

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

TUESDAY, THE THIRTIETH DAY OF JANUARY
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE SAMBASIVARAO NAIDU

CIVIL REVISION PETITION NO: 2153 AND 2160 OF 2016

CIVIL REVISION PETITION NO: 2153 OF 2016

Petition Under Section 22 of AP Buildings (Lease, Rent and Eviction) Control Act, 1960 aggrieved by the Order dated 25-02-2016 Passed in RA.No.7 of 2015 on the file of the Court of the Principal Senior Civil Judge, Ranga Reddy District at L.B.Nagar in RC.No.29 of 2008 on the file of Additional junior Civil Judge, Rent Controller Kukatpally.

Between:

P Siva Kumar, S/o. Narasimha, Occ : Business C/o. M/s. Mallikharjuna Dresses, Shop No. 1-20, Tara Nagar, Chanda Nagar, Serilingampalli (M), Ranga Reddy District.

...Petitioner/Appellant

AND

Anil Kumar Bohra, S/o. Motilal Bohra, Occ: Business R/o. HUDA Colony, Venkat Residency, Chanda Nagar, Serilingampally Mandal, Ranga Reddy District.

...Respondent/Respondent

I.A. NO: 1 OF 2016(CRPMP. NO: 2755 OF 2016)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay the operation of the order in RC.No.29 of 2008, dated 10-09-2015 of the Rent Control-Cum-Additional Junior Civil Judge, Kukatpally at Miyapur, as confirmed by the Appellate Authority-Cum-Principal Senior Civil Judge, Ranga Reddy at L.B.Nagar, dated 25-02-2016 in RA No.7 of 2015 pending disposal of the above Civil Revision Petition.

CIVIL REVISION PETITION NO: 2160 OF 2016

Petition Under Section 22 of AP Buildings (Lease, Rent and Eviction) Control Act, 1960 aggrieved by the Order dated 25-02-2016 Passed in RA.No.8 of 2015 on the file of the Court of the Principal Senior Civil Judge, Ranga Reddy District at L.B.Nagar preferred against the Order dated 10-09-2015 made in RC.No.30 of 2008 on the file of Additional junior Civil Judge, Rent Controller Kukatpally.

Between:

P Shiva Kumar, S/o.Narasimha, Aged about 58 years, Occ Business, C/o. M/s.Mallilcharjuna Dresses, Shop No.1-20, Tara Nagar, Chanda Nagar, Serilingampalli (M), Ranga Reddy District.

...Petitioner

AND

A Kumar Bohra, S/o Motilal Bohra, Aged about 39 years, Occ Business, R/o. HUDA Colony, Venkat Residency, Chanda Nagar, Serilingampally Mandal, Ranga Reddy District.

...Respondent

I.A. NO: 1 OF 2016(CRPMP. NO: 2763 OF 2016)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the petitioner to deposit the rents to the credit of R.C.No.30 of 2008 on the file of the learned Rent Controller-cum-Additional Junior Civil Judge, Kukatpally at Miyapur, pending disposal of the main C.R.P.

Counsel for the Petitioners in both CRP's : Sri M V Durga Prasad

Counsel for the Respondents in both CRP's: Sri Bankatlal Mandhani

The Court delivered the following: Common Judgment

THE HON'BLE SRI JUSTICE SAMBASIVA RAO NAIDU

CRP.NO.2153 OF 2016
AND
CRP.NO.2160 OF 2016

COMMON JUDGMENT:

Being aggrieved by the Judgment and Order dated 25-02-2016 in R.A.No.7 of 2015 and R.A.No.8 of 2015 on the file of Principle Senior Civil Judge, Ranga Reddy, where under, his Rent Control Appeal against the common judgment in R.C.No.29 of 2008 and R.C.No.30 of 2008 on the file of Addl. Jr. Civil Judge Cum Rent Controller, Kukatpally, were dismissed, the appellant in the above referred Rent Control Appeals, filed two Civil Revision Petitions vide CRP.No.2153 of 2016 and CRP.No.2160 of 2016 under Section 22 of A.P. Buildings (Lease, Rent & Eviction) Control, Act, 1960 (herein after will be referred as 'Act, 1960') and sought for setting aside the said common order and also prayed for dismissal of the Rent Control case filed by the land-lord for his eviction and to allow his petition by permitting him to deposit the agreed rent into Court.

2. As could be seen from the material documents filed along with the present revision petitions, it appears that two Rent Control cases vide RC.No.29 of 2008 and RC.No.30 of 2008 have been disposed by the trial Court under a common order dated 10-09-2015 and since they were decided against his claim, the present appellant filed RA.No.7 of 2015 and RA.No.8 of 2015. However, since both the appeals were dismissed, the present revision petitions came to be filed.

3. Before advertng to the contentions raised by the petitioner in the present revision petition, it is just and necessary to refer the brief facts of the above referred Rent Control cases. Since there are two original cases and there are two Rent Control Appeals and in view of the present Revision Petitions to avoid confusion and for better appreciation, the parties need to be referred as landlord and tenant. The property involved in these two cases is a Mulgi admeasuring 555 Sq.yrds in plinth area admeasuring 62 Sq.yrds bearing Mulgi No.1-20 at Tara Nagar, Serlingampally, Ranga Reddy District. The Landlord filed a petition under Section 10(2)(i), 10(3)(iii) of the Act, 1960 seeking eviction of

the tenant or any other person on his behalf from the above referred Mulgi on the ground of willful default in payment of rent and also on the ground of bonafide requirement of the property. Whereas, the tenant filed another Rent Control case under Section 8(5) of the Act, 1960, seeking permission to deposit the rent of above referred Mulgi @ Rs.1525/- per month into the Court.

4. As per the admitted case of both parties, it appears that the tenant was in occupation of the said premises since a longtime and the same was originally owned by one Gokuldas Mundhada. Subsequently, the Landlord, who filed the above referred Rent Control case purchased the property under a registered sale deed from the original owner and tenant was informed about the alienation of the property and the tenancy was attorned in favour of the landlord vide letter dated 10-06-2005.

5. As per the averments made by both parties, at least not disputed by the landlord, the attornment of tenancy and with a direction to the tenant to pay the rent to the landlord was through the above said letter. The landlord has claimed that subsequent to the purchase of the property, the

tenant paid rent for 4 months from May, 2005 to August, 2005 through money order but failed to pay the rents from August, 2005.

6. Therefore, it was a willful default as per which the tenant is liable to vacate the shop Mulgi. In addition to that the landlord has claimed that he was in requirement of the shop for establishment of his own business, thereby, on the ground of bonafide requirement also he sought for eviction of the tenant from the shop.

7. Whereas, the tenant has filed the second case on the ground that subsequent to the attornment of tenancy, when he tried to pay the rent, the landlord started avoiding to receive the same. Therefore, he started sending the rent by way of money order which were received by the landlord for some period and when he tried to enquire the landlord about any Bank Account so that he can deposit the rent, such information was not furnished and that the landlord was avoiding receipt of rent, thereby, he sought permission of the Court to deposit the rent into the Court.

8. While disputing the averments made by the landlord with regard to willful default, bonafide requirement,

the tenant has claimed that there was no such default of payment in rent but the landlord himself avoided the receipt of rent and that the landlord being owner of the other similar properties cannot claim such a bonafide requirement and prayed for dismissal of the case filed by the landlord and also permission to deposit the rent into the Court.

9. Both parties adduced common evidence in both the cases. The landlord has been examined as PW.1. He has marked Exs.P1 to P8, whereas, the tenant has been examined as RW.1, two more witnesses were examined as RW.2 and RW.3. Exs.R1 to R13 have been marked by the tenant. The learned Junior Civil Judge having appreciated the evidence, both oral and documentary, came to the conclusion that there was willful default of payment of rent by the tenant and also held that the landlord was able to prove the bonafide requirement, thereby, allowed the petition filed by the landlord and dismissed the petition filed by the tenant.

10. Being aggrieved by the common judgment, the tenant preferred two Rent Control Appeals as referred above and since both the appeals were dismissed under a common order against his favour, he has filed the present revision

petitions. CRP.No.2153 of 2016 has been filed against the appeal vide RA.No.7 of 2015, whereas, CRP.No.2160 of 2016 has been filed against the findings in RA.No.8 of 2015. Since both the appeals are against the common judgment which in fact disposed two Rent Control cases, to avoid the confusion and for the sake of convenience, it would be suffice to dispose the revisions under a common judgment.

11. Heard both parties.

12. The learned counsel for the petitioners herein vehemently submitted that the trial Court as well as the first appellate Court did not record any finding with regard to the voluminous documentary evidence produced by the tenant to show that he bonafidely tried his best to pay rent to the present landlord. Even though, the documents clearly indicates and though the cross-examination of PW.1 clearly proved that the landlord successfully avoided the payment of rent and though the tenant made all efforts to remit the rent, the trial Court as well as the first appellate Court without appreciating the said oral and documentary evidence simply accepted the case of landlord and dismissed his contention. Therefore, there is a necessity to set aside the said findings

and to allow the tenant to remain in the premises by payment the agreed rent.

13. On the other hand, the learned counsel for the respondent also submitted that the evidence on record clearly indicates that subsequent to the purchase of the property, the landlord as well as his vendor informed the tenant about the transfer of the property and attornment of tenancy in favour of the landlord but the tenant avoided the payment of rent. The landlord was able to prove that he was badly in need of the premises for his own use which amounts to bonafide requirement. Therefore, the trial Court and the first appellate Court came to a correct conclusion and disposed the petitions under the common judgment, thereby, there is no necessity to set aside the common judgment and sought for dismissal of both revision petitions.

14. As per the oral arguments submitted by the learned counsel for the petitioner and respondent on record including the certified copies of the depositions of the witnesses, copies of the documents filed before this Court clearly indicates that the tenant was in occupation of the above referred Mulgi since the year, 1980. The evidence on

record also indicates that when the tenant obtained the premises from the original owner Gokuldas, he made a security deposit with the then landlord and subsequently, after the sale of the property in favour of the landlord, a letter was received by the tenant dated 10-06-2005 through which he was informed about the sale of the property in favour of the present landlord and about the attornment of the tenancy in favour of the landlord.

15. Therefore, from this portion of the evidence, it is quite clear that the tenant who occupied the premises in 1980 continued to pay the rent till the property was alienated in favour of the respondent herein in the year 2005. The landlord did not place any material before the Court to accept that the tenant was irregular in payment of rent from 1980 till 2005. Therefore, there is evidence to at least accept that the tenant has been in the possession of the premises for more than 25 years by paying the agreed rent which was enhanced from time to time.

16. Similarly, there is evidence before the Court that soon after the alienation of the property, the tenant sent the rent for 4 months and the same was received by the landlord.

Even though, there is some discrepancy with regard to the period for which the tenants sent rent for 4 months by way of money order and receipt of some rent by the brother of landlord still the evidence on record goes to show that subsequent to the purchase of the property by the present landlord, there was some disturbance and the tenant was forced to pay rent by way of money order and he was also forced to address a letter to the landlord asking him to provide number of Bank Account so that he can remit the rent into the Bank.

17. The tenant who filed the present revision petitions produced before the Court bunch of rental receipts of various dates. When the landlord was examined as PW.1 before the trial Court, he was cross-examined on behalf of the tenant and during the said cross-examination, he has accepted that he purchased the property on 07-11-2005. The attornment of the tenancy was informed to the tenant. Even though, he claimed that he visited the premises twice and demanded the tenant for rent, he could not establish the said contention and it is elicited from PW.1 that the tenant has paid money orders for a period of 4 months. PW.1 has claimed that in his

absence, his brother received the money orders. In the further cross-examination of PW.1, it is elicited that there was an advance amount of Rs.2,500/- with the original owner of the property. PW.1 has admitted that receipt dated 01-08-1980 shows deposit of Rs.5,000/- in respect of shop No.3 issued to one Mallikarjuna dresses. A suggestion was given to PW.1 that he received money orders for 8 months but he denied the same and deposed that his brother received money orders for 4 months for the month of May, June, July and August, 2005. However, in the further cross-examination, PW.1 admitted that in the evidence affidavit he has mentioned that the rent was received by him from May, 2005 to August, 2005. However, PW.1 has claimed that the said rent was received by his brother, who in turn paid the amount to him and he did not receive any other amounts. PW.1 denied the suggestion that when the respondent paid Rs.32,025/- by way of money order subsequent to his legal notice, the said amount was returned. However, an attempt was made by the learned counsel to show that though the tenant tried his best to remit the rent by way of money orders and the amount was sent to the correct address, the landlord

got the same returned, thereby, there was no such willful default in payment of rent.

18. With regard to bonafide requirement of the premises, the landlord was enquired as to what nature of business, he want to establish but he did not give any proper answer. The documents produced by the tenant including the deposit receipts, postal acknowledgment, money order receipts were not disputed, but there was no appreciation as to whether there was such an attempt by the tenant to pay the rent of the premises.

19. The trial Court while disposing both the petitions vide Para No.7 of the order made an observation that though the tenant attempted to pay arrears of rent through money order, he failed to establish regular payment of rent through money order, and the tenant failed to clarify the exact arrears due and on perusal of the money order receipts, it seems they have not been regularly paid and dismissed the contention raised by the tenant. When there is a material before the Court that the tenant made attempts to pay the rent by way of money order in view of the failure by the landlord to receive the same and when the landlord who filed the Rent

Control case on the ground of willful default failed to inform the Court as to the exact amount due from the tenant, the Court below failed to record any finding as to the arrears but on a omnibus finding dismissed the contentions raised by the tenant and even without recording the failure of the landlord as to the nature of the business which he want to establish simply allowed the case.

20. The first appellate Court even though a specific ground has been raised with regard to the above aspects without proper appreciation, simply dismissed the appeal and accepted the findings recorded by the trial Court. As could be seen from the oral evidence of RWs.1 to 3 and as per Exs.R1 to R13 which includes postal receipts, postal acknowledgments, money order, acknowledgments did not record any finding about all this documentary evidence and allowed the petition filed by the landlord, dismissed the case of tenant. Therefore, it requires consideration as to whether really there was an attempt by the tenant to pay the agreed rent. The trial Court did not record any finding as to whether a tenant who was in occupation of the premises for more than 25 years by regularly paying the rent prior to its alienation in

favour of the respondent/landlord started troubling the landlord in payment of rent and whether there was really such a failure by the tenant or whether the landlord who purchased the property wanted to get rid of the tenant by one way or the other.

21. Therefore, there is a necessity to remand both the cases to the trial Court for fresh consideration and for appreciation of entire oral and documentary evidence. Therefore, both the revision petitions are disposed. The original Rent Control cases are remanded to the trial Court for fresh disposal.

22. In the result, Petitions are disposed of. The trial Court shall dispose of both the petitions vide RC.No.29 of 2008 and RC.No.30 of 2008 as expeditiously as possible preferably in 3 months and report compliance.

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

Sd/- K.AMMAJI
ASSISTANT REGISTRAR
SECTION OFFICER

//TRUE COPY//

To,

1. The Principal Senior Civil Judge, Ranga Reddy District at L.B.Nagar(With records)
2. The Additional Junior Civil Judge, Rent Controller Kukatpally (With records)
3. One CC to Sri M V Durga Prasad, Advocate [OPUC]
4. One CC to Sri Bankatlal Mandhani, Advocate [OPUC]
5. Two CD Copies

ADK/gh

HIGH COURT

DATED:30/01/2024

COMMON JUDGMENT

CRP.No.2153 AND 2160 of 2016



**DISPOSING OF THE BOTH CRP'S
WITHOUT COSTS**

(8) WJ
6/4/24