

(2005) 10 AP CK 0071
In the Andhra Pradesh High Court
Case No : C.R.P. No. 4430 of 1999

Linga Pentamma and Others

APPELLANT

Vs

T. Jagadishwar Rao and Others

RESPONDENT

Date of Decision : 27-10-2005

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Rules, 1961 — Rule 16, 5

Citation : (2006) 1 ALT 111

Hon'ble Judges : G. Yethirajulu, J;B. Prakash Rao, J

Bench : Division Bench

Advocate : C. Jayasree Sarathy, for the Appellant; Kishore Rai, for the Respondent

Judgement

G. Yethirajulu, J.—This is a reference made by a learned single Judge of this Court, Sri P.S. Narayana, by posing the following question to be considered:

Whether Rule 5 of the A.P. Buildings (Lease, Rent and Eviction) Control Rules, 1961 is mandatory or directory?

2. The same question was posed by a learned single Judge of this Court in C.R.P. No. 142 of 2001 by referring the matter to a Division Bench. A Division Bench of this Court by relying on a Judgment of the Supreme Court in B. Rama Swamy Vs. B. Ranga Swamy, , answered the reference by holding as follows:

Rule 16 is nothing but an offshoot of Rule 5, wherein the procedure forgiving notice has been stipulated. Under those circumstances the reference does not require any further elaboration in view of the Judgment of the Supreme Court in N.D. Thandani's case (supra). Since Rule 16 of the Rent Control Rules is a Rule of Procedure which is prescribed under Rule 5, it automatically has to be declared as mandatory, otherwise it would have the effect of diluting the rigour of Rule 5.

3. The Division Bench ultimately answered the reference by holding that Rule 5 and Rule 16 of the Rent Control Rules are mandatory.

4. The Supreme Court in N.D. Thandani's case (1 supra) observed thus:

The tenant has to deposit the rent through a challan as prescribed accompanying the deposit wherein all the particulars provided for by Sub-rule (2) have to be given. The challan is in triplicate. One copy is to be delivered to the Controller, after securing acknowledgment on another copy which is to be retained by the tenant. Such delivery of copy of the challan containing particulars specified in Sub-rule (2) enables the Controller to maintain proper accounts and also to give notice of the deposit to the landlord who can thereafter withdraw the amount so deposited. A failure to comply with the provisions of the rule will result either in the deposit being lost in the jumble of hundreds of transactions which take place in the treasury or bank everyday, or would result in failure by the Controller in maintaining the accounts and giving notice to the landlord. Whatever be the situation, the landlord would be deprived of the opportunity of receiving the rent regularly in spite of the tenant having deposited the same. The whole purpose behind enacting the rule will be frustrated because of the tenant's negligence.

5. The learned single Judge having referred the matter to the Division Bench for an authoritative pronouncement on the interpretation of Rule 5 whether mandatory or directory, once again referred the present matter to answer the same question.

6. In the light of the Judgment of a Division Bench of this Court in C.R.P. No. 142 of 2001, dated 22-4-2004, by relying on a Judgment of the Supreme Court in N.D. Thandani's case (1 supra), there is no need to examine the issue once again. We, accordingly, reiterate the Judgment given by a Division Bench of this Court in C.R.P. No. 142 of 2001, dated 22-4-2004.

7. The reference is, accordingly, answered. The Revision Petition shall be posted before appropriate Bench for disposal according to law.