

Bangalore District Court

Mr.N.Yellappa Rao Ghodke vs Mr.Dhasarath Rao on 19 March, 2015

IN THE COURT OF THE XV ADDL.JUDGE:

Court of Small Causes, Mayohall Unit, Bangalore.

(SCCH.19)

Present: Smt.C.G.Vishalakshi, B.A.L., LL.B.,
XV Addl. Judge

Dated this the 19th day of March 2015

HRC.No.10068/2007

Petitioner: Mr.N.Yellappa Rao Ghodke,
Aged 64 years,
Son of Late B.Nagoji Rao alias Giddappa,
Presently residing at B-4, Giddappa Block,
Tannery Road, Frazer Town,
Bangalore-560 005.

(By Sri.S.S.L., Advocate)
-Vs-

Respondent: Mr.Dhasarath Rao, (since dead)
Aged about 87 years,
Son of B.Nagoji Rao alias Giddappa,
Presently residing at A-Lane, No.1,
Giddappa Block, Tannery Road,
Frazer Town, Bangalore-560 005.

Legal representatives of Respondent:-

1. Sri.D.Mohan,
Aged about 50 years,
S/o.Late Dhasarath Rao.
2. Smt.Radha,
Aged about 45 years,
W/o.Mohan.
3. Sri.Ramji,
Aged about 45 years,
S/o.Late Dhasarath Rao.
4. Smt.Padma,

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- Aged about 43 years,
5. Sri.Laxman,
Aged about 43 years,
W/o.Late Dhasarath Rao,
6. Smt.Padmini,
Aged about 40 years,
W/o.Laxman.
7. Sri.Gaure,
Aged about 35 years,

S/o.Late Dhasarath Rao.
8. Smt.Manju,
Aged about 30 years,
W/o.Gaurf,
All are residing at:-
A-Lane, No.1, Giddappa Block,
Tannery Road,
Frazer Town,
Bangalore-560 005.

(By Sri.S.N.G., Advocate)

JUDGMENT

This petition is filed by the Petitioner U/s.27(2) (a) (h) & (r) of the Karnataka Rent Act 1999, with a prayer to pass a Judgment or directing the Respondents to vacate and hand over the vacant possession of petition schedule property and for arrears of rent and for costs in the interest of justice and equity.

2. The brief facts of the petitioner's case are as under: The Petitioner claims that he is the absolute owner and landlord in respect to the property bearing No.A-Lane, No.1, being portion of property situated in survey No.21 Municipal Old No.36, New No.33, Giddappa 3 SCCH-19 HRC.No.10068/2007 Block, Tannery Road, Devarjeevanahalli Village, Bangalore North Taluk, presently known as Frazer Town, Bangalore, having purchased the same under deed of reconveyance dated 19.8.1981 where in the petition schedule property is one portion property.

3. It is further averred that Respondent is tenant in respect to the suit schedule property on monthly rentals of Rs.100/- at the time of filing this petition and tenancy is being the English Calendar month. The Respondent is defaulter in paying rents and not paid rent from 01.04.2004 to 30.04.2007 amounting to Rs.3,600/-. It is further case of the Petitioner that he requires the petition schedule property for himself his family members, for their own use and occupation, as the Petitioners desired to demolish the schedule property and to reconstruct the building on the schedule property as the schedule property is old and as such he had issued legal notice against the Respondent on 09.05.2007 calling him to pay the arrears of rent from 01.04.2004 asking him to vacate and hand over the vacant possession of suit schedule property in favour of the Petitioner. The said notice was served on the Respondent on 15.05.2007 and it was served on him through the certificate of posting, inspite of the same, the Respondents not replied the legal notice.

4. During the pendency of the petition, the Petitioner got amended the petition and added Para (a) are as follows, stating that he is the absolute owner of the property No.30(New No.33), situated at 'A' Block, Giddappa Block, Frazer Town, Bangalore and there are 9 houses in the said 'A' Block and there are 9 tenants including this Respondent. The other 8 tenants are the tenants under the Petitioner in respect of property bearing No.30 and Petitioner has filed eviction cases against those

8 persons along with Respondent totally he has filed 9 petitions for eviction of all 9 tenants for the purpose of demolishing and reconstruction of the building and if at all the tenants in all petitions have evicted from the petition schedule property he can demolish and reconstruct the building for his own use and occupation. If partial eviction is ordered the Petitioner is unable to reconstruct the building. Further contended that the tenancy of the Respondent has been terminated by causing notice against the Respondent on 09.05.2007. Hence, contended that the Respondent does not want the Respondent to continue as his tenant any longer. Hence, he prays to allow the petition.

5. In response to the notice issued by this court, the Respondent appeared before this court through his counsel and filed his objections denying the claim of the Petitioner in their petitions. Hence, contended that there is no jural relationship of landlord and tenant in between him and the 5 SCCH-19 HRC.No.10068/2007 Petitioner and contended that Respondent is not residing at premises No.'A' Lane, No.12, Giddappa Block. On the other hand, he is residing at Premises No.13, which property is his own property as the same was given to him by his father B.Nagoji Rao @ Giddappa about half a century ago and eversince he has been residing therein along with his family members. Thus Respondent has nothing to do with premises No.12 and that the premises under the occupation of the Respondent is bearing No.12 as alleged by the Petitioner. Further contended that he is neither a tenant under the Petitioner in respect to the petition schedule property on monthly rental of Rs.100/- nor he has paid any rents to the Petitioner at any point of time and he denies the allegations of the Petitioner that he has with held the rents from 01.04.2004 to the tune of Rs.3,600/- as false and reiterated that when he is not a tenant nor paid any rents to the Petitioner at any point of time, the question of with holding the allege rent is out of scope. Hence, contended that the petition is liable to be dismissed.

6. Further he also denies the requirement of the petition schedule property as per their own use and occupation as false. Hence, contended that the Petitioner is residing at his own property, which has a palatial accommodation, inspite of the same, the petition is ill motivated as the same is filed to some how evict the Respondent and knock of a valuable property 6 SCCH-19 HRC.No.10068/2007 of the Respondent. Though he had admitted that issuance of notice by the Petitioner against him, but he denies that he has not replied the notice to the Petitioners as false. On the other hand, he stated that he has given reply on 02.06.2007 through his advocate. The said notice was returned with shara as "Not claimed". Hence, the allegations of the Petitioner that the Respondent has not replied to the legal notice is nothing but mischievous. Further contended that the Petitioner has no right either to brand the Respondent as his tenant or claim any rents from him or to effect the alleged termination of his tenancy or seek his eviction.

7. Further during the pendency of the petition, Respondent also got amended his written statement by adding Para No.7(a) stating that the Petitioner has filed 8 more eviction petitions against the tenants under HRC.No.10015/2007, HRC.No.10016/2007, HRC.No.10017/2007, HRC.No.10048/2007, HRC.No.10049/2007, HRC.No.10051/2007 and HRC.No.10069/2007 on the grounds of demolish and reconstruct or claiming that it is require for his bonafide use and occupation. However, during the pendency of the above said case, the Petitioner has obtained possession of 7 houses from his tenants through court process and thereafter during the year 2012-13, he has constructed a multistoried residential building which comprising of 9 portions to

new tenants on higher rents and 7 SCCH-19 HRC.No.10068/2007 advances in the year 2014. Thus the claim of the Petitioner is absurd and redundant and hence, Petitioners is liable to be dismissed. Hence, prays for dismissal of the petition filed by the Petitioner.

8. During pendency of the suit since, the Respondent Dashrath Rao died as legal representatives were brought on record and they also filed similar type of objections to the petitions of the Petitioners and prays for dismissal of the petition.

9. Petitioner in order to prove his case, got examined himself as PW.1 and got marked as Ex.P1 and Ex.P.15 and closed his side. Whereas Respondents got examined themselves as RW.2 & RW.3 and got marked documents like Ex.R.1 to Ex.R.6 and closed their side.

10. Heard arguments and perused the entire records.

11. In the light of the above following points arise for my consideration:

1. Whether the Petitioner proves that there exists landlord and tenant relationship in between the Petitioner and the Respondent?

2. Whether the Petitioner proves that Defendant is chronic defaulter and he is in arrears of rent to the tune of Rs.3,600/- from 01.04.2004 to 30.04.2007 till the date of filing of the suit as claimed by him?

3. Whether the Petitioner proves that he has intention of demolition and reconstruction of existing building and after constructing, he requires the 8 SCCH-19 HRC.No.10068/2007 same for his own use and occupation as per the Sec.27(2)(a)(h) & (r) of Karnataka Rent Act ?

4. Whether the Petitioner is entitled for the relief sought for?

5. What order?

12. My answer on the above points are :

Point No.1: In the Negative Point No.2: In the Negative Point No.3: In the Negative Point No.4: Petitioner is not entitled Point No.5: As per final order, for the following :

REASONS

13. Point No.1:- On reading the materials on record, it shows that the Petitioner has maintained this eviction petition U/s.27(2)(a)(h) & (r) of Karnataka Rent Act against the Respondent for the relief of eviction of Respondent from the petition schedule property and for arrears of rent asserting that he is the sole and absolute owner of all that piece and parcel of immovable property being residential premises bearing

No.A-Lane, No.1, being portion of property situated in survey No.21 Municipal Old No.36, New No.33, Giddappa Block, Tannery Road, Devarjeevanahalli Village, Bangalore North Taluk, presently known as Frazer Town, Bangalore in which the petition schedule property is one of the shop premises having acquired the same under deed of reconveyance dated 19.8.1981 and 9 SCCH-19 HRC.No.10068/2007 Defendant is tenant under him in respect to the petition schedule property on monthly rentals of Rs.100/-.

14. The Respondent is chronic defaulter in paying rents and not paid rents from 01.04.2004 to 30.04.2007 to the tune of Rs.3,600/- and as the Petitioner has an intention to demolish the schedule property and reconstruct the building thereon, and after construction of the same, he requires the petition schedule property for his own use and occupation, he had requested the Respondent asking him to quit and deliver the vacant possession of the petition schedule property along with arrears of rent. Since, the Respondent not complied with the demands of Petitioner, the Petitioner caused legal notice against the Respondent on 09.05.2007 and though the said notice was duly served on the Respondent, he has not replied the same nor vacate and hand over the vacant possession of the petition schedule property along with arrears of rent. Hence, he has approached this court seeking the above said relief.

15. Per contra as could be seen from the defence set out by the Respondent, the Respondent not only denied the very title of the Petitioner with respect to the petition schedule property by denying about the acquisition of ownership and title with respect to the petition schedule property contending that though he is not residing at No.12 as alleged by the 10 SCCH-19 HRC.No.10068/2007 Petitioner, but he is residing at No.13, Giddappa Block, Frazer Town, Bangalore having acquired the same through his father stating that the said property is his own property, which was given to him by his father Late.B.Nagoji Rao @ Giddappa, about half a century ago and eversince thereof, he has been residing therein along with his family members. Thus he not only denied the very jural relationship of landlord and tenant in between himself and the Petitioner with respect to the petition schedule property, but he denies the very title of the Petitioner in respect to the petition schedule property. Hence, burden is on the Petitioner to prove at first instance that there exists the landlord and tenant relationship in between himself and the Respondent by proving the fact that the Respondent is residing at petition schedule property as tenant under him with necessary evidence.

16. On perusal of the entire materials on record, it is pertinent to note that the Petitioner had filed other 8 eviction petitions under HRC.No.10015/2007, HRC.No.10016/2007, HRC.No.10017/2007, HRC.No.10048/2007, HRC.No.10049/2007, HRC.No.10051/2007 and HRC.No.10069/2007 along with this petition, against the other tenants, who are in occupation of the subject matter of those HRC Petitions as tenants under him, for the relief of eviction of them from the petition schedule 11 SCCH-19 HRC.No.10068/2007 property claiming that he has an intention to demolish all the existing structure and to reconstruct the building thereon and thereafter he requires the said property for his own use and occupation.

17. During pendency of the petitions all the Respondents have filed an application U/s.43 of Karnataka Rent Act denying the very jural relationship of landlord and tenant in between

themselves and the Petitioner herein. On contest those HRC Petitions were dismissed by passing an orders on application U/s.43 of Karnataka Rent Act. Aggrieving by the said orders, the Petitioner herein had preferred HRRP Petition before the Hon'ble High Court of Karnataka in HRRP No.222/2008, No.223/2008, No.224/2008, No.225/2008, No.226/2008, No.227/2008, No.228/2008, No.229/2008, wherein the Hon'ble High Court of Karnataka after appreciating oral and documentary evidence available on record was pleased to pass a common order dated 11.09.2009 by expressing opinion that the Petitioner has proved his title in respect to the petition schedule premises i.e., with respect to the subject matters covered under all the HRC Cases i.e., HRC.No.10015/2007, HRC.No.10016/2007, HRC.No.10017/2007, HRC.No.10048/2007, HRC.No.10049/2007, HRC.No.10051/2007 and HRC.No.10069/2007 i.e., Survey No.21, Municipal Old No.30, New No.33 and remanded back all the HRC Cases, except this HRC Petition on hand with observations that 12 SCCH-19 HRC.No.10068/2007 dismissal of the eviction petition without giving any finding on Point No.2 to 4 is not correct and directed the Trial Court to dispose off the HRC Petitions. But at that time of passing an common order, the Hon'ble High Court of Karnataka was pleased to separate the HRRP Petition No.229/2008 in relation to the HRC Case on hand, only on the ground that one of the Petitioner was expired requiring his legal representatives to be brought on record. As such the HRRP No.229/2008 in relation to this case on hand was not remanded on that time. Hence, this court could not dispose off of this HRC Petition also along with the other HRC Cases. However the HRRP Petition No.229/2008 was pleased to dispose off by Hon'ble High Court of Karnataka by setting aside the orders passed by this court on I.A. U/s.43 of Karnataka Rent Act and remanded back with an observations that the co- ordinate Bench of this court was pleased to heard the other HRC matters and by common order dated 11.09.2009 set aside the finding of the Trial Court on the issues framed by it, touching jural relationship by extracting Para No.25 & 26 of the orders passed on other HRRP Petitions by summing up the conclusion as Para No.25 & 26 as follows:

Para No.25. On Respondent-appreciation of the evidence on record. I am of the considered view that the Petitioner has proved his title in respect of the petition schedule premises. Even assuming that there was a dispute over the jural relationship between the parties, then the Trial Court ought to have directed the parties to approach the competent court of 13 SCCH-19 HRC.No.10068/2007 Civil jurisdiction for declaration of rights rather than dismissing the petitions.

Para No.26. On a consideration of the oral and documentary evidence on record as well as the submission made on both sides. I am of the considered view that Point No.1 has to be held in the negative and that the finding given on the said point requires to be reserved in this order. From a reading of the answer to the issues raised by the Trial Court, it is noted that while answering point No.1 in the negative there has been dismissal of the eviction petitions without giving any finding on point Nos.2 to 4 raised by the Trial Court on merits. It is necessary that a finding on the merits of eviction petitions has to be given by the Trial Court and thereafter to dispose of the eviction petitions in accordance with law.

And opined that in that circumstances, no different view can be taken than what was taken by co-ordinate bench in HRRP.No.228/2008 and other cases. Thus there is already a finding by the Hon'ble High Court of Karnataka in respect to the title and ownership of the Petitioner with regard to the petition schedule premises covered under all the HRC Cases including the subject matter of this HRC Petition. Hence, though Respondent has denied the title of the Petitioner in respect to the petition schedule property, no different view can be taken by this court, when there is already finding about the title of the Petitioner in respect to the petition schedule property by the Hon'ble High Court of Karnataka.

18. If really the petition schedule property is different property than the property claimed by the Respondent, then definitely they would have 14 SCCH-19 HRC.No.10068/2007 taken such defence in the HRRP Petition only before the Hon'ble High Court of Karnataka, as the Respondent was duly appeared in the said HRRP.No/229/2008 through his advocate as per the admissions of RW.1, as he clearly admitted about the same and deposed in kannada as follows:-

" WÀÈÀ GZÀÑ ÈÁÀAiÀiÁ@AiÀÄçAzÀ ÈÀªÀÄUÀÆ ,À°À ÈÉÆÄn ,ÄÄ §AçzÀÄÝ. ÈÀªÀÄäÈÄÄß ¥ÀPÀèPÀgÀgÀÈÁßV ªÀiÀrzÀÝgÀÄ JAzÀgÉ ,Àj. ,ÀzÀj WÀÈÀ GZÀÑ ÈÁÀAiÀiÁ@AiÀÄzÀ°è ªÀQÀ@gÀÈÄÄß ÈÉÄ«Ä¹ ¥ÀæPÀgÀtªÀÈÄÄß ÈÀqÉ¹zÉÝÄªÈ JAzÀgÉ ,Àj. WÀÈÀ GZÀÑ ÈÁÀAiÀiÁ@AiÀÄzÀ DzÉÄ±ÀzÀ CÈÄÄ ,ÁgÀ ÈÁªÀÄ ªÀÄvÉÛ CfðzÁgÀgÀÄ Cfð ,ÀéwÛÈÀ ªÀiÀ°ÄPÀgÀ@è JAzÀÄ °ÉÄ¼À@Ä §gÀÄªÀÄç@è JAzÀgÉ ,ÁQèAiÀÄÄ CfðzÁgÀgÀÄ ªÀiÀ°ÄPÀgÀ@è JAzÀÄ ÈÄÄrAiÀÄÄvÁÛgÉ".

19. No doubt the Petitioner has proved his title and ownership over the petition schedule property, but this petition being for the relief of ejectment of the Respondent from the petition schedule property and for arrears of rents, the Petitioner must necessarily prove the fact that there exists the jural relationship of the landlord and tenant in between himself and the Respondent in respect to the petition schedule property that he is the landlord and Respondent is tenant under him. To prove the fact that though Petitioner adduced his evidence as PW.1 and deposed in his evidence that he is the owner and landlord in respect to the petition schedule property and Respondent is tenant under him in respect to the petition schedule property 15 SCCH-19 HRC.No.10068/2007 on monthly rentals, but to prove the said fact he has not produced any material evidence before this court nor elicited any material admissions from the mouth of RW.2 (The deposition of legal representatives of Respondent ought to have been recorded as RW.1, but due to oversight it is mentioned as RW.2). Though Petitioner made an attempt to elicit that Hon'ble High Court of Karnataka was pleased to dispose off the HRRP Petition No.229/2008 as per the Ex.P.15 by holding that the Petitioner is landlord and Respondent is tenant in respect to the petition schedule property, but RW.2 by denying the said suggestion as false and stated that there was no such order by the Hon'ble High Court of Karnataka. Further as per the orders of Hon'ble High Court of Karnataka in HRRP.No.229/2008, though their lordship remanded the matter with an observations that a co-ordinate bench of Hon'ble High Court of Karnataka was pleased to heard and passed common order in HRRP.No.222/2008 to HRRP.No.228/2008 by upholding that the Petitioner has proved his title in respect to the subject matter of all the HRC Cases, but no where the Hon'ble High Court of Karnataka has given finding about the jural relationship of landlord and tenant in between the Petitioner and Respondent in respect to the properties covered under all HRC Cases. On the other

hand, the HRRP.No.222/2008 to HRRP.No.228/2008 were remanded back with an observations on reference 16 SCCH-19 HRC.No.10068/2007 to the authority, to admit additional evidence and thereby setting aside the orders of dismissal passed by this court under I.A. U/s.43 of Karnataka Rent Act by making an observations that if at all was there any dispute with respect to the title of both parties, the Trial Court ought to have referred the matter to Civil Court directing both parties to approach Civil Court directing both parties to approach Civil Court for declaration of their right and without passing of the said orders dismissed the eviction petitions without giving any finding on Point No.2 to 4 is not correct and directed the Trial Court to dispose of the petitions in accordance with law. Thus there is no finding by the Hon'ble High Court of Karnataka, in respect to the jural relationship of landlord and tenant between the Petitioner and the Respondent. Thus the Petitioner has burden of proving that there exist jural relationship of landlord and tenant in between the Petitioner and the Respondent in respect to the petition schedule property with necessary evidence.

20. No doubt the other related HRC Petitions i.e., HRC.No.10015/2007, HRC.No.10016/2007, HRC.No.10017/2007, HRC.No.10048/2007, HRC.No.10049/2007, HRC.No.10051/2007 and HRC.No.10069/2007 were pleased to allowed by this court by holding that the Petitioner has proved that there exist the jural relationship of landlord and tenant in respect to the subject and matters of those HRC cases by 17 SCCH-19 HRC.No.10068/2007 appreciating the evidence of both Petitioner and Respondent therein and on the admissions of the Respondent in some of the HRC Cases, that they are paying rents to the Co-owners etc. But in the case on hand, though PW.1 adduced his evidence to prove that there exists the relationship of landlord and tenant in between himself and the Respondent, but as aforesaid discussions no iota of evidence placed before the court to show that he is the landlord and the Respondent is tenant under him in respect to the petition schedule property nor elicited any material admissions from the mouth of RW.2. On the other hand Respondent attempted to say that he is also one of the son of B.Nagoji Rao @ Giddappa through 2nd wife and his father had given the said property to him by way of gift etc., no documents has been produced by the Respondent also to substantiate the said aspect. But mere the fact that that the Respondent not placed any documents before the court to show that the petition schedule property was given to him by his father under gift deed, it cannot be said that the Respondent is residing in the petition schedule property in the status of tenant, only unless it is proved by the Petitioner with necessary cogent evidence. No doubt as per the observations made by the Hon'ble High Court of Karnataka, the Petitioner has proved his title in respect to the petition schedule property, but this petition being for the relief of eviction, the Petitioner must necessarily 18 SCCH-19 HRC.No.10068/2007 establish the fact that he is the landlord and Respondent is tenant under him in respect to the petition schedule property. But absolutely no such material evidence has been placed before the court. Hence, this court is of the opinion that the Petitioner has failed to prove the fact that he is the landlord and Respondent is tenant under him in respect to the petition schedule property by proving that there exists the jural relationship of landlord and tenant in between them. Hence, I answered Point No.1 in the Negative.

21. Point No.2 & 3:- Since, the Petitioner has failed to prove the very jural relationship of landlord and tenant in between himself and the Respondent in respect to the petition schedule property, the question of considering the bonafide requirement of the petition schedule property for his own use and occupation and also for arrears of rent does not arise. Hence, I answered Point No.2 & 3 in the

Negative.

22. Point No.4:- Since the Petitioner failed to prove the fact that he is the landlord and Respondent is tenant under him in respect to the petition schedule property, he is not entitle for any relief i.e., with respect to either arrears of rent or an order of eviction of Respondent from the petition schedule property. Hence, I answered that Petitioner is not entitle.

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23. Point No.5:- For the foregoing reasons assigned to Point No.1 to 4 as well as facts and circumstances observed therein, I proceed to pass the following :

ORDER Petition filed by the Petitioner U/s.27(2) (a) (h) & (r) of the Karnataka Rent Act 1999 is hereby dismissed.

However the Petitioner is at liberty to file necessary suit for recovery possession.

(Dictated to the Stenographer, computerized transcript thereof corrected by me and then pronounced in the open court on this the 19th day of March 2015) (C.G.Vishalakshi) Member SCCH 19.

ANNEXURES Petitioner's Witnessess:

PW.1 Sri.N.Yellappa Rao Ghodke
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Respondent's Witnessess:

RW.2 Sri.D.Gowri
RW.3 Sri.B.V.Palnethra

Petitioner's Exhibits:

Ex.P.1 : Certificate of Sale Deed
Ex.P.2 : Notarized Copy of Mortgage Deed
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Ex.P.3 : Notarized Copy of Condition Sale Deed
Ex.P.4 & 5 : Tax Paid Receipts issued by BBMP
Ex.P.6 & 7 : Electricity Bills issued by BESCOM
Ex.P.8 : Letter regarding inspection of Vigilance squad
Ex.P.9 : Legal Notice dated 09.05.2007
Ex.P.10 : UCP
Ex.P.11 : Postal Acknowledgment
Ex.P.12 : Copy of HRC Judgment
Ex.P.13 : Copy of Award

Ex.P.14 : Copy of HRRP No.222/08 to 228/2008
Ex.P.15 : Copy of HRRP No.229/2008

Respondent's Exhibits:

Ex.R.1 : Photo
Ex.R.2 : Notice dated 19.12.2012
Ex.R.3 : Notice dated 09.05.2007
Ex.R.4 : Notice dated 02.06.2007
Ex.R.5 : Certificate
Ex.R.6 : Letter issued by BESCO

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(C.G.Vishalakshi)

Member

SCCH 19.

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19.03.2015

Judgment (pronounced in open court
vide separate orders)

Petition filed by the Petitioner
U/s.27(2) (a) (h) & (r) of the Karnataka
Rent Act 1999 is hereby dismissed.

However the Petitioner is at liberty to
file necessary suit for recovery possession.

XV ACJ