

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION NOS.77 AND 80 OF 2020

COMMON ORDER:

(Per Sri Justice M.S.Ramachandra Rao)

1. These two Revisions arise under Section 22 of the Telangana Buildings (Lease, Rent and Eviction) Control Act, 1960 (for brevity, 'the Act'), out of the same Rent Control Proceedings R.C.No.205 of 2015 before the IV Additional Rent Controller, Hyderabad and between the same parties and so they are being disposed of by this common order.

2. The petitioner in both these Revisions is the tenant of the respondents.

3. The respondents filed the said R.C. seeking eviction of the petitioner from a Mulgi bearing Municipal No.4-5-437/1 (old No.4-5-434) situated at Balaji Market, Badichowdi, Sultan Bazar, Hyderabad. The eviction of the petitioner is sought on the ground of willful default in payment of rents and municipal taxes and also bonafide requirement of the 3rd respondent for using the R.C. schedule premises for his business in sweets, namkeen and bakery.

4. Counter affidavit was filed by the petitioner opposing the said Application and taking a plea that she had deposited a sum of Rs.18,00,000/- with Srinivas Panwar, the husband of the 1st respondent and father of respondents 2 and 3 who had died on 10.07.2009. She also denied that she was liable to pay municipal tax for the R.C. schedule property. She also denied that the respondents bonafide require the R.C. schedule property for use by the 3rd respondent.

5. Pending the R.C., the respondents filed I.A.No.208 of 2015 invoking Section 11(1) of the Act and sought a direction to the petitioner to deposit a sum of Rs.1,25,788/- towards arrears of rent from October, 2009 to August, 2015 and to continue to deposit monthly rent at Rs.1,924/- per month from September, 2015 onwards to the credit of the main R.C. in respect of the R.C. schedule property.

6. It is not in dispute that the respondents later filed I.A.No.41 of 2016 invoking Order VI Rule 17 CPC to amend the eviction petition by deleting the Premises 'No.4-5-437/1' and also the word "old" before No.4-5-434 in the R.C. on the ground that the Municipal number was mentioned incorrectly. The said Application was allowed on 06.09.2016.

7. On 09.02.2016 in I.A.No.208 of 2015, a direction was given to the petitioner to deposit arrears of rent from October, 2009 to January, 2016 amounting to Rs.1,35,408/- within six (6) months from the date of the order and they were directed to pay future rents from October, 2016 onwards at Rs.1,924/- per month on or before 10th of every English calendar month.

8. Though the petitioner filed I.A.No.80 of 2016 to set aside the said order, it was dismissed on merits on 16.8.2016 and no further Appeal was preferred against it.

9. The respondents then filed I.A.No.256 of 2016 under Section 11(4) of the Act against the petitioner on 19.11.2016 to stop all further proceedings in R.C.No.205 of 2015 and to pass an order directing the

petitioner to put the respondents in possession of the R.C. schedule property alleging that the petitioner had failed to deposit the rents as per the directions issued by the Rent Controller in I.A.No.208 of 2015 on 09.02.2016.

10. Counter affidavit was filed by the petitioner opposing I.A.No.256 of 2016 stating that the orders in I.A.No.208 of 2015 were passed in respect of the property bearing No.4-5-437/1 but the tenancy is in respect of the property bearing No.4-5-434; only subsequently the Application for amendment was allowed; the R.C. schedule property was incorrectly mentioned in the R.C. as bearing No.4-5-434; and therefore, the order passed in I.A.No.208 of 2015 cannot be applied to the R.C. schedule property.

11. By order dt.20.09.2018, I.A.No.256 of 2016 was allowed and all further proceedings in R.C.No.205 of 2015 were stopped. The petitioner was directed to vacate the R.C. schedule premises within two months from the date of the order.

12. The Court below observed that I.A.No.80 of 2016 filed under Rule 8(3) of the Rules framed under the Act to set aside the order dt.09.02.2016 in I.A.No.208 of 2015 had been dismissed on 16.08.2016; that the petitioner did not comply with the orders passed under Section 11(1) of the Act in I.A.No.208 of 2015; and the reason assigned by the petitioner for non-payment of rent is only the wrong mention of the Municipal number, but the petitioner had not filed any Appeal challenging the order passed on 16.08.2016 in I.A.No.80 of 2016 and so

the said contention of the petitioner cannot come in the way of the disposal of the Application under Section 11(4) of the Act. It held that the petitioner had not complied with the order passed under Section 11(1) and so the Application under Section 11(4) of the Act was liable to be allowed.

13. As a consequence of the order passed on 20.09.2018 in I.A.No.256 of 2016, R.C.No.205 of 2015 was allowed on the same day granting two months time to the petitioner to vacate the R.C. schedule property.

14. Challenging the order dt.20.09.2018 in I.A.No.256 of 2016, the petitioner filed R.C.A.No.97 of 2018 and challenging the order dt.20.09.2018 in R.C.No.205 of 2015, the petitioner filed R.C.A.No.98 of 2018 before the Additional Chief Judge, City Small Causes Court, Hyderabad.

15. By separate orders, both these Appeals were dismissed on 25.11.2019.

16. In the Appeals also, the petitioner raised the same contention that the order in I.A.No.208 of 2015 was in respect of Premises bearing No.4-5-437/1, but the petitioner was in occupation of the property bearing No.4-5-434 and the order in I.A.No.208 of 2015 therefore cannot apply to the petitioner.

17. The Appellate Court took note of the fact that I.A.No.41 of 2016 was allowed and the Municipal number of the R.C. schedule property

was changed from No.4-5-437/1 to No.4-5-434 on 06.09.2016; and that I.A.No.80 of 2016 filed by the petitioner to set aside the order dt.09.02.2016 in I.A.No.208 of 2015 is dismissed on 16.08.2016 and the said order had attained finality. It also observed that the amendment would be carried out from the date of the R.C. and since the petitioner did not try to deposit the rents and also did not dispute the jural relationship or otherwise denied the ownership of the respondents, the Appeals are liable to be dismissed. It also observed that the petitioner did not show any bonafides by depositing the rents if she really needed the R.C. schedule premises. It also observed that if there is default in deposit of rent under Section 11(1), it is mandatory on the part of the Rent Controller to order eviction unless sufficient cause is shown on the part of the tenant for his failure to deposit the rent due.

18. It also observed that there is no material to show that the petitioner gave Rs.18,00,000/- towards deposit to the respondents. It also observed that the petitioner was given six months time to deposit the arrears of rent from October, 2009 to January, 2016 and even after lapse of the said period, the petitioner had not deposited the arrears of rent. It also took note of the contention of the petitioner that the petitioner had deposited the entire arrears of Rs.1,96,976/- prior to the filing of R.C.A.No.98 of 2018, but held that the said deposit relates only to the rents up to November, 2018 and there is subsequent default from December, 2018 to October, 2019 for eleven (11) months totaling Rs.21,164/- and therefore, no relief can be granted to the petitioner.

19. Assailing the order dt.25.11.2019 in R.C.A.No.98 of 2018, C.R.P.No.77 of 2020 has been filed and assailing the order dt.25.11.2019 in R.C.A.No.97 of 2018, the petitioner filed C.R.P.No.80 of 2020.

20. Heard the counsel for the petitioner and the counsel for the respondents.

21. Section 11 of the Act states as under:

“11. Payment or deposit of rent during the pendency of the proceedings for eviction:-- (1) *No tenant against whom an application for eviction has been made by a landlord under Section 10, shall be entitled to contest the application before the Controller under that Section or to prefer any appeal under Section 20 against any order made by the Controller on the application, unless he has paid to the landlord or deposits with the Controller or the appellate authority, as the case may be, all arrears of rent due in respect of the building up to the date of payment or deposit and continues to pay or deposit any rent which may subsequently become due in respect of the building, until the termination of the proceedings before the Controller or the appellate authority, as the case may be.*

(2) *The deposit of rent under sub-section (1) shall be made within the time and in the manner prescribed.*

(3) *Where there is any dispute as to the amount of rent to be paid or deposited under sub-section (1), the Controller or the appellate authority, as the case may be, shall on application made to him either by the tenant or by the landlord, and after making such inquiry as he deems necessary, determine summarily the rent to be so paid or deposited.*

(4) *If any tenant fails to pay or to deposit the rent as aforesaid, the Controller or the appellate authority, as the case may be, shall, unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building.*

(5) The amount deposited under sub-section (1) may, subject to such conditions as may be prescribed, be withdrawn by the landlord on application made by him in that behalf to the Controller or the appellate authority, as the case may be.”

22. A reading of the said provision indicates that when an Application under Section 11(1) of the Act is ordered by the Rent Controller, the tenant has to comply with the said order and if he does not do so, under sub-section (4) of Section 11 the Rent Controller is duty bound to stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building if the tenant fails to show sufficient cause to the contrary.

23. This Court in **A. Manik Rao Vs. K.Sunitha Wesley and others**¹ held that Section 11(4) provides for drastic consequences, in case, the ingredients thereof are established; the owner of the premises would be entitled to get the possession of the premises without the necessity of proving any other facts such as willful default in payment of rents or *bona fide* requirement of the premises; obviously, because the consequences are drastic, the Legislature has taken care to ensure that every failure to pay the arrears of rent does not entail in eviction. It is only when the amount of arrears was not deposited without there being any ‘reasonable cause’, that the order under Section 11(4) of the Act can be passed.

24. In the instant case, there is no dispute about the ownership of the respondents of the R.C. schedule property or the existence of landlord and tenant relationship between the parties. Though initially in

¹ 2014(5) ALD 752

R.C.No.205 of 2015, the Municipal number of the R.C. schedule property was wrongly mentioned as 4-5-437/1, the same is corrected by filing I.A.No.41 of 2016 which was admittedly allowed on 06.09.2016.

25. There is no dispute that in I.A.No.208 of 2015 on 09-02-2016, an order was passed under Section 11(1) of the Act directing the petitioner to deposit arrears of rents of Rs.1,35,408/- within 6 months and to continue to pay future rents from October, 2016 onwards @ Rs.1,924/- p.m. on or before 10th of every English Calendar month. But within this 6 month time, nothing was deposited.

26. I.A.No.80 of 2016 was filed by the petitioner to set aside the said order, but it was dismissed after contest on 16.08.2016. No appeal was preferred by the petitioner against the said order and it became final.

27. Still the said order was not complied with by the petitioner.

28. Respondents then filed I.A.No.256 of 2016 under Section 11(4) of the Act to stop all further proceedings in the R.C. No.205 of 2015 and to pass an order directing the respondent to put the petitioner in possession of the R.C. Schedule property.

29. The only defence taken by the petitioner in the said I.A. in his counter is that I.A.No.208 of 2015 was filed when the R.C. schedule property was mentioned as No.4-5-437/1, but he was a tenant of property with No.4-5-434 and so the said order does not apply to him.

30. As rightly held by the Rent Controller and the lower appellate Court, in the absence of any challenge by way of appeal or Revision to

the order dt.16-08-2016 in I.A.No.80 of 2016 filed by the petitioner, though he had the above point available to him at that time, he cannot take advantage of the said point in the application under Section 11(4) of the Act.

31. In any event, once I.A.No.41 of 2016 filed to correctly mention the R.C. Schedule property was allowed on 06-09-2016, the amendment of the R.C. as regards the Municipal number of the property would relate back to the date of institution of the R.C. and the order passed in I.A.No.208 of 2015 dt.09-02-2016 would apply to the said property as well.

32. In fact, even in the schedule to the R.C. originally, the property was described as mulgi bearing Municipal No.4-5-437/1 (old No.4-5-434). It appears that only by way of abundant caution the amendment was sought and it was carried out though even the said original description would cover the R.C. schedule property because of the mention of the number 4-5-434 in it.

33. In my considered opinion, sufficient cause has not been shown by the petitioner for his failure to pay or deposit the rent as per the order dt.09-02-2016 in I.A.No.208 of 2015.

34. It is not in dispute that the deposit of arrears of rent of Rs.1,96,976/- was made only while filing R.C.A.No.98 of 2018 on 19-11-2018 after the R.C. was allowed on 20-09-2018 as a consequence to I.A.No.256 of 2016 being allowed on 20-09-2018. Even if the said

deposit is taken into account, it only covers the period upto November, 2018, but there is no further deposit after that month till October, 2019 for a further period of 11 months. Thus the petitioner cannot be said to have bonafidely.

35. Therefore I do not see any error of jurisdiction in the orders passed by the appellate authority under the Act or by the Rent Controller warranting interference by this Court under Section 22 of the Act.

36. Accordingly, both the Revisions are dismissed. No costs.

37. Consequently, miscellaneous applications pending, if any, shall stand closed.

M.S.RAMACHANDRA RAO, J

Date: 30-01-2020

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