

IN THE HIGH COURT FOR THE STATE OF TELANGANA  
AT HYDERABAD

TUESDAY, THE FIFTH DAY OF MARCH  
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE SAMBASIVARAO NAIDU

CIVIL REVISION PETITION NO: 5457 OF 2011

Petition Under Section 22 of AP Buildings (Lease, Rent and Eviction) Control Act, 1960 aggrieved by the Judgment dated 22.09.2011 Passed in RA.No.212 of 2010 on the file of the Court of the Chief Judge, City small Causes Court at Hyderabad under reversing the Order of eviction dated 21.06.2010 made in RC No.47 of 2009 on the file of the Court of the Principal Rent Controller at Secunderabad.

**Between:**

Yogendranath Sachdev, S/o. Late R.R.Sachdev, Occ: Business R/o. 13/15, Santoshima Colony, West Marredpally, Secunderabad. Rep., by GPA Janardhan, R/o. H.No. 2-4-125/12, Plot No.12, Mallikarjun Nagar, Uppal, Hyderabad.

...Petitioner/Respondent/Petitioner/Landlord

**AND**

1. M/s. Nanda Xerox, Rep., by its Proprietor H.No.3-6-363/1, 1st Floor, Liberty Building, Basheerbagh, Hyderabad.
2. M. Parmeshwar Pillay, S/o. M. Manikyam Pillay, Occ: Business R/o. 3-6-363/1, 1st Floor, Liberty Building, Basheerbagh, Hyderabad.
3. Smt Nanda Bai, W/o. M. Parmeshwar Pillay, Occ: Business R/o. 3-6-363/1, 1st Floor, Liberty Building, Basheerbagh, Hyderabad.

...Respondents/Appellants/Respondents/Tenants

Counsel for the Petitioner : Sri Mohammed Imran Khan

Counsel for the Respondents: Sri T Viswanadha Sastry

The Court delivered the following: Judgment

**THE HON'BLE SRI JUSTICE SAMBASIVA RAO NAIDU**

**CRP.NO.5457 OF 2011**

**JUDGMENT:**

This Civil Revision petition has been filed by the petitioner in R.C.No.47 of 2009 on the file of Principal Rent Controller, Hyderabad under Section 22 of A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (in short 'Act, 1960') against the judgment and decree in R.A.No.212 of 2010 dated 22-09-2011, where under, the appeal preferred by the respondents herein against the judgment of trial Court in R.C.No.47 of 2009 was allowed. Consequentially, the petition filed by the petitioner herein for eviction of the respondents/tenants was dismissed.

2. Before advertng to the grounds under which this revision is preferred, for the sake of convenience, there is a necessity to give a brief note of the proceedings initiated before the Rent Control Act. The parties will be referred to in the same ranking which was used in the original control case filed before the Principal Rent Controller, Hyderabad.

3. The petitioner being Land-lord of property bearing Municipal No.3-6-363/1 at Basheerbagh, Hyderabad, filed R.C.No.47 of 2009 under Section 10(2)(i) of A.P. Rent Control Act, 1960, seeking eviction of the respondents from the schedule property. According to the petition filed before the Rent Controller, it was the specific case of the petitioner herein that the property shown in the petition schedule was let out to the respondents on a monthly rent of Rs.660/-. The respondents were irregular in payment of rent as well as the property tax. The respondents paid rent up to February, 2003 and thereafter, there was default in payment of rent till January, 2009. Therefore, the petitioner got issued a notice on 20-01-2006 demanding the payment of arrears of rent. But there was no proper response, thereby, the petitioner/land-lord filed the above referred Rent Control case seeking the eviction of the tenants from the premises on the ground of failure and willful default in payment of the rent.

4. A counter has been filed by the respondents alleging that they took the property from the petitioner in January, 1991 on a monthly rent of Rs.500/- which was subsequently enhanced from time to time, and as on the date

of above said Rent Control case, it was Rs.660/- per month. The respondents claimed that the liability to pay the property tax was on the petitioner/landlord. They have also claimed that the petitioner informed them that they will collect the rent in lumpsum i.e., once in 6 months or 11 months as per his convenience. There was no lease agreement. The respondents have also claimed that the petition schedule property is not a building within the meaning of Section 2 (3) of the Act. The respondents have claimed that though they offered rent for February, 2003 and subsequent months, the petitioner did not collect the rent, therefore, there was no such willful default.

5. The respondents have also claimed that since the petitioner did not collect the rent, they have deposited the rent before the Court to the credit of Rent Control case. A part from this, the respondents have claimed that the building requires necessary repairs, they spent huge amount for making the building habitable. Therefore, they prayed for dismissal of the Rent Control case.

6. The trial Court having framed appropriate points and after examining the witnesses produced by the parties,

came to a conclusion that there was willful default in payment of the rents by the respondents/tenants, thereby, they are liable to vacate the premises, accordingly, allowed the petition by order dated 21-06-2010. The respondents were directed to vacate the premises within one month from the date of the judgment.

7. Being aggrieved by the said judgment, the respondents have filed appeal before the Chief Judge, City Small Causes Court, Hyderabad vide R.A.No.212 of 2010. The first appellate Court having appreciated the arguments of both parties and evidence produced before the Court, came to the conclusion that there was no such willful default in payment of rent by the respondents and allowed their appeal. Consequentially, dismissed the Rent Control case.

8. The present Revision has been filed on the following grounds:

The trial court failed to appreciate the oral and documentary evidence in a proper way and came to an incorrect conclusion, as if there was no willful default on the part of the respondents/defendants. Even if it is contended that the respondents have deposited the arrears of rent to the

credit of Rent Control case, it was without any permission of the Court and without following the procedure as envisaged under law. The Court below did not consider the fact that the respondents categorically admitted by way of non-traverse in so far as the receipt of notice issued by the petitioner is concerned demanding the arrears of rent. Therefore, shifting of the burden of proof of default to the petitioner was totally unwarranted. The Court below did not consider the case law that was relied on by the present petitioner. The failure of the respondents to follow the procedural formalities was not considered by the lower appellate Court. The observations made by the first appellate Court on the petitioner that the petitioners failure in taking recourse for a period of three years before issuing notice demanding arrears of rents amounts to "laying a trap" only to brand the tenants as a willful defaulter is totally erroneous, thereby, the same has to be set aside. The petitioner has claimed that the Court below failed to differentiate the payment of rents, tender of rents and valid tender of rents.

9. The petitioner has claimed that the aspect of respondents carrying on repairs being dismissed by the

appellate Court as a non-issue, the respondents ought to have been held to be willful defaulters in payment of rent and the payment allegedly spent on repairs could not have been taken into consideration so far as to reduce the arrears of rent. The petitioner has claimed the burden of proof to show that they did not commit any willful default is on the respondents. The respondents did not deny the receipt of legal notice which is marked as Ex.P1. Therefore, it shows that in spite of such a notice demanding the arrears of rent, there was failure by the respondents to comply with the demand made in the notice, thereby, the respondents are liable to vacate the premises.

10. The petitioner has claimed that the provisions of law were not correctly applied by the first appellate Court. There was failure by the lower appellate Court in deciding what is willful default. Therefore, having claimed that there was willful default in payment of rent by the respondents, they sought for setting aside the impugned judgment and for restoration of the order of the trial Court.

11. Heard the learned counsel for the petitioner. None appeared for the respondents though reasonable opportunity was provided by listing the present Civil Revision

Petition and two connected Revision Petitions for number of times. There was no representation for the respondents, as such, it was deemed that the respondents are not interested to submit arguments.

12. The present revision petition has been filed assailing the order of the learned Chief Judge, City Small Causes Court, Hyderabad i.e., the first appellate Court allowing the appeal filed by the tenants and setting aside the order of the trial Court, where under, the tenants were directed to vacate the scheduled premises. The record placed before the Court shows that the petitioner being a land-lord of the scheduled property, filed the Rent Control case seeking eviction of the respondents/tenants on the ground of willful default in payment of the rent. The respondents, who did not dispute the tenancy and occupation of the property on monthly rent took a specific stand that the petitioner/landlord was not collecting the rent every month but they used to collect rents in lumpsum once in 6 months or 11 months as per their convenience. But specifically there was failure by the petitioner/landlord in collecting the rent, as such, the respondents started depositing the amount into the Court.

13. Therefore, from the above pleadings, it is quite clear that there is no dispute about the tenancy and there is no dispute about the quantum of rent of the premises. The respondents did not dispute about the ownership of the petitioner on the schedule property. Therefore, there is no dispute about the landlord and tenants relation between the parties. The petitioner has claimed that the respondents/tenants stopped payment of rent from March, 2003 to January, 2009.

14. In order to substantiate their respective contentions, the parties have produced oral and documentary evidence. Even as per the evidence of RW.1, he has deposited the entire arrears into the Court as claimed by the petitioner. Therefore, it is very clear that there was failure on the part of the tenants in payment of the rents from March, 2003 and the above referred payment was only after the landlord issued a notice and only after the petition filed by the landlord seeking eviction of the respondents. It is also clear from the record that the tenants did not obtain any permission from the Court for depositing the arrears of rent into the Court.

15. In view of the specific evidence of RW.1 that they deposited the arrears of rent into the Court, it is very clear that there was failure by the tenants in payment of the rents from March, 2003. The respondents/tenants could not adduce any evidence to prove that the petitioner himself was irregular in collection of the rent. It is elicited from RW.1 that he has received notice, got issued by the petitioner through which a demand was made for payment of the rent and there was no reply by the tenants.

16. The other ground on which the respondents sought for dismissal of the petition was about the alleged expenditure on the repairs of the building. The respondents have claimed that they spent some of the rent amount for effecting repairs to the building. The respondents did not place any material to show that he was authorized to effect repairs to the building by utilizing the rent amount. The order of the trial Court clearly shows that only after the appearance in consequence of the summons issued by the trial Court, the respondents started depositing the arrears of rent to the credit of the Rent Control case and later he filed an application seeking permission for such deposit.

17. Therefore, the conduct of the respondents in depositing the amount into the Court is quite clear that it was only to avoid the eviction order. When there was no authorization by the landlord to spend the rent amount for affecting repairs, the tenants cannot take advantage of the situation by saying that he spent money for affecting repairs. The record further shows that the respondents failed to follow the procedure while depositing the rent to the credit of Rent Control Case.

18. As per the impugned judgment, the learned Chief Judge, City Small Causes Court made an observation that in view of the averments made by the respondents in their counter that when they offered the rent, the petitioner failed to receive the amount, thereby, the respondents were forced to deposit the entire amount of rent for 71 months into the Court. It is very clear from the record that the Rent Control Case was filed in February, 2009 and the alleged deposit of the rent was subsequent to the appearance of the respondents before the trial Court. Therefore, the respondents were not able to produce any evidence to believe that when he offered the rent, the petitioner refused to

receive the same. Even if, there was such a refusal by the landlord nothing prevented the tenants to send the same by way of money order.

19. Admittedly, there was no notice issued by the respondents seeking Bank Account number and other details so that they can deposit the rent into the Bank account of the petitioner/landlord. The first appellate Court having placed reliance on judgment reported in AIR 1989 SC, wherein, it was observed that if the deposit of rent was made within 15 days of the filing of Rent Control petition and within first date of hearing, it is not default in payment of rent, allowed the appeal preferred by the tenants.

20. But in the case on hand, the default was right from March, 2003, and only after the petitioner filed Rent Control Case in February 2009, the respondents/tenants deposited the amount. The observations made by the first appellate Court that the petitioner/landlord failed to collect the rent is without any basis. The observations made by the lower appellate Court that the landlord waited for three years even after issuing notice and did not demand the arrears of rent and without taking any steps for eviction of tenants, it is

a trap on the tenants so as to show the tenants as a willful defaulter without any basis. If really, the petitioner/landlord was intending to lay such a trap, he need not wait for more than three years. When there is no dispute about jural relationship between the parties and when there is no evidence by the respondents that he offered the rent regularly but the petitioner/landlord refused to collect the rents, it amounts to willful default and the trial Court rightly appreciated the evidence placed before the Court but the first appellate Court on a wrong presumption as if, the petitioner laid a trap, allowed the appeal filed by the tenants. Therefore, the impugned order is liable to be set aside. The petitioner /landlord is able to show that in spite of the existing jural relationship and though there was failure by the tenants in payment of rent for 70 months, though the amount was deposited after following the Rent Control Case, it amounts to willful default, as such, the petitioner is entitled to get the eviction of the respondents from the schedule premises.

21. In the result, C.R.P. is allowed. The petition filed by the petitioner seeking eviction of the tenants is allowed.

The respondents shall vacate and handover the property to the petitioner within three months from the date of this order.

Consequently, Miscellaneous applications if any, are closed. No costs.

**SD/- G SIREESHA,  
ASSISTANT REGISTRAR.**

**//TRUE COPY//**

  
**SECTION OFFICER**

**To,**

1. The Chief Judge, City small Causes Court at Hyderabad (With records, if any)
2. The Principal Rent Controller at Secunderabad (With records, if any)
3. One CC to Sri Mohammed Imran Khan, Advocate [OPUC]
4. One CC to Sri T Viswanadha Sastry, Advocate [OPUC]
5. Two CD Copies

**ADK**

**HIGH COURT**

**DATED:05/03/2024**

**JUDGMENT**

**CRP.No.5457 of 2011**



**ALLOWING THE CRP  
WITHOUT COSTS**