

(1998) 07 AP CK 0066

In the Andhra Pradesh High Court

Case No : C.R.P. No. 1692 and 1693 of 1993

Guiram Laloi (dead) by LRs.

APPELLANT

Vs

Mir Azam Ali (dead) by LRs.

RESPONDENT

Date of Decision : 01-07-1998

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10(2)

Citation : (1998) 4 ALD 313 : (1998) 4 ALT 191 : (1998) 2 APLJ 433

Hon'ble Judges : R. Bayapu Reddy, J

Bench : Single Bench

Advocate : Mr. I. Nagesh, for the Appellant; Mr. V. Venkataramana for M. Venkateswarlu, for the Respondent

Judgement

1. These two revisions were filed by the landlord questioning the common orders dated 2-12-1992 passed in R.A.Nos.450/88 and 451/88 which were dismissed by the appellate Court thereby confirming the orders of the Rent Controller in R.C.C.No.522/86 (Old R.C.C.134/82) and R.C.No.130 of 1987 (Old R.C.38/83) by which the petitions were dismissed.

2. The revision petitioner is the landlord while the first respondent herein is the original tenant who died during the pendency of the rent control proceedings and in whose place the other respondents were brought on record as his legal representatives. The landlord filed R C. 522786 at the first instance seeking eviction of the tenant from the demised premises, which is a non-residential building, on the ground of wilful default in payment of rent for the period from February 1982 to May 1982 (four months). During the pendency of the said rent control petition the landlord filed other R.C.C.130/87 seeking eviction of the tenant on the ground of personal requirement for additional accommodation and also on the ground of nuisance. Both the petitions were enquired together and by the common orders dated 1-8-1988 the III Additional Rent Controller, Hyderabad dismissed both the eviction petitions having come to the conclusion that there was no wilful default in payment of rent and the requirement of the landlord is

not proved to be bona fide and there is also no nuisance caused to the landlord on account of the business that is carried on by the tenant in the demised premises. Questioning such orders the landlord filed R.A.450/88 against the orders in R.C.522/86, and the other R.A.451/88 questioning the orders in R.C. 130/87. Both these appeals were dismissed by the appellate Court which confirmed the findings of the Rent Controller relating to all grounds of eviction in both the cases by the common orders dated 2-12-1992. C.R.P. 1692/93 is filed by the landlord questioning the orders in R.A.450/88 and C.R.P.1693/93 is filed against the orders in R.A.451/88.

3. As both the revisions arise out of the common orders passed by the appellate Court, they are heard together and are being disposed of by a common order. During the course of arguments the learned Counsel for the petitioner did not press and did not argue relating to the ground of nuisance which was rejected by both the Courts below. He however contended that the findings of the Courts below regarding the ground of wilful default in payment of rent and requirement of the building for additional accommodation are not based on proper appreciation of evidence and are therefore liable to be set aside.

4. The points that arise for consideration in the present revisions are :

(1) Whether the tenant committed any wilful default in payment of rent ?

(2) Whether the landlord is entitled to seek eviction of the tenant on the ground of requirement of premises for additional accommodation ?

5. Point No.1 :- The alleged period of default in payment of rent is for the months from February, 1982 to May 1982. It is not the contention of the landlord that there was any such delay in payment of rent for the period upto January 1982 even though the tenant has been staying in the demised premises which is a non-residential building since many years prior to that. He is however alleged to have committed default in payment of rent for the first time only for the above said period from February 1982 to May 1982. The rent for the said period is alleged to have been paid to the landlord in lumpsum at the rate of Rs.250/- per month which is the agreed rent on 29-6-1982 as evidenced by Ex.PI 1 receipt. The contention of the landlord appears to be that the tenant has to pay the rent regularly every month by the first of the succeeding month, that he however committed default in payment of such rent from February 1982 to May 1982, that on the other hand he set up the plea of false payment of rent every month as and when it became due and finally paid the rent for the entire period of four months only on 9-6-1982 and as such the default committed by the tenant in payment of rent regularly is to be treated as wilful default. Such contention did not find favour with the Courts below in view of the evidence placed on record. It is clear from the oral and documentary evidence which are referred to in detail by both the Courts below that even during the period prior to February, 1982 the son of the landlord was used to receive the rent from the tenant and the required receipts were however not being issued promptly as and when the amounts were

paid and such receipts were being used once in two or three months or even more than that. Even with regard to the period from February 1982 to May 1982 the specific contention of the tenant is that rent was being paid every month to the son of the landlord and that receipts were however not passed as and when the amount was paid every month as per the earlier practice and that Ex.P1 1 receipt was issued on 29-6-1982 for the entire amount of rent paid during every month for the period from February 1982 to May 1982. Such contention was accepted by both the Courts below in view of various entries found in Exs.R2 to R13 which are the account books maintained by the tenant for his business. The contention of the landlord that such account books were manipulated were rightly rejected by both the Courts below as there was no reason to suspect the genuineness of such account books. They were also checked and inspected by the Sales Tax Authorities as seen from Ex.R14 in Ex.R8 ledger. Both the Courts below have discussed the entire evidence in detail, and after giving valid and convincing reasons, came to the conclusions that there was no default, let alone wilful default, in payment of rent for the above period of four months. There are absolutely no valid reasons to interfere with such findings given by both the Courts below in the present revision. C.R.P.1692 of 1993 is without any merits and liable to be dismissed.

6. Point No. 2 :- The landlord filed R.C.130/87 u/s 10(3)(c) of A.P. Rent Control Act raising the plea that he requires the petition schedule building by way of additional accommodation for the purpose of doing business which they were already carrying on in another portion of the same building. The entire building consists of down-floor and first floor. The entire down-floor consists of one hall and the relevant sketch is marked as Ex.P12. The tenant is doing his business in the said premises. In the upstairs, which is marked as Ex.P13 sketch, the tenant is doing business in a small portion. The said portion in the upstairs and the entire ground-floor comprise the demised building which was taken on lease by the tenant and in which he is running his printing press. The entire remaining portion in the first floor is in the occupation of the landlord, and the different portions in the first floor which are in the occupation of the landlord are marked as Ex.P13(b) to Ex.P13(h) in the Ex.P 13 sketch. In the portion marked as Ex.P13(d) in Ex.P13 sketch, the landlord and his sons are already carrying on their goldsmith work and the remaining portions of the first floor are being used for their residence. The contention of the landlord appears to be that himself and his sons, who are five in number, are carrying on their goldsmith work at present in a portion of the first floor marked as Ex.P13(d) in Ex.P13 sketch and that they require the demised building by way of additional accommodation as contemplated u/s 10(3)(c) of the Act and as such the tenant is liable to be evicted. It is clear from a perusal of the orders of both the Courts below that they have discussed the entire evidence in this regard and after giving valid and convincing reasons in support of their conclusion they arrived at the concurrent finding that the alleged requirement of the landlord for additional accommodation is not bona fide, that they do not require any such additional accommodation for

the goldsmith work which they are now carrying on in a portion of the first floor and that such ground is however set up only for the purpose of seeking eviction of the tenant. The appellate Court has also rightly pointed out by referring to the proviso u/s 10(3)(c) of the Act that the disadvantage to which the tenant will be put to if he is evicted from the demised building would outweigh the advantage that the landlord is likely to derive by such eviction of the tenant and that therefore the petition filed for eviction u/s 10(3)(c) of the Act cannot be allowed. The Courts below have further found that the ground of requirement by way of additional accommodation was not there in the mind of the landlord when he filed R.C.522/86 seeking eviction on the ground of wilful default in payment of rent, that if really the landlord had felt the necessity of such additional accommodation for his business, he would have asked for eviction of the tenant on such ground also in R.C.522/86 itself and that such ground was invented only at a subsequent stage after six months for filing the second petition for eviction by raising such ground in R.C.130/87. Such finding of the Courts below is clearly justified in view of the evidence placed on record and the circumstances revealed from such evidence. The lower Court also found that the landlord is having two more rooms in the second floor of the same building and he is in occupation of those rooms also, that he however failed to mention this fact in his petition for eviction and that such fact came to the notice of the Court only during the course of the evidence adduced in the trial Court. In the decision of the Supreme Court reported in Sri. Raja Lakshmi Dyeing Works and Others Vs. Rangaswamy Chettiar, , it is observed that High Court should not interfere with the concurrent findings of the lower Courts under the revisional powers when such concurrent finding is based on evidence regarding the bona fide requirement of the premises by the landlord for his own use and occupation. In a recent decision of the Supreme Court reported in Smt. Fatima Bee Vs. Mahamood Siddiqui and Mohd. Omer Siddiqui, , it is observed that the concurrent findings recorded as to bona fide requirement by the Courts below cannot be interfered with by the High Court in the revision unless the evidence on record was misled by the Courts below. In the present case there is no such error committed by the Courts below and there is no misleading of the evidence by those Courts. On the other hand, both the Courts below have discussed the evidence in detail and gave valid and convincing reasons in support of their conclusion that the landlord does not require the demised building for any such additional accommodation as prayed for in the petition.

7. In view of all these circumstances there are no valid reasons to interfere with such findings of the Courts below even with regard to the alleged requirement of the landlord for additional accommodation.

8. In the result, both the C.R.Ps.1692/93 and 1693 of 1993 are dismissed. No costs.