge, City Small Causes Court, Hyderabad dismissed R.A.No.5 of 2014 by order dt.30.04.2019.

19. After considering the evidence, the said Appellate Authority held:

(i) that the property was originally owned by one Saleh Bin Osman and petitioners were tenants under him, and after his death, his legal heirs sold the R.C. Schedule property to the respondents under Ex.R.3 –Sale Deed dt.20.03.2008.

(ii) that the R.C. Schedule property consists of Ground + Three Floors; that there are four shop rooms in the ground floor with a staircase and store-room, and all the four shop rooms are situated in a row from South to North, and the eviction petition is filed in respect of the 2nd shop in the row which is in occupation of petitioners.

that first to third floor of the building in which the R.C. Schedule property is located are in occupation of other tenants and according to respondents they belong to their father and sisters.

(iv) that the R.C. Schedule Shop is situated at Tilak Road, Abids, Hyderabad, which is centrally located place in the Twin Cities; that the building containing the said R.C. Schedule shop is more than (30) years old, and that there are amenities like electricity and parking facility, but there is no water facility.

20. Apart from the above facts, he also noted that both the respondents are natural brothers and are doing business separately in two shop rooms located on either side of the R.C. Schedule shop in the ground floor, and that the 1st respondent is doing business in the name and style ‘Quality Textiles’; and the 2nd respondent is doing business in the name and style ‘Raymonds Collections’.

21. After considering the evidence on record, the Appellate Authority noted that, held that in his cross-examination as R.W.1, the petitioner admitted that the R.C. Schedule property was located in a commercial locality where there are also residential flats and he did not know the width of the road on the southern side of the R.C. Schedule shop; that R.W.1 was confronted with photographs of the said shop and he admitted its extent to be 390 Sq.ft.

22. He further held that the PW1 admitted that Ex.P.10, dt.30.08.2011, Special Notice was issued by Greater Hyderabad

Municipal Corporation for revision of property tax for the R.C. Schedule property proposing to revise the property tax from Rs.4,726/- to Rs.16,500/-. He also referred to Ex.P.9, which is the Market Value Assistance Certificate, issued by the Joint Sub-Registrar, Hyderabad for the R.C. Schedule property wherein it is stated that the land costs would be Rs.50,000/-; that the structure cost would be Rs.2,34,000/- and the market value was fixed at Rs.2,84,000/-. He also noted that Ex.P.3 which was issued by the Chartered Engineer and Government Registered Valuer, Hyderabad, stated that the rental value of Rs.75 per Sq.ft. per month would be reasonable rent for the R.C. Schedule shop which is in the ground floor facing the 80 feet wide road of Tilak Road, Abids.

23. He placed reliance on Ex.P.8, Rental Deed dt.31.12.2009 was marked through PW1 and observed that it was executed by one Mahender Kumar Agarwal and Santosh Bai Agarwal (landlords) with one Babu Saleem Khan (tenant) in respect of South-East portion of the shop bearing Municipal No.4-1-938/A of plinth area of 152 Sq.Ft. situate at Tilak Road, Abids, Hyderabad wherein the tenant agreed to pay Rs.12,000/- per month exclusive of electricity consumption charges, Municipal Taxes and other incidental charges, and that in the said document it was also stated that the tenancy would be for three (3) years and the tenant has to enhance the monthly rent by Rs.1,000/- every year and the said tenant was carrying on footwear business.

24. He rejected the contention of respondents that the said document cannot be relied upon and held that under Section 77 of the Evidence Act, 1872, Certified Copy of a public document is admissible in evidence without being proved by calling a witness. He held that Ex.P.8-Rental Deed is not only a public document but also dt.31.12.2009 and was a contemporaneous document and can be safely taken into consideration for ascertaining prevailing market rents in the locality of the R.C. Schedule Property since the present R.C. was filed in the year 2010.

25. He rejected Exs.R.4 to R.6 – Certified Copies of Lease Deeds dt.17.01.2001, 08.05.2002 and 13.11.2005 on the ground that they are not contemporaneous documents.

26. He held that no rebuttal evidence was produced by the petitioners contradicting or controverting the contents of Ex.P.8 or to prove that it is a sham document.

27. He also held that under Section 4(1) of the Act the Rent Controller has got jurisdiction to provide for periodical increase in fair rent to off-set the delay.

28. He therefore dismissed the R.A.No.5 of 2014 with costs of Rs,10,000/- to be paid by petitioners to respondents, and granted two (02) months time to pay all arrears of rent pursuant to the orders of the Rent Controller. He observed that if they did not do so, the respondents are at liberty to take steps to recover the same by due process of law, and also recover the expense incurred thereon from the petitioners.

The present Revision

29. Challenging the same, the present Civil Revision Petition is filed.

30. Heard Sri R.A. Achuthanand, counsel for petitioner, and Sri Vedula Srinivas, counsel for respondents.

31. The counsel for petitioners contended that the Rent Controller as well as the Appellate Authority erroneously exercised jurisdiction under Section 4(1) of the Act. According to him, by the date of filing of the application for fixation of fair rent, there was a registered lease deed entered into between the 1st petitioner and the uncle of respondents dt.27.08.1990, and so, the application for fixation of fair rent itself was premature as it had been filed in September, 2009 before the expiry of the duration of the said Lease Deed which was valid up to 31.07.2010. He also challenged Ex.P.3, report of the Valuer dt.01.09.2009. He contended that the Appellate Authority could not have relied upon Ex.P.8-Rental Deed dt.31.12.2009 to arrive at a fair rent because nobody connected with the said document was examined as a witness. According to him, mere production and marking of the document as an Exhibit does not amount to its proof. According to him, PW.1 had stated that he had no personal knowledge about Ex.P.8 and the said document cannot be said to be proved in evidence. He contended that merely because objections are not taken at the time of trial, it does not preclude the petitioners from challenging the same at a later point of time; and that Ex.P.10 – Demand Notice, issued by the Greater Hyderabad Municipal Corporation (G.H.M.C.), under Section 220(2) of the Greater Hyderabad Municipal Corporation Act, 1955 cannot be the basis for fixation of fair rent, since it indicated incorrect plinth area and wrong annual rent value of Rs.56,402/- and proposed enhancement of tax to Rs.16,921/-. He contended that the Court below should have relied on Exs.R.4 to R.6 which were marked by R.W.1 without any objection taken by respondents as they are contemporaneous documents. He also stated that there cannot be periodical enhancement of rent under Section 4 of the Act, and there is no provision under the Act which provides for such periodical enhancement.

32. The counsel for petitioners relied on the following decisions, viz., **Gopal Das and another vs. Sri Thakurji and others**[1], **Bidhan Paul vs. Paresh Chandra Ghosh**[2], **Smt. Rekha Rana and others vs. Smt. Ratnashree Jain**[3], **R.V.E. Venkatachala Gounder vs. Arulmigu Visweswaraswamy and V.P. Temple and another**[4] and **G. Chikkapapana *alias* G.C. Papanna vs. Smt. Kenchamma**[5]

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[1] A.I.R (30) 1943 PRIVY COUNCIL 83
[2] A.I.R. 2002 Gauhati 46 (Agartala Bench)
[3] AIR 2006 Madhya Pradesh 107
[4] (2003) 8 S.C.C. 752
[5] 1993 R.C.R. Civil (3) Pg.8

33. Sri Vedula Srinivas, counsel appearing for respondents, refuted the said contentions and supported the orders passed by the Rent Controller and the Appellate Authority. He relied on the following decisions, viz., **State of Haryana vs. Ram Singh**[6], **Madamanchi Ramapa and another vs. Muthaluru Bojjappa**[7], **Shyam Lal vs. Sanjeev Kumar and others**[8], **Anita Malhotra vs. Apparel Export Promotion Council and others**[9].

The consideration by the Court

34. Section 4 of the Act deals with determination of fair rent.

35. Sub-Section (1) of Section 4 states that the Rent Controller shall, on application by a tenant or a landlord of a building, fix the fair rent for such building after holding such enquiry as the Controller thinks fit. There are other sub-sections too.

36. Interpreting the said provision, a Division Bench of this Court in **Suresh Gir vs. K. Sahadev**[10], held that only sub-Sections (2) to (4) of Section 4 of the Act which required the Rent Controller to take the rents prevailing in the year 1944 for fixation of fair rent were struck down and sub-Section (1) of Section 4 is valid and after holding an enquiry, the Rent Controller has to fix the fair rent.

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6 AIR 2001 SC 2532
7 AIR 1963 SC 1633
8 AIR 2009 SC 3115
9 AIR 2012 SC 31
10 1998 (1) A.L.D. 25 (DB)

37. In **K.Rojarani Vs. Lalitha Macherla**[11], a learned single Judge of this Court, after considering the judgments of the Supreme Court and other High Courts, held that fair rent is to be fixed after conducting necessary enquiry taking into consideration the location of the building, its age, amenities provided to the tenants, and type of construction and the purpose for which it is put to use.

38. These decisions have been followed by this Court in its common order dt.03.06.2019 in Civil Revision Petition Nos.1100 and 1226 of 2018.

39. As to the location of the R.C. Schedule shop, it is not disputed by petitioners that the R.C. Schedule shop is located at Tilak Road, Abids, Hyderabad which is commercial locality. There is a 80 feet wide road on the Southern side of the said shop also. It has been found by the Appellate Authority that there are amenities like electricity and parking facility for the R.C. Schedule property, but no water facility.

40. Since the petitioners are purchasers from the legal heirs of the executant of the said lease deed and notice of such purchase has been admittedly received by the petitioners vide Exs.P.6 and P.7, attornment letters, the respondents stepped into the shoes of the landlord. There is no prohibition contained in the Act for filing an application for fixation of fair rents.

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[11] 2019 (1) A.L.D. 356

41. I shall first deal with the contention of petitioners that the application for fixation of fair rent which was filed on 29.09.2009 itself is premature in view of the earlier registered lease deed executed by the vendor of the respondents, viz., Osman Bin Saleh on 27.08.1990.

42. Firstly the registered Lease Deed dt.27.08.1990 has not been marked as an Exhibit by the petitioners in the Trial Court. It was, in fact, the plea of respondents that the said document was procured from its executant who was not in sound mind at that point of time.

43. Be that as it may, even if there is a written agreement between the parties for lease/rent, the respondents cannot be precluded from seeking fixation of fair rent under the provisions of the Act if they felt that the rent fixed under the said Lease Deed dt.27.08.1990 is not reasonable. No such prohibition is envisaged under the Act.

44. That apart, nowhere, either before the Rent Controller or before the Appellate Authority, has this contention been advanced by the petitioners. Therefore, I do not find any substance in this contention.

45. Both the Rent Controller as well as the Appellate Authority have relied upon Ex.P.8, Lease Deed, executed between Mahender Kumar Agarwal and Santosh Bai Agarwal (landlords) with one Babu Saleem Khan (tenant) in respect of South-East portion of the shop bearing Municipal No.4-1-938/A of Plinth Area 152 Sq.Ft. Located at Tilak Road, Abids, Hyderabad.

46. The Municipal Number of the R.C. Schedule shop is 4-1-938/39 and it is also located in Tilak Road, Abids, Hyderabad, which is very close to the property governed by Ex.P.8. The rent fixed under Ex.P.8 dt.31.12.2009, is Rs.12,000/- with a provision for enhancement every year by Rs.1,000/- , and it is a certified copy of the registered Rental Deed entered between the above parties.

47. Under Section 74 of the Evidence Act, public records kept (in any State) of private documents are 'Public Documents'.

48. Under Section 76 of the Evidence Act every public officer having custody of a public document can issue a Certified Copy after collecting the fee fixed for it; and under Section 77 thereof such Certified Copies may be produced in proof of the contents of the public documents of which they purport to be copies.

49. The Supreme Court in **Madamanchi Ramapa (7 supra)** has held that a Certified Copy of a public document need not be proved by calling a witness.

50. This principle was reiterated in **State of Haryana (6 supra)**, and it was held that a 'Certified Copy' of the registered sale deed is admissible in evidence without proof of admission of the documents by the vendor / purchaser or any other witness.

51. In **Shyam Lal (8 supra)** the Supreme Court has reiterated that if a document is a certified copy of the public document it can be admitted without formal proof.

52. In **Gopal Das (1 supra)**, relied upon by the counsel for petitioners, the Privy Council held that objection as to mode of proof has to be taken before a document is marked and not in appeal for the first time.

53. In the decision cited in **R.V.E. Venkatachala Gounder (4 supra)**, cited by counsel for petitioners also the Supreme Court has held in para no.20 as under :

> *"20. … … …The objections as to admissibility of documents in evidence may be classified into two classes: (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as "an exhibit", an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The latter proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the court on the mode of proof sought to be adopted going against the party tendering the*

evidence, the opportunity of seeking indulgence of the court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the latter case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in a superior court."

54. Even if these principles are applied, in view of the three-Judge judgment in **Madamanchi Ramapa and another (8 Supra)** mentioned by me in above which make the Certified copy a public document to be admissible in evidence even without formal proof, i.e., without examining any connection with the said document, they do not come in the way of the respondents in relying on Ex.P-8.

55. I am also of the opinion that the said document is a contemporaneous document since it was executed on 31.12.2009 while Exs.R. 4 to 6 have been executed prior to 2005, and the R.C. was admittedly filed in September, 2009. So the Rent Controller and the Appellate Authority rightly rejected them.

56. In my considered opinion, the Rent Controller as well as the Appellate Authority therefore rightly followed Ex.P.8 in arriving at the fair rent of Rs.60/- per Sq.Yd, and their assessment of evidence, both oral and documentary, does not suffer from any infirmity warranting interference by this Court under Section 22 of the Act, except, as regards periodical increase in rents by 10% for every two (02) years.

57. As far as such periodical enhancement is concerned, the landlord would again have to seek for increase in fair rent and he cannot seek such enhancement except in cases where some addition, improvement or alteration has been carried out at the landlord's expense. (See Section 5 of the Act).Under Section 5 of the Act, the enhancement can only be at a rate per annum not exceeding 6% of the cost of such addition, improvement, or alteration.

58. So only the direction of the Rent Controller in regard to the enhancement of rent at 10% for every two (02) years from the date of filing of the R.C., i.e., 29.09.2009, which was confirmed by the Appellate Authority, is set aside.

59. Accordingly, the Civil Revision Petition is allowed in part confirming the fixation of fair rent @ Rs.60 per sq.ft ie. @ Rs.23,400/- p.m from the date of filing of the RC as above. The arrears at the said rate shall be paid within 2 months from today. No order as to costs.

60. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 30.08.2019
Mrkr / Ndr