

(1995) 09 AP CK 0039

In the Andhra Pradesh High Court

Case No : Civil Ren. Petition No's. 520, 521 and 1886 of 1992

Adapa Santharam, Petitioners and other

APPELLANT

Vs

Sait Nathmal Manik Chand

RESPONDENT

Date of Decision : 11-09-1995

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10, 10(2), 10(5), 22, 3
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1996 AP 149 : (1995) 3 ALT 853

Hon'ble Judges : B.S. Raikote, J

Bench : Single Bench

Advocate : C. Poornaiah, for the Appellant; M.S.K. Sastry, for the Respondent

Judgement

1. In all these three Revision Petitions common question of facts and law arises and hence, I am disposing of the same by this common judgment. I refer to the ranking of the parties as arrayed in the trial Court.

2. The proceedings arise under the A.P. Building (Lease, Rent and Eviction) Control Act, 1960. (Hereinafter referred to as the Act). The petitioners in C.R.P. No. 520 of 1992 are the original tenants. They have challenged the order of eviction passed against them on the ground of default in paying arrears of rent in R.C.C. No. 80 of 1983 on the file of the Rent Controller (Principal District Munsiff), Rajahmundry, dated 15th October, 1990; before the lower appellate authority i.e., sub-Judge, Rajahmundry in R.C.A. No. 20 of 1990. To this R.C.A. No. 20 of 1990, the landlord had filed cross-objections challenging the order of the Rent Controller in refusing eviction on the ground of alternative accommodation secured by the tenants. The lower appellate Court dismissed R.C.A. No. 20 of 1990 and allowed the cross-objections and thereby ordered eviction of the tenants not only on the ground of default in paying arrears of rent, but also on the ground that the tenants secured alternative accommodation. Being aggrieved by the same, the tenants filed the petition in

C.R.P. No. 520 of 1992.

3. C.R.P. No. 521 of 1992 is also filed by the tenant. The tenant had filed R.C.C. No. 10 of 1983 before the Rent Controller u/s 8(5) of the Rent Control Act seeking permission of the Court to deposit the arrears of rent into Court and the said application was rejected. Being aggrieved by the same, the tenant had preferred an appeal before the lower appellate authority in R.C.A. No. 19 of 1990. The lower appellate Court dismissed the same. Hence, the tenant has preferred this C.R.P. No. 521 of 1992 before this Court.

4. C.R.P. No. 1886 of 1992 is filed by the land-lord. The land-lord had filed a petition before the Rent Controller pleading subsequent default on the part of the tenant in paying the arrears of rent after filing the eviction petition and seeking eviction on that ground also in R.C.C. No. 11 of 1984. The Rent Controller allowed it. Being aggrieved by the same, the tenant preferred an appeal before the lower appellate authority in R.C.A. No. 18 of 1990. The lower appellate authority allowed the appeal by setting aside the order of the Rent Controller passed on R.C.C. No. 11 of 1984 and hence, the landlord has preferred this revision petition in C.R.P. No. 1886 of 1992.

5. First let me consider C.R.P. Nos. 520 of 1992 and 521 of 1992. These two C.R.Ps. filed by the tenant go together.

6. The respondent-landlord filed an eviction petition against the present petitioner-tenant on three grounds namely, the land-lord required the suit premises for bona fide occupation (under Section 3(a)(iv)(b) of the Act). (2) That the tenant defaulted in paying the rent to the land-lord (under Section 2(i) of the Act) and (3) Tenant has secured alternative building (under Section 10 (2)(5) of the Act). The Rent Controller dismissed the eviction petition of the land-lord regarding bona fide requirement and alternative accommodation. But, allowed the eviction petition on the ground of default in paying arrears of rent falling due both prior to the filing of the eviction petition and also subsequent to the filing of the eviction petition. Being aggrieved by the said order of eviction, the tenant had preferred R.C.A. No. 20 of 1990 before the lower appellate authority. For that, the land-lord had also preferred cross-objections contending that he was entitled for eviction even on the ground that the tenant had acquired alternative accommodation. The lower appellate authority dismissed the appeal filed by the tenant and allowed the cross-objections. As a result, there is an order of eviction against the tenant only on two grounds i.e., on the ground the tenant was in arrears of rent and also on the ground that the tenant had acquired alternative building. The learned counsel for the petitioner strenuously contended in these two C.R.Ps. that the impugned orders of both the Courts below in ordering eviction of the petitioner on these two grounds was illegal and without jurisdiction and contrary to the material on record. The learned counsel for the respondent supported the impugned judgments by contending that there is no error of jurisdiction. He further contended that this Court may not interfere with the orders of both the Courts below under its revisional jurisdiction u/s 22 of the

Act.

7. I have anxiously considered the case on merit.

The first contention of the learned counsel for the petitioner was that the findings of both the Courts below that the tenant committed wilful default in payment of rent was illegal and contrary to the pleadings and evidence on record. In support of his contention, he took me through the judgments of both the Courts below and necessary pleadings and evidence on record. At the out-set, I should make it clear that the power of the revision of the High Court u/s 22 is not as wide as an appellate Court, and not as restricted as the power of revision u/s 115 of the Code of Civil Procedure. This has been the consistent approach of this Court. Therefore, for limited purpose to find out whether there is any material irregularity or illegality in the impugned orders. I considered both the pleadings and evidence on record and also the principle applicable to the facts of the case. It is not in dispute that the petitioner is the tenant regarding the suit-schedule properly which consists of schedule "A" building and schedule "B" certain furniture like telephone, etc. attached to the shop premises and both of them have been let-out to the petitioner. When for the first time the premises was leased out in the year 1971, the rent was Rs. 300-00 for the premises and Rs. 200/- for the furniture for a period of 4 years and subsequently, in the year 1976 as agreed to between the parties the rent for "B" schedule was enhanced to Rs. 300-00. Thus, the total rent payable as on the date of filing of the eviction petition was Rs. 600-00 per month, regarding both "A" and "B" schedule properties.

8. The case of the land-lord was that the tenant did not pay the rents from September, 1982 till the filing of the eviction petition in R.C.C. No. 80 of 1983. The eviction petition was filed on 15-8-1983. He further contended that the tenant also defaulted in paying the rents subsequent to the filing of the eviction petition and on that ground he filed R.C.C. No. 11 of 1984 u/s 10(2)(i) of the Act. On both the petitions, he contended such default on the part of the tenant was wilful default. He examined himself as PW 1 and deposed to the same effect. It is to be noted at this stage itself that the alleged default before filing the eviction petition was from September, 1982 to July, 1983 and the further default alleged was during the pendency of the eviction petition for the months of August and September, 1983. The tenant by filing counter denied the allegations made by the land-lord. He examined himself as RW-1. He contended that when he offered rent for the month of September, 1982 in the month of October, 1982, the land-lord demand enhanced rent and refused to receive the same saying that the would receive the same after enhancement of rent was settled.

He further contended that for the month of October, 1982, he offered rent in the month of November, 1982, but the land-lord refused the same on the same ground. In those circumstances, he sent the rent for the month of September and October, 1982 under two separate Money Orders vide Exs. B-2 and B-3, dated 8-11-1982, for an amount of Rs. 650/ - each. He also filed Exs. B-4 and

B-5 alleged to be the returned Money Order coupons. Relying upon Exs. B-4 and B-5, he contended that they were refused by the landlord. He further deposed that on 20-11-1982 he sent Ex. A-1 a telegraphic notice through his counsel to the land-lord stating that the land-lord refused to receive the rent and demanding enhanced rent and also refused to receive the money orders. For that, the landlord gave reply vide Ex. A-2, dated 20-11-1982 through his counsel categorically denying the allegations made in Ex. A-1 telegraphic notice. The tenant further deposed that thereafter, he filed R.C.C, No. 10 of 1983 before the Rent Controller, Rajahmundry u/s 10(5) of the Act seeking the permission of the Court to deposit the rent in the Court.

9. This part of the case has been specifically considered by both the Court below, Both the Courts below rejected the contention of the tenant regarding his case that he sent Money Orders under Exs. B-2 and B-3 to the land-lord and Exs. B-4 and B-5 are the money order coupons showing the refusal. I have also verified Exs. B-2, B-3, B-4 and B-5 from the original records. Money Order coupons dated 8-11-1982 show the name of S. Nathmal Manik Chand, but the name of the land-lord is Sait Nathmal Manik Chand. Apart from that, from Exs. B-2 and B-3, it is clear that the full address of the land-lord is not shown. Moreover, the alleged M.O. coupons said to have been refused do not bear any postal endorsement or postal seal. The lower appellate Court specifically noted that if the correct address were to be given in Exs. B-2 and B-3, the same should have reached the land-lord. After all the land-lord resides in the up-stairs of the same building. Exs. B-4 and B-5 did not contain any endorsement of the postal authority nor seal of the postal department in order to hold that they were refused and returned by the landlord and in this view of the matter, reliance was not placed on these documents. Having regard to this evidence on record on the part of the tenant, both the Courts below held that the tenant did not tender the rent to the land-lord as contended by him in the months of September, October and November, 1982 either in person or through the alleged money orders. It was open to the tenant to tender the rent to the land-lord immediately after the receipt of Ex. A-2 reply notice, dated 29-11-1982 sent by the land-lord to his telegraphic notice vide Ex. A-1. In Ex. A-2, the land-lord specifically stated that he never refused to receive the rent from the tenant. On receipt of Ex. A-2 at least the tenant should have sent the rent either by Demand Draft or by cheque at least through the counsel of the land-lord, who issued Ex. A-2. Instead of that, he filed R.C.C. No. 10 of 1983 before the Rent Controller, u/s 8(5) of the Act seeking the permission of the Court to deposit the rent into the Court. Moreover, as noticed by both the Courts below, the said petition in R.C.C. No. 101993 was filed on 30-12-1983. It was returned to the tenant by the office with certain objections on 31-12-1982. The tenant has presented the same after complying with the office objections on 25-1-1983 and it has been taken on file on 21-2-1983. Thereafter, the tenant has deposited a total amount of Rs. 4,550-00 vide challan No. 1363 on 30-3-1983 towards the rents from September, 1982 to March, 1983 for a period of seven months. From this material on record, it is

clear that even after filing R.C.C. No. 10 of 1983 on 31-12-1982 u/s 8(5) of the Act, he was not filigent in prosecuting the said petition and deposoting the rent immediately. Mere filing an application u/s 8(5) of the Act could not by itself be sufficent, but he must deposit the rent immediately on that application seeking the permission of the Court. Moreover, the said application in R.C.C. No. 10 of 1983 has been filed without complying the other requirements of Section 8 of the Act. As per Section 8(2) of the Rent Control Act, if the land-lord refuses to receive or accept the rent, then the tenant may by notice require the landlord to specify within 10 days from the date of receipt of the notice the bank into which the rent may be deposited. Under clause (4) of the Act, if the landlord does not specify such a bank for depositing the rent, the tenant should send the rent to the landlord by money order and if the landlord refuses to receive the rent remitted by money order under sub-section (4), then the tenant may deposit the rent before the authority. From these provisions, it is clear that in order to invoke the jurisdiction of the Court seeking permission to deposit the rent, the tenant must fulfil these other conditions of that section. As noted above, the money orders alleged to have been sent vide Exs. B2 and B3 were not sent on the correct address of the landlord. The alleged money order coupons Exs. B4 and B5 do not bear any endorsement of the postal authority noting refusal nor bear the seal of the postal department. On the other hand, there is illegal statement on those coupons Ex.B5 "No such addressee". In those circumstances, as held by both the Courts below, there was no tender of rent by the tenant to the landlord by money order, nor there was any refusal of the money order by the landlord. From these circumstances, it is clear that by filing an application in R.C.C. No. 10 of 1983 of the Act seeking permission of the Court to deposit the arrears of rent, the tenant cannot plead that there was no default on his part. As held by this Court in (1985) 2 ALT 169 , Section 8 of the Act is only directory and not mandatory. From this, it follows that the tenant may resort to Section 8 and may not resort to Section 8. After the arrears of rent have fallen due, without following the mandatory provisions of that Section, if he invokes Section 8(5), such application cannot come to the aid of the tenant to show his bona fides in not paying the rent in time. More over, even after filing of that petition on 30-12-1982, actually the rent was not deposited till 30th March, 1983. From these circumstances, it is clear that the tenant was a wilful defaulter right from the month of September, 1982 till March, 1983. Nevertheless, in this case, it is an admitted fact by the tenant himself in his evidence as RW-1 that the rent was payable at the end of every month with a grace period of 10 days thereafter. In these circumstances, I am of the opinion that both the Courts below rightly held that the tenant was wilful defaulter in the payment of rent to the land-lord. However, the learned counsel for the petitioner further contended that in view of the admissions made by the land-lord as PW-1 that the tenant deposited Rs. 3,000-00 with him, the landlord should have adjusted the same towards arrears of rent. Even this aspect of the case has been specifically considered by the lower appellate Court in paragraph 15 of its judgment. As per the provisions of Section 7 of the Act, the land-lord shall not claim, receive or stipulate for the

payment of any premium, an amount not exceeding one month's rent by way of advance. On that basis, it is calculated that after deducting one month's rent as advance out of Rs. 3000-00, the amount that would be in excess of that one month's rent comes to Rs. 2,350-00. Even if this amount is adjusted towards arrears of rent for the period of five months from September, 1982 to January, 1983, even then, there would be default on the part of the tenant, because, the arrears would be more than the amount in deposit- In view of the rejection of the case of the tenant, regarding Exs. B-2 to B-5 there cannot be any explanation on the part of the tenant for not tendering the arrears of rent. However, the learned counsel for the land-lord contended that if the tenant had requested the landlord, the landlord should have adjusted the arrears of rent out of the amount in deposit. It is only on the basis of evidence for the first time it appears an argument was developed in the lower appellate Court in this behalf and the lower appellate Court has rejected the same, holding that even after such adjustment, still the tenant would be in arrears. The learned counsel for the land-lord further contended that such an adjustment, the tenant should necessarily plead in the case and it is not an automatic adjustment. He further contended that there is no agreement for such adjustment towards the rent between the parties. In support of his contention, he relied upon the ruling of the Supreme Court reported in Bhoja alias Bhoja Ram Gupta Vs. Rameshwar Agarwala and others, . In para 20 of the judgment, the Hon'ble Supreme Court has held as under:

"We are in broad agreement with the view of the Full Bench of the Patna High Court and the Madras High Court on the question of "automatic adjustment" and hold that a tenant cannot save himself from the consequences of eviction under the Act on the ground of default in the payment of rent by claiming automatic adjustment of any excess rent paid consequent upon mutual enhancement of rent, even if illegal unless there is an agreement between the parties for such an adjustment. The tenant may also in a given case seek adjustment of the excess rent in the hands of the landlord against the arrears by specifically asking the landlord for such an adjustment before filing of the suit or in response to the notice to quit and even in the written statement by way of set off within the period of limitation and by following the procedure for claiming such a set off, while resisting the claim for eviction on the ground of default in payment of arrears of rent but he cannot claim "automatic adjustment"."

On the other hand, the learned counsel for the petitioner-tenant relied upon the ruling of the Supreme Court reported in Modern Hotel, Gudur, Represented by M.N. Narayanan Vs. K. Radhakrishnaiah and Others, . That was a case in which Their Lordships of the Supreme Court were interpreting Section 7 of the A.P. (Lease, Rent and Eviction) Control Act. In that case, it was argued that the landlord had an amount of Rs. 6,500/- as advance and after deducting one month's rent from out of the advance amount, the balance amount of Rs. 5,000-00 was with him in deposit and Section 7(2)(a) prohibited payment any sum exceeding one month's rent by way of advance further subsection (3)

declared the stipulation for payment of rent in advance beyond that of one month as null and void. From the facts of that case, it is revealed that the payment in deposit with the landlord was more than the alleged arrears of rent payable by the tenant. Considering a similar contention the Honourable Supreme Court held as under (at pp. 1512 and 1513 of AIR):

"In Sarwan Kumar Onkar Nath Vs. Subhas Kumar Agarwalla, , Salimuddin's case came for consideration. This was also dispute under the Bihar Act where two months' rent had been paid in advance by the tenant to the landlord on the stipulation that the advance amount would be liable to be adjusted towards arrears of rent, whenever necessary or required. The Court held that the tenant could not be evicted on the ground of default in the payment of rent for the months even if the tenant failed to ask the landlord to make adjustment of the advance amount in the absence of any agreement requiring the tenant to inform the landlord as to when such adjustment is to be made. This Court said that when the Rent Act prohibited the landlord to claim such advance payment, the tenant could not be considered to be a defaulter and the doctrine of *pari-delicto* was not attracted to such a fact-situation.

Mr. Rao building, upon the ratio of these two decisions rightly contended before us that when he landlord had Rs. 5,000/- on tenant's account with him which he was holding for years without paying interest and against the clear statutory bar, there could be no justification for granting a decree of eviction on the plea of arrears of rent. In view of the fact that the stipulation that the amount would be refundable at the end of the tenancy is null and void u/s 7(3) of the Act, the amount became payable to the tenant immediately and the landlord with Rupees 5,000/- of the tenant with him could not contend that the tenant was in default for a smaller amount by not paying the rent for some months".

In the light of the latter decision, the learned counsel for the tenant-petitioner contended that the landlord should have adjusted the arrears of rent from out of the amount in deposit with the landlord whether the tenant requests for such adjustment or not or whether there is an agreement to that effect or not and such adjustment Should necessarily be automatic.

10. I have read both the ruling of the Supreme Court. In the ruling reported in Bhoja alias Bhoja Ram Gupta Vs. Rameshwar Agarwala and others, , the Hon'ble Supreme Court was considering the provisions of the Bihar Building (Lease, Rent and Eviction) Control Act, 1947. Section 4 of the said Act provided that "notwithstanding anything contained in any agreement or law to the contrary, it shall not be lawful to the landlord to increase or claim any increase in the rent which is payable for the time being in respect of any building except in accordance with the provisions of this Act". The said Act also did not provide any stipulation for automatic adjustment in case there was any excess payment of rent more than what was payable under the Act; nor there was any agreement between the parties. From the provisions of the said Bihar Act, it is further clear that there is no provision for receiving any advance rent similar to Section 7 of

the A.P. Act. u/s 7(1) of the A.P. Act, the landlord would not be entitled to claim or receive or stipulate for payment of any amount, in excess of fair rent if the said fair rent is fixed or under clause (2) in excess of agreed rent in case fair rent is not fixed. But, however, it is provided that in either of the case, the landlord may receive one month's rent as advance. Interpreting this very provision only the Hon'ble Supreme Court in the decision reported in Modern Hotel, Gudur, Represented by M.N. Narayanan Vs. K. Radhakrishnaiah and Others, has held that any amount received in excess of the advance amount received in excess of the advance amount permissible under the Act, the landlord has to give adjustment to such amount in deposit and after such adjustment, if there could not be any arrears, then the tenant cannot be evicted. Both the decisions are by the Division Bench of that Court. Since the ruling in Modern Hotel, Gudur, Represented by M.N. Narayanan Vs. K. Radhakrishnaiah and Others, is in relation to the A.P. Act only, I am of the opinion that I am bound by the said decision. Moreover, both the decisions were considered in another recent Division Bench ruling of the Supreme Court reported in Kranti Swaroop Machine Tools Pvt. Ltd. and Another Vs. Smt. Kanta Bai Asawa and Others, . Even in Kranti Swaroop Machine Tools Pvt. Ltd. and Another Vs. Smt. Kanta Bai Asawa and Others, , the Supreme Court was considering the scope of Section 7(2) of the A.P. Act. In that case, the Surpeme Court has noticed both its earlier ruling reported in Modern Hotel, Gudur, Represented by M.N. Narayanan Vs. K. Radhakrishnaiah and Others, and Bhoja alias Bhoja Ram Gupta Vs. Rameshwar Agarwala and others, . Even in this decision also, the Supreme Court held that the tenant was entitled for adjustment of the arrears of rent out of the deposit lying with the landlord whether there was a such agreement to the effect or not or whether such request was made or not. Therefore, I have to hold that since u/s 7(1) and (2) of the Act, the landlord was prohibited from receiving any amount in excess of one month's rent as advance, he must give automatic adjustment of arrears of rent out of the amount in deposit, in excess of the one month's rent, whether the tenant claimed to that effect or not, and after such adjustment, if the tenant still would be in arrears of rent, then he would be considered as defaulter for the purpose of Section 10(2)(i) of the Act. In this case, the lower appellate Court has held in paragraphs 15 to 20 of its judgment that even after such adjustment out of the amount in deposit, still there would be arrears of rent, and as such, he is a defaulter. This finding recorded by the lower appellate Court that there wa3 wilful default on the part of the tenant in paying the rent, even after such adjustment, being a finding on fact, does not call for interference.

11. It has to be noted at this stage itself that the petition filed by the tenant in R.C.C. No. 10 of 1983 was rejected by the Rent Controller. The lower appellate Court confirmed the same in R.C.A. No. 19 of 1990 by holding that the said petition u/s 8 was filed without complying the other requirements of that Section. By referring to Exs. B2, B3, B4 and B5, the lower appellate Court has held, as I have noticed above, that the tenant has not proved that he tendered rent to the landlord. His case that he had sent the rent by money order has been rejected by

disbelieving Exs. B2 to B5 by the both the Courts below. The lower appellate Court further observed that even after receiving reply from the counsel for the landlord vide Ex. A2 denying the telegraphic notice of the tenant sent as per Ex. A1 and further stating that the landlord never refused the rent tendered by the tenant, the tenant has not sent the same to the landlord or to the counsel for the landlord, either by Demand Draft or money order on a correct address. The address given in Exs. B2 and B3 was not full and correct and it was on that address the alleged money order was sent. It has also held that unless it was proved that the landlord refused to receive the rent, thereafter he tendered the said rent by demand draft or money order and the same was also refused by the landlord, the tenant cannot maintain the petition u/s 8(5) of the Act. Thus, the lower appellate Court further concluded that there was no proper tender of rent vide Ex. B5, In fact, Ex. B5 was returned with an endorsement "no such addressee". On none of the documents there was any endorsement of the postal authority to the effect that landlord refused nor there was any postal seal on them. Having regard to these facts and circumstances of the case only, the appellate Court confirmed the finding of the Rent Controller, in R.C.C. No. 10 of 1993, in the appeal No. R.C.A. No. 19 of 1990. It is against this order of the lower appellate Court in R.C.A. No. 19 of 1990, the tenant has preferred C.R.P. No. 521 of 1992. From the above discussion, it is clear that there are no merits" even in C.R.P. No. 521 of 1992 and accordingly, the same is liable to be dismissed.

12. I may mention here itself, that the lower appellate Court has further held that, there were no arrears of rent subsequent to the filing of the eviction petition in R.C.C. No. 80 of 1983. From Ex. A3 certified copy of the ledger and from Exs. B6 to B24 the various ligament-schedules, it was clear that the rent for the month of April, 1983 to June, 1983 was deposited in Court under challan dated 2-7-1983. The explanation of the tenant that he did not deposit the same because, there was summer vacation to the Court, was not accepted. However, the lower appellate Court held that subsequent to the filing of the eviction petition R.C.C. No. 80 of 1983 (in the month of August, 1983) there was no default on the part of the tenant in paying the arrears of rent. Accordingly, it found that there was no substance in the petition of the landlord filed in R.C.C. No. 11 of 1984, by allowing tenant's appeal filed in R.C.A. No. 18 of 1990. Against that judgment only, the present C.R.P. No. 1886 of 1992 has been preferred by the landlord. The finding recorded by the lower appellate Court in R.C.A. No. 18 of 1990 also being finding based on evidence on record, does not call for interference. Accordingly, C.R.P. No. 1886 of 1992 filed by the landlord also is liable to be dismissed.

13. The second contention of the learned counsel for the petitioner was that the lower appellate Court was in error in holding in favour of the landlord that the tenant has acquired alternative building in terms of Section 10(2)(v) of the Act. He further contended that order eviction of the petitioner-tenant on this count was also illegal and contrary to the material on record. From the material on

record, it is clear that the tenants have admitted that they have purchased building which was just opposite to the suit premises. However, they have further contended that it was not available for their occupation as it was already let out to some other firm. They further contended that in the petition-schedule premises, the tenants were carrying on business under the name and style of Lakshmi Jewellers and in the premises that was acquired by the tenants, there was a business under the name and style of Sri Lakshmi Fashion Jewellers and it was a different firm and if was let out to that firm in the year 1982. The tenants examined RW-2, one of the partners of Sri Lakshmi Fashion Jewellers. RW-2 is not other than one of the brothers of the petitioner-tenant. Both RW-1 the tenant, RW-2 his brother admitted that they had not divided their joint family properties, and they were having three other brothers. In their evidence, it is further admitted that the 2nd respondent's son Srinivas had also purchased another residential house in the same street under Ex. B-2 registered sale deed, dated 16-4-1986. There also, a business was being run under the name and style of Mahalakshmi Fashion Jewellery. RW-2 further admitted that the three family members as partners in Mahalakshmi Fashion Jewellery were silent partners, he only was an active partner of that firm. He stated that one and the same clerk maintained the accounts in the firm in the suit-schedule premises and also the firm running in the newly acquired premises. Having regard to these circumstances, it was held by the appellate court that even the other shop under the name and style of Sri Lakshmi Fashion Jewellers, housed in the opposite building, newly acquired, also was the business of respondents 1 and 2 themselves, the other partners being RW-1's undivided brother's wives and 2nd respondent's wife. Whatever it may be, one thing is certain that such acquisition of another suitable building just in front of the suit schedule premises is not disputed and it was acquired in the year 1982 is also not disputed. It has not come in the evidence that such acquisition of the property was to the knowledge of the landlord. It was only when the landlord came to know that the said building was acquired by the tenant, he filed petition for amendment, seeking eviction of the tenants on the ground of acquiring alternative building. The said amendment has been allowed. Legal position is that once the tenant acquires an alternative accommodation, that is a ground for eviction u/s 10(2)(v) of the Act. However, the learned counsel for the tenant contended that in view of the decision of the Supreme Court reported in AIR 1987 SCC 2016, the landlord should initiate action for eviction, on such ground, immediately after the accrual of the cause of action. He submitted that in the instant case, he did not do so. But, this contention of the learned counsel for the petitioner cannot be accepted for more than one reason. As I have noted above, it is not in dispute that new premises was acquired only in the year 1982 and eviction petition was filed in the month of August, 1983. The tenant has not pleaded nor placed any evidence on record to show that the landlord had the knowledge of the said acquisition of the new properties by the tenant. The tenant has not intimated such acquisition to the landlord in any one mode known to the law. Having regard to these circumstances only, the moment the landlord came to know such acquisition, he

has sought the eviction of the premises in question u/s 10(2)(v) of the Act by amending his petition. The said ruling of the Supreme Court, in my opinion, in the circumstances supports the case of the landlord only. It is not the case of the tenant that the said building was not suitable. In fact, in the newly acquired building, the family members of the tenant are doing the same jewellery business, as I have noted above. More over, the landlord had no knowledge of such acquisition of alternative building by the tenants and hence, it cannot be held that there was any negligence on the part of the landlord in seeking eviction on the ground of acquiring alternative accommodation. More over, the decision of the Supreme Court was with reference to the Delhi Rent Control Act, the provisions of which are entirely different from the provisions of the A. P. Act. Even in the judgment of this Court reported in (1984) 2 APLJ 1, it has been held that u/s 10(2)(v) of the Act, the cause of action for eviction arises the amount the moment secured an alternative building and this right of the landlord cannot be defeated if the tenant decided to let the premises to his relations or out-siders so as to plead that the alternative building secured has already been let out. The learned single Judge in the said decision further observed that otherwise provisions of Section 10(2)(v) cannot be given effect to. In view of that law declared by this Court, it is clear that the landlord is entitled for eviction of the suit-premises on the ground that the tenant secured alternative building. Moreover, on the basis of the evidence, it cannot be disputed that the physical character of the building now acquired is similar to the suit-schedule premises in possession of the tenant. More over, it has come in evidence of RW-2 that the first floor of the newly acquired building in which business under the name and style of Sri Lakshmi Fashion Jewellery is located is vacant. But, RW-2 further stated that the said first floor was being used for storing boxes, etc. as godown. However, from his own evidence, it is further revealed that the first floor of the said premises was not let out to Shri Lakshmi Fashion Jewellery. On the basis of this evidence on record, the lower appellate Court concluded that even the first floor of the newly acquired building was available for the tenants to occupy. Having regard to these materials on record, the lower appellate court allowed the Cross-Objections filed by the landlord and set aside the finding recorded in that behalf of the Rent Controller and order eviction in favour of the landlord u/s 10(2)(v) of the Act also.

14. Having considered the entire evidence on record, I am of the opinion that this finding also does not call for interference.

15. In the result, even C.R.P. No. 520 of 1992 filed by the tenant also is liable to be rejected. According, I pass the following order:

C.R.P. No. 520 of 1992, C.R.P. No. 521 of 1992 and C.R.P. No. 1886 of 1992 are hereby dismissed. Since the eviction petition has been pending right from the year 1983 for more than 12 years, I am of the opinion that the tenant is not entitled to any time for vacation the premises. In order to avoid any kind of hardship to the petitioner, I grant three months time from today to vacate and

deliver vacant possession of the premises in question to the landlord. In the circumstances, there shall not be any order as to costs.

16. Order accordingly.