
(2001) 12 AP CK 0071
In the Andhra Pradesh High Court
Case No : CRP No. 3566 of 2001

Manyam Lakshmikantham and Others	APPELLANT
Vs	
Runkana Balaji	RESPONDENT

Date of Decision : 07-12-2001

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 11(4), 15

Citation : (2002) 2 ALD 386

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Venkateswar Rao and Gudapati, for the Appellant; G.V. Rao, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioners obtained an order of eviction in RCC No. 22 of 1996 on the file of the Court of the Principal Junior Civil Judge-cum-Rent Controller, Vizianagaram. The respondent-tenant filed an appeal u/s 20 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for brevity "the Act"). In the application being IA No. 1150 of 1990, seeking stay, filed by the respondent-tenant, the appellate Court granted stay subject to the condition of the respondent-tenant paying arrears of rent to the petitioners-landlords. The respondent-tenant, allegedly committed default in paying the arrears of rent, as directed by the appellate Court. Therefore, the petitioners-landlords filed execution petition being EP No. 112 of 2000, under Order 21, Rule 11 of the CPC (for brevity "the Code"), seeking direction to the respondent-tenant to vacate and hand over vacant possession of the schedule property u/s 15 of the Act. The learned Rent Controller by the impugned order, dismissed the EP holding that in the absence of any order of the appellate Court rendering the eviction order executable, no EP would be maintainable. The learned Rent Controller also recorded the statement made by the respondent-tenant in the counter that conditional order of the appellate Court was complied with.

2. The learned Counsel for the petitioners-landlords, Sri Venkateswara Rao Gudapati, submits that the moment the respondent-tenant committed default by not complying with the order of the appellate Court passed in IA No. 1150 of 1999, the eviction order passed by the learned Rent Controller would become executable and the learned Rent Controller ought to have passed an order directing the respondent-tenant to put the petitioners-land lords in possession. I am afraid, the submission is devoid of any merit.

3. The respondent-tenant appears to have made a categorical statement in the counter-affidavit filed before the learned Rent Controller stating that pursuant to the conditional order passed by the appellate Court he deposited the rents under Challan No. 513 of 2000, dated 29-12-1999 for the period from January, 1999 to December, 1999. This is not specifically denied by petitioners-landlords before the learned Rent Controller. Further, if the petitioners-landlords disputed the quantum of amount payable towards arrears of rent or otherwise, instead of moving the learned Rent Controller u/s 15 of the Act, they ought to have moved the appellate Court for further clarifications. In this context a reference be made to Section 11(4) of the Act which reads:

Payment or deposit of rent during the pendency of proceedings for eviction:

(4) If any tenant fails to pay or to deposit the rent as aforesaid, the Controller or the appellate authority, as the case may be, shall, unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building.

4. When an order of eviction is passed inter alia on the ground that a tenant has committed wilful default, an appeal is maintainable only when tenant pays to the landlord or deposited with the Rent Controller arrears of rent due in respect of the building upto the date of deposit. Under Sub-section (4) of Section 11, if the tenant fails to pay or deposit the rent u/s 11(1), as noticed hereinabove, the landlord has to approach the Rent Controller by filing an application to stop all further proceedings and make an order directing the tenant to put the landlord in possession. Without there being any application, the appellate Court or trial Court as the case may be cannot assume existence of an executable order of eviction against a tenant, if any authority is required for this, I may refer to the decisions of the apex Court in *Dakaya alias Dakaiah Vs. Anjani*, and *K.A. Ramesh and Others Vs. Smt. Susheela Bai and Others*, . In *K.A. Ramesh*, the apex Court held:

We fail to appreciate how this contention can be pressed into service on the peculiar facts of this case. As we have seen earlier, the eviction proceedings have themselves become infructuous once the bank draft dated 2nd February, 1989 for the full amount of arrears was already got encashed by the respondents. That apart, even if there was any default pending such proceedings, it was open 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. The respondents did nothing of this sort. 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. The opportunity never became available to the appellants as the respondents did not invoke this provision.

5. As noticed above, the respondent-tenant averred that he paid the rents, as directed by the appellate Court. If any default, as alleged by the petitioners-landlords exists, then it is open to the petitioners-landlords to file an application u/s 11(4) of the Act, as held by the apex Court in K.A. Ramesh. In the absence of such an application, and any order thereupon by the appellate Court, it cannot be presumed that the tenant by allegedly not depositing or paying the rents, as directed by the appellate Court, becomes liable for eviction by the execution by the executing Court. Admittedly, the petitioners have not moved either the Rent Controller or the appellate-authority seeking an order to stop proceedings and evict the tenant. In the absence of such an order, it cannot be said that there is any executable eviction order against the respondents. In that view of the matter, this Court finds no error in the impugned order passed by the learned Rent Controller.

6. In the result, there are no merits in the CRP, and the same is accordingly dismissed. There shall be no order as to costs.