

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

CRP.No.6235 of 2018

ORDER:

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.18.09.2018 in R.A.No.152 of 2016 of the Additional Chief Judge, City Small Causes Court, Hyderabad, who partly allowed the said appeal but confirmed the eviction order dt.02.06.2016 in R.C.No.94 of 2014 of the Principal Rent Controller, City Small Causes Court, Secunderabad.

2. Petitioner herein is the tenant of the respondent.

RC.No.94 of 2014

3. Respondent filed the said RC.No.94 of 2014 under Section 10(3)(a)(i) of the Act to direct the petitioner to vacate and handover vacant possession of residential premises bearing Municipal No.11-3-625/1 of Ashoknagar, Secunderabad belonging to the respondent.

4. In the said RC, respondent contended that petitioner is her tenant under a Rental Agreement dt.07.04.2008 on a monthly rent of Rs.400/-; that the rent was agreed to be enhanced every year by 5%; that the rent at the time of filing

of the RC was Rs.600/- p.m.,; that the petitioner defaulted in payment of rent from November, 2013 onwards and also did not pay arrears of electricity bill and water bill of Rs.7,032/- and Rs.9,000/- respectively; that the last payment of part of the arrears was on 20.03.2014 from the daughter of the petitioner; and that the RC schedule property was also bonafidely required by her for providing accommodation to her family members.

Counter of respondent

5. Counter was filed by the petitioner opposing grant of relief to the respondent. While accepting that the petitioner was tenant of the respondent, it was denied that monthly rent was Rs.600/- p.m., or that there was any default in payment of rent from November, 2013 or that payment of electricity bill and water bill was not done. It was contended that the receipt filed as a material document by the respondent along with the eviction case was in fact towards rent for the month of March, 2014, and there were no arrears of rent. It was denied that petitioner committed default in payment of rent and it is stated that the petitioner used to pay rent regularly, but there is no habit of passing any receipt to the petitioner though the respondent used to take receipt from the petitioner every month. It was contended

that the respondent and her husband had several other properties apart from the RC schedule property, and therefore the ground of bonafide requirement was also not available to the respondent.

6. Before the Rent Controller, respondent examined herself as PW1 and marked Exs.P1 to P5. Petitioner examined herself as RW2 and marked Exs.R1 to R5.

The order of the Rent Controller

7. By order dt.02.06.2016 the Rent Controller directed eviction of the petitioner on both the grounds of willful default in payment of rents as also on bonafide requirement.

8. The Rent Controller held on appreciation of evidence that though petitioner stated in cross-examination that she paid rents regularly along with water and electricity charges, no document is filed to substantiate this aspect. It observed that as per Ex.P2 dt.25.03.2014 rent for March, 2014 alone was shown to be paid by the petitioner to respondent, but there is no evidence to show payment of rent from November, 2013 onwards. It observed that Exs.P3 to P5 along with Ex.R2 show that there is a huge amount of arrears pending against water and electricity consumption charges. It also noted that as per evidence of the petitioner, she had

deposited rents as per orders passed in I.A.No.11 of 2015 only from September, 2014 till January, 2015 and petitioner failed to pay rent for 10 months @ Rs.600/- p.m., and also electricity and water consumption charges.

9. Coming to the bonafide requirement aspect, the Rent Controller observed that though Ex.R1 Encumbrance Certificate dt.18.11.2014 shows that respondent owned two other houses, it is for the respondent to choose the premises from which she wants to seek eviction, and it is not for the petitioner to dictate to the respondent which premises is needed by her.

The order of the Appellate Authority in RA.No.152 of 2016

10. Challenging the same, petitioner filed RA.No.152 of 2016 before the Additional Chief Judge, City Small Causes Court, Hyderabad.

11. The Appellate Authority reversed the finding of the Rent Controller on the aspect of bonafide requirement but confirmed the finding of willful default by the petitioner and confirmed the order of eviction passed by the Rent Controller.

12. The Appellate Authority observed that petitioner as RW1 in her cross-examination dt.14.10.2015 admitted that she is

supposed to pay electricity and water consumption charges as per Ex.P1 Rental Agreement covenants along with the monthly rent, and had stated that there was a separate water connection to the RC schedule property; there was a practice prevalent between the parties to issue rent receipts, but after some time the respondent stopped issuing receipts.

13. It noted that Ex.P2 receipt was marked in the evidence of RW1 during cross-examination and as per Ex.P2 monthly rent was paid on 25.03.2014 probably for the month of February, 2014. It observed that as per the practice prevalent between the parties and Ex.P2, burden lies on the petitioner to prove that she has not committed willful default in payment of monthly rent, electricity and water consumption charges. It noted that the petitioner as RW1 simply pleaded ignorance as to whether her daughter Zeenath acknowledged the rent receipt being issued by the landlady and stated that she cannot identify the signature of her daughter on the rent receipts dt.01.08.2013 and 01.09.2013 and she cannot even identify the signature of her other daughter Sameena on the rent receipt dt.03.07.2013.

14. The Appellate Authority therefore concluded that pleading of ignorance by the petitioner about the signatures of her own daughters on the rental receipts indicates that the

respondent is in the habit of passing rental receipts as and when rents were paid by the petitioner, and the petitioner did not produce any evidence to show that she has not committed any willful default in payment of rent from November, 2013 to August, 2014.

15. It concluded that the three rental receipts dt.03.07.2013, dt.08.2013, and dt.01.09.2013, apart from Ex.P2 show that the respondent was in the habit of passing rent receipts as and when the petitioner was paying monthly rents.

16. It noted that in the cross-examination, RW1 admitted that she was paying monthly rent of Rs.600/- p.m., including electricity and water consumption charges.

17. Therefore, the appellate authority held that supine indifference on the part of the petitioner can be inferred regarding payment of rent, electricity and water consumption charges, particularly, when Ex.R2, online water bill, shows that the water consumption dues are pending from December, 2013 to October, 2014 of Rs.8,790/-.

18. It recorded the admission in the cross-examination of the petitioner that she had not filed any document to show that she was paying electricity and water consumption

charges regularly and from Exs.R3 to R5, Money Order Receipts, filed by the petitioner, she did not establish that she paid monthly rents from November, 2013 to August, 2014 @ Rs.600/- p.m., exclusive of electricity and water consumption charges.

19. It also noted that the petitioner admitted that under Exs.R4 and R5, Money Orders, she had sent Rs.700/-; that Ex.R4 is dt.15.12.2014 and if it constitutes two months' rents for months of October, 2014 and November, 2014, petitioner should pay Rs.1,200/- + two months electricity and water consumption charges, and therefore the said documents are not helpful to the petitioner.

20. It also recorded that Ex.R3 dt.25.10.2014 is a Money Order for Rs.750/- sent by the petitioner to the respondent and the petitioner did not explain why the said amount was sent.

21. It observed that if the respondent was refusing to receive rent without any justifiable cause, nothing prevented the petitioner to take recourse under the provisions of Section 8 of the Act by filing a petition under Section 8(5) seeking permission of the Court to deposit rents even before the respondent initiated the eviction proceedings. It also

referred to an application under Section 11(1) of the Act i.e., I.A.No.11 of 2015 filed by the petitioner seeking permission to deposit monthly rents of October, November and December, 2014 @ Rs.600/- p.m. + Rs.150/- towards water consumption charges, and permission accorded by the Court on 01.07.2015 to deposit the said amounts to the credit of the RC; and even after filing of the RC, petitioner was not diligent to deposit monthly rents into Court without delay.

The Contentions of the parties in this Revision

22. Assailing the same, this Revision is filed.

23. Counsel for the petitioner contended that the concurrent findings of both the Rent Controller as well as the Appellate Authority under the Act are contrary to the evidence on record and are perverse and so the eviction order passed by the trial Court which was confirmed by the Appellate Authority, both are required to be set aside.

24. He contended that there are admissions in the evidence of PW1 which were ignored by both the Courts below. He also contended that Courts below ignored the stand of the petitioner that the landlady was not in the habit of issuing rental receipts and therefore the finding that petitioner had

committed willful default in payment of rents cannot be sustained.

25. Counsel for the respondent supported the orders passed by the Rent Controller as well as the Appellate Authority and contended that the concurrent finding of facts of both the Rent Controller and the Appellate Authority are based on correct appreciation of evidence on record and do not warrant any interference of this Court under Section 22 of the Act.

26. I have noted the contentions of both sides.

The consideration by the Court

27. On the aspect of quantum of rent, according to the respondent, the monthly rent was Rs.600/- p.m., at the time of filing of the RC.

28. Though this was denied by the petitioner in the counter filed in the RC, in her cross-examination as RW1, petitioner admitted that she was paying rent @ Rs.600/- p.m., *including* water consumption charges excluding electricity charges. She also admitted that the rent of the RC schedule property is Rs.600/- p.m., though she denied the same in the counter. Therefore, the quantum of amount payable by the petitioner to the respondent monthly as rent is Rs.600/- p.m.

29. Coming to the aspect of willful default, it is the allegation of the respondent that it is the duty of the petitioner to pay both rent as well as electricity and water charges and there were arrears of rent from November 2013 and arrears of electricity and water charges were Rs.7,032/- and Rs.9,000/- respectively.

30. In her evidence, no doubt, there is a statement by the respondent in her cross-examination that she did not know when she filed the RC and she did not know in which month the petitioner committed default in payment of rent. The respondent also stated that she did not know that the challan shown to her is for the deposit of rents till July, 2015 pursuant to the order passed in I.A.No.11 of 2015. She stated that petitioner had paid advance of Rs.20,000/- as security deposit and that the rent excludes electricity and water consumption charges. She denied that she was not issuing receipts after receiving rents after obtaining the signature on the receipt of rent and also denied retaining the receipts with her. She denied knowledge about Ex.P2 receipt initially, but later she stated that she was aware of the said receipt but did not know what was written in it. She stated that the said receipt pertains to the month of March, 2014. She stated that after filing of the RC, petitioner is paying

electricity charges by herself. She also stated that rents sent to her through post were refused by her.

31. However, in the chief-examination affidavit she had not only mentioned about filing of the RC on the ground of default in payment of rent but also about the quantum of rent and period of default. Therefore, the fact that the respondent did not say as to when she filed the case does not assume much significance. The fact that she also stated that she did not know in which month petitioner committed default in payment of rent is a stray sentence, which cannot be given much weight, because she had signed the pleadings in the RC mentioning about the default in payment of rent from November, 2013 and also mentioned about the period of default in the chief-examination affidavit.

32. Coming to the evidence of the petitioner, petitioner had stated in the counter that the respondent was not in the habit of issuing rent receipts at all, but in her cross-examination she stated that there was a practice of issuing receipts for some time and thereafter the respondent did not issue any receipts.

33. Also, while in the counter filed by her, petitioner even denied that the monthly rent is Rs.600/- p.m., but in her

cross-examination she admitted that monthly rent was Rs.600/- including water consumption charges.

34. Her statement that she cannot identify the handwriting of her own children, Zeenath and Sameena, on rental receipts dt.01.08.2013, dt.01.09.2013 and dt.03.07.2013, in my considered opinion, shows that the petitioner was not speaking the truth since no mother can say that she cannot identify the signature of her own children.

35. Her further statement in the cross-examination that the respondent inducted her in the property and asked her to stay in the RC schedule property till her children got married and were blessed with grand children, is unbelievable because there is no dispute that the petitioner was inducted into possession under a Rental Agreement dt.07.04.2008, which is admitted by the petitioner in the counter affidavit filed by her.

36. She also admitted that Ex.P2 receipt was issued by the respondent. Therefore, the Appellate Authority was right in concluding that Ex.P2 as well as the rental receipts, dt.01.08.2013, dt.01.09.2013 and dt.03.07.2013, suggest that there was a practice of issuing rental receipts by the respondent.

37. As rightly held by the Appellate Authority, if the landlady has discontinued issuing receipts, nothing prevented the petitioner from filing a petition under Section 8(5) seeking permission of the Court to deposit rents even before the respondent initiated eviction proceedings.

38. Not having done so, petitioner cannot be said to have proved that she had paid the rents due on time.

39. Also, having admitted in her cross-examination that she has to pay electricity and water consumption charges apart from monthly rent, petitioner cannot claim to have complied with the same, when Ex.P2 shows the water bill arrears to be Rs.8,790/-, Ex.P3 water bill dt.01.03.2014 shows arrears of Rs.6,396/-, Ex.P4 water bill dt.07.07.2014 shows arrears of water bill charges to be Rs.7,568/-.

40. Therefore, I am of the opinion that the Appellate Authority as well as the Rent Controller did not commit any error in fact or law in coming to the conclusion that the petitioner had committed willful default in payment of rent and water charges.

41. Accordingly, this Civil Revision Petition fails and it is dismissed.

42. However, petitioner is granted time up to 31.07.2019 to vacate the RC schedule property subject to the condition of the petitioner also paying arrears of rent from November, 2013 till date excluding the amounts paid as advance or deposited before the Rent Controller within a period of four (04) weeks from the date of receipt of a copy of this order and also continue to pay rent, water and electricity charges till 31.07.2019. Petitioner shall also file an undertaking within 1 week before this court that he would not only vacate the RC schedule premises by 31.07.2019 but also pay the amounts as aforesaid. In default of filing such undertaking or paying amounts as directed above, petitioner is liable to be evicted forthwith. No order as to costs.

43. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

30th April, 2019.

gra