
(2003) 11 AP CK 0097

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 4175 of 1994

Simpson and Company Limited

APPELLANT

Vs

R.A. Mohammadi and Others

RESPONDENT

Date of Decision : 07-11-2003

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10, 11, 22, 8, 9

Citation : (2004) 2 ALD 27

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : C. Subba Rao, for the Appellant; Devineni Radha Rani, (Amicus Curiae), for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—Heard Sri C.Subba Rao, representing the Revision petitioner and M/s.Devineni Radha Rani appointed by this Court as amicus curiae to assist the Court.

2. The unsuccessful tenant M/s.Simpson and Company Limited, represented by its Manager, both before the Rent Controller, Hyderabad in R.C.C.No.66/80 and in R.A.No.366/89 before the Chief Judge, City Small Causes Court, Hyderabad preferred this Civil Revision Petition u/s 22 of the A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960, in short hereinafter referred to as "Act", being aggrieved of the orders made therein on an application filed u/s 9(3) of the said Act.

3. Sri C.Subba Rao explained the facts in detail and also submitted that the dismissal of R.C.No.372/77 would not operate as res judicata since the same was not decided on merits. The learned Counsel also maintained that Section 9 of the Act is only a procedural provision which has nothing to do with either Section 10 or Section 11 of the Act and hence even if M/s.Simpson and Company Limited, represented by its Manager - the tenant, is permitted to deposit rents, by

allowing the present application, no prejudice would be caused to any of the respondents and hence even in the interest of justice, the tenant/Revision Petitioner should be permitted to deposit the rents.

4. Per contra, M/s. Devineni Radha Rani, the learned amicus curiae made the following submissions. The learned Counsel had explained the ingredients of sub-section (3) of Section 9 of the Act and had maintained that even on the facts available on record, there is no bonafide doubt or dispute so as to attract sub-section (3) of Section 9 of the Act. The learned Counsel further submitted that unless the ingredients of sub-section (3) are satisfied, the relief prayed for by the Revision petitioner cannot be granted. The learned Counsel also had further explained the factual details and also the findings recorded by the learned Rent Controller and also the appellate authority in this regard.

5. Heard the Counsel representing the Revision petitioner, hereinafter referred to as "tenant" and also the learned amicus curiae who had assisted this Court.

6. M/s.Simpson and Company Limited, represented by its Manager - tenant in R.C.No.66/80 had pleaded as hereunder:

7. The petitioner obtained the premises bearing No.1-4-454 to 457 situate at Kavadiguda, Hyderabad, A.P. from late Ghulam Ali Mohammadi, who is the owner-cum-landlord of the aforesaid premises (in short, the demised premises). In the year 1968, the lease was renewed for a period of ten years with an option for renewal for further five years. The rent was Rs.425/- per month and it is payable once in every six months. The petitioner paid the rent regularly till the year 1972. As the petitioner is not aware who are the legal heirs of late Mohammadi, they could not pay rent in spite of their best efforts. On their enquiry, one Mr.Siddiqui, the son-in-law of the lessor informed the petitioner that the present respondents are the legal heirs of late Mohammadi. Respondents 1 to 4 are the sons and the respondents 5 and 6 are the daughters of late Mohammadi. Respondents 1 to 3 migrated to Pakistan and they became permanent citizens there. The petitioner is not disputing about the legal heirs of late Mohammadi. Mr.Siddiqui informed the petitioner that some arrangements will be made for the receipt of rent. He asked the petitioner to keep the rent with them till some arrangements were made. Though four or five years lapsed, no arrangement was made. Thereupon, the petitioner issued a legal notice to all the legal heirs of Mohammadi, calling upon them to make arrangement for the receipt of the rent. They assured the petitioner that they would make some arrangements for the receipt of rent. It happened in the year 1976. Thus, a large amount is now with the petitioner towards the arrears of rent. The petitioner also filed under the same provision of law R.C.No.372 of 1977 on the file of Principal Rent Controller, Hyderabad, but the same was dismissed for default on 25-7-1978.

8. The 4th respondent was set exparte. It is also clear from the record that the tenant could not serve notice on respondents 1 to 3 despite several opportunities being given in this regard and on 12-3-1983 the application u/s 9(3) of the Act

was dismissed as against respondents 1 to 3 for non-payment of process. Respondents 5 and 6 filed the counter admitting the tenancy and also the ownership of late Ghulam Ali Mohammadi relating to the demised premises. It was further pleaded that their father died on 1-2-1971. Late Mohammadi left behind four sons and two daughters. The correct name of the 5th respondent is Mrs.Zohra Siddiqui Ahmed and not Mrs.Zohra Sardar Ali Khan. It is also pleaded that Ghulam Ali Mohammad died on 1-2-1971 itself and there is no truth in the assertions of the tenant that they paid rent till 1972. The dismissal of R.C.No.272/77 will definitely operate as res judicata and hence the present application is not maintainable. It was further pleaded that the death of Mohammadi cannot be a ground to seek permission to deposit the rent in Court. It was further pleaded that the respondents have 1/11th share in the demised premises.

9. Before the learned Rent Controller, one K.Rajagopalan, who was then worked as Accountant in the tenants Company was examined as PW-1 and the learned Rent Controller had dismissed the said application on the ground that the tenant cannot invoke Section 9(3) of the Act. Aggrieved by the same, the tenant preferred R.A.No.366/89 on the file of appellate authority and before the appellate authority the tenant filed I.A.No.955/91 to receive additional evidence and these documents were marked as Exs.P-1 to P-10 at the appellate stage. The appellate authority after framing the Point for consideration "Whether the petitioners are entitled to deposit the rents in Court" ultimately had dismissed the Appeal with costs and aggrieved by the same, the tenant had preferred the present Civil Revision Petition u/s 22 of the Act.

10. Section 9 of the Act deals with Right of tenant to deposit rent in certain cases. For the purpose of appreciating whether the relief prayed for by the tenant can be granted, it is appropriate to have a look at sub-section (3) and sub-section (4) of Section 9 of the Act, and they read as hereunder :

(3) Where any bona fide doubt or dispute arises as to the person who is entitled to receive the rent for any building the tenant may deposit such rent before such authority and in such manner as may be prescribed and shall report to the Controller the circumstances under which such deposit was made by him and may continue to deposit any rent which may subsequently become due in respect of the building before the same authority and in the same manner until the doubt is removed or the dispute is settled by the decision of a competent Court or by as settlement between the parties or until the Controller makes an order under clause (b) of sub-section (4) as the case may be.

(4) (a) The controller to whom a report is made under sub-section (3) shall, if satisfied that a bona fide doubt or dispute exists in the matter, direct that, pending removal of the doubt or settlement of the dispute as aforesaid, the deposit be held by the authority concerned.

(b) If the Controller is not so satisfied, he shall forthwith order payment of the

amount deposited to the landlord.

The words ".....any bona fide doubt or dispute....." in sub-section (3) assume importance in deciding the question in controversy. The words "bona fide doubt" and "dispute" are not defined in the Act. It is needless to say that in the absence of the definition in the Act, these expressions may have to be understood depending upon the facts and circumstances of each case. In the application filed u/s 9(3) of the Act, it is stated that the respondents are legal heirs of the deceased Ghulam Ali Mohammadi. In the light of the stand taken by the tenant, definitely it cannot be said that "a bona fide doubt or dispute arises as to the person who is entitled to receive the rent for any building" within the meaning of Section 9(3) of the Act. The appellate authority not only discussed Section 9(3) of the Act, but in fact had gone into a further step and had discussed even about Section 9(1) of the Act. In fact, the documentary evidence filed even at the appellate stage had been discussed in detail and these documents will not alter the situation in any way so far as it relates to the non-satisfaction of the ingredients of sub-section (3) of Section 9 of the Act. The appellate authority in fact had discussed all the aspects in detail and had affirmed the order of the learned Rent Controller.

11. Several other elaborate contentions which had been advanced relating to the scope and ambit of an application filed u/s 9(3) of the Act and the other provisions under Sections 8, 10 and 11 of the Act need not be considered any further in view of the limited question in controversy in the present Civil Revision Petition. It is no doubt true that R.C.No.372/77 was dismissed for default and a similar application was moved after a sufficient lapse of time though the order of dismissal for default may not operate as *res judicata* since the said application was dismissed for default and not on merits, however, I do not see any justifiable reasons on the part of the tenant to file yet another application after sufficient lapse of time without giving any explanation why they had not pursued the first application R.C.C.No.372/77. Apart from this aspect, though sufficient opportunity was given, service could not be effected on respondents 1 to 3 and the application u/s 9(3) of the Act was dismissed on 12-3-1983 for non-payment of process. Hence, viewed from any angle, the impugned order in the present Civil Revision Petition does not suffer from any legal infirmity or illegality, both on facts and in law warranting interference u/s 22 of the Act and accordingly the Civil Revision Petition shall stand dismissed. No costs.

12. This Court records its appreciation for the assistance rendered by the learned amicus curiae Mrs.Devineni Radha Rani.