

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.7137 of 2017

ORDER:

This civil revision petition is filed by the petitioner herein/tenant under Section 22 of the A.P Building (Lease, Rent and Eviction) Control Act, 1964 (for short "the Act"), aggrieved by the judgment dated 20.10.2017, passed in R.A.No.51 of 2015 by the learned Additional Chief Judge, City Small Causes Court, Hyderabad, whereby, R.A.No.51 of 2015, filed by the petitioner herein/tenant against the orders dated 30.01.2015 passed in R.C.No.410 of 2011, by the III Additional Rent Controller, Hyderabad, was dismissed, confirming the orders passed in R.C.No.410 of 2011 filed by the respondent herein/landlord.

2. The revision petitioner herein is the tenant and the respondent herein is the landlord. For the sake of convenience, hereinafter, the parties are referred to as petitioner/tenant and the respondent/landlord.

3. Heard Sri R.A.Achuthanand, learned counsel for the petitioner/tenant, Sri Ashok Kumar Agarwal, learned counsel for the respondent/landlord and perused the record.

4. Learned counsel for the revision petitioner/tenant would contend that both the orders passed by the Courts below are erroneous. The duration mentioned in the registered lease deed had expired and therefore, no reliance can be placed on it to enhance the rent by 21% on the existing rent. The arrears of rent calculated by both the Courts below is erroneous and the Rent

Control Court has no jurisdiction to entertain the subject R.C and ultimately prayed to set aside the impugned judgment and allow the revision petition as prayed for.

5. On the other hand, learned counsel for the respondent/ landlord would contend that the Court below had rightly recorded a finding that the petitioner/tenant committed wilful default in payment of rent and that the Rent Control Court has jurisdiction to entertain the subject R.C. The Court below is justified in passing the impugned judgment upholding the order of eviction passed by the trial Court. There is nothing to take a different view. There is no illegality or perversity in the judgment under challenge and ultimately prayed to dismiss the revision petition.

6. In view of the submissions made by both sides, the point that arises for determination is:

“Whether the impugned judgment dated 20.10.2017, passed in R.A.No.51 of 2015 by the learned Additional Chief Judge, City Small Causes Court, Hyderabad, confirming the order dated 30.01.2015 passed in R.C.No.410 of 2011, by the III Additional Rent Controller, Hyderabad, is sustainable?”

7. POINT: The material placed on record reveals that the respondent/landlord filed R.C.No.410 of 2011, before the III Additional Rent Controller, Hyderabad under Sections 10(2)(i), 10(2)(vi) and 10(3)(a)(iii)(b) of the Act, seeking eviction of the petitioner/tenant from the petition schedule property. It is stated by the respondent/landlord in the affidavit filed in support of R.C.No.410 of 2011 that he is the absolute owner of property

bearing No.5-1-619 to 5-1-624, situated at Troop Bazaar, Hyderabad, and let out the same to the petitioner/tenant for carrying on the electrical business under a Registered Rental Deed dated 18.06.2003, vide Doc.No.1874 of 2003. It is stated that initially the tenancy was for a period of three years commencing from 01.07.2003 on a monthly rent of Rs.900/- excluding Municipal Tax and electricity consumption charges. The rent was agreed to be paid on or before 5th of every succeeding month and there is also interest free deposit amount of Rs.25,000/-, which has to be deposited by the petitioner/tenant with the respondent/landlord during inception of tenancy, and it is refundable when the petitioner/tenant vacates the petition schedule property. After lapse of three years tenancy period, the oral tenancy continued and the petitioner/tenant was carrying on the business under the name and style "M/s.New Avon Electricals" in the petition schedule mulgi. There was a mutual agreement between the parties to the litigation that the rents shall be enhanced by 21% on the existing monthly rents. The rent was enhanced from time to time and the petitioner/tenant was irregular in paying rents. The respondent/landlord further stated that he sent notice dated 28.09.2011 to the petitioner/tenant and though the same was received by the petitioner/tenant, he failed to give reply. The petitioner/tenant is a chronic wilful defaulter and malafidely denying the title of respondent/landlord over the petition schedule mulgi in collusion with the strangers/third parties in order to cover up his wilful default. Therefore, the respondent/landlord prayed to evict the petitioner/tenant from the petition schedule mulgi.

8. The petitioner/tenant filed counter and admitted the jural relationship between him and the respondent/landlord and also admitted the execution of registered rental deed dated 18.06.2003 and ultimately prayed to dismiss the R.C.

9. During the course of trial, PW.1 was examined and Exs.P.1 to P.7 and Exs.C.1 and C.2 were marked on behalf of respondent/landlord. On behalf of petitioner/tenant, RW.1 was examined and got marked Exs.R.1 to R.35.

10. The learned Rent Controller, on an analysis of both oral and documentary evidence, was pleased to allow the R.C.No.410 of 2011 vide order dated 30.01.2015 on the ground of wilful default in payment of rent by the petitioner/tenant and also negated the contention with regard to the jurisdiction of the R.C Court raised by the petitioner/tenant and ultimately, directed the petitioner/ tenant to vacate the schedule premises within a period of two months from the date of its order i.e, 30.01.2015.

11. Aggrieved by the said order, the petitioner/tenant filed R.A.No.51 of 2015, before the Additional Chief Judge, City Small Causes Court, Hyderabad, wherein the said appeal was dismissed by the first appellate Court on 20.10.2017, confirming the orders passed by the learned Rent Controller and granted two months time to the petitioner/tenant to vacate the petition schedule property and deliver vacant possession of the same to the respondent/ landlord. Hence, this Civil Revision Petition by the petitioner/ tenant.

12. It is the contention of the revision petitioner/tenant that duration mentioned in the registered rental deed dated 18.06.2003 had expired and therefore, no reliance can be placed on it to enhance the rent by 21% per annum on the existing rent. In this regard, it is relevant to state that under Ex.P.2-registered rental deed dated 18.06.2003, there is specific mention of enhancement of rent by 21% per annum and there is also evidence of respondent/landlord that on the mutual agreement between the landlord and the tenant, the rent was enhanced. The oral evidence of the landlord and the terms of Ex.P.2 cannot be overlooked. Therefore, there is no force in the submission made by the learned counsel for the revision petitioner/tenant with regard to this aspect.

13. Further, in the question raised by the petitioner/tenant with regard to the jurisdiction of the Rent Control Court to entertain the subject R.C, the learned Rent Controller had rightly negated this contention assigning various reasons. There is nothing to substitute the same.

14. With regard to the factual aspect of wilful default in payment of rent by the revision petitioner/tenant, both the Courts below after going through the entire oral and documentary evidence on record, concurrently recorded a finding that the petitioner/tenant committed wilful default in payment of rent and ordered for eviction of the subject premises. There is nothing to substitute the same with any other opinion. The first appellate Court elaborately dealt with enhancement of rent by 21% annually and recorded a positive finding in favour of the landlord. It is supported by oral

and documentary evidence and the first appellate Court has considered various decisions rendered by the Hon'ble Apex Court in coming to the conclusion.

15. Learned counsel for the petitioner/tenant relied upon the following decisions:

- 1) *Smt. K. Rachamma vs. Smt. Bimal Bai and another*¹
- 2) *Mohd. Khaja vs. Mohd. Shoukat Fahim Ahmed*²
- 3) *Bumrah Shell Oil Distributing @ Bharat Petroleum Corporation Ltd. vs. Khaja Midhat Noor and others*³
- 4) *Rayapuraju Venkatarama Rao and another vs. Gangadharan Nair*⁴
- 5) *Hindustan Petroleum Corporation Ltd. vs. Dilbahar Singh*⁵
- 6) *Modern Hotel, Gudur, rep. by M.N.Narayanan vs. K.Radhakrsirhnaiah and others*⁶

The facts and circumstances of the above cited decisions are quite distinguishable from the facts and circumstances of the case on hand and no reliance can be placed over the said decisions, as contended by the learned counsel for the revision petitioner/tenant.

16. It is apt to state that the supervisory jurisdiction conferred on the High Court under Article 227 of the Constitution of India is limited to see that a Court or Tribunal subordinate to it functions

¹ 1996(2) ALD 379

² 2001 Law Suit (AP) 1461

³ (1988) 3 Supreme Court Cases 44

⁴ 2011 Law Suit (AP) 619

⁵ (2014) 9 Supreme Court Cases 78

⁶ AIR 1989 Supreme Court 1510

“within the bounds of their authority” and to ensure that law is followed by such Court or Tribunal by exercising jurisdiction vested in them and not declining to exercise the jurisdiction which is vested in them. In the instant case, both the Courts below have discussed the material on record at length and concurrently ordered for eviction of the subject premises on the ground of wilful default in payment of rent by the petitioner/tenant. There is nothing to take a different view. All the submissions made on behalf of the revision petitioner/tenant do not merit consideration. Both the Courts below have rightly exercised the jurisdiction vested in them. No perversity or illegality is found in the impugned orders. The Civil Revision Petition is devoid of merit and is liable to be dismissed.

17. Accordingly, this Civil Revision Petition is dismissed. No costs.

Pending Miscellaneous Petitions, if any, shall stand closed.

Date: 26.11.2019
scs

Dr. SHAMEEM AKTHER, J