
(2012) 02 AP CK 0001
In the Andhra Pradesh High Court
Case No : C.R.P. No. 5842 of 2011

M/s. Mohamadiya and Company and others	APPELLANT
Vs	
Smt. C. Uma and others	RESPONDENT

Date of Decision : 09-02-2012

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 32

Citation : (2012) 3 ALD 155 : (2012) 3 ALT 421

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : K.K. Waghray, for the Appellant; D. Madhava Rao, for the Respondent

Final Decision : Dismissed

Judgement

C.V. Nagarjuna Reddy

1. An interesting, nay, an important question arises for adjudication of this court. The question is whether with the fixation of fair rent for the demised premises in excess of Rs. 3500/- per month, the jurisdiction of the Rent Controller is ousted and consequently the order of eviction passed by him, as confirmed in appeal, is without jurisdiction?

2. The brief facts leading to the case are recounted hereunder:

The petitioners are the tenants of premises bearing No. 3-6-564/7, situated at Himayathnagar, Hyderabad (hereinafter referred to as "the demised premises"). The demised premises belongs to respondent No. 1 (hereinafter referred to as "the landlady"). The tenancy was oral and the agreed rent for the demised premises was Rs. 1100/- per month. The landlady filed two petitions before the learned II Additional Rent Controller, Hyderabad (hereinafter referred to as "the Rent Controller"). She filed R.C. No. 468/2006 for fixation of fair rent and R.C. No. 470/2006 for eviction of the petitioners on the plea that the demised premises was needed for the bonafide requirement of her husband who is a Doctor for running a clinic. The petitioners contested both the petitions. By

separate orders dated 29-7-2010, the Rent Controller allowed R.C.No.470/2006 and ordered the petitioners' eviction. He has also fixed fair rent for the demised premises at Rs. 30/- per sq.ft. per month.

3. Feeling aggrieved by the said two orders of the Rent Controller, the petitioners filed two separate appeals before the learned Chief Judge, City Small Causes Court, Hyderabad. The landlady also filed an appeal not being satisfied with the adequacy of the fair rent fixed by the Rent Controller. The learned Chief Judge dismissed all the three appeals. The present Civil Revision Petition arises out of Judgment in R.A.No.378/2010 pertaining to the petitioners' eviction.

4. At the hearing, Sri K.K. Waghray, learned counsel for the petitioners, fairly conceded that he is not pressing the Civil Revision Petition on the concurrent findings of the Courts below relating to the bonafide requirement of the landlady which constituted the sole basis for the eviction order. He has however advanced the contention relating to the Rent Controller losing his jurisdiction with the fixation of fair rent in excess of the pecuniary limit prescribed in Section 32(c) of the A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960 (for short "the Act"). His submission is that the fair rent for the demised premises was fixed with effect from the date of filing of the application for such fixation, which also happened to be the date on which the petition for eviction of the petitioners was filed; that as the rent per month for the demised premises shall be taken as the rent in excess of Rs. 3500/- as on the date of filing the eviction petition, the learned Rent Controller has lost his jurisdiction to adjudicate the eviction petition on merits and that therefore he ought to have rejected the petition by relegating the landlady to take recourse to the common law remedy of filing a civil suit for the petitioners' eviction.

5. This argument, though appears attractive superficially, on a deeper analysis of the true legal position, it does not hold water. The reasons for this conclusion are setout, infra.

6. There is no dispute on two aspects among the parties, namely, (i) that under the A.P. Buildings (Lease, Rent & Eviction) Control (Amendment) Act 2005, the pecuniary jurisdiction of the Rent Controller is limited to Rs. 3500/- per month in the areas covered by the Municipal Corporations in the State and Rs. 2000/- per month in other areas. As the demised premises is situated within the area of Greater Hyderabad Municipal Corporation, the pecuniary jurisdiction of the Rent Controller is limited to Rs. 3500/- per month; and (ii) that as on the date of filing of the eviction petition, the agreed rent was Rs. 1100/-, which was within the pecuniary jurisdiction of the Rent Controller and that the order fixing the fair rent would operate from the date of the application for such fixation, which was also the date on which the eviction petition was filed.

7. From the facts noted above, to start with, the Rent Controller had jurisdiction to entertain and adjudicate on the petition filed by the landlady for eviction of the petitioners as the agreed rent for the demised premises was Rs. 1100/- per

month. The mainstay of the plea of the petitioners, as put forth by their Counsel, is that as the fair rent fixed by the Rent Controller relates back to the date of the application, he loses jurisdiction, as admittedly, the fair rent exceeded the pecuniary limits of his jurisdiction. An identical question fell for this Court's consideration in *Anil Kumar R. Kamdar (died per L.R.) Vs. Dasari Vaikuntham (died per L.Rs.)* C.R.P. No. 5025/2009, dt. 21-7-2010. A learned single Judge, by his Judgment dated 21-7-2010, repelled a similar submission and held that since the Rent Controller had jurisdiction to entertain the eviction petition on the date of filing of the petition, the subsequent event of fixation of fair rent, albeit with retrospective effect, will not oust the jurisdiction of the Rent Controller. The learned Judge has placed reliance on some Judgments of the Supreme Court and also of a Larger Bench of this Court in *Ramvilas Bajaj Vs. Ashok Kumar and Another*,

8. A Full Bench of Madras High Court in *Putta Kannayya Chetti Vs. Rudrabhatla Venkata Narasayya* AIR 1918 Mad 998 (F.B.) dealt with a case where a suit was filed for accounts valued at Rs. 5000/-, which was the pecuniary limit for the District Munsif to exercise his jurisdiction at the relevant point of time. However, the suit was decreed for Rs. 5577-7-1 by the learned District Munsif, Chodavaram, on finding that the plaintiff was entitled to recover the said sum on true and proper accounting. An appeal was filed by the aggrieved party in the High Court. The plaintiff raised an objection by pleading that as the value of the subject matter of the suit was Rs. 2000/-, appeal lies to the District Court and not to the High Court. The said objection was upheld by the Full Bench and in the process, has undertaken a very useful discussion on the concept of jurisdiction. The Full Bench has visualized different situations and one such situation is where the plaintiff files a suit for ejectment and claims future mesne profits in addition, which may keep on increasing depending upon the duration of the pendency of the suit. It has also visualized another situation where the suit is filed for accounts and the plaintiff may approximately value the suit which is within the pecuniary jurisdiction and after the trial, the Court may find that the plaintiff is entitled to the money which is beyond its pecuniary jurisdiction to grant. While giving its opinion, the Full Bench laid down the principle that the value of the subject matter of the suit for the purposes of jurisdiction must be its value when the plaint is filed, whether such value is determined by rules made for that purpose, which in case of dispute may be settled by the Court. It is useful to reproduce the relevant passage of the said Judgment hereunder:

.....We are therefore of opinion that in every case, when the Court is seized of jurisdiction, it cannot and does not lose it by any change in the value of the subject matter of the suit after the institution of the suit or by the precise ascertainment of its value in cases which do not admit of such ascertainment at the time of institution, except when the plaint is allowed to be amended; and that is not really an exception. On the same principle we think that the Court can award such sum as it finds due to the plaintiff, although such sum is above the pecuniary limits of its jurisdiction....

9. In *Official Trustee, West Bengal and Others Vs. Sachindra Nath Chatterjee and Another*, the Supreme Court has distinguished "exercise of jurisdiction" from "existence of jurisdiction". The Supreme Court has pithily put as under:

....The authority to decide a cause at all not the decision rendered therein is what makes up jurisdiction: and when there is jurisdiction of the person and subject-matter, the decision of all other questions arising in the case is but an exercise of that jurisdiction. The extent to which the conditions essential for creating and raising the jurisdiction of a Court or the restraints attaching to the mode of exercise of that jurisdiction, should be included in the conception of jurisdiction itself, is sometimes a question of great nicety.

10. In *Ramvilas Bajaj (2-supra)*, the majority of the Larger Bench, speaking through me, while dealing with the question whether increase in the pecuniary jurisdiction of the Rent Controller u/s 32(c) of the Act had effect on the cases pending on the date of its coming into force, deduced five principles. In the present context, principles (iii) and (iv) thereof are relevant, which are as follows:

(i)

(ii)

(iii) Right to forum is a vested right and it becomes vested when the proceedings are initiated in the Tribunal or the Court of first instance and unless the Legislation has by express words or by necessary implication indicated in clear terms (otherwise), the vested right will continue irrespective of change of jurisdiction of different Tribunals/Courts (*Commissioner of Income Tax, Bangalore Vs. Smt. R. Sharadamma*,

(iv) Right of the parties are crystallized on the date of the institution of the suit and subsequent amendment would not affect the pending proceedings unless the amending Act either expressly or by necessary implication gives retrospective effect to the amended provision (*Atma Ram Mittal Vs. Ishwar Singh Punia*,

11. In *Sai Krishna General Stores Vs. B. Sai Anand Prasad*, a learned single Judge of this Court had an occasion to consider whether the Rent Controller had jurisdiction to fix fair rent in excess of his pecuniary jurisdiction. The learned Judge has reiterated the legal principles while making a copious reference to the case law. The following extract from the Judgment in *Kanda Lingaiah Vs. P. Nirmala Devi*, is very apt in the present context:

It is well settled principle that the rights of the parties crystallizes on the date of the institution of the suit and even the rent enhanced and the building becomes older than ten years the rights will continue to be available until the suit is disposed of or adjudicated. Once rights crystallize the adjudication must be in accordance with law. In the instant case, the rent was only Rs. 1,000/- as on the date of filing of the R.C. and the landlady enhanced the rent subsequent to the filing of the R.C. without prejudice to her rights with regard to the eviction petition and, therefore, it cannot be said that the Rent Controller has no

jurisdiction.

12. From the firmly established principles in the Judgments referred to above, it should be taken as settled law that it is the value of the subject matter at the time of institution of the case that determines the jurisdiction of the forum and not its subsequent increase in the value, albeit in some cases, as the present one, with retrospective effect unless the statute either expressly or by necessary implication takes away the jurisdiction of the Courts to decide the pending cases. Otherwise, the parties will be groping in uncertainty. While taking the present case itself as an illustration, even though the landlady has filed the application for fixation of fair rent, neither she nor the Rent Controller knew till the case was adjudicated whether the fair rent will be fixed in excess of the pecuniary limit of the Rent Controller or not. If the Rent Controller's jurisdiction is to be determined on the future act, then that would become a purely speculative litigation, in the sense, if the fixation of fair rent is below Rs. 3500/- per month, the eviction petition would fall within the Rent Controller's jurisdiction and if the fair rent so fixed is more than Rs. 3500/- per month, the landlady will be non-suited before the Rent Controller. The law never envisages such an uncertainty and fluctuating fortunes of the litigants.

13. There is another angle to this issue. If the plea of the petitioners is accepted, it amounts to penalizing the landlady for succeeding in her petition for fixation of fair rent i.e., by convincing the Rent Controller to enhance the fair rent beyond his pecuniary limits for entertaining the petition for eviction, her eviction petition will be thrown out on the ground of lack of pecuniary jurisdiction. This will lead to a wholly anomalous situation where the person who has lost his cause in the proceeding for fixation of fair rent will have the last laugh by ensuring that the successful party in the fair rent proceedings is non-suited in the eviction proceedings on the ground of lack of pecuniary jurisdiction. Such an incongruous situation should never be allowed to arise.

14. On the analysis as above, I hold that as the Rent Controller had pecuniary jurisdiction to entertain the eviction petition when it was instituted, the subsequent fixation of fair rent, even with effect from the date of application, would not bar the jurisdiction of the Rent Controller to decide the eviction petition.

15. In the result, the Civil Revision Petition is dismissed.

16. As a sequel, C.R.P.M.P. No. 8210 of 2011 is disposed of as infructuous.

Justice C.V. Nagarjuna Reddy

17. After pronouncing the Judgment, the learned counsel for the petitioners sought for time to his clients to vacate the demised premises.

18. The petitioners are permitted three months' time for handing over the vacant possession of the demised premises, on payment of all arrears accrued as of now and rents for future period to the landlady, subject to an authorized

representative of the petitioners filing an undertaking-affidavit to this effect before the Rent Controller within a period of one week from today.