

Mir Mehdi Ali, Hyderabad vs Smt. Razia Begum, Hyderabad on 1 May, 2019

Author: M.S.Ramachandra Rao

Bench: M.S.Ramachandra Rao

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.484 of 2016

ORDER :

This Civil Revision Petition is filed under Section 22 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short, 'the Act') challenging the order dt.26.08.2015 passed in Rent Appeal No.255 of 2011 on the file of the Chief Judge, City Small Causes Court, Hyderabad confirming the order dt.11.10.2011 passed in Rent Case No.328 of 2006 on the file of the IV Additional Rent Controller, Hyderabad.

2. The said R.C. was filed by the respondent against the petitioner for eviction of petitioner from the R.C. Schedule premises on the ground of willful default in payment of rents from December, 2005, and also on the ground of bona fide requirement of petitioner of the R.C. Schedule premises for the benefit of her husband and sons so that they can use it for their business.

The plea in the Eviction Petition:

3. According to respondent, she is the owner of the premises which had been let-out to petitioner in the year 1987 for non- residential purpose of running light machine business, called 'New Famous Mechanical Works'; that the rent was Rs.400/- per month payable before 5th of the succeeding month, initially; that the rent was later enhanced and at the time of filing of the eviction petition in ::2:: MSR,J crp_484_2016 2006, it was Rs.1500/- per month; that petitioner was very irregular in payment of rents, and always defaulted in payment of rents and only on repeated requests and demands, petitioner would pay the rents in petty instalments after accumulating the rents. She alleged that she got issued Ex.P.2 Legal Notice dt.16.05.2006 to petitioner demanding that petitioner vacate the R.C. Schedule premises within one (01) month on the ground of willful default and bona fide requirement, that the petitioner after received it did not comply with it, and so, the eviction petition was filed.

The stand of the Petitioner in the Eviction Petition

4. Counter-affidavit was filed by petitioner opposing the said application.

5. Firstly, he contended that the land over which the R.C. Schedule premises is constructed belongs to the Housing Board and the respondent's brother, by name, Rasheed Khan, grabbed the land and constructed the R.C. Schedule premises there, and that he had paid Rs.10,000/- to the said Rasheed Khan for making construction. According to him, the property changed hands from Rasheed Khan to respondent in the year 1987, and the petitioner was asked to execute a rental deed, and he did execute a rental deed. He also alleged that respondent discharged the loan in instalments of Rs.150/- by 1997; that the respondent requested for an advance of Rs.16,000/- thereafter, and he paid it; but, a receipt was issued on 13.01.2001 signed by the husband of respondent by name Qadeer Khan. According to ::3:: MSR,J crp_484_2016 petitioner, the rent as on 13.01.2001 was Rs.1,150/- per month and the rent at the time of filing of the eviction petition was Rs.1,500/- per month.

6. He alleged that the respondent stopped passing rental receipts since 10.02.1994, and the last rental receipt passed by her was for Rs.726/-. He denied that he is due to pay rents from December, 2005 and contended that he was paying rents whenever the respondent or her men used to collect the rent, and that the rent was due from 01.05.2006.

7. He also contended that after he received the Ex.P.2, Legal Notice, dt.16.05.2006, he asked the respondent to pass rent receipts and take the rent; that as the respondent had sent the notice, the old method of paying the rent without receipt would not be continued. According to him, he was ready to pay the rent and requested her to pass a receipt, but the respondent refused every time. He, therefore, contended that there is no default or willful default by him in payment of rents.

8. He also denied that the respondent required the R.C. Schedule premises for her bona fide requirement.

9. Before the Rent Controller, the respondent examined herself as PW1 and PW.2, and marked Exs.P.1 to P.5; while the petitioner examined himself as R.W.1, and marked Exs.R.1 to R.5.

::4::

MSR, J
crp_484_2016

The order of the Rent Controller in the RC:

10. By order dt.11.10.2011, the Rent Controller allowed the Rent Case No.328 of 2006 only on the ground of willful default in payment of rents, but rejected the plea of bona fide requirement claimed by respondent.

11. He observed that the respondent had issued Ex.P.2 alleging that petitioner is due rents from December, 2006 to May, 2006 and demanded to pay rents; that Ex.P.4 is the postal receipt and Ex.P.5 is the acknowledgment showing that petitioner received Ex.P.2 on 23.05.2006; that petitioner also admitted that he received Ex.P.2 and stated in cross-examination that he did not give

any reply to it. He held that petitioner deposed that he had not paid rents even after receipt of Ex.P.2; Ex.P.1, Rental Agreement dt.01.08.1987 showed that the rent is payable by 5th of each calendar month and receipt should be obtained from the respondent by petitioner; that petitioner admitted that he signed Ex.P.1 and also that rent for March, 2011 is due and that the rent for March, 2011 is payable in the month of April.

12. The rent Controller then referred to Exs.R.1 to R.4 filed by petitioner and observed that Ex.R.1 is the Rental Receipt dt.23.11.2006 which indicated that petitioner paid rents for seven (07) months, i.e., from May, 2006 to November, 2006 on 23.11.2006; that as per Ex.R.2, petitioner paid rents for December, 2006 and January, 2007 on 06.02.2007; that as per Ex.R.3, petitioner paid rents from February, 2007 to May, 2007 on 04.06.2007; that as per Ex.R.4, ::5:: MSR,J crp_484_2016 petitioner paid rents from June to August, 2007 on 19.09.2007; and these receipts show that even after filing of the eviction case, the petitioner was paying accumulated rents and is not paying rents regularly every month. It also held that petitioner pleaded that he sent rents by Money Orders to respondent, but did not produce any evidence in that regard.

The order in the Rent Appeal:

13. Assailing the same, the petitioner filed Rent Appeal No.255 of 2011 before the Chief Judge, City Small Causes Court, Hyderabad.

14. The Appellate Authority confirmed the eviction of petitioner also on the ground of willful default in payment of rent.

15. The Appellate Authority noted that according to respondent, default in payment of rents by petitioner is from December, 2005 onwards while according to petitioner it was from May, 2006 onwards; that the terms and conditions stipulated in Ex.P.1 were not disputed by petitioner; as per a condition stipulated in Ex.P.1, rent was to be paid on or before 5th of every succeeding month; that prior to the filing of the eviction case, the respondent had given Ex.P.2 - Legal Notice dt.16.5.2006 through counsel calling upon the petitioner to pay rents from December, 2005 to May, 2006; that in the said Legal Notice, it was asserted that Rs.9,000/- was due to respondent by the petitioner towards arrears of rent; and even after the said notice was received by him also, the petitioner did not reply to it. It further observed that after filing of the eviction case by the respondent, the ::6:: MSR,J crp_484_2016 petitioner paid under Ex.R.1 rents from May, 2006 to November, 2006 in compliance with an order passed in Interlocutory Application No.229 of 2006, and till such time, no attempt was made by the petitioner to clear off the rental dues. It also noted that the eviction case was filed on 13.07.2006.

16. It observed that if the petitioner was prompt in payment of rents and his intention was not to evade payment of rents, he would have paid the amount due towards rents to the respondent soon after he received Ex.P.2-Legal Notice; that even after service of summons in the eviction case on the petitioner, the petitioner did not attempt to clear the rental dues and paid the dues only after order was passed by the Rent Controller in I.A No.229 of 2006; even after the filing of the eviction case, petitioner was not prompt in payment of rents and made lumpsum payment of rents under Exs.R.2

to R.4 even thereafter. It therefore held that he was paying rents irregularly as per his convenience to the respondent, and that this default in payment of rents is willful.

The Civil Revision Petition

17. Assailing the same, the present Civil Revision Petition is filed. Contentions of Counsel for petitioner

18. The counsel for petitioner contended that there is no default, much less willful default on the part of petitioner in payment of rents to the respondent, and that both Rent Controller and Appellate Authority grossly erred in directing petitioner's eviction. He ::7:: MSR,J crp_484_2016 contended that the respondent was not passing receipts, and as and when receipts were given petitioner would pay the rents. He referred to the deposition of P.W.1 and a sentence in her evidence that her husband was collecting the rents, and that for some period rents were sent through Money Order, and she had refused them, and wanted the Court to infer from this evidence that it was the respondent who was harassing the petitioner. He even sought to contend that his client did not receive Ex.P.2-Legal Notice. The counsel for petitioner placed reliance on the Exs.R.1 to R.4 showing payment of rents from May, 2006 to August, 2007 after filing of the eviction case.

19. He also placed reliance on the following decisions, viz., S. Sundaram Pillai vs. V.R. Pattabiraman¹, Smt. Priya Bala Ghosh and others vs. Bajranglal Singhanian and another², Mallampalli Mallikarjuna Rao and another vs. Godavarthi Seshamma and another³, D.C. Oswal vs. V.K. Subbiah and others⁴, G. Surapa Raju vs. T. Mohana Rao⁵, Sha Shivaji Mansey vs. Vallabha Vyas⁶, Kolla Veeraswamy (died) per L.R.s vs. Gondesi Nagarathnamma (died) per L.Rs⁷, Rai Chand Jain Appellant vs. Miss. Chandra Kanta Khosla⁸ and Ram Sarup Gupta (dead) by L.Rs vs. Bishun Narain Inter College and A.I.R. 1985 S.C. 582(1) A.I.R. 1992 S.C. 639 A.I.R. 1971 Andhra Pradesh 298 (V.58 C 58) A.I.R. 1992 S.C. 194 1993 (2) A.L.T. 658 2000 (2) A.L.D. 505 1993 (1) A.L.T. 537 A.I.R. 1991 S.C. 744 ::8:: MSR,J crp_484_2016 others⁹, and contended that the orders passed by the Court below deserve to be set aside.

Contentions of Counsel for respondent

20. The counsel for respondent refuted the said contentions and supported the orders passed by both the Rent Controller as well as the Appellate Authority. He relied on M.Sadiq Vali v. P.Lakshamma.¹⁰ The Consideration by the Court

21. In the eviction petition, it is the contention of respondent that petitioner had committed willful default in payment of rent from December, 2005. The eviction petition was filed on 13.07.2006.

22. According to Ex.P.1, Rental Agreement dt.01.08.1987 between petitioner and respondent, the rents were to be paid by the 5th of each calendar month and receipt should be obtained by petitioner from the respondent, and the agreement specifically says that a discharge without receipt will not be valid.

23. The petitioner, in his cross-examination, admitted that he signed Ex.P.1, and that as per Ex.P.1, rent is payable on or before 5th of every succeeding month.

24. The respondent had issued Ex.P.2 Notice dt.16.05.2006 to petitioner specifically mentioning that petitioner was in default of A.I.R. 1987 S.C. 1242 1998(1) ALD 353 ::9:: MSR,J crp_484_2016 payment of rents from December, 2005 till May, 2006 amounting to Rs.9,000/-.

25. In the cross-examination, the petitioner, as R.W.1, admitted receiving Ex.P.2 - Notice and also stated that he did not give any reply to it, and he did not pay rents after receipt of Ex.P.2.

26. In the light of this admission by petitioner, it is not open to petitioner to now contend that he never received Ex.P.2 notice.

27. The respondent in her cross-examination stated that she did not remember the name of the months for which the petitioner became due rents but stated that he was due to pay rents for five months. She however denied the suggestion that she was not giving receipts whenever rents were paid. She then stated that petitioner was her tenant for the last nineteen (19) years; and that she did not remember the year from which the petitioner was the tenant of the premises. From the said evidence, the counsel for petitioner sought to contend that the petitioner was not at all aware of the tenancy and its particulars. In my opinion, no such inference can be drawn from the above statements of the respondent. They indicated that she knew that he was the tenant and also that he had committed default in payment of rents.

28. The counsel for petitioner also contended that since the respondent stated that she did not know the total amount of rent payable by the petitioner and that her husband was collecting rents, she cannot maintain the eviction petition.

::10::

29. This contention is also without merit because the Legal Notice Ex.P.2 issued by her mentions the amounts due and the petitioner received the said legal notice Ex.P.2.

30. No doubt, the respondent did state that rents which were sent through Money Orders were refused by her. But the said statement also does not help the petitioner in any way because he did not mark any Money Order refusal endorsements indicating for which period he sent the rents by Money Order which were refused by respondent, and whether they cover the period from December, 2005 to July, 2006 also, the period for which willful default in payment of rents was alleged by the respondent.

31. Section 8 of the Act enables a tenant to make deposit of rents if the landlord is not evading to receive rents by approaching the Rent Controller by filing application therefor.

32. The said provision states as under :

"8. Right of tenant paying rent or advance to receipt :

(1) Every tenant who makes a payment on account of rent or advance shall be entitled to obtain a receipt for the amount paid duly signed by the landlord or his authorized agent.

(2) Where a land-lord refuses to accept, or evades the receipt or, any rent lawfully payable to him by a tenant in respect of any building, the tenant may, by notice in writing, require the land-lord to specify within ten days from the date of receipt of the notice by him, a bank into which the rent may be deposited by the tenant to the credit of the land-lord;

Provided that such bank shall be one situated in the city, town or village in which the building is situated or if there is no such bank in such city, town or village, within three miles of the limits thereof.

Explanation: - It shall be open to the land-lord to specify from time to time by a written notice to the tenant and subject to the proviso aforesaid, a bank different from the one already specified by him under this sub-section.

::11::

(3) If the landlord specified a bank aforesaid, the tenant shall deposit the rent in the bank and shall continue to deposit in at any rent which may subsequently become due in respect of the building.

(4) If the landlord does not specify a bank as aforesaid the tenant shall remit the rent to the landlord by money order, after deducting the money order commission and continue to remit any rent which may subsequently become due in respect of the building in the same manner until the land-lord signifies by a written notice to the tenant his willingness to accept the rent or specifies a bank in which the rent shall be deposited in accordance with the provisions of sub-section (2).

(5) If the land-lord refuses to receive the rent remitted by money order under sub-section (4), the tenant may deposit the rent before such authority and in such manner as may be prescribed, and continue to deposit any rent which may subsequently become due in respect of the building, before the same authority and in the same manner, and the amount deposited may, subject to such

conditions as may be prescribed, be withdrawn by the person held by the Controller, to be entitled to the amount on application made by such person to the Controller in that behalf."

33. Thus, according to the said provision, if the landlord refuses to pay the rent or refuses to accept the rent the tenant should first issue a Notice to the landlord requiring the landlord to specify within ten (10) days a Bank into which the rent may be deposited by the tenant to the credit of the landlord; and if the landlord does not do so, then only he can send the rent by Money Order.

34. It is not the case of petitioner that he had invoked Section 8. Without doing so, he cannot straightaway send the rent by Money Order.

35. The Supreme Court explained the term 'willful default' occurring in the above Act in S. Sundaram Pillai (1 supra), as under :

"26. Thus, a consensus of the meaning of the words "willful default" appears to indicate that default in order to be willful must be intentional, deliberate, calculated and conscious, with full knowledge of legal consequences flowing therefrom. Taking for instance a case where a tenant commits default after default despite oral demands or reminders and fails to pay the rent without any just or lawful cause, it cannot be said that he is not guilty of willful default because such a course of conduct manifestly ::12:: MSR,J crp_484_2016 amounts to willful default as contemplated either by the Act or by other Acts referred to above."

36. In Mallampalli Mallikarjuna Rao (3 supra), the Andhra Pradesh High Court also explained that a tenant can be said to have committed willful default in payment of rent when he acts with supine indifference to the obligations or is recklessly indifferent in them.

37. Applying the above principle to the facts of the instant case, since admittedly the petitioner was informed under Ex.P.2 about his default in payment of rents from December, 2005 to May, 2006 in payment of monthly rent, and admittedly petitioner did not respond to it and also did not make any payment for the said period, it has to be held that his default in payment of rent is intentional, deliberate, calculated and conscious with full knowledge of legal consequences flowing therefrom.

38. When the terms of the Rental Agreement Ex.P1 specified that he must pay the rent by 5th of the month and obtain receipt from the respondent, he ought to have paid the rents within the said period continuously without default; and if the respondent, as is alleged by him, refused to issue receipts, he ought to have invoked Section 8 of the Act.

39. His plea that there was a practice between the parties to pay the rents only as and when demanded by the respondent is not established and, in fact, any such practice runs contrary to Ex.P.1 condition that he must pay the rents by the 5th of every calendar month.

::13::

MSR,J
crp_484_2016

40. Even assuming that there was any such practice, as is alleged by the petitioner, once Ex.P.1-Legal Notice was received by him he should have at least made the payment of arrears as on that date immediately. But he did not do so, and did not even reply to Ex.P.2.

41. In Smt. Priya Bala Ghosh and others (2 supra), the Supreme Court held that if the tenant pays the rent by hand or by money order at his cost, it should not make any difference to the landlord, and a tenant who resorts to mode of payment through Money Order cannot be evicted if he had shown readiness and willingness to pay the rent due and payable by him to the landlord.

42. The said principle could have been applied had he immediately, after receipt of Ex.P 2 legal notice, sent arrears of rent by Money Order. Or made sincere efforts to pay them, but the petitioner did not prove for what months he had sent rent by Money Order which was refused by the respondent. His silence and inaction after Ex.P2 legal notice was received by him showed that he was not ready and willing to pay the rents due. Therefore, this decision does not help the petitioner at all.

43. In D.C. Oswal (4 supra), the Supreme Court held that if there is a practice where the landlord had consented to collection of rent of two or three months at one time, and there is a default of three months in paying rent then it cannot be said to be willful default. In Sha Shivaji Mansey (6 supra), this Court held that if rent was being accepted by the landlord at irregular intervals or where the tenant had ::14:: MSR,J crp_484_2016 defaulted in payment of rent for bona fide reasons it will not be a case of 'willful default'.

44. In the instant case, no such consent of the respondent for irregular payment of rents in lumpsum has been established by the petitioner, and so, the said decisions also does not help the petitioner in any manner.

45. In G. Surapa Raju (5 supra), a learned Single Judge of this Court held that if the tenant had made efforts to pay rents to the landlord and then ultimately deposited the rents in a Bank, the tenant cannot be found fault with and the landlord who refused to accept the rent, cannot seek eviction of the tenant.

46. The facts in the instant case are entirely different from the said decisions. Therefore, this decision has also no application to the present case.

47. As already stated by me, in the instant case, there is no evidence of the landlord deliberately accepting rents at irregular intervals and there is also no bona fide reason for the petitioner to pay the rent with delay. Therefore, the said decision also is inapplicable.

48. In Kolla Veeraswamy (7 supra) and Rai Chand Jain (8 supra), this Court and the Supreme Court dealt with the scope of jurisdiction of the High Court under Section 22 of the Act vis-à-vis Section

115 of Civil Procedure Code, 1908, and held that the High Court has the power to interfere and re-appraise evidence, and its ::15:: MSR,J crp_484_2016 jurisdiction is wider than the jurisdiction conferred on it under Section 115 of the Civil Procedure Code, 1908.

49. This principle is well-settled, and does not require any elaboration.

50. In Ram Sarup Gupta (9 supra), the principle laid down is that in the absence of a pleading, the evidence produced by the parties cannot be considered, and no party should be permitted to travel beyond its pleading. In the instant case, I do not find any deviation between the pleading and evidence, and so, this decision also has no application to the facts of the present case.

51. In M. Sadiq Valil (10 supra) cited by Counsel for respondent, this Court held that if the landlord is not accepting rents regularly and failed to issue receipts, the tenant ought to have adopted the remedy available to him under Section 8 of the Act. It observed that if the contention of the tenant that the landlord was accepting rents at irregular intervals is not proved, he is liable to be evicted if he fails to show that he was prevented by sufficient cause for reasons beyond his control to pay the rents on time.

52. This decision squarely applies to the instant case.

53. I therefore do not find any error of jurisdiction or error of fact or law in the order passed by the appellate authority under the Act warranting interference by this Court in exercise of its jurisdiction under Section 22 of the Act.

::16::

MSR, J
crp_484_2016

54. Accordingly, the Civil Revision Petition fails, and it is dismissed with costs of Rs.5,000/- payable to respondent by petitioner within four (04) weeks from to-day.

55. The petitioner is granted time till 30.09.2019 to deliver peaceful and vacant possession of the R.C. Schedule premises to the respondent and shall also pay / deposit arrears of rent due to respondent on or before 30.09.2019.

56. The petitioner shall also file an undertaking within two (02) weeks from the date of receipt of a copy of this order that he would comply with the above two conditions.

57. In default of complying with either of the conditions mentioned above, the petitioner shall be liable for immediate eviction from the R.C. Schedule premises.

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

31.07.2019 Ndr JUSTICE M.S.RAMACHANDRA RAO Date :