

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 7945 OF 2004

FAROOQ ALI

Appellant (s)

VERSUS

NAZEER HUSSAIN

Respondent(s)

(With appln(s) for permission to submit additional document(s) and office report)

Date: 10/09/2009 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MARKANDEY KATJU
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Appellant(s) Mr. Jay Savla, Adv.
Ms. Arundhati Das, Adv.
Ms. Meenakshi Ogra, Adv.

For Respondent(s) Mr. V. Kanagaraj, Sr. Adv.
Mr. K. Maruthi Rao, Adv.
Ms. K. Radha, Adv.
Mrs. Anjani Aiyagari, Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard learned counsel for the parties.

One of the main points in this case is whether co-owner of the non-residential building can file an eviction petition against his tenant.

Section 10(3)(a)(iii) of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 states:

...2/-

CA 7945/04...contd..

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"A landlord may subject to the provisions of clause (d), apply to the Controller for an order directing the tenant to put the landlord in possession of the building-

(i).....

(ii).....

(iii) in case it is any other non-residential building, if the landlord is not occupying a non-residential building in the city, town or village concerned which is his own or to the possession of which he is entitled whether under this Act or otherwise -

(a) for the purpose of a business which he is carrying on, on the date of the application, or

(b) for the purpose of a business which in the opinion of the Controller, the landlord bona fide proposes to commence;

Provided that a person who becomes a landlord after the commencement of the tenancy by an instrument interviews shall not be entitled to apply under this clause before the expiry of three months from the date on which the instrument was registered;

Provided further that where a landlord has obtained possession of a building under this clause he shall not be entitled to apply again under this clause -

(i) in case he has obtained possession of a residential building, for possession of another residential building of his own;

(ii) in case he has obtained possession of a non-residential building, for possession of another non-residential building of his own."

...3/-

CA 7945/04...contd..

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The question as to whether in the case of a co-owner it can be said that the non-residential building is his own. It appears that there are conflicting judgment of coordinate benches of this Court on this point. While in Super Forgings & Steels (Sales) Pvt. Ltd. Vs. Thyabally Rasuljee, (1995) 1 SCC 410, it has been held that a co-owner is also the owner of the property and hence an eviction petition is maintainable, on the other hand, in Lingala Kondala Rao Vs. Vootukuri Narayana Rao, (2003) 1 SCC 672, it appears that a contrary view is taken.

In our opinion, hence, this controversy should be decided by a larger Bench as to whether the words "which is his own" under Section 10(3)(a)(iii) would include a co-owner or not.

Let papers of this case be placed before the learned Chief Justice for nominating an appropriate

larger Bench.

(N. ANNAPURNA)
COURT MASTER

(INDU SATIJA)
COURT MASTER