

(1999) 09 AP CK 0128
In the Andhra Pradesh High Court
Case No : CRP No. 4830 of 1998

Marisetty Ramesh

APPELLANT

Vs

Perla Subba Rao and another

RESPONDENT

Date of Decision : 06-09-1999

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10, 22

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1999) 6 ALD 330 : (1999) 6 ALT 806

Hon'ble Judges : G. Bikshapathy, J

Bench : Single Bench

Advocate : Mr. Nooty Rama Mohana Rao, for the Appellant; Mr. M. Ravindranath Reddy, for the Respondent

Judgement

1. This revision petition is filed against the orders dated 24-9-1998 of the learned senior civil Judge, Kavali made in CMA No.6 of 1993, confirming the order dated 2-8-1993 of the learned Rent Controller-cum-Principal District Munsif, Kavali, in RCC No.12 of 1987.

2. The revision petitioner is the tenant. The respondents-landlords filed an application for eviction of the tenant in RCC No.12 of 1987 on the ground of willful default of payment of rent; sub-letting and also bona fide requirement for additional accommodation. Learned Rent Controller accepted all the grounds, as alleged by the landlords and ordered eviction of the tenant, against which, the tenant has filed the appeal in CMA No.6 of 1993 and the same was dismissed. Then the tenant carried the matter in revision in CRP No.3291 of 1994 and this Court, by order dated 27-9-1996 remanded the matter to the Court below for consideration after giving opportunity to the parties to adduce evidence, if they so choose. After remand, evidence was adduced by the parties and was heard. The appellate Court held that the ground of willful default in payment of rents and sub-letting was not proved. The other ground, that is, bona fide requirement was established before the Court below and, therefore, the Court below ordered

eviction of the petitioner, by order dated 24-9-1998, against which, the present revision petition is filed.

3. The issue that falls for consideration is whether the order of the Court below is sustainable in law.

4. Admittedly, the application was filed for eviction of the tenant on three grounds viz., willful default, sub-letting and bona fide u/s 10(3)(c) of Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (Act No.XV of 1960) (for short "the Act"). The Court below found that the first two grounds were not sustainable. However, on the third ground it was found that there was a bona fide requirement.

5. Learned Counsel appearing for the petitioner-tenant submits that the Court below did not consider the material facts available before it and, therefore, it committed an error in finding that the landlords requirement of additional accommodation was bona fide u/s 10(3)(c) of the Act. Learned Counsel for the tenant further submits that an extent of nearly 1000 square yards was let out to the tenant for establishing a flour mill and the tenant had established it in the year 1990 and has developed the business to a great extent. Therefore, the requirement of additional accommodation to the landlords for the purpose of conducting the business in the old bottles and second hand plastic items by the first son; and in respect of other son for cloth business, was not sustainable. Even otherwise, they did not require such a huge extent of land for conducting the business. On this aspect, the Court below considered the evidence on record and found, on the basis of the evidence of the tenant, that the landlords are doing business and they require the premises bona fide for conducting their business. But such a finding of fact arrived at on appreciation of evidence cannot be interfered with even u/s 22 of the Act. But, however, the principal contention of the learned Counsel for the petitioner - tenant is that the comparative hardship was not considered by the Courts below and that mandatory duty is cast upon the Court below to ascertain the comparative hardship as required under proviso to Section 10(3)(c) of the Act, that fact has to be considered by the Court below as observed by the Supreme Court in *B. Kandasamy Reddiar Vs. O. Gomathi Ammal*, . There is no dispute about the proposition laid down by the Supreme Court that the comparative hardship has to be considered as contemplated under proviso to Section 10(3)(c) of the Act while dealing with the matter. But the question is whether the Court can suo moto considers it without the pleading by the tenant. It would not be appropriate for this Court to decide such an issue without pleading. The issue relating to comparative hardship is a pure question of fact, which has to be considered on the basis of evidence available on record. In the instant case, the petitioner tenant has not adduced any evidence on this aspect and this Court cannot treat it as a pure question of law for being considered at the time of arguments in the revision petition. Since the issue relating to comparative hardship was neither pleaded nor any evidence was let in, even after the matter was remitted back by this Court, the petitioner

is precluded from contending that the Court below has failed to consider the aspect of comparative hardship. Though the powers of revisional Court u/s 22 of the Act are wider than the powers u/s 115 of the Code of Civil Procedure, but in the absence of pleading, it would not be appropriate for this Court to consider the same in the revisional jurisdiction.

6. Under these circumstances, I do not find any merit in the revision petition. Accordingly the revision petition is dismissed. No costs.

7. However, the petitioner-tenant shall vacate the premises within a period of three (3) months from today.