

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.Nos.6807 & 6808 of 2018

COMMON ORDER:

These two Revision Petitions arise between the same parties under Article 227 of the Constitution of India and therefore they are being disposed of by this common order.

2. Smt. Noor Jehan Begum, who is 6th respondent in both the revisions, filed R.C.No.178 of 2006 before the I Additional Rent Controller, Hyderabad, through her son and alleged GPA Holder Khaja Arshad Moin, against petitioners herein for their eviction under Section 10 (2) (i) and 10 (2) (ii) (v), Section 10 (3) (a) (iii) (b) and 10 (c) of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short 'the Act') from the premises bearing Municipal No. 6-1-1063/1/3, Saifabad, Hyderabad. She alleged that the petitioners herein were inducted as tenants of the said premises in 1981 by her vendor Sri Sultan Mehmood Mohiuddin; that petitioners have committed willful default in non-payment of property tax and rents; that the lease of the premises was given to run a medical hall and general stores business but the petitioners changed the use it by starting photo copying business; that her son was running hotel business at R.T.C. Cross Road in a rented premises, but his landlord asked him to vacate and the said premises and so the RC schedule premises was suitable to carry on such business and is *bona fide* required for the said purpose.

3. The 6th respondent along with her son Khaja Arshad Moin also filed R.C.No.179 of 2006 seeking eviction of the petitioners from another premises bearing Municipal No.6-1-1063/1/4, Saifabad, Hyderabad on similar grounds under the same statutory provisions.

4. After the trial concluded and the matter was posted for arguments, respondent Nos.2 to 5 in both the Revisions, who are legal heirs of the 6th respondent's son Khaja Arshad Moin, filed I.A.No.180 of 2018 in R.C.No.178 of 2006 and I.A.No.183 of 2018 in R.C.No.179 of 2006 invoking Rule 7 (5) of the Rules framed under the Act, to receive certified copy of GPA dt.16-03-2006 allegedly executed by 6th respondent appointing Khaja Arshad Moin, as her agent.

5. In the said application, they contended that 6th respondent had filed both the eviction petitions through her son Khaja Arshad Moin, that she had executed GPA on 16-03-2006 in favour of her son; and basing on the same, the eviction petitions were being prosecuted by him; that the counsel appearing for them had cross examined 6th respondent on the GPA; that the eviction petitions were posted for submitting arguments of the respondent No.6 and counsel had also submitted arguments in part, but it came to be known during submissions that the original GPA was not marked and the record indicated that only photo copy of the GPA was filed. It was further contended that respondent Nos.2 to 5 had applied for certified copy of

GPA since the original was filed in R.A.No.89 of 2015 on the file of the Chief Judge, City Small Cause Court, Hyderabad, that the said document is crucial document for adjudication in the case and so the Court should receive it in the interest of justice.

6. Counter affidavit was filed by the petitioners opposing the said applications. They contended that allegations made therein are incorrect and false and this is an attempt made by the respondent Nos.2 to 5 to fill up lacuna in the case; that matter was coming up for final arguments and the learned counsel for respondents had argued the matter exhaustively at length; and at this stage, the said applications were not maintainable. They also pointed out that 6th respondent, who was the petitioner in the eviction petitions, had already been examined and she stated specifically in unequivocal terms that she never cross executed any GPA in favour of her son Khaja Arshad Moin and in the light of the said statement, the eviction petitions themselves have to be dismissed. They also contended that the Khaja Arshad Moin, the GPA holder, was not alive and even otherwise, the alleged GPA now sought to be produced is forged and a created one; and at this stage, the respondent Nos.2 to 5 cannot be allowed to file the document. They also pointed out that respondent Nos.2 to 5 had failed to explain delay in filing said applications and that in 2007 itself, in the main counter filed by the petitioners, they had objected for not furnishing of the GPA.

7. By order dt.24-10-2018, the Principal Rent Controller, Hyderabad, allowed both applications. He stated that at the time of filing of documents, Court need not consider relevancy of documents and it is at the trial that they can be rejected, if they are found to be not relevant; that mere marking of document is no proof and the proper time for raising objection regarding admissibility of document or sufficiency of proof is at the stage of trial; receiving the said document would not cause any prejudice to the petitioners and they would have an opportunity to question about the admissibility and relevancy of the said document at the time of evidence. He observed that it is the Rent Controller's obligation to dispose of the main application on merits by giving reasonable opportunity to both parties to give evidence and petitioners would have an opportunity to cross examine the witness on the document and so the said document would be received subject to proof of relevancy and admissibility.

8. Assailing the same, these Revision Petitions are filed.

9. Smt. Manjari S. Ganu, learned counsel for the petitioners, contended that under Rule 7 (4) of the Rules framed under the Act, the parties shall produce at the first hearing of the case all documentary evidence of every description in their possession or power on which they intend to rely, and which has not already been filed, and all documents which the Rent Controller has ordered to be produced, and the Rent Controller should receive the documents so produced; but sub rule (5) of Rule 7 states that if documentary evidence in the

possession or power of any party which should have been, but has not been produced in accordance with the requirements of sub rule (4), shall not be received at any subsequent stage of the proceedings, unless good cause is shown to the satisfaction of the Rent Controller for the non production thereof; and the Rent Controller receiving such evidence shall record the reasons for so doing.

10. She contended that the affidavits filed in the I.A.No.180 of 2018 in R.C.No.178 of 2006 and I.A.No.183 of 2018 in R.C.No.179 of 2006 by respondent Nos.2 to 5 did not give any reasons why the GPA dt.16-03-2006 has not been filed at the first hearing of the RC in spite of petitioners taking a specific plea in their counter affidavit that copy of the GPA, on the basis of which the eviction petitions had been filed, had not been filed by respondent No.6/respondents and the 6th respondent was called upon to prove to the satisfaction of the Court that her son Khaja Arshad Moin was duly constituted GPA and was entitled to represent 6th respondent and continue the proceedings and present the case. Attention of this Court was also drawn to the evidence of 6th respondent as C.W.2 in both the cases wherein the 6th respondent had stated categorically that *she did not execute any GPA in favour of her son Khaja Arshad Moin to file the respective eviction proceedings*. The learned counsel for the petitioners contended that in the light of the said statement given by the 6th respondent, there is no question of receiving any alleged GPA executed by her including the certified copy of the GPA

dt.16-03-2006 allegedly executed by the 6th respondent and the Court below clearly erred in allowing the applications filed to receive said document in both the eviction petitions.

11. Learned counsel for the respondents however supported the orders passed by the Court below and contended that the eviction petitions had been filed in the year 2006, that the petitioners had successfully dragged them till the date; and at this stage, if the certified copy of the GPA dt.16-03-2006 is not received, grave prejudice would be caused to the respondents. He also contended that all procedure is a hand maid of justice and procedural technicalities shall not be allowed to defeat substantive justice urged for dismissal of both the Revision Petitions.

12. I have noted the contentions of both sides.

13. From the facts set out above, it is clear that applications under Rule 7 (5) of the Rules framed under the Act had been filed in October, 2018 at the stage of addressing of arguments in both RCs, which had been filed in 2006, after conclusion of the trial.

14. Rule 7 (4) of the Rules deals with the duty of the parties to produce documentary evidence which is in their possession or power and sub rule (5) of Rule 7 states in what circumstances such documentary evidence, which is not produced as per the mandate of sub rule (4) of Rule 7, can be received later. The said provisions are extracted hereunder:

Rule 7:

(1) to (3).....

(4) The parties or their counsel shall produce at the first hearing of the case, all the documentary evidence of every description in their possession or power on which they intend to rely, and which has not already been filed and all documents which the Controller has ordered to be produced and the Controller shall receive the documents so produced.

(5) No documentary evidence in the possession or power of any party which should have been but has not been produced in accordance with the requirements of sub-rule (4) shall be received at any subsequent stage of the proceedings, unless good cause is shown to the satisfaction of the Controller for the non-production thereof; and the controller receiving any such evidence shall record the reasons for so doing.”

15. These Rules make it clear that it is the duty of the parties to produce at the *first hearing of the case*, documentary evidence of every description in their possession or power on which they intend to rely, and which had not already been filed along with other documents which the Rent Controller had ordered to be produced; but when they do not do so, they cannot be received at a later stage unless good cause is shown to the satisfaction of the Rent Controller for their non-production at the first hearing of the case.

16. The term “first hearing” occurring in sub rule (4) of Rule 7 also occurs in Order 10 Rule 1 CPC, Order 15 Rule 1 CPC and Order 14 rule 1 (v) CPC.

17. This word had been explained by the Supreme Court in **Badami (deceased) By L.R. Vs. Bhali**¹. The Supreme Court following its earlier judgment in **Karwar Singh Saini Vs. High Court of Delhi**², held that “first hearing of the suit can never be earlier than the date fixed for preliminary examination of the parties and the settlement of the issues.” It observed that it is only *after filing of the Written Statement and framing of issues, hearing of the case commences and the hearing therefore should be first in point of time after the issues have been framed*. It explained that the date of first hearing of the suit under the CPC is ordinarily understood to be the date on which the Court proposes to apply its mind to the contentions raised by the parties in their respective pleadings and also to the documents filed by them for the purpose of framing the issues which are to be decided in the suit.

18. If this principle is applied, the 6th respondent who is the petitioner in the RCs was expected to file, at the first hearing of the case i.e. after the settlement of issues, the GPA in question, on the basis of which she had initiated both the eviction petitions. Thus, before commencement of trial, the 6th respondent ought to have filed the GPA in question. The filing of the GPA was however not done at that time. Petitioners had pointed out in their counter that copy of the GPA had not furnished to them and the 6th respondent should prove

¹ (2012) 11 SCC 574

² (2012) 4 SCC 307

that the agent appointed under the said GPA was entitled to represent the 6th respondent and to continue the proceedings in the case.

19. More over, the affidavits filed in support of I.A.Nos.180 and 183 of 2018 in R.C.Nos.178 and 179 of 2006, filed by the legal heirs of the son of the 6th respondent, merely state that there was cross examination of 6th respondent on the GPA, that the matter had been posted for arguments and their counsel had also submitted arguments in part, but they came to know that the original GPA was not marked and only photo copy of GPA was filed before the Court; that thereafter they applied for certified copy of the GPA because original of it was filed in R.A.No.89 of 2015 on the file of the Chief Judge, City Small Cause Court, Hyderabad; and so it should be received in evidence. No reason is assigned by respondents as to why they had not sought to submit the GPA at the first hearing of the RCs before trial commenced.

20. So I am of the opinion that no good cause has been shown by 6th respondent for filing these applications at such a belated stage entitling her to leave to submit the said document under sub rule (5) of Rule 7.

21. Much before this, the 6th respondent had been examined as witness C.W.2 in both the eviction petitions; and in her deposition, recorded on 19-11-2013, she had categorically denied executing any GPA in favour of her son Khaja Arshad Moin to file the eviction cases.

22. Thus, the respondents, who were fully aware that petitioners had already raised the plea that the GPA was not furnished to them in the counter filed by them to the eviction petitions in December 2007, and who were also aware of the evidence of 6th respondent given on 19-11-2013 that she had never executed such GPA, waited till 10-10-2018 to file these applications.

23. No doubt procedure is a hand maid of justice, but in the instant case unfortunately, the Rent Controller did not focus on the delay on the part of the respondent Nos.2 to 5 in filing this document or on the statement in the evidence of RW2 and focused more on when relevancy of the said document is to be looked into. He ought to have considered whether good cause is shown by the respondent Nos.2 to 5 for not filing the GPA at the first hearing of the R.C. but failed to do so.

24. Also when 6th respondent had denied ever executing any such GPA dt.16-03-2006 in favour of her son Khaja Arshad Moin, the document purporting to be certified copy of the GPA executed by her in favour of her son, cannot be received in evidence.

25. In this view of the matter, I am of the opinion that the orders passed by the Principal Rent Controller, Hyderabad, in I.A.No.180 of 2008 in R.C.No.178 of 2006 and in I.A.No.183 of 2018 in R.C.No.179 of 2006 are liable to be interfered with in exercise of the jurisdiction of this Court under Article 227 of the Constitution of India.

26. Accordingly, both these Revision Petitions are allowed and the said orders are set aside. No costs.

27. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 18-02-2019

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