
(1996) 11 AP CK 0028

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1743 of 1992

Raj Kumar Sharma (died) rep. by his L.Rs.

APPELLANT

Vs

Jonnalagadda Satyanarayana and Sons

RESPONDENT

Date of Decision : 26-11-1996

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10(3)

Citation : (1997) 1 ALT 573 : (1997) 1 APLJ 225

Hon'ble Judges : A. Hanumanthu, J

Bench : Single Bench

Advocate : T. Bali Reddy, for the Appellant; T. Veerabhadrayya, for the Respondent

Judgement

A. Hanumanthu, J.—This revision is directed against the judgment and decree dated 31-1-1992 passed in R.C.A. No. 108/82 on the file of the Subordinate Judge at Vijayawada reversing the order of the Rent Controller in R.C.C. No. 31/81.

2. The facts in brief are as follows:

The respondents (sic. petitioners) 4 and 5 herein and their brother late Rajakumar Sharma whose legal representatives are petitioners, 1,2 and 3 (for the sake of convenience called as land-lords hereafter) filed the eviction petition R.C.C. No. 31/81 u/s 10(2)(i) and Section 10(3)(a)(iii)(a) of A.P. Buildings (Lease, Rent and Eviction) Control Act (Act 15 of 1960) (hereinafter called as the "Act") on the grounds of wilful default in payment of rent and also on the ground of requiring the building for starting the existing business carried on by them in the non-residential premises let out to the respondent herein (referred as tenant). The tenant resisted that application by filing a counter denying the allegations made in the petition. During the trial, the 5th petitioner herein was examined as P.W.1 and Exs.A-1 to A-5 were marked. On behalf of the tenant, its proprietor by name J. Koteswara Rao was examined as R.W.1 and Exs.B-1 to B-8 were marked. On a consideration of the oral and documentary evidence placed

before him, the learned Rent Controller held that there was no wilful default in payment of rent and that the land-lords require the premises bonafide for their use and occupation and therefore, allowed the eviction petition and ordered for eviction of the tenant from that premises granting 2 months time. Aggrieved of that order, the tenant preferred the appeal R.C. A. No. 108 / 82 to the Subordinate Judge, Vijayawada. The learned Subordinate Judge by his judgment dated 31-1-1992 confirmed the finding of the Rent Controller that there was no wilful default in payment of rent. But, on a consideration of subsequent events that were brought to his notice by the appellant-tenant through the petition LA. No. 5330/89 and LA. No. 5639/89 that the land-lords came into possession of a bigger non-residential portion situated by the side of the tenanted schedule building after getting evicted its tenant who was carrying on cloth business in it and that the land-lords have started carrying on their existing business in sports goods under the name and style of "Sharma's sports" and relying on the Full Bench decision in "Vidhyavathi Bai v. Shankarlal 1987 (2) ALT 550 : 1987 (2) APLJ 365) held that the land-lord who had come into occupation of a non-residential building is not entitled to for eviction of another non-residential building occupied by the tenant and consequently, set aside the order of eviction passed by the learned Rent Controller and allowed the appeal. As against that judgment and decree of the learned Subordinate Judge, the land-lords have come up with this revision petition.

3. Admittedly, the petitioners herein are the owners of non-residential premises bearing D.No. Old 28-1-29 (New 28-1-32) consisting of two rooms situated within the municipal limits of Vijayawada.- It forms part of a big building. The petitioners became the owners of that building having purchased the same under a registered sale deed dated 28-11-1980 from the previous owners. There are some other tenants with respect to the other portions of that building. The respondent herein is the tenant of the petition-schedule premises bearing No. 28-1-29. The land-lords sought eviction of the tenant from the said premises on the ground of wilful default and on the ground of bona fide requirement. Both the Rent Controller as well as the appellate authority held that there was no wilful default in paying the rent on the part of the tenant. It is a question of fact. On an appraisal of the evidence adduced by both the parties, both the Courts below gave a finding that there was no wilful default on the part of the tenant. Therefore, it does not call for interference in revision by this Court. Further, the learned counsel for the petitioners also has not challenged the said finding on fact with regard to the plea of wilful default.

4. Section 10(3)(a)(iii) of the Act relates to eviction of non-residential premises on the ground of bona fide requirement by a land-lord. The relevant provisions so far as it is material read as follows:

"Section 10(3)(a):- A landlord may," subject to the provisions of clause (d), apply to the Controller for an order directing the tenant to put the landlord in possession of the building-

(i)-

(ii)

(iii) in case it is any other non-residential building, if the landlord is not occupying a non-residential building in the city, town or village concerned which is his own or to the possession of which he is entitled whether under this Act or otherwise-

(a) for the purpose of a business which he is carrying on, on the date of the application, or

(b) for the purpose of a business which in the opinion of the Controller, the landlord bona fide proposes to commence."

The object of Section 10(3)(a)(iii) of the Act is to enable the landlord to recover the possession of his non-residential building in the occupation of a tenant if it is required for the purpose of the business which he carries on or he bona fide proposes to commence. There is, all the same, a rider attached to this enabling provision and that is, the landlord, seeking recovery of such non-residential building should not be in occupation of another non-residential building in the city, town or village concerned, Which is his own or to the possession of which he is entitled. As seen from the averments in the petition, the landlords sought for eviction of the premises on the ground that they do not possess any residential or non-residential building of their own in Vijayawada, that they are residing in rented premises, that the landlords Nos.2 and 3 have been running business in sports goods under the name and style of "Sharma"s sports" at Vijayawada in a rented premises by paying a rent of Rs. 210/- per month and that they require the premises for running their sports business and that requirement is bona fide. The learned Rent Controller held that the requirement of the landlord is bona fide and therefore, ordered for eviction. The learned Subordinate Judge, on being satisfied that the landlords came into possession of another non-residential portion of the same house occupied by another tenant and that the landlords have been carrying on the business in sports goods, etc. under the name and style of "Sharma"s sports" in the said premises, subsequent to the filing of the appeal, held that the landlords are not entitled to seek eviction of this tenant as they came into occupation of a non-residential building of their own.

5. The learned counsel for the petitioners vehemently contends that the learned Subordinate Judge is not justified in taking into consideration the events which have taken place subsequent to the disposal of the R.C.C. No. 35/ 81, that the rights and obligations of the parties have to be adjudicated upon as they were at the commencement of the lis, that there is no proof with regard to the additional plea taken by the tenant that the petitioners-landlords came into possession of non-residential accommodation during the pendency of the appeal and that the impugned judgment does not disclose whether LA. No. 5330/89 filed to receive additional grounds of evidence, LA. No. 5639/89 to amend the counter in R.C.C. No. 35/81 were actually allowed and that the finding of the appellate Court that

the landlords came into possession of non-residential premises during the pendency of the appeal is not based on any evidence.

6. The question involved in this revision is whether the Court can take into consideration the circumstances which come into being subsequent to the commencement of the eviction proceedings while granting the relief on the plea of bonafide requirement and whether the plea based on subsequent events can be accepted without proof.

7. The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they existed at the commencement of the litigation. However, the subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief, the Court is not precluded from taking into consideration of the subsequent changes of fact and law where no specific provision or fair play is violated, with a view to promote substantial justice. Subsequent events set up by a party should be proved like any others, fact before they are being accepted by the Court. This proposition gets support from the decision of Apex Court. In *Pasupuleti Venkateswarlu Vs. The Motor and General Traders*, , Justice Krishna Iyer observed in para 4 thus:

"It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceedings. Equally clear is the principle that the procedure is the hand maid and not the mistress of the judicial process. If a fact, arising after the lis has come to Court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the Tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision of fair play is violated, with a view to promote substantial justice-subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations, for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the "party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed."

The same view has been reiterated in the subsequent cases also. In *Variety Emporium Vs. V.R.M. Mohd. Ibrahim Naina*, , Apex Court observed in para 16 thus:

"No authority is needed for the proposition that, in appropriate cases, the Court must have regard to events as they present themselves at the time when it is hearing the proceedings before it and mould the relief in the light of those

events. We may, however, draw attention to a decision of this Court in *Hasmat Rai and Another Vs. Raghunath Prasad*, , the ratio of which may be stated thus:

When an action is brought by a landlord for the eviction of a tenant on the ground of personal requirement, the landlord's need must not only be shown to exist at the date of the suit, but it must exist on the date of the appellate decree, or the date when a higher Court deals with the matter. During the progress and passage of proceeding from Court to Court, if subsequent events occur which, if noticed, would non-suit the landlord, the Court has to examine and evaluate those events and mould the decree accordingly. The tenant is entitled to show that the need or requirement of the landlord no more exists by pointing out such subsequent events, to the Court, including the appellate Court. In such a situation, it would be incorrect to say that as a decree or order for eviction is passed against the tenant, he cannot invite the Court to take into consideration subsequent events. The tenant can be precluded from so contending only when a decree or order for eviction has become final."

In *Ramesh Kumar Vs. Kesho Ram*, , the Supreme Court observed in para 4 thus:

"The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But, this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the Court is not precluded from taking a "cautious cognizance" of the subsequent changes of fact and law to mould the relief."

8. In the instant case, as seen from the impugned judgment, the tenant filed LA. No. 5330/89 to receive additional grounds of appeal and also I. A. No. 5639/ 89 to amend the counter in R.C.C. No. 35781 enabling him to plead that the subsequent to the institution of the appeal, the landlords came into possession of a non-residential building of their own which was vacated by another tenant and as such, they are not entitled to seek eviction of the tenant u/s 10(3)(a)(iii) as the landlords have come into possession of another non-residential building. On the basis of the averments in these petitions and on the ground that these averments were not denied by the landlords in their counter, the learned Subordinate Judge held that the subsequent events show that the landlords came into possession of a non-residential building of their own and as such, they are not entitled to seek eviction under law. A perusal of the impugned judgment does not disclose whether the said petitions were allowed and whether an opportunity was given to prove the said subsequent events. When such subsequent events are pleaded in the course of an appeal or a revision, the Court may, having regard to the nature of the allegations or fact on which the plea is based, permit evidence to be adduced by the parties. Obviously, in the instant case, no such evidence has been recorded to prove the subsequent event as alleged in the Interlocutory Application filed by the tenant. No relief can be granted on the pleadings alone without evidence to prove the alleged subsequent

factual event.

9. On a consideration of the fact of the present case, I am of the opinion that ends of justice would be met by setting aside the judgment under revision and remitting the matter to the Subordinate Judge at Vijayawada to take into account the subsequent event relied upon by the respondent-tenant as alleged in LA. No. 5330/79 for receiving additional grounds of appeal and also to consider LA. No. 5639/89 for amending the counter in R.C.C. No. 35/81, and dispose of the matter afresh. The learned Subordinate Judge is directed to give opportunity to the respondent-tenant to substantiate the alleged subsequent event pleaded by him by adducing oral or documentary evidence and also to give an opportunity for the landlords to controvert the same. The learned Subordinate Judge is further directed to dispose of the appeal R.C.A. No. 108/87 as expeditiously as possible, preferably within three months from the date of receipt of copy of this order. The parties are directed to bear their costs. The office is directed to forward the copy of this order along with lower Court records within 10 days.