

(2003) 07 AP CK 0052

In the Andhra Pradesh High Court

Case No : CRP No's. 1113 and 1318 of 2000

N. Kumara Swamy

APPELLANT

Vs

A. Indraseva (died) by LRs. and Others

RESPONDENT

Date of Decision : 21-07-2003

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10(2), 11, 11(4)

Citation : (2003) 5 ALD 842 : (2004) 1 ALT 558

Hon'ble Judges : T. Ch. Surya Rao, J

Bench : Single Bench

Advocate : Bankatla Mandhani, in CRP No. 1113 of 2000 and P.A. Kamaleswari, in CRP No. 1318 of 2000, for the Appellant; Bankatla Mandhani, in CRP No. 1318 of 2000, M. Sivananda Kumar, Respondent Nos. 2 and 3 in CRP No. 1113 of 2000, Bajran Singh Thakur, for Respondent Nos. 4 to 6, Madduri Sivananda Kumar, in CRP No. 1318 of 2000, for the Respondent

Final Decision : Allowed

Judgement

T. Ch. Surya Rao, J.—These revision petitions are directed against the common judgment dated 21.12.1999 passed by the learned Chief Judge, City Small Causes Court, Hyderabad in R.A. Nos. 353 and 367 of 1996.

2. The 1st respondent in both the appeals filed the eviction petition in R.C. No. 817 of 1990 against the appellants and another on the ground of willful default said to have been committed by the tenants preceding to the date of filing of the eviction petition and also subsequent thereto during the pendency of the proceedings. The eviction was also sought on the grounds of acts of waste and bona fide personal requirement.

3. The learned Rent Controller by his order dated 15-10-1996 in R.C. No. 817 of 1990 directed eviction of the tenants only on the ground that they committed willful default, while negating the other two grounds viz. acts of waste and bona fide personal requirement. As aforesaid, two appeals have been filed by two

of the tenants individually in R.A. Nos. 353 and 367 of 1996. Under the impugned judgment, the learned Chief Judge concurred with the finding of the Rent Controller and dismissed both the appeals. The learned Judge also confirmed the findings of the Rent Controller on the other two points viz. acts of waste and bona fide requirement. It is obvious therefore, that the eviction was ordered only on the ground of willful default.

4. The case of the landlord was that the tenants committed willful default in paying the rents for the months of October, 1990 to December, 1990. It is his further case that the tenants, during the pendency of the eviction petition has failed to pay the rents for the period between January, 1991 to January, 1995 i.e., for (49) months amounting to Rs. 12,250/-. Therefore, the alleged willful default claimed by the landlord is for three months in between October, 1990 to December, 1990 preceding the date of filing of the eviction petition and for the period between January, 1991 to January, 1995 subsequent to the filing of the eviction petition.

5. There has been no gain saying about the jural relationship of landlord and tenant between the parties inter se. The quantum of rent is Rs. 250/- per month and equally mere is no dispute about the same. The facts emanating from the record show that the appellant in R.A. No. 373 of 1996 filed a suit in O.S. No. 1968 of 1990 on the file of the IV Assistant Judge, City Civil Court, Hyderabad for perpetual injunction against the landlord restraining him from forcibly dispossessing the tenant without following the due process of law and she has been depositing the rents to the credit of the said suit. The appellant in R.A. No. 353 of 1996 is the mother and the appellant in the other appeal in R.A. No. 367 of 1996 is the son. The 3rd respondent in the eviction petition is also sailing with respondents 1 and 2 and there is no conflict of interest among the respondents inter se in the eviction proceedings.

6. The rents pertaining to three months preceding the date of eviction petition are said to have been sent by Money Order to the landlord who refused to receive the same. Admittedly in the present case, the landlord received the Demand Draft towards the rents for those three months even before filing the eviction petition. From this admitted fact it is obvious that there has been no default in payment of rents on the part of the tenants for the three months period preceding the date of filing of the eviction petition. The main controversy between the parties appears to be the alleged default subsequent to the date of filing of the eviction petition. While it is the case of the appellants that they never committed default and they have been continuously depositing the rents to the credit of the suit, it is the case of the 1st respondent-landlord that they were irregular in payment of rents and committed default. Appreciating the evidence on the point, the learned Rent Controller was of the view that the tenants committed default in depositing the rents for the months of July, 1992, November, 1992 and April, June and August, 1993. The learned Appellate Court was also of the view that the tenants failed to deposit the rents for those months.

7. Sri Bankatlal Mandhani, learned Counsel appearing for the appellants contends that both the Courts below lost sight of the glaring fact that there have been deposits for some months for double the amount of rent payable and if the total amount deposited into the Court had been considered, it would have revealed that there had been no default. This factual aspect has not been considered by both the Courts below. Obviously, both the Courts below have gone by the apparent facts looking at the table showing the dates of deposits, where there had been no remittances for particular months. The remittances of double the amount for particular months have not been considered by both the Courts below. Admittedly the total amount due as per the case of the landlord was Rs. 12,250/-representing the rent for (49) months from January, 1991 to January, 1995. If the total amount paid under various exhibits is calculated, according to the learned Counsel for the appellants, it would be the same amount and therefore, there is no default. This exercise has not been done by both the Courts below. Once the total amount deposited under various challans is considered, there would not have been any default at all. This is the factual aspect.

8. Even other wise assuming for a moment that there has been default for five months as concurrently held by both the Courts below, would it constitute a valid ground for eviction is the next question to be considered in these two revisions. In other words, default in depositing the rents during the pendency of the proceedings can be considered as a willful default entailing eviction or not is the question. The said question is no more res Integra and has been covered by a recent Full Bench Judgment of this Court in Vinukonda Venkata Ramana Vs. Mootha Venkateswara Rao and Another, . The Full Bench ultimately answered the points thus:

(1) The Full Bench decision of this Court in P.N. Rao v. K. Radhakrishnamacharyulu, AIR 1978 319, is no longer a good law having regard to the decision of the Apex Court in Dakaya alias Dakaiah Vs. Anjani, .

(2) The question whether default made subsequent to the filing of the eviction petition can be made a ground for ordering eviction is answered in affirmative subject to the fulfillment of conditions laid down in Section 11 of the Act.

(3) There is no bar in taking additional evidence in revision filed u/s 22 of the Act.

9. The subsequent default in paying the rents pending the eviction proceedings can therefore, be a ground for eviction in accordance with Section 11 of the Rent Control Act. Section 11 of the Act in the context therefore, becomes germane for consideration. It reads as under:

Payment or deposit of rent during the pendency of proceedings for eviction:--(1) No tenant against whom an application for eviction has been made by a landlord u/s 10, shall be entitled to contest the application before the Controller under that Section, or to prefer any appeal u/s 20 against any order made by the Controller on the application, unless he has paid to he landlord or deposits with

the Controller or the appellate authority, as the case may be all arrears of rent due in respect of the building up to the date of payment or deposit and continues to pay or deposit any rent which may subsequently become due in respect of the building, until the termination of the proceedings before the Controller or the appellate authority, as the case may be

(2).....

(3).....

(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.

10. A bare perusal of the above said provision show that the tenant against whom an application for eviction has been made is entitled to contest the said application, only when he pays all arrears of rent due in respect of the demised premises to the date of petition and thereafter when he continues to pay the rents during the pendency of the proceedings, Similarly, the tenant who suffers an order of eviction is entitled to prefer an appeal only when he deposits all the arrears of rents due in respect of the demised premises and thereafter continues to deposit the rents during the pendency of the appeal. In the event of any default, it is obvious that the tenant is not entitled to contest the proceedings either before the Rent Controller or before the appellate Court. Of course he is entitled to show the cause as to why he has not been able to deposit the rents and his failure to show sufficient cause would entail, under Sub-section (4) of Section 11 of the Act; passing of the necessary orders by the Rent Controller or the appellate authority as the case may be, stopping all further proceedings and making an order directing the tenant to put the landlord in possession. In other words, it is obvious from the perusal of both the provisions of Sub-section (1) and Sub-section (4) of Section 11 of the Act that the tenant would be precluded from contesting the eviction proceedings and preferring the appeal in the event of any default committed by him in paying the rents subsequent to the filing of the eviction petition. In my considered view, the default committed by the tenants preceding the date of the eviction petition which entails order of eviction is different from the consequences ensued under Sub-section (1) and Sub-section (4) of Section 11 of the Act in the event of the tenant committing default in depositing the rents pending the proceedings. In fact the Apex Court in K.A. Ramesh and Others Vs. Smt. Susheela Bai and Others, , considered this aspect and held thus:

"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 becomes 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

the respondents to enforce the statutory right available of 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. Nothing of this sort was done by the respondents. 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. It can, therefore, easily be said that the respondents waived this right available to them under the Statute presumably by encashing the bank draft dated 2nd February, 1989. Consequently, even this contention cannot be of any assistance to the respondents"

11. The judgment of the Apex Court in *Dakaya alias Dakaiah Vs. Anjani, , and K.A. Ramesh* case (supra), would further show that the default in payment of rents preceding the date of filing of the eviction petition will not be available to the landlord, once that amount is paid and accepted by the landlord before filing of the eviction petition. Indeed, the same thing had happened in this case. When the tenants had sent a draft representing three months rent preceding the date of filing of the eviction petition, the same was accepted by the landlord. Perhaps that is the reason why the alleged default in payment of rents preceding the date of filing of the eviction petition has not been considered by both the Courts below and has not been pressed before me in these revisions rightly by the learned Counsel for the respondents. Inasmuch as Sub-section (4) of Section 11 of the Act envisages a procedure where either the Rent Controller or the Appellate Authority as the case may be, is obliged under law to see whether there is sufficient cause for the tenant in his failure to deposit the rents and that procedure cannot be circumvented by holding that non-deposit of the rents subsequent to the filing of the eviction petition constitutes default entailing eviction. Therefore, in my considered view and having regard to the judgment of the Apex Court in *K.A. Ramesh* case (supra), it is obvious that except filing a necessary application under Sub-section (4) of Section 11 of the Act, the landlord cannot urge before the Rent Controller or the Appellate Authority as the case may be, that the tenant has committed default in depositing the rents during the pendency of the eviction proceedings. Therefore, both the Rent Controller and the Appellant Authority have fallen into an error by ignoring this glaring legal position and therefore, the finding of both Courts below that the failure of the tenants in depositing the rents subsequent to the filing of the eviction petition would constitute willful default cannot be sustained.

12. In the result, both the revision petitions are, allowed. Under circumstances, there shall be no order as to costs.