
(1993) 07 AP CK 0048

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 3995 of 1991

G. Surapa Raju

APPELLANT

Vs

T. Mohana Rao and Others

RESPONDENT

Date of Decision : 02-07-1993

Acts Referred:

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

Citation : (1993) 2 ALT 658

Hon'ble Judges : Motilal B. Naik, J

Bench : Single Bench

Advocate : P.S. Narayana and P.V. Rama Raju, for the Appellant; T. Veerabhadrayya, for the Respondent

Final Decision : Allowed

Judgement

Motilal B. Naik, J.—This revision petition is directed against the order dt.30-11-1991 in CMA No. 12/90 on the file of the Rent Control Appellate Authority, Bhimavaram reversing the finding in R.C.C.No. 4/87 dt.16-2-1990 on the file of the Rent Controller-cum-Principal District Munsif, Bhimavaram.

2. Petitioner is the tenant and respondent is the landlord. The landlord filed R.C.C.No. 4/87 on three grounds viz. (1) bona fide requirement for his personal occupation, (2) acts of waste by the tenant and (3) wilful default in payment of rents by the tenant. The learned Rent Controller, after going through the oral and documentary evidence, found that the grounds sought for evicting the tenant were untenable and, therefore, dismissed the eviction petition. Aggrieved by the said order dated 16-2-1990 the landlord carried the matter by way of CMA No. 12/90. The lower appellate Court, while confirming the finding of the trial Court on two counts viz., bona fide requirement and acts of waste held that the tenant committed wilful default in payment of rents and, therefore, ordered eviction. Aggrieved by the said order, the present revision is filed.

3. Sri P.S. Narayana, learned counsel for the petitioner-tenant, mainly contends

that the tenant, who has been running the business in the premises in question right from 1967, has never committed default; it is only for the months of September and October, 1982 the tenant was found to have committed default. According to the petitioner, when he approached the landlord for payment of rent, the landlord did not accept the rent on the ground that the rent payment receipt book was not available. It is further contended that inasmuch as the period of lease was coming to an end by September, 1982, the landlord, in order to evict the tenant, had cleverly refused to accept the rent due to be paid for the months of September and October, 1982 on some pretext or the other. That being the situation, it cannot be said that the tenant has committed default muchless wilful default.

4. Sri T. Veerabhadrayya, learned counsel for the landlord, on the contrary contends that the tenant had to pay monthly rent on or before the 4th of the succeeding month; the rent deed also provides a grace period of fifteen days. It is also provided in the agreement that if default is for more than one month, then the landlord is entitled to seek eviction. That being the categorical contemplation in the lease-deed, the tenant ought to have been alert and ought to have demanded at least a Kucha receipt in token of his payment of rents from the landlord, so that the version of the tenant could be accepted.

5. Having regard to the rival contentions, the only short question that falls for consideration is whether there is wilful default by the tenant in payment of rents?

6. It is evident from the finding of the Rent Controller that the tenant made efforts to pay the rents-even by sending letters, as is revealed from the correspondence made by him to the landlord from time to time-and ultimately he deposited the rents in the Andhra Bank. Though Ex.A-5, which is a blank rent payment receipt book, was produced in the court by the landlord, indicating the availability of the receipts, the lower appellate court has rejected the same. Right from the beginning the stand of the tenant is that the landlord, in order to evict him, hatched a plan and, therefore, refused to accept the rent on one pretext or the other. It could also be seen that the tenant has been staying in the premises by running a hotel for quite a long time and there was no complaint from the landlord to the effect that the tenant had ever committed default in payment of rents. May be, there need not be earlier occasions, but even a single occasion of default could also be sufficient for the landlord to seek eviction of the tenant. Sri Veerabhadrayya has placed reliance on the decision of this Court in *Fatima Bee v. Mohd. Akbar Hussain*, 1976 (2) An.W.R. 31. wherein a learned single Judge of this Court held that even one default, if it is not accidental but deliberate, is sufficient to seek eviction. There is no dispute as far as the proposition laid down by this Court. In the instant case, it is to be seen whether there is a deliberate attempt on the part of the tenant to avoid payment of rents. After going through the averments in the counter and the finding of the trial court, I am satisfied that there was no deliberate attempt on the part of the tenant (to avoid) in payment of rents. On the contrary, I am inclined to accept the submission made by Sri

Narayana that the landlord cleverly designed a scheme to get the tenant evicted by not accepting the rents at the fag-end of the lease period. Sri Narayana has placed reliance on the decision of the Supreme Court in *S. Sundaram Pillai and Others Vs. R. Pattabiraman and Others*, wherein the Supreme Court has dealt at length with the question of wilful default in given circumstances. The facts of this case are squarely covered by the above decision of the Supreme Court. Sri Narayana has also relied on another decision of the Supreme Court in *Smt. Priya Bala Ghosh and others Vs. Bajranglal Singhanian and another*, wherein the Supreme Court observed "the law has to be broadly construed because it is not intended to trap the tenant into a situation so that the landlord can evict him".

7. For all the foregoing reasons, I hold that there was no wilful default on the part of the tenant in payment of rents to the landlord. The finding of the lower appellate court is not based on proper appreciation of the intricacies involved in the case. The lower appellate court has decided the matter on hypothetical presumptions and assumptions and, therefore, I am not inclined to sail with the finding of the lower appellate Court. On the contrary, I accept the finding of the trial Court.

8. The revision petition is accordingly allowed. No order as to costs.