

(2007) 11 KAR CK 0046

In the Karnataka High Court

Case No : House Rent Revision Petition No's. 142 and 193 of 2007

Mohammed Zakaulla

APPELLANT

Vs

C. Munireddy
 C. Munireddy Vs Mohammed Zakaulla

RESPONDENT

Date of Decision : 26-11-2007

Acts Referred:

Karnataka Rent Act, 1999 — Section 27 (2) (a), 27 (2) (o), 27 (2) (r)

Citation : (2008) 3 KarLJ 583

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : S.G. Prabhakar, in HRRP No. 142 of 2007 and S. Rajashekar, for S. Rajashekar, Black Coats Law Firm in HRRP No. 193 of 2007, for the Appellant; S. Rajashekar, for S. Rajashekar, Black Coats Law Firm in HRRP No. 142 of 2007 and S.G. Prabhakar in HRRP No. 193 of 2007, for the Respondent

Judgement

D.V. Shylendra Kumar, J.—These two revision petitions are by the tenant and the landlord of a commercial premises bearing No 5/13, 16th Cross, Lakkasandra, Bangalore-30, measuring east-west 12 feet and north-south 12 feet, which premises was the subject matter of HRC No 424 of 2002, on the file of Chief Judge, Court of Small Causes, Bangalore,

2. The eviction petition by the landlord titled as one u/s 27(2)(a) and (o) of the Karnataka Rent Act, 1999 [for short, the Act], having failed in terms of the order dated 13-4-2007, though technically under the impugned order it was sought that the eviction petition u/s 27(2)(a) is allowed, the eviction petitioner not having achieved his objective of getting the premises, has while preferred HRRP No 193 of 2007 seeking for eviction of the tenant from the premises based on the Section 27(2)(o) ground, the trial court having allowed the petition u/s 27(2) (r) of the Act also, though it was not a head under which the eviction had been sought for in the petition nor prayed for in the prayer column, the tenant has come up to this court to avoid eviction order purporting to be one u/s 27(2)(o) and (r) of the Act, as indicated by the trial court.

3. It is this single order which has given rise to the above two revision petitions, one by the landlord and the other by the tenant. Both revision petitions having been admitted, had come up for orders and the learned Counsel for the parties have requested the court to take up the main matter for disposal and pass orders.

4. I have heard Sri S.G. Prabhakar, learned Counsel appearing on behalf of the tenant and Sri S Rajashekar, learned Counsel appearing for the landlord in both the cases.

5. Submission of Sri S.G. Prabhakar, learned Counsel for the petitioner in HRRP No. 142 of 2007, filed at the instance of the tenant, is that the learned trial judge has committed a grave error in ordering eviction under the provisions of Section 27(2)(r) of the Act; that it was not one of the specific ground under which eviction had been sought for; that the learned trial judge is in error in merely relying upon the pleading in the body of the eviction petition indicating that the premises is needed for the use of the son of the eviction petitioner for starting a pharmaceutical shop; mere fact that it had been so mentioned in the body of the eviction petition is not sufficient to contend that the petition was one seeking for eviction even u/s 27(2)(r) of the Act also; that when the eviction petitioner himself had not evinced interest to seek eviction of the tenant on this ground, both by not indicating the petition to be as one for such purpose also and not having prayed for eviction under this head, the learned trial judge could not have assumed himself that the eviction petition is also one on this ground and allow the petition under tills head.

6. It is also submitted that the learned trial judge has also committed a grave error in allowing the petition u/s 27(2)(a) of the Act, even when the actual rent due by the tenant had not been determined in terms of Section 27(2)(a) of the Act and the tenant having not been called upon to pay such quantified rent within a period of one month, the provisions of Section 27(2)(a) could not have been pressed into service for ordering eviction and for allowing the petition. It is pointed out that on facts also, the tenant was only not in arrears of rent; that the so-called arrears was in the context of dispute as regards to the ownership of the petition premises; that the moment it was decided that the eviction petitioner is the landlord, the tenant had deposited/paid the rent and therefore the tenant was not in fact any arrears and provisions of Section 27(2)(a) of the Act was never attracted to the case and for this reason also, allowing the petition u/s 27(2)(a) of the Act is bad and not sustainable, both on facts and in law and therefore the impugned order is to be set aside by allowing the revision petition filed by the tenant.

7. It is also submitted that the learned trial judge could not have applied different norms in deciding as to whether the petition was one u/s 27(2)(r) or otherwise, as a reason and logic employed in holding that the petition cannot be one u/s 27(2)(o) of the Act, as the petition did not contain any plea supporting this ground of eviction was also equally applicable for ignoring the vague plea for the bona fide occupation of the landlord and the court should not have ventured

into pressing into service the provisions of Section 27(2)(r) of the Act for allowing the eviction petition.

8. Sri Rajashekar, learned Counsel for the respondent-landlord, on the other hand submits that though the landlord would not so much seek to support the order of eviction on the ground of arrears of rent claimed as per Section 27(2)(a) of the Act, nevertheless submits that it is a fact that the tenant was in arrears for a considerably long time; that the tenant was aware of the fact that the eviction petitioner was the son of the original landlord, who had continued the earlier litigation even as power of attorney holder of his father in a suit for eviction under the general law, but that suit having failed to due to change of law and not on merits, the eviction petitioner was forced to come up with an independent petition under the provisions of the Act thereafter; that the tenant pleading that the eviction petitioner was not landlord was a mere ruse for not paying the rent and not reflected bona fides, of the tenant and therefore even if technically the order could not have passed Section 27(2)(a) of the Act, the order should not be disturbed, particularly as the trial court has found that the tenant was liable to be evicted on the ground available u/s 27(2)(r) of the Act

9. Supporting the order passed by the learned trial judge allowing the petition Section 27(2)(r) of the Act, learned Counsel for the landlord submits that it was a mistake that the provision was not mentioned at the top of the petition, but there was sufficient pleading in the body of the petition, indicating that the premises was required for the bona fide use and occupation of the petitioner's son - an unemployed graduate - who had completed B. Pharma course and intended to start a pharmaceutical shop in the premises and the landlord himself after retirement was keen on joining his son not only to help him but also to run the business and this requirement of the landlord being very much within the knowledge of the tenant, as the tenant has filed objections even with regard to this plea, mere technicality of not mentioning the head under which eviction is sought cannot make any difference; that if the learned trial judge had proceeded on the premise that the parties had gone to trial on such understanding and ultimately on examination of such pleadings and evidence in support of the pleadings, passed an eviction order Section 27(2)(r) of the Act, the order should not be disturbed only on the technical ground that the provision Section 27(2)(r) of the Act had not been expressly mentioned in the petition or as one seeking for eviction. What is submitted is the main object of the petition was to seek possession of the premises and if it could not be made good on the grounds mentioned in the petition only, it can be made good on any other ground and even if such ground is not specifically mentioned in the petition, eviction can be ordered on such ground also, so long as there was sufficient pleadings in the petition to support that ground. In this regard, learned Counsel for the landlord submits that the law in this regard is well settled that technicality should not be the rule, but the intention and understanding of the parties based on which they go to trial is what matters and if they had sufficient opportunity to canvass their respective cases, which is the only test and non-mentioning of the provision,

which is only technical, should not make much different to the outcome and therefore urges for dismissal of the revision petition filed by the tenant.

10. Learned Counsel would also submit that the landlord has filed independent revision petition i.e. HRRP No. 193 of 2007, and submits that an eviction petition u/s 27(2)(o) of the Act is one which can be presented in the circumstances when the tenant has without justification contended that the eviction petitioner is not the landlord and has failed to prove the same or when the stand taken by the tenant that the eviction petitioner is not the landlord is not a bona fide stand and having regard to the background of the litigation between the parties, it was well within the knowledge of the tenant that the eviction petitioner was the landlord and having taken a contrary stand, which having failed, such a stand having absolute without any bona fides, the trial court should have allowed the petition u/s 27(2)(o) of the Act also and it is for this reason the landlord is compelled to come up with a revision petition to this court seeking for allowing the petition on this ground also.

11. Sri S.G. Prabhakar, learned Counsel appearing for the tenant, who figures as respondent in HRRP No 193 of 2007, would counter the submissions of Sri S Rajashekar, pointing out that while it is a fact the tenant was not able to make good his dispute regarding the relationship of landlord between the revision petitioner and the respondent, the dispute raised was a bona fide one; that it was raised only for the reason that while the so-called will executed by the erstwhile landlord was not within the knowledge of the tenant and on the other hand admittedly there are other legal heirs to the original landlord and in view of the dispute, rents had been deposited before the court; that when once this dispute was resolved, the tenant has not made this as an issue and has paid the arrears of rent and current rent without any demur and that itself is the proof of bona fides of the tenant in making payment of rent; that the learned trial judge had found sufficient substance in the stand of the tenant that there was no relationship of landlord and tenant and an application filed by the tenant u/s 43 of the Act had been ordered and the landlord had been directed to approach the civil court for determination of the ownership over the property; that this order, however, came to be varied by the high court in HRRP No. 311 of 2005, a revision petition filed by the landlord, in terms of the order dated 19-10-2005; that the tenant has not thereafter disputed the relationship of landlord and tenant, but has paid all the rents; that the stand taken by the tenant earlier with regard to the relationship can never be characterized as one lacking any bona fides in the wake of such developments and therefore there is absolutely no scope for holding that the tenant had denied the relationship without any bona fides; that the entire developments clearly indicate the initial denial of the tenant about the ownership of the eviction petitioner was just and bona fide and therefore there is no scope or occasion to pass an eviction order against the tenant under the provisions of Section 27(2)(o) of the Act and the revision petition is to be dismissed.

12. Sri S.G. Prabhakar has also submitted on behalf of the tenant-revision petitioner in HRRP 142 of 2007 that the trial court could not have passed an order of eviction as against the tenant u/s 27(2)(r) of the Act i.e. on the ground of bona fide use and requirement of the landlord or his son, for the reason that while the landlord had by an application sought for amendment of the eviction petition pleadings so as to include this provision as a ground for eviction i.e. petition to be one u/s 27(2)(r) of the Act also and such application had come to be allowed and the petitioner had been permitted to amend the eviction petition as one to be u/s 27(2)(r) of the Act also, in the revision petition filed by the tenant, questioning the correctness of this order i.e. in HRRP No 50 of 2007, the learned Counsel for the respondent therein i.e. the landlord, having submitted that the revision petition be allowed and the order under challenge be set aside and this court having set aside the order permitting amendment to be carried out to the eviction petition, it was no more open to the landlord to press the ground of bona fide use and occupation by the landlord in terms of Section 27(2)(r) of the Act; that such an examination itself could not have been undertaken in the light of the order passed by this court in HRRP No 50 of 2007 and as such, the eviction order passed by the trial court, questioned in HRRP No 142 of 2007, filed by the tenant, should be set aside, revision petition allowed and the eviction petition should be dismissed.

13. It is such rival submissions that are required to be examined. I have perused the pleadings, the impugned order passed by the trial court, material on record and I have bestowed consideration to the rival submissions made at the Bar in both the revision petitions.

14. In so far as the revision petition filed by the landlord in HRRP No 193 of 2007 is concerned, while it is true that the tenant had disputed the ownership of the landlord initially and the trial court also had ordered in his favour on this contention and had referred the matter for determination of this question by civil court, such order was revised by this court in the revision filed by the landlord and in the wake of these developments, it cannot be said that the tenant had denied the ownership of the eviction petitioner in respect of the schedule premises without any justification or without any basis. One it is found that the stand taken by the tenant was a bona fide stand, though ultimately tenant is either not successful in this stand or has not been able to make it good, even then, no order of eviction can be passed u/s 27(2)(o) of the Act and therefore HRRP No. 193 of 2007 filed by the landlord is liable to be dismissed.

15. Learned Counsel appearing for the landlord has placed reliance on the decision of this court in the case of Babulal and Anr. v. K Sharadamma and Anr. (2) 2003 CCR 1367. Though it has been held in this decision that a tenant who had denied the relationship of landlord and who had failed to make good that plea will become liable to be evicted u/s 27(2)(o) of the Act, irrespective of the fact that the landlord having taken up it as a ground for eviction in the beginning of the eviction petition and such ground by itself is good enough to order eviction

and in the case relied upon by the learned Counsel for the landlord, the eviction order passed by the trial court on such ground we sustained in the revision petition filed by the tenant and the revision petition was dismissed, the ratio does not apply to the present case, inasmuch as it is not as though the tenant had taken an inconsistent stand of paying rent to the eviction petitioner, who later took up the stand that the eviction petitioner is not the landlord and denied his title but had taken the stand that the eviction petitioner is not the owner in the beginning, and when once the prayer for referring the matter to civil court to resolve this question as had been ordered by the trial court, was set aside by this court, the tenant having fallen in line and having paid the rent without any demur, it cannot be said that the tenant was not acting with bona fides in taking such a stand and therefore the decision relied upon by the landlord does not advance the case of the landlord in the facts and circumstances of this case.

16. Coming to the revision petition filed by the tenant in HRRP No 142 of 2007, while there is not much controversy with regard to the ground of non-payment of rents for ordering eviction i.e. u/s 27(2)(a) of the Act, in the sense that the tenant has paid all the rents and had not remained in arrears of rent during the pendency of the petition, the trial court has neither followed the procedure for passing an order of eviction under this provision nor is it a fact that the tenant had given scope for passing an order of eviction on this ground by remaining in arrears of rent i.e. not depositing the arrears of rent as determined by the court within a period of one month. When this requirement is not to existence, there is no question of tenant being evicted in terms of the provisions of Section 27(2)(a) of the Act and the order passed by the trial court indicating that the petition is allowed u/s 27(2)(a) of the Act is not sustainable.

That leaves the question as to the correctness or otherwise of the order of the trial court in ordering eviction u/s 27(2)(r) of the Act i.e. on the ground of bona fide requirement and use by the landlord. In so far as this ground is concerned, it should be noticed that while the requirement should be made good by the landlord, the Act itself being a piece of welfare legislation to protect the interests of the tenants. While understanding such provisions and interpreting such provisions, it should be in the background of achieving the object of providing such protection to a tenant. If the legislature had carved out a limited scope for evicting the tenant, notwithstanding a contract to the contrary between the parties, that scope while cannot be enlarged nor can it be leniently viewed in favour of the landlord has failed to order eviction against tenant, even when the landlord in order to make good to the hilt the existence of such a ground for evicting the tenant.

17. In the instant case, while there appears to be some pleading in the petition relating to the requirement of the landlord for bona fide use and occupation of the premises i.e. for starting business by the son of the landlord in the pharmaceutical trades to open a pharmaceutical shop in the petition schedule premises, that ground has not been fully pressed into service by all necessary

pleading and supporting materials and is not even urged as a ground of eviction either in the heading of the eviction petition or in the prayer column. But what is more important is when the trial court had consciously allowed amendment being aware of the lacking in the petition for making the petition to be one filed u/s 27(2)(r) of the Act, but unfortunately in the revision petition filed by the tenant as against this order, the landlord having conceded the petition and therefore the petition which had come to be amended in terms of the order passed by the trial court having been restored to its original status as had been filed initially and by deleting the ground u/s 27(2)(r) of the Act, and if such is the implication of the order passed by this court in the revision petition filed by the tenant, even during the pendency of the eviction petition, I am of the view that it is not open to the landlord to yet again contend that the landlord can seek eviction of the tenant on the ground of bona fide use and occupation. I say so for the reason that when once the landlord conceded allowing of the revision petition filed by the tenant as against the order of the trial court permitting amendment to the eviction petition, it amounts to landlord is consciously giving up the limited pleading or ground that could have been made out in the eviction petition for seeking eviction in terms of the provision u/s 27(2)(r) of the Act. If the landlord himself had consciously conceded to this position, it is not open to the landlord later to press into service the very limited plea and urge for eviction [of the tenant] u/s 27(2)(r) of the Act nor was it proper on the part of the trial court to consider this ground for ordering eviction. It is for this reason, I find it not necessary to entertain the application sought to be filed by the tenant in HRRP 142 of 2007, for bringing on record additional facts and material in the wake of the subsequent developments during the pendency of these two revision petitions before this court touching upon the conduct and bona fides on the part of the landlord for seeking eviction of the tenant u/s 27(2)(r) of the Act. It is open to the tenant to make use of such material, if there arises a situation in future and if the tenant so wishes to make use of it at such later stage. The trial court could not have considered the bona fide requirement of the landlord even if there was a meek plea in this regard in the eviction petition and the eviction petition should have been examined within the scope of the provisions of Section 27(2)(a) of the Act and if at all u/s 27(2)(o) of the Act. Therefore HRRP No 142 of 2007 is to be allowed.

18. In the result, HRRP No 142 of 2007 is allowed and the impugned order of eviction passed u/s 27(2)(o) and (r) of the Act is set aside and the eviction petition is dismissed. HRRP No 193 of 2007 is dismissed.