
(2012) 01 AP CK 0054

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 5839 of 2011 in Civil Revision Petition No. 1435 of 2011

Kaleem Akter Siddiqui

APPELLANT

Vs

Dr. Soma Sudheer Rao

RESPONDENT

Date of Decision : 03-01-2012

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10, 10(2), 4
Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114
Constitution of India, 1950 — Article 226

Citation : (2013) 1 ALT 671

Hon'ble Judges : B. Chandra Kumar, J

Bench : Single Bench

Advocate : Mohammad Adnan, for the Appellant; K. Mohan, for the Respondent

Final Decision : Dismissed

Judgement

B. Chandra Kumar

1. This Review Petition is filed by the Petitioner u/s 114 C.P.C. seeking to review the order dated 18-08-2011, passed by this Court in C.R.P. No. 1435 of 2011 where under and whereby this Court dismissed the Civil Revision Petition confirming the judgment dated 22-03-2011 passed in R.A. No. 157 of 2010 by the Chief Judge, City Small Causes Court, Hyderabad (For brevity, "the appellate authority") and as such the order dated 26-04-2010 passed in R.C. No. 50 of 2008 by the Additional Rent Controller, Secunderabad (For brevity, "the Rent Controller"). Whereas the Review Petitioner is the Petitioner, the first Respondent is the Respondent in R.C. No. 50 of 2008. For the sake of convenience, I refer them as arrayed in R.C. No. 50 of 2008.

2. The main submission of the learned counsel for the petitioner is that the impugned order is not in accordance with law as it is hit by doctrine of per incurium in view of the law laid down by the Apex Court in case between Sunita

Rani and others Vs. Sri Chand and others (2009) 14 (ADDL) S.C.R. 295. His main submission is that once an application filed by the landlord seeking eviction of the tenant is dismissed, the tenant enjoys all the protections followed by the Rent Control Act including the one against enhancement of rent. His main submission is that since the eviction petition filed by the landlord is dismissed, his claim for enhancement of rent ought to have been rejected. It is also his submission that he could not cite the above referred decision before the Court while arguing the matter. He has relied on a decision of this Court in case between D. Sanjeeva Rao Vs. M. Sankara Ratnamaiah 1980 APLJ 1 19 and also on a decision in case between Gangamrna Vs. Venkanna, . He has also relied on a judgement of Apex Court in Criminal Appeal No. 2271 of 2010 raised out of a SLP (Criminal) No. 7615 of 2009 and also in an order of this Court in Civil Revision Petition No. 129 of 2003 in case between Abdul Rehman Vs. Saraswathi Prasad Singh and also on a decision of the Apex Court in case between Government of Andhra Pradesh and Another Vs. B. Satyanarayana Rao (Dead) by Lrs. and Others,

3. Sri K. Mohan, learned counsel for the respondents herein submits that merely on the ground of non citing of certain decisions a review petition is not maintainable and in support of his contentions, he has relied on a decision of this Court in case between Mohd. Yousuf, Ex-Driver Vs. The Director General of Fire Services, The Regional Fire Officer, Central Region, The Divisional Fire Officer and The Government of Andhra Pradesh,

4. The only point that arises for consideration is whether the impugned order requires review?

5. As seen from the grounds or Civil Revision Petition, the petitioner has referred to the decision of Sunita Rani (1st supra) as one of the grounds in the Civil Revision Petition. Thus, it is clear that though the learned counsel for the petitioner has not cited the said decision at the time of his arguments, but however the said decision has been referred in the grounds of Revision itself. It is not in dispute that the eviction petition filed by the respondent herein seems to have been dismissed. Whether it was dismissed prior to the initiation of the petition for enhancement of rent or subsequently is the point that arose for consideration in the Revision. In the case of Mohd. Yousuf (5th supra) relied upon by Sri K. Mohan, learned counsel for the respondents herein, the petitioner therein was appointed as a Fireman and he was dismissed from service on the ground that he was unauthorisedly absent from duty for certain period. When he approached the A. P. Administrative Tribunal, the Tribunal held that the enquiry report was not furnished to the petitioner and therefore set aside the dismissal order. Assailing the said order of the Tribunal, the department preferred Writ Petition No. 3478 of 2004, then this Court dismissed the Writ Petition holding that the conduct of the petitioner in not intimating the department about his admission in the Hospital due to his sickness was not justifiable and on this ground and on some other grounds, the Writ Petition was allowed. Challenging

the same, the petitioner filed Review Petition mainly contending that the learned counsel for the petitioner could not bring to the notice of the Court certain decisions of the Supreme Court. The Division Bench of this Court dismissed the same laying down certain principles, which are as follows :

1. On the discovery of new and important matter or evidence which, after the exercise of due diligence is not within the knowledge or could not be produced by the petitioner at the time when the order was made.
2. It can be exercised on account of some mistake or error apparent on the face of record.
3. To correct the patent error of law or fact, which stares in the face.
4. The expression "any other sufficient reason" appearing in order XLVII Rule 1 CPC has to be interpreted in the light of other specified grounds.
5. An erroneous order/judgment cannot be corrected in the guise of exercise of power of review.
6. There is a clear distinction between an erroneous decision and an error apparent on the face of record. While the former can be corrected by the higher forum, the latter only can be corrected under Order XLVII rule 1 CPC.
7. While exercising the power of review, the court cannot sit in appeal over its judgment.
8. The term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts of the legal position.

6. It was further held that failure to cite certain decisions at the time of hearing does not appear to be valid and sufficient ground for review of the order. The learned counsel for the petitioner has relied on a decision of Gangamma (3rd supra). In the said case, when the suit was taken up for hearing by the District Munsif, an adjournment was applied for by the defendant, the adjournment was refused and the suit was dismissed. At the time of appeal/the learned counsel for the appellant failed to point out that the suit was heard without taking evidence on behalf of the defendant and the proper course was to remand the case to the District Munsif. Thus, the Review Application was based on the main ground that there was a mistake on the part of the counsel who appeared in the Appeal and the Review Application was allowed by the Subordinate Judge, the same was confirmed by this Court holding that the mistake on the counsel will be sufficient ground for granting review under Order 47 Rule 1 C.P.C. The same view was taken by this Court in a case of D. Sanjeeva Rao (2nd supra) where there is an error apparent on the face of the record, or where manifest injustice has been done, or where it involves the interpretation of any statute or constitution, the Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution, can and must interfere. In the decision cited 2nd supra this Court

was not dealing with any Review Petition but was dealing with the Writ Petition. Under Order XLVII C.P.C, the scope of the Review is limited to certain specified grounds namely (i) discovery of new and important matter or evidence, which after the exercise of the due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or made, (ii) on account of some mistake or error apparent on the face of the record; and (iii) for any other sufficient reason.

7. Admittedly, this Court while passing the impugned order has not taken into consideration the judgment of the Apex Court in Sunitha Rani's case (1st supra) though the said decision was referred in the grounds of appeal. Of course the learned counsel for the petitioner did not cite that decision while arguing the matter. However, the fact remains that that decision was referred to in the grounds of appeal itself, this Court ought to have gone through the entire record including the grounds of appeal and ought to have quoted the above referred decision in it's order. Now, therefore it requires a fresh consideration as to whether the above referred decision is applicable to the facts of this case or not?

8. If a decision is referred without considering a binding precedent, it is not a good law and must be held to be per incuriam. In view of the same, I hold that order under review require reconsideration.

9. As seen from the record, the landlord filed eviction petition in R.C. No. 19 of 2007 on the file of Principal Rent Controller, Secunderabad u/s 10 (2) (i) of Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 seeking eviction of the tenant on the ground of willful default. The learned Rent Controller, on appreciation of oral and documentary evidence came to the conclusion that the tenant has not committed any default in payment of rents because the landlord accepted the rents once in three months or six months and since he is in the habit of receiving the rents from the tenant as per the wish of the landlord, so he is not entitled to seek eviction of the tenant on the ground of willful default and the landlord filed R.C. No. 50 of 2008 seeking fixation of fair rent in respect of the premises and the same was allowed on 26-04-2010. Admittedly as on that date, no orders were passed in R.C. No. 19 of 2007. The orders in R.C. No. 19 of 2007 were passed dismissing the eviction petition on 24-09-2010. Challenging the enhancement of rent, the tenant preferred Rent Appeal No. 157 of 2010; orders were passed in the said Appeal on 22-03-2011. Thus, as on the date of passing of orders by the appellate authority, orders were passed in eviction petition i.e. R.C. No. 19 of 2007, challenging the enhancement of rent tenant is in Revision before this Court.

10. There are separate provisions under the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 for fixation of the fair rent and for eviction of the tenants. u/s 4, a landlord can seek fixation of fair rent; u/s 10 , the landlord can seek eviction of the tenant. There is no provision under the Act, which prevents the landlord from seeking fixation of fair rent merely because he sought eviction of the tenant. In this case, firstly, landlord sought eviction of the

tenant and subsequently he sought enhancement of the rent. Of course his petition seeking eviction was dismissed on 24-09-2010 and the fixation of fair rent was ordered on 24-04-2010 i.e. much before passing of the eviction order. Anyhow under the provisions of this Act, there is no bar preventing a landlord from seeking enhancement of rent even after filing an application seeking eviction of the tenant. I am of the considered view that a landlord can seek fixation of fair rent at any time because eviction proceedings may take quite a long time and may be pending for decades together. Therefore, it does not mean that merely because a landlord has filed an eviction petition he cannot seek enhancement of rent, both the applications have to be considered on the basis of the evidence adduced in the respective cases. Of course when a landlord seeks eviction of the tenant it may be a good ground for the tenant to plead that the landlord sought enhancement of rent and since he did not accept for the same, the landlord is seeking his eviction and the claim of the landlord is not bona fide. Anyhow now it has to be seen whether the decision cited 1st supra relied upon by the learned counsel for the petitioner is applicable to the facts of the present case. In that case the landlord initiated proceedings for eviction of the tenants in three different premises, the prescribed authority pronounced a common judgment and dismissed all the eviction petitions filed by the landlord. Challenging the orders of the prescribed authority the landlord preferred Appeals before the appellate authority. The appellate authority allowed the appeal in respect of one premises i.e. go-down and ordered eviction of the tenant therein and rejected the other two appeals relating to the Shop and Kothari. However, a common order was passed. Then the tenant filed Writ Petition before the Allahabad High Court challenging his eviction order in respect of the go-down. The landlord also approached the High Court by filing the Writ Petitions against the judgment of the appellate authority in respect of the two premises namely Shop and Kothari in which his claim for eviction was negatived. The Allahabad High Court while hearing the petitions and confirming the orders of the lower authority enhanced the rent in respect of the two premises namely shop and kothari. In fact, the landlord did not file any petition before the prescribed authority for fixation of fair rent and no such application was filed before the appellate authority, the High Court while passing eviction orders in respect of two premises and while confirming the order by the appellate authority in rejecting the claim of the landlord seeking eviction ordered enhancement. Thus, the facts of that case are entirely different and do not applicable to the facts of the present case.

11. In a recent judgment dated 27 August, 2009 in C.A. No. 5835 of 2009 (State of Maharashtra and another Vs. M/s. Super Max International Private Ltd., and others) a three-Judge Bench of the Apex Court examined a question of the Court's authority to increase the existing rent or to direct the tenant to pay/ deposit in court an amount in excess of the existing monthly rent. The court upheld the court's power and authority to make such a direction in cases where the tenant approaches the superior court in appeal or revision against a decree

or order of eviction. But at the same time it is made clear that in a case where the landlord approaches the superior court against an order rejecting his application for eviction/release, it is not open to the Court to direct any increase in the monthly contractual/statutory rent of the premises.

12. Referring to another case of the Supreme Court in *Niyas Ahmed Khan Vs. Mahmood Rahmat Ullah Khan* (2008) & SCC 539 the Apex Court observed that in the writ petition filed by the landlord against the rejection of eviction petition there is no scope for issue of any interim direction to the tenant to pay higher rent. But in Writ Petitions by tenant against grant of eviction, the High Court may, as a condition of stay, direct the tenant to pay higher rent, the Apex Court further observed as follows :

It needs to be realized that a tenant against whom the eviction/release application filed by the landlord has been rejected by the courts below enjoys all the protections afforded by the Rent Act, including the one against the enhancement of rent. That being the position, it is not open to the High Court, to summarily strip the tenant of the statutory protection and hence the existing rent in a completely unguided and subjective manner.

13. Thus, it is clear that where in a case a tenant suffered eviction order and when he approached the High Court while staying the eviction having regard to the facts and circumstances of the case, the High Court may fix the rent above the existing rent. But here in this case there are two separate proceedings. Now we are not dealing with the eviction proceedings. The landlord filed the eviction petition and it was dismissed on 24-09-2010 even before that date the landlord sought enhancement of the rent and the said application was allowed by the learned Rent Controller on 26-04-2010. Here we are dealing with the matter arising out of the application filed by the landlord seeking enhancement of rent. Therefore, the only point that arises for consideration is whether the fixation of fair rent by the Rent Controller is correct or not? Merely because eviction petition filed by the landlord is dismissed, in the meanwhile is not a ground to reject the claim of the landlord in fixation of fair rent or enhancement of rent. Where in a case a tenant approaches High Court in Revision and seeks stay of eviction, the High Court, considering the fact that, the proceedings may be pending for considerable period and that, the landlord would be forced to receive the rent fixed long back may, having regard to the facts and circumstances of the case, direct the tenant to pay higher rent. Dismissal of an eviction petition should not come in the way of landlord seeking enhancement of rent. Whether rent has to be enhanced or not has to be considered basing on the evidence of each case. Similarly when eviction of a tenant is sought, the Rent Controller should examine the same basing on the evidence on record. Therefore, the facts and circumstances of the case relied upon by the learned counsel for the Petitioner in the in the decision cited first supra are quite different and distinct. Therefore, the same is not applicable to the facts and circumstances of the present case. Therefore, though the Review Petition is maintainable, the matter requires to be

reviewed but the impugned order cannot be recalled or cancelled or modified since the decision cited 1st supra by the learned counsel for the petitioner does not apply to the present case.

Accordingly, Review Civil Revision Petition M.P. is dismissed. No order as to costs. Let this be order be attached to the order made in C.R.P. No. 1435 of 2011 dated 18-08-2011.