

(1996) 11 AP CK 0011

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 3698 of 1996

Kanuboina Venkata Ramanaiah

APPELLANT

Vs

Palukuru Rukminamma

RESPONDENT

Date of Decision : 27-11-1996

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10(2), 7(1), 7(2)

Citation : (1997) 3 ALT 511

Hon'ble Judges : S. Dasaradharama Reddy, J

Bench : Single Bench

Advocate : S.V. Muni Reddy, for the Appellant; M. Bhaskara Lakshmi, for the Respondent

Final Decision : Dismissed

Judgement

S. Dasaradharama Reddy, J.—The petitioner who is the tenant has filed this revision petition against the reversing judgment of the appellate Court. The eviction petition was filed on 13-7-1989 on the grounds of material alteration in the building and willful default in payment of rents for the period from November, 1988 to March, 1989 at the rate of Rs. 190/- per month. The trial Court has rejected the plea regarding the material alteration in the building. Regarding the default, the learned Rent Controller held that since an advance amount of Rs. 1,000/- is lying with the landlord which represents rent for more than five months, the tenant cannot be said to be a wilful defaulter. Against the dismissal of the eviction petition, the landlord carried the matter in appeal. The finding regarding the material alteration of the building arrived at by the learned Rent Controller was upheld by the appellate authority. However, regarding the default, the learned Subordinate Judge held that u/s 7(2) of the A.P. Buildings (Lease, Rent and Eviction) Control Act, (for short the Act) the landlord is entitled to keep one month's rent as advance and hence deducting Rs. 190/-, Rs. 810/- can be said to be lying in advance in excess and as this is less than Rs. 950/-, the tenant is a defaulter in respect of rent of March, 1989. Accordingly, the appellate

Court allowed the appeal and ordered the eviction petition. Aggrieved by this, the tenant has come in this revision.

2. Sri S.V. Munireddy, learned Counsel for the petitioner contended that admittedly, an amount of Rs. 1,000/- is lying with the landlord as advance which is contrary to Section 7(2)(a) of the Act. The tenant is entitled to appropriate the entire amount towards rental arrears. He relied on *Sarwan Kumar Onkar Nath Vs. Subhas Kumar Agarwalla, and Modern Hotel, Gudur, Represented by M.N. Narayanan Vs. K. Radhakrishnaiah and Others*, in support of his proposition that the entire advance lying, if it is more than the permissible amount, can be adjusted towards rent by the tenant. On the other hand, Smt. M. Bhaskara Lakshmi, learned Counsel for the landlord has relied on the decision of this Court in *Adapa Santharam, Petitioners and other Vs. Sait Nathmal Manik Chand*, . She contended that it was never the case of the tenant that she did not pay the rents for the five months in view of the excess advance deposit lying with the landlord. On the other hand, the specific plea of the tenant was that he paid Rs. 950/- on 4-12-1988 under Ex.B-1 which plea was rejected by both the Courts below. She further submitted that it was only during the course of arguments that the tenant has raised the plea taking aid of the decision in *Modern Hotel* case (supra).

3. The short point for consideration is whether in a case where more than one month's rent advance is lying with the landlord contrary to Section 7(2)(a) of the Act the tenant is entitled to appropriate the entire advance towards rental arrears or only the excess amount over one month's rent?

4. There is no dispute about the proposition that if more than one month's rent is lying in deposit with the landlord contrary to Section 7(2)(a) of the Act, the tenant is entitled to adjust the excess amount against the rental arrears. This has been authoritatively held by the Supreme Court in *Modern Hotel* case (supra). There, one of the clauses in the written lease deed provided:

"Out of the advance Rs. 6,500/-, the second party shall deduct every month Rs. 75/- from the stipulated rent upto Rs. 1,500/- and the balance of Rs. 5,000/- shall be paid back to the second party by the first party under valid receipt after expiry of the lease period."

The rent was Rs. 200/- per month which was enhanced from Rs. 150/- per month in the second span of 15 years lease. The landlord held higher amount as advance than the amount due as on the date of filing the eviction petition. The exact rental arrears arc, however, not available from the judgment. The question whether the entire amount or the only excess amount over one month's rent has to be adjusted towards rental arrears was neither raised nor decided in that decision. In *Swaran Kumar Onkar Nath* case (supra), relied on by the learned Counsel for the petitioner, arising under Bihar Buildings (Lease, Rent and Eviction) Control Act, the monthly rent was Rs. 70/- and the tenant paid two months' advance in November, 1960. He did not pay rent for the months of September, and October, 1972. The plea taken by the tenant was that Rs. 140/-

paid as advance has to be adjusted against the rental arrears and hence he is not a defaulter. There was no written lease deed but in the written statement, the tenant pleaded that the amount paid by way of advance could be set off by way of rent if necessary or required. On those facts, the Supreme Court held that it is open to the landlord to appropriate the said sum towards arrears even without the option being exercised by the tenant as regards the adjustment of advance and that the High Court has erred in taking technical view that the tenant had not asserted in his written statement regarding the adjustment of advance towards rental arrears. The Supreme Court held that the specific plea taken by the tenant in the written statement amounts to such an assertion. In this case also, the question whether the entire amount of advance or only the amount after deducting one month's rent which is permissible under the statute can be set off towards rental arrears was neither raised nor decided. This case is distinguishable for another reason, that the tenant has taken specific plea in his written statement that the amount paid by way of advance could be set off against rental arrears whenever necessary or required. In the present case, there is no agreement. Section 7(2)(a) of the Act reads as follows :

"Where the fair rent of a building has not been so fixed the landlord shall not, after the commencement of this Act, claim, receive or stipulate for the payment of any premium or other like sum in addition to the agreed rent;

Provided that the landlord may receive, or stipulate for the payment of, an amount not exceeding one month's rent by way of advance"

5. The proviso enables the landlord to stipulate for the payment of advance rent of one month. This implies that it is open to the parties to stipulate that there need not be any advance or that any advance paid can be set off against the rental arrears as and when they fall due. The tenant has not pleaded or proved that there is any such stipulation. On the other hand, the intention of the parties clearly shows that the amount of Rs. 1000/- has to be treated as advance. The plea of the petitioner that he could not deposit the rents as he was under bona fide impression that the excess advance amount lying with the landlord could be set off against the rental arrears cannot be accepted in view of his conduct. In the counter to the eviction petition, the tenant took the stand that he paid arrears of Rs. 950/- to the landlord's daughter-in-law on 4-12-1988 under Ex.B-1. Later he stated :

"It is submitted that upto 31-3-1989 the five months advance rent was already paid to the petitioner and prior to that there was regular depositings in the Andhra Bank Account No. 8548 of the Eviction Petitioner herein. So, there is no default committed by the respondent - much less any wilful default"

6. From the above extract it can be seen that the tenant has taken specific stand that he paid arrears of Rs. 950/- on 4-12-1988. Both the Courts below disbelieved Ex.B-1, under which the payment was alleged to have been paid. Having failed to establish this plea of payment of rents, the tenant cannot take,

now, the plea that he was under bona fide impression that the advance amount can be set off against the rental arrears. The petitioner cannot be permitted to take such an inconsistent stand. Both the decisions of the Supreme Court (1 and 2 supra) have been referred by Justice B.S. Raikote in Adapa Santaram case (supra) where the facts are almost similar. In that case the rental arrears payable as on the date of filing of the eviction petition was for 11 months from September, 1982 to the date of filing of the suit i.e., August, 1983. It was held that u/s 7(1) and (2) of the Act, the landlord was prohibited from receiving any amount in excess of one month's rent as advance, that he must give automatic adjustment of arrears of rent out of the amount in deposit, in excess of the one month's rent whether the tenant claimed to that effect or not, and after such adjustment, if the tenant still would be in arrears of rent, then he would be considered as defaulter for the purpose of Section 10(2)(i) of the Act. This decision is directly in favour of the respondent and against the petitioner. In view of this it has to be held that the petitioner was in default of one month's rent in respect of March, 1989 since even after adjustment of the excess advance amount of Rs. 810/-, there will be still deficit of Rs. 140/- towards rent. The appellate Court has rightly held that the petitioner has committed wilful default. Accordingly, the C.R.P. is dismissed but without costs. FOUR MONTHS" time is granted from to-day to the petitioner to vacate the premises subject to the condition that he pays arrears and future rentals promptly within time.