
(1982) 07 AP CK 0019

In the Andhra Pradesh High Court

Case No : Civil Revn Petition No. 4883 of 1981

Andhra Pradesh Transport Co., Vijayawada

APPELLANT

Vs

Ghansyamdas Thosniwal

RESPONDENT

Date of Decision : 29-07-1982

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Rules, 1961 — Rule 23, 23(4)

Citation : AIR 1983 AP 12

Hon'ble Judges : Seetharama Reddy, J

Bench : Single Bench

Advocate : T.S. Harinath, for the Appellant; C.P. Sarathy, for the Respondent

Judgement

Seetharama Reddy, J.—The Revisionist in the tenant. The sole rather important point that is raised by the learned counsel for the petitioner, is whether the tenant is entitled to a notice before the execution is order at a time when the execution petition is filed beyond 2 years. It has been submitted by the learned counsel that there is no authoritative pronouncement on this aspect. The argument is that admittedly the execution petition has been filed beyond 2 years and since there is no specific rule framed under the Act governing the situation, the provisions enacted in Order XXI, Rule 22, C. P. C. Are attracted which provides for a notice to be given to the judgment-debtor before any execution is ordered. Hence the order which has been made on the execution petition filed by the respondent is admittedly without any notice and the same will have to be set aside. Rule 23 of the Rent Control Rules framed under the A. P. Buildings (lease, Rent and Eviction) Control Act, 1960 reads as follows:-

"Rule 23. (1) Every application for the execution of the orders passed under this Act shall be in writing signed and verified by the decree holder and filed before the controller within six months from the date of the order accompanied by a certified copy of the order concerned together with the necessary process fee.

(2) On receipt of an application for the execution of orders as provided by sub

rule (1), the controller shall ascertain whether all the requirements have been complied with; and if they have not been complied, the controller may reject the application or may allow the defect to be remedied within the time to be fixed by him.

(3) where the application is admitted, the controller shall enter in the proper register a note of the application, of the date on which it was made and shall subject to the provisions hereinafter contained allow execution of orders.

(4) Where the application for execution is made by or against the legal representative of a party to the order, the controller shall issue a notice to the person or persons concerned directing him to show cause as to why the application should not be complied with. (5) to (8)"

Provisions enacted in Order XXI, Rule 22 may also profitably be extracted hereunder: "Order XXI, Rule 22 (1) where an application for execution is made-

(a) more than two years after the date of the decree or

(b) against the legal representative of a party to the decree or where an application is made for execution of a decree filed under the provisions of section 44-A, or

(c) against the assignee or receiver in insolvency "Where the party to the decree has been adjudged to be an insolvent".

2. A reading of sub-rules (1) to (4) of Rule 23 of the Rent control Rules make it abundantly clear that the Legislature did not intend to enact a provision enabling the judgment-debtor to have a notice before the execution is ordered: this is so even if the execution is levied beyond 6 months. There is no dispute by the learned counsel for the petitioner that any notice is required in case the execution petition is filed not only within 6 months but even within 2 years. But the provision enacted in sub-rule (4) of Rule 23 provides a clue as to under what circumstances a notice will have to be given to the judgment-debtor before the execution petition is ordered. Sub-rule (4) follows sub-rule (1) of Rule 23 and therefore, the intention of the legislature must irresistibly be imputed to the effect that they did not desire to have any notice issued to the persons including the judgment-debtor other than the legal representatives as contemplated under sub-rule (4).

3. Yet another aspect. We find three contingencies laid down under Order XXI, Rule 22. One of such contingencies is whenever execution application is made against the legal representative of a party to the decree, a notice shall go. The legislature certainly must be imputed with the knowledge of the provisions enacted in Order XXI, Rule 22 (1) of the three varied contingencies under which a notice must be given if the execution petition is filed beyond 2 years. If that be so the Legislature having had the knowledge of Rule 23 (1) along with the proviso where the powers specifically had been conferred upon the Court to condone the delay where the execution petition is filed beyond 6 months could

have enacted a provision similar to Rule 22 of order XXI, Civil filed beyond 6 Months, specifically so when such a provision has been explicitly made under sub-rule (4) of Rule 23 of the Rules.

4. In my undoubted view therefore the Legislature by Implication has made a provision that no notice is necessary even in cases where the Execution petition is filed beyond 2 years much less beyond 6 months excepting in a solitary instance contemplated under sub-rule (4) of rule 23. In the circumstances, I am not persuaded to accede to the submission made by the Learned counsel for the petitioner. I therefore, do not see any irregularity. Impropriety and illegality in the order under revision warranting interference with the same. The civil Revision petition is accordingly dismissed. No costs. The petitioner, however, is allowed 3 months time from today to vacate the premises provided he regularly continues to pay the rent as agreed.

5. Revision dismissed.