

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.234 of 2020

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.16-12-2019 in R.C.A.No.41 of 2019 of the Additional Chief Judge, City Small Causes Court at Hyderabad confirming the order dt.12-02-2019 in R.C.No.204 of 2015 of the IV Additional Rent Controller, City Small Causes Court, Hyderabad.

2. Respondent Nos.1 and 2, who are husband and wife, had filed the said R.C. for eviction of petitioners, who are father and son, on the ground of willful default in payment of rent from January, 2015 onwards, subletting and *bona fide* requirement of the R.C. schedule premises and also on the ground of acts of nuisance.

3. The premises in question is a mulgi bearing premises No.10-3-568, an area of 50 sq. ft., situated at 10-3-568 (8/3RT LIGH), Vijaya Nagar Colony, Hyderabad within the specified boundaries.

4. The Rent Controller allowed the eviction petition on the ground of willful default in payment of rent and also *bona fide* requirement of respondents, but in appeal filed by petitioners in R.C.A.No.41 of 2019, the order of the Rent Controller was confirmed only on the ground of *bona fide* requirement of the respondents and the plea of default raised by respondents was negated.

5. The petitioners have filed this Civil Revision Petition against the order of the Appellate Authority.

6. According to the respondents, they are the owners and possessors of the R.C. schedule mulgi; that 1st petitioner is a tenant thereof from 1973; and the rent at the time of filing of the eviction petition was Rs.2,300/-. According to the respondents, the petitioners were running Maha Lakshmi Ghee and Butter shop.

7. The respondents contended that 1st respondent is idle and the 2nd respondent is a house-wife and they are suffering very much for their livelihood and to maintain their children and for day-to-day necessities they intend to start their own business in the R.C. schedule property.

8. According to them, they requested the petitioners to vacate the premises, but the petitioners did not give proper response and hence they filed the eviction petition.

9. The other allegations relating to default, subletting and acts of nuisance are not being adverted to since there is no challenge to those findings by the landlords/respondents.

10. Counter-affidavit was filed by petitioners to the eviction petition contending that the petitioners had filed O.S.No.2218 of 2015 seeking perpetual injunction against respondents and an interim order of *status quo* was granted in the said suit, which is still subsisting. In the counter filed by petitioners, they denied that respondents require the R.C. schedule premises for their own purpose or that there was any *bona fide*

requirement requiring eviction of the petitioners. It is contended that respondents are residing on the upstairs of the house behind the R.C. schedule shop and they are having sufficient accommodation for them and they do not need the R.C. schedule premises for their personal occupation. A plea is also raised that 1st respondent is working in a private Company as an employee and that the eviction petition was filed only to harass the petitioners.

11. Before the Rent Controller, the respondents examined P.Ws.1 and 2 and marked Exs.P-1 to P-5 while the petitioners examined R.Ws.1 and 2 and marked Exs.R-1 to R-4.

12. With regard to the aspect of *bona fide* requirement of respondents, the Rent Controller referred to the evidence of P.Ws.1 and 2 and observed that in spite of elaborate cross-examination, the petitioners were not able to establish that the requirement of R.C. schedule premises by respondents was not *bona fide*. The Rent Controller also held that petitioners did not file any oral or documentary evidence to disprove the contention of the respondents.

13. The Appellate Authority also confirmed the finding with regard to *bona fide* requirement rendered by the Rent Controller. It noted that in the cross-examination of P.W.1, though suggestions were made to P.W.1 that respondents have entered into an agreement for development with a Builder regarding the building in which the R.C. schedule premises is located, the said suggestion was denied. It also noted that no suggestion was given to P.W.1 that the 1st respondent was working in a private

Company. It also observed that the petitioners did not file any document to prove that 1st respondent was an employee. It also took note of the evidence of 1st petitioner as R.W.1 viz. that 2nd petitioner is his elder son and his younger son is residing in Kothapet, both are married and his younger son is running Kirana General Stores at Kothapet and both his sons are looking after his needs. It also noted that 1st petitioner is dependent on his sons and his sons are doing their independent business and there is no need for the 1st petitioner to do business in the R.C. schedule premises and no hardship would be caused to him if he is evicted.

14. Assailing the same, this Revision is filed.

15. Heard learned counsel for petitioners and Sri A.S.Narayana, learned counsel for respondents.

16. Learned counsel for petitioners contended that 1st respondent is employed and such a plea was taken by the petitioners in the counter filed by them in the R.C. but there is no statement in the evidence of P.W.1 that 1st respondent was not employed.

17. If the petitioners are alleging that 1st respondent is employed, the burden is on the petitioners to establish the said fact and a mere pleading by petitioners or statement in their evidence by R.W.1 cannot be taken as proof that 1st respondent is employed.

18. The other contention of the learned counsel for petitioners was that the two shops adjacent to the shop in the occupation of 1st petitioner

fell vacant during the pendency of R.C.A. before the Appellate Authority and that respondents can use the said property.

19. There is no merit in this pleading as well because it was not the contention of the respondents that they owned the neighbouring mulgis. It was their case that they own the R.C. schedule mulgi only and in the cross-examination of P.W.1, she clarified that her brothers-in-law filed two eviction cases against their respective tenants regarding adjacent mulgis, which suggests that the neighbouring mulgis were allotted to the brothers of the 1st respondent and the 1st respondent had no right, title or interest in the said mulgis.

20. Both the Courts below had considered the evidence on record and came to the conclusion that the requirement of respondents of the R.C. schedule premises is *bona fide*.

21. Such concurrent findings on fact rendered on appreciation of evidence, which cannot be said to be perverse or not based on evidence on record, are not liable to be interfered by this Court in exercise of its revisional jurisdiction under Section 22 of the Act.

22. Accordingly, the Civil Revision Petition fails and is dismissed at the admission stage.

23. However, petitioners are granted time till 15-06-2020 to vacate the R.C. schedule premises and shall continue to pay the rents till the said period. The petitioners shall also file an undertaking, within two (02) weeks from the date of receipt of a copy of this order, before the Rent

Controller that they shall vacate and handover physical vacant possession of the R.C. schedule premises to the respondents by 15-06-2020 and that they will continue to pay monthly rents till then without fail. In default of filing such undertaking, they are liable to be evicted forthwith. No costs.

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

M.S.RAMACHANDRA RAO, J

Date: 10-02-2020
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