

(1999) 10 AP CK 0058

In the Andhra Pradesh High Court

Case No : CRP No's. 4972 of 1996 and 1475 of 1997

Jyothi Automobiles, Hyderabad and others

APPELLANT

Vs

Khet Bai and another

RESPONDENT

Date of Decision : 30-10-1999

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10(3), 11, 12, 14, 8

Citation : (2000) 1 ALD 627

Hon'ble Judges : C.V.N. Sastri, J

Bench : Single Bench

Advocate : Mr. M.P. Ugle and Mrs. C. Jayashree Sarathy, for the Appellant;

Judgement

1. These two civil revision petitions, one filed by the tenants, and the other filed by the landlady for eviction of the tenants from the petition schedule premises under the provisions of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960.

2. For the sake of convenience, the parties herein will be referred as per their array in the eviction petition. The building in question is a non-residential building which has been let out by the petitioner to the respondents for the purpose of running an automobile spare parts shop. The rent payable is Rs.375/- per month. The tenancy is oral. The eviction petition was filed on 4-12-1984. Prior to the filing of the eviction petition, the petitioner-landlady filed a civil suit on 19-4-1982 being OS No.609 of 1983 on the file of the Court of the Additional Chief Judge (Temporary) Civil Court, Hyderabad against the tenant for arrears of rent, damages for use and occupation and ejectment after issue of notice terminating the tenancy. By judgment and decree dated 27-4-1984, that suit was decreed only for arrears of rent disallowing the reliefs of ejectment and damages. Thereafter the eviction petition was filed before the Rent Controller. The eviction petition was initially filed against the firm of Messrs Jyothi Automobiles but subsequently the petition was got amended by impleading the

partners of the firm also as respondents as per the order dated 30-1-1991. It may also be mentioned that initially the eviction petition was filed on the following grounds :

- (1) Wilful default in payment of rents from May, 1979 to November, 1984.
- (2) Bona fide requirement of the suit premises for her own use, that is, by way of additional accommodation for the business which is being carried on by her sons in the adjacent premises.
- (3) Change of user i.e., using the building for a purpose other than for which it was let out.
- (4) The building is bona fide required for the purpose of demolition and reconstruction of a new building in its place.
- (5) Unauthorised alterations made to the building by the tenant so as to impair its value and utility.

Subsequently the petition was got amended from time to time so as to raise the following additional grounds:

- (1) Subsequent default in payment of rents during the pendency of the proceedings.
- (2) Unauthorised sub-letting.

3. The eviction petition was resisted by the respondents denying all the allegations made in the petition and contending that originally the rent was only Rs.250/- per month, that it was subsequently enhanced to Rs.325/- per month, that the respondents were regularly paying rents as and when they fell due, but the petitioner refused to receive the rents tendered with ulterior motives as the respondents did not agree to further enhance the rents from Rs.325/- as demanded by the petitioner, that the respondents were, therefore, obliged to send the rents by money-order from the month of May, 1979 onwards but all the MOs. were returned as refused by the petitioner. The respondents were, therefore, constrained to issue a notice to the petitioner calling upon her to specify a bank in which to deposit the rents. As she failed to send any reply to the said notice or specify the name of any bank, the respondents filed an application u/s 8 of the Act before the Rent Controller being RC No.184 of 1982. As no interim order was passed by the Rent Controller therein permitting them to deposit the rents into Court, the rents were deposited by them in their own bank account regularly. After the civil Court's decree in OS No.609 of 1983, they paid all the arrears of rent as per the decree and thus there was no default and muchless wilful default in payment of the rents. During the pendency of the eviction petition, the petitioner/ landlady filed IA No.52 of 1986 in RC No. 1072 of 1986 u/s 11 of the Act to stop all further proceedings and give a direction to the respondents to put the petitioner in possession of the building on the ground that respondents failed to pay the rents regularly. The said application was

dismissed by order dated 24-6-1986 holding that the respondents have duly paid all the rents till date and there were no arrears. However, the respondents were directed to pay or deposit the future rents as and when they fell due. On the same date RC No.184 of 1982 filed by the respondents was also disposed of with a similar direction to deposit the rents to the credit of the eviction petition filed by the landlady. Thus according to the respondents, there was no default in payment of the rents either before the filing of the eviction petition or during the pendency of the proceedings as alleged by the petitioner. They have also denied and disproved all the other grounds pleaded by the petitioner.

4. The learned Rent Controller, by his order dated 20th April, 1982, dismissed the eviction petition negating all the grounds pleaded by the petitioner. On appeal by the landlady, the appellate authority held that there was wilful default in payment of the rents subsequent to the filing of the eviction petition and ordered eviction on that sole ground while confirming the findings of the Rent Controller on all the other grounds. Aggrieved thereby, the respondents (tenants) have filed CRP No.4972 of 1996 whereas the petitioner/landlady filed CRP 1475 of 1997 questioning the findings which went against her.

5. The learned Counsel for both parties have made elaborate submissions assailing the order of the appellate authority insofar as it went against them. In support of their respective submissions, the learned Counsel have cited a number of decisions which will be referred to presently at the appropriate place.

6. In view of the rival contentions, the following points arise for consideration :

(1) Whether there is wilful default in payment of rents from May, 1979 to November, 1984 i.e., prior to the filing of the eviction petition.

(2) Whether there is any wilful default in payment of the rents subsequent to the filing of the eviction petition and, if so, whether the same can be made the basis for ordering eviction.

(3) Whether there was any unauthorised change of user of the suit premises for a purpose other than the purpose for which it was let out.

(4) Whether the petitioner bona fide requires the suit premises by way of additional accommodation for carrying on the business by her sons.

(5) Whether the building is required for the purpose of demolition and construction.

(6) Whether there is unauthorised subletting of the suit premises by the tenant to others.

Point No. 1:

The material on record makes it abundantly clear that the tenant has been sending the rents regularly by money order from March, 1979 onwards since the landlady refused to receive the rents tendered and even the money-orders so

sent were refused by the landlady. Admittedly the landlady filed a civil suit for ejectment and also for damages after issuing a notice terminating the tenancy. Long before the eviction petition was filed, the tenant has also filed an application u/s 8 of the Act seeking permission to deposit the rents into Court. As there was no interim order in the said application, the tenant went on depositing the rents in his own account in the bank and subsequently after the disposal of the civil suit filed by the landlady, the tenant paid away the entire decretal amount including the rents from May, 1979 to August, 1984 long before the eviction petition was filed. Thus by the date of the filing of the eviction petition, there were no arrears of rent whatsoever due to the petitioner-landlady. Under these circumstances, it cannot be said that there was any default muchless wilful default in payment of rents by the tenant prior to the filing of the eviction petition. Both the Courts below have elaborately considered and discussed the evidence on record in this behalf and recorded concurrent findings to the effect that there was no wilful default for the period from May, 1979, to the end of August, 1984 or till the date of the filing of the eviction petition. I do not find any valid grounds whatsoever to interfere with the said concurrent findings. The meaning of the expression "wilful default" has been explained in numerous decisions and it is by now too well settled to require any further elaboration. In *Dakaya alias Dakaiah Vs. Anjani*, , the Supreme Court following its earlier decision in the case of *S. Sundaram Pillai and Others Vs. R. Pattabiraman and Others*, , held that default per se cannot be construed as wilful and keeping in view the beneficial purpose of the Rent Act to protect the eviction of the tenant, it was held that if payment has been made before the institution of the suit, the cause of action for instituting the suit will vanish and eviction cannot be ordered in such a case. Though the earlier case referred to in the said judgment arose under the provisions of the Tamil Nadu Act which contained a somewhat different provision, the later case decided by the Supreme Court arose under the A.P. Buildings Act only and the Supreme Court reiterated the same principle which was laid down in the earlier case. The same principle was again affirmed in *K.A. Ramesh and Others Vs. Smt. Susheela Bai and Others*, , wherein it was held that where the tenants sent the entire arrears by bank draft prior to the filing of the proceedings and the same was got encashed by the landlords after the filing of the petition, there was no occasion for the controller to proceed with the eviction petition and the same was required to be summarily rejected as having become infructuous.

In view of these authoritative pronouncements of the Supreme Court, it must be held that there was no default muchless wilful default prior to the filing of the eviction petition and the landlady is not entitled for an order of eviction on this ground.

7. The learned Counsel for the petitioner/landlady, however, sought to contend that Ex.P8 shows that the alleged payment of rent for May, 1979, by means of a cheque dated 11-6-1979 is false and as both the Courts below have not considered the same, the findings recorded by them must be deemed to be

perverse and vitiated. Ex.P8 is a letter dated 14-8-1989 addressed by the Union Bank of India to the petitioner in reply to the letter dated 1 -8-1989 addressed by the petitioner to the bank. In Ex.P8 it is stated that on verification of the records, it is found that the cheque dated \ 1-6-1979 for Rs.325/- has not been paid in the account of M/s. Jyothi Automobiles and hence no corresponding credit was made in the petitioner's account. This, in my view, does not advance the case of the petitioner since admittedly the petitioner refused to receive all the cheques sent to her by the tenant. In his order the learned Rent Controller recorded a clear finding that the rent for May, 1979, was sent by the respondent by cheque dated 11-6-1979 on 20-6-1979 under Ex.R2 and the same was returned as refused. That apart, admittedly after the civil Court's decree, all the arrears of rent including the rent for May, 1989, have been paid by the tenant and the same have also been received without any demur or protest by the petitioner. It cannot, therefore, be said that the finding reached by the Courts below is, in any way, erroneous or unsustainable. Point No.1 is, therefore, held against the petitioner.

Point No.2:

8. Coming to Point No.2, this is raised by the petitioner by amending the petition as per the order dated 26-12-1987 by incorporating Para 3(a) in the eviction petition wherein it is stated that the respondent has further defaulted in payment of monthly rents during the pendency of the eviction petition and made the following payments at irregular intervals:

Rs.6,175/- paid on 27-2-1986,

Rs.975/-paid on 11-2-1987,

Rs.650/- paid on 2-7-1987

Rs.975/-paid on 22-4-1987

Rs.650/-paid on 25-9-1987.

According to the learned Counsel for the petitioner, as per the direction granted by the controller on the application filed u/s 11, the tenant was bound to pay or deposit the rents regularly every month. But contrary to the said direction, he paid or deposited the rents at irregular intervals on the dates mentioned above and the same constitutes wilful default. It is, however, the contention of the learned Counsel for the respondent that the said irregular payments on a few occasions were on account of the fact that the Counsel for the petitioner was either not available to receive the rents regularly or they received the same at irregular intervals and it was not on account of any default on the part of the tenant. Be that as it may, the fact remains that those payments were accepted by the petitioner without any protest or demur. Further no amount was due by the date of the amendment i.e., 26-12-1987 inasmuch as those amounts have been paid and received prior to the amended plea in the petition. As such the principle laid down in the three decisions of the Supreme Court referred to earlier

will apply and there is no cause of action available for the petitioner on the basis of the alleged subsequent defaults by the date of the filing the amendment petition. Further there is abundant authority for the proposition that subsequent defaults during the pendency of the proceedings cannot be made the basis for passing an order of eviction and recourse must be had by the land-lord only to the remedy provided u/s 11 of the Act. In *K.A. Ramesh v. Susheela Bai*, (supra), it is held as follows:

"Even if there was any default pending such proceedings, it was open to the respondents to enforce the statutory right available to them u/s 11(1) read with Section 11(4) of the Act for getting all further proceedings stopped before the Rent Controller and for asking immediate decree for possession, and/or in appeal of the appellant-tenants to request the appellate Court to dismiss the appeal and put the respondent-landlords forthwith in possession on account of such default. Nothing of this sort was done by the respondents. If they had tried to enforce this right, the appellants would have got an opportunity to show to the trial Court or the appellate Court, as the case may be, that there was sufficient cause for not passing such an order u/s 11(4) of the Act. That opportunity never became available to the appellants as the respondents did not invoke this provision. It can, therefore, easily be said that the respondents waived this right available to them under the statute presumably because they themselves were satisfied on getting full payment of arrears of rent by encashing the bank draft dated 2-2-1989."

Likewise in *P. Rajanna Vs. K. Lalitha Reddi alias Chinnamma Devi and another, and Sona Optics Vs. Shyam Sunderbhargava and Others*, , this Court also held that an order of eviction cannot be passed on the basis of subsequent defaults in paying or tendering the rent by the tenant after filing of the eviction petition. In *P. Rajanna v. K Lalitha Reddy*, (supra), where the tenant was all along interested in paying or tendering the rent at the rate of Rs.250/- per month which, according to him, was the agreed rent and he also filed a petition u/s 8 of the Act and the landlord was all along refusing to receive the rent at the rate of Rs.250/- per month demanding more and more and some defaults were made by the tenant in paying the rent after filing of the eviction petition, it was held that the default was not a wilful default and, at any rate, the defaults in payment of rent during the pendency of the eviction proceedings could not operate as a ground for passing an order of eviction u/s 10(2)(i) proviso of the Act. In *M/s. Sana Optics v. Shyam Sunderbhargava*, (supra), it was held that where the landlord received the rents paid at irregular intervals without objection, the default cannot be termed as wilful default. It was also held that wilful default only up to the date of filing of the eviction petition can be ground for eviction u/s 10(2)(a)(i) of the Act and where on the date of the filing of the second eviction petition the tenant was not at all in arrears of rent, the cause of action for filing the eviction petition vanished and the tenant was not, therefore, liable to be evicted. In *Mohan Laxman Hede Vs. Noormohamed Adam Shaikh*, , which was a case arising under the Bombay Rents, Hotel and Lodging House Rates Control Act, it was held

that to take advantage of the protection from eviction u/s 12(3)(b) of the said Act, it cannot be said that exact or mathematical punctuality was required in the deposit of rents by a tenant. In that case the tenant had been depositing the rents in Court for two or three months at a time and there were a few defaults committed by the tenant in the sense that there was some delay in making the deposits, the Supreme Court held that in those circumstances the rent could be said to have been deposited by the tenant with reasonable punctuality and accordingly set aside the decree for eviction passed against the tenant.

9. The learned Counsel, however, sought to question the correctness of the above decisions by placing reliance on the two decisions rendered by Division Benches consisting of three Judges of the Supreme Court in Govind Prasad Vs. R.G. Parsad and Others, and M. Bhaskar Vs. J. Venkatarama Naidu, Represented by his Power of Attorney Holder A. Narayanaswamy Naidu, . But in my view these two decisions cannot render any assistance to the petitioner. The decision in Madan Mohan v. Krishan Kumar Sood, (supra), is a case dealing with the execution of a decree of eviction passed by the Rent Controller and dealt with the question of the powers of the executing Court to go behind the decree. It was held that the executing Court could not extend the time granted under the decree for deposit of the arrears of rent and the interest thereon. This decision has no relevance whatsoever to the case on hand. In M. Bhaskar v. J. Venkatarama Naidu, (supra), it was held that the tenant has got an obligation to pay the rent regularly and if he does not do so, he commits wilful default. If he finds that the landlord is evading the payment of rent, he could have followed the procedure prescribed by Section 8 of the Rent Act. The omission on the part of the landlord to avail the procedure u/s 11 does not disentitle the landlord to seek eviction for wilful default. With the said observations, the Supreme Court dismissed the appeal filed by the tenant. This case also has no application to the facts of the case on hand and the Supreme Court has also not specifically dealt with the question whether subsequent defaults during the pendency of the proceedings can be made the basis for passing an order of eviction. The learned Counsel for the petitioner also sought to place reliance on the judgment of the Supreme Court in Krishnalal Buxi v. Sudarshan Pani . In that case two applications for eviction were filed on the ground of wilful default for two successive periods. In the first application it was concurrently found that there was no wilful default. In the second application there was a default for two months. The Rent Controller found the default to be wilful and ordered eviction but the appellate Court set it aside on the ground that the landlord waived the default. The High Court, however, interfered with the said finding and held that the tenant had not proved that the landlord agreed to receive the rent at irregular intervals. The Supreme Court, while confirming the judgment of the High Court, observed that when the tenant committed default for two months pending proceedings for eviction the necessary inference drawn was that the act of the tenant in committing default was wilful and is perfectly justified. It was further observed that since the landlord had already filed an application for

eviction and while the first application was pending and the tenant had committed further default, in those circumstances, the question of drawing an inference of waiver and an intention of agreeing to receive rent contrary to the contract at irregular intervals does not arise. On the said reasoning the order of eviction passed in the second eviction petition was upheld by the Supreme Court. So far as the second eviction petition is concerned, the default in question was default prior to the filing of the said petition but not a case of subsequent default. This case cannot, therefore, be construed as an authority for the proposition that even on the basis of subsequent defaults during the pendency of the petition, an order of eviction can be passed. If the petitioner wanted to take advantage of these subsequent defaults, the petitioner ought to have filed another application u/s 11 and invited an order u/s 11(4). If the petitioner had adopted that course, the respondents would have had an opportunity to make the deposit within the time granted by the Controller as provided in sub-section (2) of Section 11. As the petitioner failed to take recourse to Section 11, the respondents have been denied this opportunity. That apart, as already stated, these amounts were also received by the petitioner without any protest and no amount was due or outstanding on the date of filing the petition for amendment. As such the same could not have been made the basis for passing an order of eviction.

For all the foregoing reasons, I am satisfied that the appellate Court committed an error in passing an order of eviction in the instant case on the basis of the alleged subsequent defaults during the pendency of the proceedings. Point No.2 is accordingly answered.

Point No.3:

10. In para 4 of the eviction petition, it is stated that the respondent has obtained the premises for automobile parts business but the respondent is using the suit premises for purposes other than for which it is let out and as such the respondent is liable to be evicted. What those "other purposes" are is not mentioned in the petition. The plea is thus vague. PW1, who is the son of the petitioner, in his evidence has stated that the suit premises was let out for doing business in automobiles and the respondent is allowing others to use the suit premises as godowns without any further details. But PW2 in his evidence has stated that the respondent is also dealing in automobiles and that he has seen some unloading of goods at the demises premises from the lorries. His evidence does not show that the suit premises was put to any use other than for which it was let out. RW1 in his evidence has stated that they were doing motor parts business only in the schedule premises. In his cross-examination, it was put to RW1 that in the affidavit of Ashok Kumar, who is his cousin and partner in the business, which was filed in support of the rent deposit petition, it was stated that they were running a workshop in the demised premises. The witness, however, stated that he does not know if such an averment was made in the affidavit. The other documentary evidence on record like the partnership deeds

of the respondents-firm and also the Income Tax assessment orders clearly show that the respondents are carrying on motor spare parts business only in the suit premises. The petitioner failed to produce any reliable material whatsoever to show that any workshop is being run in the premises. Both the Courts below have concurrently held this point against the petitioner and I do not find any infirmity in the said finding.

Point Nos. 4 and 5:

11. Points 4 and 5 can be dealt with together. According to the petitioner, the suit premises is bona fide required by way of additional accommodation for the purpose of the business carried on by her sons in the adjoining premises. It is also her case that they are planning to demolish the entire building and construct a new building in its place. It is, however, brought out in the evidence that besides the premises in which the petitioner's sons are carrying on their business three more shops have also fallen vacant and they are in possession of the same. If so, the petitioner is clearly disentitled from seeking eviction of the respondents from the suit premises on the ground that it is bona fide required for her own occupation in view of the specific bar contained in Section 10(3)(a)(iii) of the Act. The petitioner also failed to show by any credible evidence that the accommodation already available to her sons including the three other shop rooms which fell vacant is not sufficient or adequate for the purpose of their business and that some more accommodation is required. The petitioner also miserably failed to prove that the relative hardship caused to her or her sons outweighs the hardship that will accrue to the respondents by ordering eviction. In the absence of any such proof, the petitioner is not entitled to seek possession of the suit premises by way of additional accommodation u/s 10(3)(c) of the Act.

Coming to the alleged requirement for the purpose of demolition and reconstruction, the petitioner failed to prove that the building is in such a condition as to require reconstruction or demolition by placing any relevant evidence. Apart from producing a plan got prepared by a private architect which is marked as Ex.P4 and the receipt evidencing payment of the architect's fees which is marked as Ex.P5, the petitioner has not produced any other evidence whatsoever to show the condition of the building. In *P. ORR and Sons (P) Ltd. Vs. Associated Publishers (Madras) Limited* [OVERRULED], the Supreme Court, while dealing with a case arising u/s 14 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960, which is in pari materia with Section 12 of the A.P. Act, held that the overriding consideration underlying the said section is the bona fide need for demolishing the old building and erecting a new building in its place and the personal requirement of the landlord or any member of his family for residence or business envisaged in Section 10, being not connected with the condition of the building, is not germane to Section 14. It was further held that absence of any need for urgency by reason of the strong and sound condition of the building will negative the bona fide character of the requirement and as such a building which is sound and safe does not qualify for demolition in terms of the

said section. Any such building falls totally outside its ambit. In view of this pronouncement of the apex Court, I do not find any infirmity whatsoever in the concurrent findings recorded by both the Courts below on these two points against the petitioner.

12. The last question which remains to be considered relates to sub-letting. It is not in dispute that the suit premises was taken on lease by RW1 who is the Kartha and manager of the joint family of the respondents for the purpose of running their family business in automobile spare parts under the name and style of Jyothi Automobiles. In fact, the eviction petition was initially filed against M/s. Jyothi Automobiles only. But subsequently the eviction petition was got amended in the year 1991 i.e., after the lapse of six years from the date of filing the petition so as to implead the partners of the firm of Jyothi Automobiles also as respondents individually. Both the Courts below, on a consideration of the partnership deeds, income-tax assessment orders, commercial tax assessment orders and declarations which are marked as R.169 to R.176, came to the conclusion that only the firm was re-constituted from time to time but the same family business was being carried on in the suit premises without taking outsiders or strangers as partners and that the tenant neither parted with possession of the premises nor was there any transfer of the leasehold interest in favour of any strangers and as such there was no sub-letting of the suit premises. It is the settled legal position that mere reconstitution of the firm, by taking any new partners in the place of some retiring partners does not amount to sub-letting. Where the possession of the suit premises is not transferred to any stranger or outsider to the exclusion of the tenant, it cannot be said that there is sub-letting (See : Jagan Nath (Deceased) through Lrs. Vs. Chander Bhan and Others, , Pulsibai Rathi v. K.V. Satyanarayana Brothers Firm, 1989 (2) APLJ (SN) 80, Raunak Ram Vs. Pishori Singh, and Muthulingam v. Markandeya 1985 (1) ALT 306). The petitioner miserably failed to prove that there was any unauthorised subletting of the premises by the tenant. Thus the eviction petition fails on all the grounds.

13. In the result, CRP No.4972 of 1996 is allowed and CRP No.1475 of 1997 is dismissed. Each party will bear their own costs.