
(2010) 08 AP CK 0033

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 2732 of 2010

Shankarlal Loya

APPELLANT

Vs

Ramdev Rathi and Others

RESPONDENT

Date of Decision : 27-08-2010

Acts Referred:

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

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (2010) 5 ALD 800 : (2010) 6 ALT 1

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : R.A. Achuthanand, for the Appellant; Thakur Singh, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The petitioner is a tenant in respect of mulgi, bearing No. 15-7-530, Begum Bazar, Hyderabad. It was owned by the deceased-1st respondent. R.C. No. 308 of 2005 was filed in the Court of II Additional Rent Controller, Hyderabad, by the 1st respondent, against the petitioner, for eviction from the schedule premises, pleading the ground of wilful default in payment of rent. During the pendency of the R.C., he died. Respondents 2 to 6, his legal representatives, are brought on record. The 7th respondent became the owner of the premises, by virtue of a gift settlement deed, dated 11.01.2008. He filed I.A. No. 303 of 2009, with a prayer to permit him to add paragraph 2(a) to the petition, pleading the ground of wilful default, subsequent to the transfer in his favour. The application was opposed by the petitioner. It was pleaded that, before the 7th respondent came to be impleaded, not only the recording of evidence is concluded, but also the arguments were heard, and the I.A., was filed at a belated stage. It was further stated that the amendment is not permissible in law. The learned Rent Controller allowed the I.A., through order, dated 10.06.2010. The same is challenged in this revision.

2. Sri R.A. Achuthanand, learned Counsel for the petitioner, submits that the I.A., is untenable in law, and if there existed any default in payment of rent, subsequent to the filing of the R.C., the only course open for the respondents was to file an application u/s 11(4) of the A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960 (for short "the Act"). He places reliance upon the judgment rendered by a Full Bench of this Court in Vinukonda Venkata Ramana Vs. Mootha Venkateswara Rao and Another,

3. Sri Takur Singth, learned Counsel for the 7th respondent, on the other hand, submits that, it is always permissible to plead subsequent events, in a petition filed u/s 10 of the Act, and that the default committed during the pendency of the proceedings, can also be treated as one of the grounds for eviction. He contends that an application u/s 11 of the Act, has already been filed, and still the petitioner committed default in payment of the rent. He submits that filing of an application u/s 11(4) of the Act, is one of the options and is not a step, to the exclusion of a plea of eviction, on the ground of wilful default.

4. The only ground, on which the R.C. was filed, against the petitioner was that, he committed default in payment of rent for certain period, before the institution of the proceedings. During the pendency of the R.C., not only the owner of the premises died, but also his legal representatives have transferred the premises in favour of the 7th respondent. It is true that the proceedings have progressed to a substantial extent, by the time the transfer in favour of the 7th respondent has taken place. It is stated that not only the recording of evidence was concluded, but also the arguments were advanced.

5. As of now, the 7th respondent is the only person who holds the title to the property. He filed an application seeking amendment of the petition by way of incorporating a plea of default in payment of rent, subsequent to the transfer in his favour on 16.01.2008 and during the pendency of the proceedings. Whether or not there was any default, as pleaded by him, is a matter to be considered on evidence. The petitioner raised an objection, as to the maintainability of the application.

6. Even if one goes by the principles underlying Rule 17 of Order 6 C.P.C., the I.A. becomes tenable. The reason is that the basis for the plea proposed to be incorporated by way of amendment arose just before the application was presented. Since the allegation is that the default came to be committed in the recent past, the fact that the evidence was recorded in the case, or that arguments were heard, cannot be treated as a ground to reject it. Courts have recognized the rights of the parties in the proceedings under the Act to plead events that have taken place subsequent to the institution of the proceedings. Such a course is adopted, to obviate the necessity to institute fresh proceedings on the basis of the subsequent events. Therefore, no exception can be taken to the I.A. filed by the 7th respondent.

7. Another ground urged by the petitioner is that even if there was any default in

payment of rent, during the pendency of the proceedings, the only course open to the 7th respondent was to avail the remedy u/s 11 of the Act. Reliance is placed upon a judgment of this Court in Vinukonda Venkata Ramana's case. The Full Bench answered the reference made to it. One of the questions referred to it was, whether the default committed during the pendency of the eviction proceedings can be taken into account, by the Rent Controller. Conflict between two judgments rendered by learned Single Judges and the one rendered by a Division Bench, was noticed. The Full Bench answered the question as under:

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

8. From this, it is clear that there is no bar for raising the ground of subsequent default. A rider was added to the effect that such a ground cannot be raised independently and it should be the outcome or the subject matter of a petition u/s 11 of the Act. The record of the present case discloses that an application, being I.A. No. 408 of 2005 was filed u/s 11 of the Act, and the default is stated to have been committed for the period between February, 2008 and September, 2009.

9. In view of the judgment of a Full Bench of this Court, if default in payment of rent is committed during the pendency of the proceedings, not only it can be urged as a basis for consequences provided for u/s 11(4) of the Act i.e. directing the tenant to put the landlord in possession of the premises, but also can be pressed into service, as an additional ground referable to Section 10(2)(i) of the Act. The only rider is that such a ground cannot be pleaded, in isolation, and it must have the company of an application filed u/s 11 of the Act. Since the application u/s 11 was already filed, in the instant case, the amendment is permissible.

10. The learned Rent Controller has taken the correct view of the matter and the order passed by it deserves to be upheld. However, this Court feels it necessary to express its views as to the manner in which the order was passed, not by way of criticism or making adverse remarks, but as a measure to indicate the nature of improvement that is needed.

11. One of the yardsticks to know the proper application of mind by a Court to the proceedings would be the manner in which the pleadings are summed up and the purport thereof is indicated. In the recent past, instances of the reproduction of the pleadings just by substituting the expressions in first person with those of the third person have increased. In the instant case, however, the learned Presiding Officer did not even take that trouble also. Headings, "the averments of the petition are as follows" and "the averments of the counter are as follows" were employed. Under the first heading, the entire petition is reproduced, except for the portion, which is sought to be added by way of amendment. For instance,

in para 3 of the order, dealing with the averments of the petition, it is written,

Therefore, I am seeking for amendment of para No. 2 as para No. 2(a). Filing of this petition has become necessary as subsequent events have taken during pendency of the case. The above said amendment is necessary to avoid multiplication of proceedings between the parties herein and to save the time and also to avoid further litigation. If my amendment petition is allowed no prejudice will be caused to the respondent as he has right to file counter and also to lead evidence. Hence, the petition.

12. Under the second heading, the concluding para reads as under:

It is further submitted that I have filed the petition for depositing of rent u/s 8(5) of R.C. Act in R.C. No. 388/2009 on the file of I Addl. Rent Controller at Hyderabad against the present petitioner which is coming for petitioner's appearance. The same was informed to the petitioner's counsel with respect to the same the proof of which a Memo was filed on 13.10.2009 into this Hon'ble court in R.C. No. 82/2008, and then they have filed this false petition and hence the present petition may be dismissed with exemplary costs.

13. This Court had the benefit of seeing the affidavit and counter filed in the I.A., which are reproduced verbatim. After the point was framed, the contentions and judgments relied upon by the parties were referred to. In para 9, the trial Court observed:

Except the oral testimony of the respondent. The respondent failed to produce the documentary evidence with regards to the contention raised by him, hence in view of facts and circumstances of this case. It is well settled law that the court must be extremely liberal in granting prayer for amendment, if the court is of the view that such amendment is not allowed the parties shall suffered irreparability loss and injury.

14. After few sentences, the result is indicated as under:

Hence the petitioner is directed to amend as prayed by petitioner/petitioner No. 7 and no prejudice will be caused to the respondent.

15. May be that the Presiding Officer is at the initial stage of her career, but lot of improvement is needed. In the I.A., no oral evidence was recorded and still reference was made to oral testimony. Proper attention ought to have been paid in framing the sentences, to connote definite idea. Even while moulding the relief, proper care was not exhibited. The question of directing the petitioner to amend the prayer, does not arise. These observations are made with the fond hope that the learned Presiding Officer and others, if any, writing the orders in similar fashion would note that adjudication of disputes is a respectable function assigned by the society to a Judge and failure to maintain proper quality thereof, would not at all be appreciated by the society at large.

16. In the result, the C.R.P. is dismissed. There shall be no order as to costs.