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**(2013) 01 AP CK 0001**  
**In the Andhra Pradesh High Court**  
**Case No : C.R.P. No. 750 of 2007**

Danduboina Madhava Rao

APPELLANT

Vs

Kandi Atchiraju (died) and Others

RESPONDENT

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**Date of Decision :** 04-01-2013

**Acts Referred:**

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10, 10(3), 10(3)(c), 22

**Citation :** (2013) 3 ALD 23 : (2013) 2 ALT 626

**Hon'ble Judges :** M.S. Ramachandra Rao, J

**Bench :** Single Bench

**Advocate :** E.V.V.S. Ravi Kumar, for the Appellant; Jyosula Bhaskara Rao, for the Respondent

**Final Decision :** Allowed

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## Judgement

Hon'ble Sri M.S. Ramachandra Rao, J.—This revision is filed by the landlord u/s 22 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short "the Act") challenging the order dated 08-11-2005 in R.C.A. No. 16 of 1995 of the Principal Senior Civil Judge, Kakinada (appellate authority under the Act) confirming the order dated 10-07-1995 in R.C.C. No. 17 of 1988 passed by the Principal Rent Controller (Principal District Munsif), Kakinada. The petitioner herein is the owner of a shop room (hereinafter referred to as "the RCC schedule shop") in a building bearing Municipal No. 54-1-12 in Jagannaickpur, Kakinada. The respondent was the tenant of this shop. The petitioner had inherited it in a partition with his brother in November, 1980. Along with this shop there were two other shop rooms facing the road on the South of that building which the petitioner had inherited.

2. In the first week of January, 1987 requested the tenants of all the three shop rooms (including the RCC schedule shop) to vacate as he bonafidely required them for his own personal occupation for starting a general and fancy stores in all the three shop rooms, after combining them and after making necessary

alterations to suit his convenience. A tenant by name T. Laxman Rao (tailor) of one of the other shops agreed to vacate but the respondent and other tenant Kovvuri Gannemma, tenants of the RCC schedule shop and the other remaining shop respectively gave evasive replies.

3. The petitioner therefore filed R.C.C. No. 17 of 1988 before the Rent Controller (Principal District Munsif) Kakinada u/s 10 of the Act contending that he bonafidely required the RCC schedule shop for doing business in fancy and general stores; that the respondent was not regular in payment of monthly rents and that the respondent is a regular willful defaulter in payment of monthly rents and is liable to be evicted.

4. The respondent filed a counter denying the said averments contending that he is doing a business of sale of cigars in the RCC schedule shop; that the petitioner really do not have any bonafide need or intention to start the business in fancy and general goods; that he was not a willful defaulter in payment of rents; that he would suffer great hardship and lose his livelihood if eviction is ordered.

5. The Rent Controller recorded the evidence of PWs 1 and 2 and RW-1 and marked Ex. A.1 to Ex. A.3.

6. By order dated 10-07-1995, the Rent Controller-cum-Principal District Munsif, Kakinada dismissed the R.C.C. No. 17 of 1988 filed by the petitioner herein, on the ground that the petitioner had failed to prove:

- (i) his avocation prior to filing of the petition for eviction,
- (ii) that he had experience in doing fancy business,
- (iii) that he was separated from his premises and demised premises fell into his share and
- (iv) that he required to do the business to maintain his family.

7. Challenging the same, petitioner filed an appeal R.C.A. No. 16 of 1995 before the Principal Senior Civil Judge Kakinada (the Appellate Authority under the Act). By order dated 31-03-1999, the said appeal was dismissed.

8. Challenging the same, the petitioner filed Civil Revision Petition No. 2704 of 2009 before this Court. The said Civil Revision Petition was disposed of on 27-07-2005 by setting aside the order dated 31-03-1999 in R.C.A. No. 16 of 1995 and remitting back to the Appellate Authority to consider the petitioner's need for the RCC schedule shop in occupation of the respondent is one for "additional accommodation" or not in view of the fact that the shop in occupation of the tailor had been vacated and the other shop was also taken possession by filing an eviction petition and to consider the relative hardship. It was held that the concurrent findings of the Rent Controller and the Appellate Authority regarding the ground of willful default are confirmed and the said issue cannot be reagitated by the landlord. It was also observed that the Appellate Authority should give opportunity to both the parties to let in further evidence on the

aspect of bonafide requirement for additional accommodation if they desire to do so.

9. Thereafter the appeal R.C.A. No. 16 of 1995 was again restored to file of the Rent Controller Authority-cum-Principal Senior Civil Judge, Kakinada.

10. The petitioner then amended the RCC petition and added paras VI A and B contending interalia that each of the three shops is small in area and one shop room is not sufficient; that the tailor shop is the smallest one and not suitable for the proposed fancy and general stores business of the petitioner; that unless the petitioner is put in vacant physical possession of the three shop rooms including the RCC schedule shop, it is not possible for the petitioner to start the fancy and general stores business; that the above three shops together are best suited for the petitioner's proposed business; that the petitioner has no other building in Kakinada except the said shop; that the petitioner was having no avocation at that time and is well experienced in the said business as he was previously managing his brother's shop Ganga Fancy stores. Petitioner therefore contended that he bonafidely required the RCC schedule shop room for his own personal requirements and for starting fancy and general stores business.

11. The said appeal was again dismissed on 08-11-2005 by the Appellate Authority on the ground that the proviso relevant to Section 10(3) (c) dealing with additional accommodation enjoins the Rent Controller to examine the issue of hardship which may be caused to the tenant if eviction were to be ordered as against the advantage to the landlord; that no evidence is adduced in that regard by the landlord; that as per the evidence of the petitioner, he was already having a shop after getting vacated one tenant and that he is not using that shop; that he is again asking eviction of the respondent for additional accommodation by way of bonafide requirement; that it is the duty of the landlord to produce evidence that there is no hardship to the tenant in order to get him evicted; that the tenant is running a cigar shop and eking out his livelihood from his shop; that landlord must prove that the building in occupation of tenant is part of the building and it is required for the landlord to run business and to expand the business and that there is no such evidence adduced by the landlord. He also held that there is no pleading or proof from the landlord even after remand as to comparative hardship; that the tenant had clearly deposed that he had no other source of income except the cigar business and therefore he would be put to hardship if he is evicted from the petition schedule premises and the appeal therefore should be dismissed.

12. Challenging the said order of the Appellate Authority-cum-Principal Senior Civil Judge, Kakinada, the present Civil Revision is filed by the petitioner.

13. Heard Sri E.V.V.S. Ravi Kumar, Learned Counsel for the petitioner and Sri Josyula Bhaskara Rao, Learned Counsel for the respondent.

14. The learned Counsel for the petitioner submitted that the Appellate Authority erroneously placed the burden of proving that there is no hardship to the tenant

on the petitioner seeking additional accommodation; that it was for the tenant to prove the said fact; that the tenant had failed to adduce any evidence in regard there to; that the Appellate Court erred in holding that the petitioner had failed to prove that the building in occupation of tenant is part of the building owned by him; and that as per Law, in a case of bonafide requirement where the landlord asserted that there was no other means of livelihood and that he wanted to set up his business in the premises in dispute, the landlord cannot be compelled to resize the nature of the business which he intends to start. He relied upon the Judgment of this Court in K. Parasuramaiah Vs. Pokurl Lakshamma, and B. Rukmaiah and Others Vs. M.A. Samad and Others,

15. Sri Josyula Bhaskara Rao on the other hand contends that the Appellate Authority has rightly rejected the appeal filed by the landlord; that two shops are vacant adjacent to the RCC schedule shop and the landlord had not adduced any evidence to show that the said shops together are not sufficient to do the business proposed by the landlord; that the hardship which is caused to the tenant/respondent outweighs the advantage to the landlord/petitioner. He relied upon the Judgments in Jyothi Automobiles, Hyderabad and others Vs. Khet Bai and another, Laxmi Bai and Others Vs. Yashoda Bai and Others, and B. Kandasamy Reddiar Vs. O. Gomathi Ammal,

16. I have noted the respective contentions.

17. Section. 10(3) of the act in so far as it is relevant, is extracted below:

Section 10: Eviction of the tenants:-

(1)...

(2)...

(3) (a)...

(b)...

(c) a land-lord who is occupying only a part of a building, whether residential or non-residential, may, notwithstanding anything in clause (a), apply to the Controller for an order directing any tenant occupying the whole or any portion of the remaining part of the building to put the land-lord in possession thereof, if he requires additional accommodation for residential purposes or for the purpose of a business which he is carrying on, as the case may be.

....

Provided that, in the case of an application under (c), the Controller shall reject the application if he is satisfied that the hardship which may be caused to the tenant by granting will outweigh the advantage to the landlord;

18. In B. Kandasamy Reddiar's case (5 Supra), the Supreme Court held that while dealing with the question of eviction of a tenant on the ground of requirement of additional accommodation, it is mandatory to consider the

proviso mentioned above in Section 10.

19. In K. Parasuramaiah's case (1 Supra) a Division Bench of this Court held that the hardship of the tenant has first to be found out in case eviction is to be directed; that the hardship then has to be placed against the relative advantages which the landlord would stand to gain if an order of eviction is passed; that the hardship and the advantage then have to be weighed and if the balance turns in favour of the tenant, it is obvious that the petition of the landlord must be rejected; in order to weigh such hardship of the tenant with the advantage of the landlord, no hard and fast rules can be laid down and its determination depends upon the facts and circumstances of the case; that such consideration is not reflected merely to financial or physical advantages or disadvantages or any injury to the health of the person effected; that it might take within itself, consideration of the existence or availability of an alternative accommodation or the real efforts made by the tenant to seek an alternative building for his purpose and other such things; that it is not possible or desirable to give a list of any such relevant considerations in weighing the relative hardship; that the proviso should not be read as if it confers a practical immunity on the tenant from being evicted and that when once the bonafide requirement of the landlord is ascertained u/s 10(3)(c) or the landlord brings himself within that provision, then the onus is on the tenant to allege and prove the various factors which he wants the Rent Controller to take into account for weighing the relative hardship which may be caused to the tenant in case he is evicted, and establish that it outweighs the advantage which might accrue to the landlord. It was also held that if he succeeds in establishing that factor, the rejection of the petition would naturally follow but if he neither alleges nor proves the relevant factors, the benefit of Section 10(3)(c) will naturally go to the landlord. It was held that some hardship is bound to be caused when a person is disturbed from the premises where he has been carrying on business for a number of years apart from personal inconvenience, but this hardship which is inherent in this situation does not compare better with the disadvantage from which the landlord would suffer at the moment and that the landlord cannot be compelled to be content with that limited accommodation under the circumstances prevailing previously. This Judgment has been followed in B. Rukmaiah's case (2 Supra).

20. Having noticed the above Judgments, we have to now decide whether there is a bonafide requirement on behalf of the petitioner for additional accommodation and whether the hardship which may be caused to the tenant by granting it will outweigh the advantage to the landlord.

21. From the facts above narrated, it is clear that only after the order of remand passed by this Court on 27-07-2005 in Civil Revision Petition No. 2764 of 1999, the issue of additional accommodation came into focus. Thereafter the petitioner amended the R.C.C. and included the relevant pleadings in Para VI-A and B of the R.C.C. as mentioned above. Respondent filed a counter denying the petitioner's allegations but in Paragraph 8 of his counter, the respondent simply

stated that he will suffer great hardship and will lose his livelihood and therefore the petition should be dismissed.

22. In the counter filed by the respondent, there is no mention whether the respondent had made any attempt to secure an alternative accommodation in the neighborhood or any other facts which would indicate that he would suffer great hardship, as held in K. Parasuramaiah's case. Merely because vacating the shop would be fatal to the tenant's business, that cannot be a ground to dismiss the eviction petition. As held in Parasuramaiah's case, some hardship is bound to be caused when a person is disturbed from the premises where he has been carrying on business for a number of years apart from personal inconvenience, but this hardship which is inherent in this situation does not compare better with the disadvantage from which the landlord would suffer at that moment and that the landlord cannot be compelled to be content with that limited accommodation under the circumstances prevailing previously. In the deposition given by the respondent, he has categorically stated that he did not attempt to secure other premises for his business or to vacate the subject premises as the rents in the neighbourhood shops are very high. No person from the locality is examined to show that the rents in the locality are very high as alleged by the 1st Respondent. The Respondent admitted that there are two more shops of the petitioner by the side of the RCC schedule shop; that all the three shops are in a row; that the subject premises is having roads on all two sides i.e., on east and south; that among the three shops, the shop in which tailoring was being done was very small of 5" x 5" area; that the demised premises measures 3 1/2" x 10" in plinth area; that the premises vacated by the tailor is unfit to do business in fancy and general stores and that the subject premises is located in a business locality. On the other hand, the petitioner had not only pleaded why he requires all the three shops together for his proposed business, but also stated that he had worked in the shop of his brother by name Ganga fancy shop and therefore he has got experience to do the said business.

23. From the above evidence, it is clear that the three shops are in a row; individually each shop is very small and to run a business in fancy and general goods; and unless all the three shops are combined, the landlord would find it difficult to do the said business.

24. In my opinion, the Appellate Authority erred in holding that it is the duty of the landlord to produce evidence that there is no hardship to the tenant to evict him from the subject premises. In fact the burden is clearly on the tenant to prove his hardship in view of the Judgments in K. Parasuramaiah's case (1 Supra) and B. Rukmaiah's case (2 Supra) mentioned above.

25. In the decision in Jyothi Automobiles, Hyderabad (3 Supra) cited by the learned counsel for the respondent, the petitioner/landlady failed to lead evidence therein to show that the accommodation already available to her sons including three other shop rooms which fell vacant was not sufficient or adequate for the purpose of their business and that some more accommodation may be

required. In the decision in Laxmi Bai's case (4 Supra) cited by the respondent's counsel, the landlord had invoked Section 10(3)(c) for the first time in the revision petition without raising the same in the courts below and the Court felt that they are not entitled to raise said plea in the revision petition for the first time. In this case the High Court in its order dated 27-07-2005 in C.R.P. No. 2704 of 1999 allowed the issue to be raised and had remanded it to the Appellate Authority to consider the same and thereafter the matter has again come before this Court. Therefore the said decisions cited by the counsel for the respondent does not apply.

26. In my opinion, after remand by this Court to the Appellate Authority the respondent/tenant has not filed any pleading elaborating on the alleged hardship which would be caused to him except stating that he will suffer great hardship and will lose his livelihood. In view of his admission that he did not attempt to secure other premises for his business, I am of the view that the tenant has failed to establish that the hardship which would be caused to him would outweigh the advantage to the landlord. In view of the admissions by the respondent as to the size of the shops, the petitioner cannot be compelled to start his business in the two shops which have fallen vacant instead of all the three shops including the petition schedule shop. I am of the opinion that the tenant cannot dictate to the landlord as to how he should conduct his affairs and it is for the landlord to decide how he should put his property to use subject to the provisions of the Act. In my opinion, the Appellate Authority has failed to correctly apply the principles of law as to burden of proof and also failed to appreciate the evidence on record in deciding the question whether the petitioner has a bonafide requirement for additional accommodation and that the advantage which would ensure to his benefit is not outweighed by the hardship which may be caused to the tenant. Therefore, the Civil Revision Petition is allowed and the tenant is directed to vacate the premises in his occupation on or before 7th of April, 2013. No costs.