

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.2777 of 2018

ORDER :

This Civil Revision Petition is filed under Section 22 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short 'the Act'), challenging the order dt.15.03.2018 of Additional Chief Judge, City Small Causes Court, Hyderabad in Rent Appeal No.136/2015, confirming the order dt.30.06.2015 in R.C.No.162 of 2012 on the file of Principal Rent Controller, City Small Causes Court, Secunderabad.

2. The petitioners herein are respondents in R.C.No.162 of 2012 on the file of Principal Rent Controller, City Small Causes Court, Secunderabad.

THE PLEA OF THE RESPONDENT IN THE RC.

3. The respondent filed the said R.C. for eviction of the petitioner from the schedule property which is a commercial premises under lease to petitioners.

4. In the said R.C., the respondent contended that the R.C. Schedule property is located in the city of Secunderabad where core of the commercial activity is being carried on; that his wife had been doing business under the name and style "M/s. Car Jewel" dealing in car accessories in a rental shop at Minister Road, Secunderabad under a lease obtained by her from the owner of the said property; that he is

assisting his wife in the said business and had acquired rich and varied experience; and he intends to start his own shop in the R.C. Schedule property which is ideally located and suitable for such business. He contended that he requested the petitioners to vacate the R.C. Schedule property and handover possession since he is not in possession of any other property where he can carry on his business; and thus, he *bona fide* requires the R.C. Schedule property.

THE COUNTER OF PETITIONERS IN THE RC

5. The petitioners filed a counter-affidavit contending that they were tenants of the R.C. Schedule property for more than twenty-seven years; originally the owner of the premises and their landlord was one Srikanth Gannerwala; that he sold the property to the respondent; and though the petitioners were tendering rents to the respondent, he was refusing to receive the same. They alleged that security deposit of Rs.70,000/- was given to Srikanth Gannerwala, and suppressing the above facts, the respondent has filed the R.C.

6. The petitioners also contended that there were lot of properties owned by respondent in the Twin-Cities of Hyderabad and Secunderabad; that respondent had lot of businesses at various places; and he filed the eviction petition with a *mala fide* intention to evict the petitioners. It is further contended that the R.C. Schedule property does not have any parking place or toilets and is situated in a congested area where there are frequent traffic jams; that the property is more than forty years old without any proper maintenance and is in

a dilapidated condition, and there is also seepage of water from the walls during the rainy season. It was also contended that there is hardly any commercial activity possible in the R.C. Schedule property. Therefore, the requirement of the respondent of the R.C. Schedule property is not genuine or *bona fide*.

THE ORDER OF THE RENT CONTROLLER

7. Before the Rent Controller, the respondent examined Pw.1 and marked Ex.P.1 to P.7. The petitioners examined R.W.1 and marked Exs.R.1 to R.13.

8. By order dt.30.06.2015, the Rent Controller allowed the R.C. and directed the petitioners to vacate and handover vacant possession of the R.C. Schedule property to the respondent within two (02) months from the date of the order.

9. After considering the oral and documentary evidence, the Rent Controller observed that since the respondent had stated categorically that he was assisting his wife in running business in car accessories, the experience gained by him in that business cannot be doubted. He also held that petitioners did not produce any evidence to show that the respondent owned other properties in Twin-Cities of Hyderabad and Secunderabad where he can start his business. Therefore, he held that the respondent had no other premises of his own to carry on his business other than the R.C. Schedule business. He further held that it was not necessary to have parking in front of the R.C. Schedule

property to run the car accessories business and the contention of the petitioners that it is not suitable for running such business, cannot be accepted. He also rejected the contention of the petitioners that since there was no mention about the *bona fide* requirement of the R.C. Schedule property by the respondent for his business in the legal notices issued by him, he had waived his right to seek eviction on the said ground.

THE ORDER OF THE APPELLATE AUTHORITY

10. Assailing the same, the petitioners filed R.A.No.136 of 2013 before the Additional Chief Judge, City Small Causes Court, Hyderabad under Section 20 of the Act.

11. The appellate authority confirmed the order of the Rent Controller and dismissed the Appeal on 15.03.2018. After reassessing the evidence on record, the appellate court also held that the respondent is an income-tax assessee disclosing his rental income in the Income Tax returns, that the respondent's wife is doing business in car accessories from 2002, and in the area where the respondent's wife was doing business in car accessories there were other shops also some of which did not have separate parking facility in front of the premises. It also took note of the statement by the respondent that there is a separate car parking facility for the R.C. Schedule property; that the respondent obtained sufficient experience to commence business in car accessories by assisting his wife for a long period of time; and therefore, the requirement of the respondent of the subject

premises is proved. It further observed that the landlord cannot be dictated as to how and in what manner he should live, particularly when the tenants have failed to establish that the requirement of the landlord is a mere fanciful desire. It also held that petitioners failed to establish that the respondent owned other properties in the Twin-Cities and absence of mention in the legal notices issued by the respondent about the *bona fide* requirement did not bar him from filing the R.C. on the said ground. It further observed that when there are lot of shops dealing with car accessories in the area where the wife of the respondent was doing business, the landlord / respondent can ask the tenants to search for another shop room to carry on business of photo emporium, and the hardship to the landlord outweighs the hardship to the tenant. It also observed that non-examination of the wife of the respondent or non-production of the income of the returns of respondent or his wife is not fatal to the case of the respondent.

12. Assailing the same, the present Civil Revision Petition is filed.

13. Sri K.G. Krishna Murthy, Senior Counsel appearing for petitioners, contended that when the respondent, in the legal notices issued by him to petitioners did not even mention about his *bona fide* requirement of the R.C. Schedule premises, the Courts below could not have granted him relief.

14. This contention cannot be accepted because there is no waiver of the right to seek eviction on the said ground of *bona fide*

requirement by a landlord merely because in some correspondence exchanged prior to the filing of the Eviction Petition there was no mention of the *bona fide* requirement. If the said *bona fide* requirement is found proved by evidence on record, the respondent cannot be denied relief.

15. The counsel for petitioners further contended that since the respondent's wife is already having a business premises, petitioner may as well continue to assist his wife in the said premises and he cannot ask the petitioners to vacate the RC schedule premises. This contention is also without merit because the tenants cannot dictate that only one member of the landlord's family should eke out his / her livelihood and other members of the landlord's family cannot seek eviction of the tenant from the landlord's premises. Moreover, it is the concurrent finding of both the Courts below that the respondent had gained sufficient experience by assisting his wife in the car accessories business, and that the respondent has no other premises in the Twin-Cities of Hyderabad and Secunderabad where he can set-up such business. It is not for the petitioners to dictate to the respondent that he should be dependent on his wife's business and contend that he cannot ask the petitioners to vacate the R.C. Schedule premises to enable him to start the car accessories business therein.

16. The other contention advanced by the counsel for petitioners is that there is no adequate car parking space in front of the R.C. Schedule property. But, that contention has been denied by the

respondent who specifically stated as R.W.1 that there is a separate car parking for the R.C. Schedule property. The respondent had also stated that he and his wife are filing income tax returns, and therefore, it cannot be said that the respondent had no capacity to start a business in the R.C. Schedule property.

17. It is settled law that in the exercise of Revisional jurisdiction under Section 22 of the Act, the High Court cannot interfere with the concurrent findings of fact recorded by the Rent Controller and the appellate authority merely because on re-appreciation of evidence a different view is possible. The High Court can only consider whether findings of fact recorded by the authorities below are in accordance with law and do not suffer from any error of law; and only such findings of fact which are perverse, or based or arrived at without consideration of material evidence, or based on no evidence, or misreading of evidence, or which are grossly erroneous and if allowed to stand, would result in gross miscarriage of justice, are open to correction. (See **Hindustan Petroleum Corporation Limited v. Dibahar Singh¹**; and **Gandhey Vijay Kumar v. Mulji²**).

18. In view of the above settled legal position and since I do not find any perversity or any other defect in the findings recorded by the Courts below, I do not find any justification for interfering with the concurrent findings recorded by the Courts below directing eviction of petitioners from the R.C. Schedule premises.

¹ (2014) 9 S.C.C. 78

² (2018) 12 S.C.C. 576

19. Though petitioners had interim order of eviction for a certain time during the pendency of the Revision, it was admitted by the counsel for petitioners during the hearing that the interim order was not extended after 21.01.2019; and that the petitioners had been evicted thereafter by the respondent.

20. Accordingly, the Civil Revision Petition fails and it is dismissed at the stage of admission. No order as to costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 18.02.2019

Ndr/*

