
(1993) 10 AP CK 0011

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No"s. 46 and 47 of 1991

Hyderabad Polmers Private Ltd. and Another

APPELLANT

Vs

Smt. B. Rajani and Others

RESPONDENT

Date of Decision : 01-10-1993

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10(2), 11, 22, 9(3)

Citation : (1994) 1 ALT 518 : (1994) 1 APLJ 331

Hon'ble Judges : S.V. Maruthi, J

Bench : Single Bench

Advocate : N.K. Annapurna Devi, for the Appellant; K. Vinaya Kumar, for the Respondent

Final Decision : Dismissed

Judgement

S.V. Maruthi, J.—These two revision petitions are disposed of by this common judgment as they involve consideration of common questions of fact and law.

2. C.R.P. No. 46 of 1991 is filed against the Judgment of the Chief Judge, City Small Causes Court, Hyderabad in R.A. No. 42 of 1990 confirming the order of eviction passed by the First Additional Rent Controller, Hyderabad in R.C. No. 2308 of 1986.

3. C.R.P. No. 47 of 1991 is filed against the judgment of the learned Chief Judge, City Small Causes Court, Hyderabad in R.A. No. 43 of 1990 confirming the order of eviction passed by the First Additional Rent Controller, Hyderabad in R.C. No. 502 of 1987.

4. The tenant is the petitioner in both these revisions.

5. Respondents 1 to 3 are the Legal Representatives of one late B. Venkaiah who originally filed R.C. No. 2308 of 1986 against the petitioners u/s 10(2) of A.P. Buildings (Lease, Rent and Eviction) Control Act for eviction of the petitioners on the grounds of wilful default in payment of rent for the period from January,

1986 to August, 1986, denial of title of the landlord, nuisance and using the premises for the purpose other than the purpose for which it was let out. The Rent Controller allowed the petition for eviction. On appeal, the learned Chief Judge, City Small Causes Court, Hyderabad, confirmed the order of eviction and directed eviction of the petitioners.

6. Subsequent to the filing of R.C. No. 2308 of 1986, the landlord filed another petition viz., R.C. No. 502 of 1987 covering the period of wilful default in payment of rent for the period from September, 1986 to February, 1987. The Rent Controller allowed this petition also. On appeal, the order of eviction was confirmed.

7. Aggrieved by the orders of the learned Chief Judge, the present revisions are filed.

8. The premises in dispute viz., No. MIG 56/A situated at Vengal Rao Nagar, Hyderabad was taken on rent by the petitioner on 15-8-1982 at Rs. 700/- per month. The rent was enhanced from time to time and as on 8-9-1986 when the eviction petition was filed, the rent was payable at the rate of Rs. 850/- per month. According to the petitioners, the premises was taken both for residence of the Managing Director of the 1st petitioner-Company and also for the office. In 1985, the petitioners filed O.S. No. 4187 of 1985 on the file of the III Asst. Judge, City Civil Court, Hyderabad, for perpetual injunction restraining the landlord and others from dispossessing the petitioners from the petition schedule premises. The suit was dismissed on 19-12-1985. On 4-2-1986, the petitioners filed R.C. No. 300 of 1986 on the file of the Principal Rent Controller, Hyderabad u/s 9(3) of the Act on the ground that there were disputes between the landlord and his wife and they refused to take the rent from January, 1986 and the rent sent by way of demand draft was returned with the acknowledgment "refused" on 10-1-1986. On 11-2-1987 the petition filed by the petitioners u/s 9(3) was dismissed with a direction to pay arrears of rent. On 26-3-1987, the petitioner deposited Rs. 11,900/- towards arrears of rent. The landlord also filed R.C. 502/87 on 22-4-87 on the ground of wilful default in payment of rent for the period from September, 1986 to February, 1987.

9. The Rent Controller as well as the appellate authority found that there was wilful default in payment of rent and directed eviction of the petitioner in both the revisions, aggrieved by which, the present revisions are filed.

10. The learned Counsel for the petitioners submitted that since there were disputes between the husband and wife and since they refused to receive the rent and in view of the fact that the rent sent by way of demand draft was returned with endorsement "refused" on 10-1-1986, the petitioners had no other alternative except to file a petition u/s 9(3) of the Act. Since the matter was pending before the Rent Controller, the petitioners did not deposit the rent. After the matter was disposed of by the Rent Controller the petitioners deposited the arrears of rent on 26-3-87. As the petitioners were availing the remedy provided

under the Rent Control Act, there is no question of wilful default. In support of her contention, she relied on the following decisions of this Court:

Dr. Madhusudhan Mahauli v. Indira Bai, 1987 (2) ALT 504

Subbamma v. Venkata Ramamma, 1965 (1) An.W.R. 381

D. Radhakrishna Murthy v. V. Subba Rao, 1986 (1) ALT 117

J. Balakrishnaiah v. The Sri Krishna Goseva Mandal, 1987 (2) ALT (SN) 22.

According to the learned Counsel, in view of the judgment of this Court in J. Balakrishnaiah v. The Sri Krishna Goseva Mandal, Hyderabad 1987 (2) ALT 22, wherein it was held that "the tenant is entitled to make avail of the remedy on refusal to receive the rent by the landlord. Accordingly, the tenant made avail of the remedy after following the procedure prescribed in Section 8 and filed the application and during pendency of the application, unless there is a direction to deposit the rent, it shall not be taken to be a default in payment of rent. For the entire period the petitioner went on remitting the rents to the landlord and he refused to receive the same. Under those circumstances, the petitioner did not commit any default muchless wilful default in payment of rent", the petitioners had committed no wilful default.

11. Therefore, the learned Counsel for the petitioners submitted that since there was no direction by the Rent Controller in R.C. No. 300 of 1990, there is no obligation on the part of the petitioners to deposit the rent and in view of the pendency of the petition u/s 9(3) of the Act, the petitioners have not committed any wilful default. She, therefore, argues that the finding of both the Courts below that there was wilful default in payment of rent is contrary to the above decision and also contrary to the provisions of the Act. Learned Counsel also submitted that there was no mala fide denial of title. The finding of both the Courts below that there was denial of possession is based on no evidence. Therefore, learned Counsel submits that the eviction petitions are liable to be dismissed.

12. Learned Counsel for the respondents submitted that u/s 9(3) of the Act, there is an obligation on the tenant to deposit the rent before the authority if there is a dispute in such a manner as may be prescribed and the tenant should continue to deposit the rent which may become due subsequently before the same authority, namely, the Rent Controller. He further submits that deposit of rent u/s 9(3) is mandatory and the failure to comply with the said provision results in wilful default. In support of this, he relied on a judgment of this Court in Ganeshlal v. Meera Bai 1986 (2) ALT 255 wherein it was held that -

"When there is any bona fide doubt or dispute as to the person who is entitled to receive the rent for the building, it is for the tenant as a reasonable prudent man to make deposit in the prescribed manner before the Controller explaining the circumstances under which he is seeking aid of Section 9(3) and continue to deposit the same till the doubt is removed or the dispute is settled either inter se

between the parties or by the competent authority or in the manner prescribed under Sub-section 4(b) of Section 9. In this case, the petitioner did not make avail of the beneficiary provision. Though Section 9(3) is not mandatory, it is for the tenant, to avoid the order of action, to make avail of that statutory right. Therefore, the petitioner committed wilful default."

13. Learned Counsel for respondents submits that in view of the above judgment, failure to deposit the rent, pending disposal of the R.C.C., amounts to wilful default.

14. The learned Counsel for the respondents submitted that in the counter-affidavit filed by the petitioners in R.C. No. 2308 of 1986, it was stated that "the petitioner is a landlord of the suit premises bearing No. MIG 56/A, situated at Vengal Kao Nagar, Hyderabad is hereby denied being not true. It is true that, the respondents are tenants of the house bearing No. MIG 56/A, situated at Vengal Rao Nagar, Hyderabad" and in view of this there was denial of title of the respondents by the petitioners. He also relied on the evidence of the deceased landlord, wherein a suggestion was made to him that he is not the owner of the premises. The suggestion reads that-

"It is not true to say that I am not the owner of the premises and as such I have not filed any documents. It is not true to say that I have no locus standi to file eviction petition."

15. Learned Counsel submits that, from the above it is clear that there was denial of title by the petitioners with a mala fide intention and therefore the petitioners are liable to be evicted on this ground also.

16. As regards the wilful default in payment of rent, admittedly, the petitioners filed R.C.C. No. 300 of 1986 on the ground that there was a dispute between the landlord and his wife and they have refused to receive the rent. From the order in R.C.C. No. 300 of 1986, it appears that it has been dismissed on the ground that there was no dispute between the husband and wife and directed the petitioners to pay the rent. Though the order was passed as long ago as on 11-2-1987, the petitioner deposited the rents only after an application was filed by the respondents u/s 11 of the Rent Control Act. Even till to-day, the petitioners are in arrears of rent. In *Ganeshalal v. Meera Bai* 1986 (2) ALT 255, K. Ramaswamy, J. (as he then was) held that when there was a dispute as to the person who is entitled to receive the rent for the building, it is for the tenant as a reasonable prudent man to make deposit in the prescribed manner before the Rent Controller u/s 9(3) of the Act and continue to deposit the same till the doubt is removed or the dispute is settled. On the facts of the present case also there was an application u/s 9(3) of the Act and the Rent Controller held that there was wilful default in payment of rent. Justice K. Ramaswamy, in *J. Balakrishnaiah v. The Sri Krishna Goseva Mandal* (4 supra), however, held that in the absence of a direction by the Rent Controller directing the tenant to deposit the rents u/s 8(5) of the Act, it cannot be said that there was wilful default in

payment of rent. The case in *J. Balakrishnaiah v. Sri Krishna Goseva Mandal* (4 supra) was u/s 8(5) of the Act, whereas the case in *Ganeshlal v. Meera Bai* (5 supra) was filed u/s 9(3) of the Act. However, the language used in both the sections is one and the same. Prima facie, it appears to me that there was a conflict between the two judgments of the learned Judge. However, in the light of the view which I am taking in this case, it is not necessary for me to make any reference to the Full Bench on the conflict between the above two decisions.

17. I have already extracted the averment made by the petitioners in the counter-affidavit filed in R.C.C. No. 2308 of 1986, wherein the petitioners herein have denied the averment in the eviction petition that the deceased R.C.C. petitioner was a landlord of the suit premises bearing No. MIG 56/A situated at Vengal Rao Nagar, Hyderabad and categorically stated that the averment was not true. At this stage, another averment made by the petitioners in the counter filed in R.C.C. No. 300 of 1986 quoted below is also relevant:

"The second respondent has obtained the premises from the petitioner for the purpose of residential one is also hereby denied being not true."

18. The only inference that can be drawn from the above averments is that the petitioners denied the title of the landlord. Further, in the cross-examination of the landlord, during the course of evidence, it was suggested that he was not the owner of the premises and that he had no locus standi to file the eviction petition. From the above, it is clear that the petitioner had denied the title of the landlord to the petition schedule premises. In this context, I may refer to a judgment of the Supreme Court in *Majati Subbarao Vs. P.V.K. Krishna Rao (Deceased)* by Lrs., , wherein it was held that-

"A denial of title in the course of eviction petition constitutes a ground for eviction provided the denial is not bona fide and it is not necessary that in order to constitute a ground for eviction the denial of title must be anterior to the filing of the eviction petition."

It was further held that:

"To insist that a denial of title in the written statement cannot be taken advantage of in that suit but can be taken advantage of only in a subsequent suit to be filed by the landlord would only lead to unnecessary multiplicity of legal proceedings as the landlord would be obliged to file a second suit for ejectment of the tenant on the ground of forfeiture entitled by the tenant's denial of his character as a tenant in the written statement."

From the above, it is clear that the landlord is entitled to take advantage of denial of title in the written statement/counter-affidavit. I have already extracted the specific denial of title of the landlord in the written statement and also the suggestions made in the cross-examination during the course of evidence of the landlord. In view of the above and following the judgment of the Supreme Court, I am of the view that the landlord is entitled to seek eviction of the petitioners as

the denial of title is not bona fide. If the denial of title is bona fide, no suggestion would have been made in the cross-examination of the landlord. Further, the petitioner would have explained under what circumstances, he made the averment denying the title of the landlord in the written statement. The very conduct of the petitioners in filing R.C.C. No. 300 of 1986 on the ground that there was a dispute between the landlord and his wife and that they refused to receive the rent and the further conduct of the petitioners in not depositing the rents till an application u/s 11 of the Act was filed by the landlord and the suggestions made in the cross-examination in the evidence of the landlord coupled with the specific averments in the written statement/counter indicates that the denial of title of the landlord to the petition schedule premises is not bona fide.

19. In view of the above, it is not necessary for me to refer to the other decisions relied upon by the learned Counsel for the petitioners.

20. As regards C.R.P. No. 47 of 1991 is concerned, I agree with the finding of both the Courts below that the petitioner has committed wilful default in payment of rent for the period from 1-9-1986 to 28-2-1987 after the first eviction petition was filed. Even otherwise, the petitioners are liable to be evicted from the petition schedule premises on the ground of denial of title of the landlord to the petition schedule premises.

21. For the reasons stated above, I see no merit in both the revision petitions and they are accordingly dismissed with costs. Petitioners are given three months time to vacate the premises.