

(1993) 07 AP CK 0035

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1275 of 1992

M. Lakshminarayana

APPELLANT

Vs

M. Jagannadha Reddy (died) through L.R., Raj Reddy

RESPONDENT

Date of Decision : 21-07-1993

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 20(1), 22

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Rules, 1961 — Rule 15, 7(3)

Citation : (1993) 3 ALT 162 : (1993) 2 APLJ 266

Hon'ble Judges : M.N. Rao, J

Bench : Single Bench

Advocate : Koka Raghava Rao, for the Appellant; M. Ravinder Reddy, for the Respondent

Final Decision : Allowed

Judgement

M.N. Rao, J.—This revision petition filed by the landlord is directed against the order passed by the learned Subordinate Judge, Medak acting as the appellate authority under the Andhra Pradesh Building (Lease, Rent and Eviction) Control Act, 1960, hereinafter referred to as "the Act", in R.C.A. No. 1 of 1991 affirming the order of the learned Rent Controller, Medak in I.A.No. 490 of 1990 in R.C. No. 6 of 1981 rejecting permission for the landlord for leave to appoint a General Power of Attorney Holder, to conduct proceedings on his behalf.

2. R.C. No. 6 of 1981 was instituted by the General Power of Attorney of the landlord seeking eviction of the tenant-respondent herein. The matter was pending for one decade and in the year 1991 when arguments were being heard, an objection was taken on behalf of the respondent-tenant that the General Power of Attorney-holder did not obtain leave of the Court for presenting R.C. No. 6 of 1981. At that stage, an application was filed I.A. No. 490 of 1990 - on behalf of the landlord seeking leave of the Court to enable his Power of Attorney to prosecute R.C. No. 6 of 1981. That application was dismissed by the Rent

Controller taking the view that it was belated. Aggrieved by that, the landlord preferred R.C.A. No. 1 of 1991 to the appellate authority - Subordinate Judge, Medak - who while agreeing that the failure to raise objection in the beginning as regards the General Power of Attorney-holder not obtaining leave of the Court, must be construed as waiver, dismissed the appeal on the ground that against an interlocutory order, appeal is not maintainable.

3. Two questions arise in this revision petition - (1) Whether it is necessary for the General Power of Attorney-holder to obtain leave of the Court to present rent control petition on behalf of the landlord; and (2) Whether the appeal is not maintainable.

4. Re: (1) Both the Courts below have overlooked the statutory rules - Andhra Pradesh Buildings (Lease, Rent & Eviction) Control Rules, 1961 made by the Governor of the State of Andhra Pradesh, in exercise of the powers conferred by Sub-sections (1), (2) and (3) of Section 30 of the Act. Rule 7(3) of the Rules mentioned supra, in specific terms lays down that:

"Every application shall be signed by the applicant or his counsel and be presented to the Controller by the applicant himself personally or by his recognized agent or by counsel."

Rule 15 of the Rules lays down that:

"Any appearance, application or act in any proceeding before the Controller or the appellate authority may be made or done by the party in person or by his recognized agent or by counsel."

5. In the case on hand, the application was presented on behalf of the landlord by his registered General Power of Attorney. In view of the specific provisions contained in Rules 7 and 15, no objection whatsoever could be taken to the Power of Attorney presenting the application on behalf of the landlord. When the matter is covered by specific statutory provisions, there is no warrant to import the Rules under Civil Rules of Practice. Point No. 1 is, therefore, answered in favour of the petitioner.

6. Point No. 2:- The consequence of the "every order passed by the learned District Munsif rejecting the prayer of the landlord to grant leave to enable the General Power of Attorney to prosecute the rent control case, is that the case in effect stands dismissed. Rent Control proceedings have thus been effectively terminated. Section 20 of the Act which deals with the appellate jurisdiction is in the following terms:

"Appeal:- (1) Any person aggrieved by an order passed by the Controller may, within thirty days, from the date of such order, prefer an appeal in writing to the Chief Judge small Causes Court in the cities of Hyderabad and Secunderabad and elsewhere to the Subordinate Judge or if there are more than one Subordinate Judge, to the Principal Subordinate Judge having original jurisdiction over the area aforesaid. In computing the said period of thirty days, the time taken to

obtain a certified copy of the order appealed against shall be excluded.

(2) On such appeal being preferred, the appellate authority may order stay of further proceedings in the matter pending decision on the appeal.

(3) The appellate authority shall send for the records of the case from the Controller and after giving the parties an opportunity of being heard and, if necessary, after making such further inquiry as he thinks fit either personally or through the Controller, shall decide the appeal.

Explanation:- The appellate authority may, while conforming the order of eviction passed by the Controller, grant an extension of time to the tenant for putting the landlord in possession of the building.

(4) The decision of the appellate authority and subject to such decision, an order of the Controller shall be final and shall not be liable to be called in question in any Court of Law, except as provided in Section 22."

The above provision provides for appeal against "an order" passed by the Controller. The question is whether the words "an order" comprehend every order including interlocutory order. Section 38(1) of the Delhi Rent Control Act provides appeal "from every order" of the Controller and this provision has been interpreted by the Supreme Court in *Central Bank of India Vs. Shri Gokal Chand*, .

".... In the context of Section 38(1), the words order of the Controller made under this Act" though very wide, do not include interlocutory orders, which are merely procedural and do not affect the rights or liabilities of the parties."

7. The scope of ambit of Sub-section (1) of Section 20 of the Act, fell for consideration before a Division Bench of this Court in *Chaganlal (died) Sardarilal v. Narasing Pershad* 1972 (1) APLJ 343. After reviewing the case law on the subject and following the aforesaid ruling of the Supreme Court, the Division Bench held that:

".....From the decision of the Supreme Court which is binding on us, it follows that it is not every order of the Rent Controller that would become appealable, nor would it mean that only final orders passed by the Rent Controller are appealable and not interlocutory orders. The test is whether it is an order affecting any rights or liabilities of the parties. Only such orders that affect the rights and liabilities of the parties would become appealable and not all interlocutory orders, which amount only to steps taken towards the final adjudication and for assisting the parties in the prosecution of their cases in the pending proceedings, thus regulating the procedure and not affecting any right or liability."

8. There is little doubt that the order passed by the Rent Controller in the case on hand has the effect of terminating the Rent Control proceedings initiated by the landlord. The order, therefore, although interlocutory in nature, is appealable under Sub-section (1) of Section 20 of the Act. Point No. 2 is accordingly

answered in favour of the petitioner.

9. For the above reasons, this Civil Revision Petition is allowed. The order passed by the appellate authority - Subordinate Judge, Medak in R.C.A. No. 1 of 1991 affirming the order of the learned Rent Controller, Medak in I.A. No. 490 of 1990 in R.C. No. 6 of 1981 is set aside. The Rent Controller is directed to dispose of R.C. No. 6 of 1981 as expeditiously as possible, in any event, not later than six months from the date of receipt of a copy of this order. No costs.