
(2001) 10 AP CK 0084

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 4463 of 2000

Singumahanthi Jagannadha Rao

APPELLANT

Vs

Putchala Surya Prakasa Rao

RESPONDENT

Date of Decision : 10-10-2001

Acts Referred:

Citation : (2001) 10 AP CK 0084

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

Bench : Single Bench

Advocate : I. Maamu Vani, for the Appellant; A. Padma, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—Heard Ms. I. Maamu Vani, representing the revision petitioner and Smt. A. Padma, representing the respondent.

2. The Civil Revision Petition is filed by unsuccessful tenant as against the judgment of the appellate authority-Senior Civil Judge, Vizianagaram, made in R.C.A. No. 3 of 1993 dated 4.8.2000. The respondent in the Civil Revision Petition- landlord filed R.C.C. No. 46 of 1984 on the file of the Rent Controller-Principal District Munsif, Vizianagaram, seeking eviction of the tenant. The grounds raised by the landlord in the eviction petition are the wilful default and bonafide personal requirement. As far as bonafide personal requirement is concerned, both the courts below had negated the said ground, but, however, though the court of first instance held that the tenant had not committed any wilful default, the appellate authority had reversed the said finding and had allowed the appeal directing the tenant to vacate the petition schedule premises and deliver vacant possession within three months. And aggrieved by the said reversing judgment of the appellate authority, so far it relates to the ground of wilful default is concerned, the unsuccessful tenant had preferred the present Civil Revision Petition.

3. The pleadings of the respective parties in RCC No. 46 of 1984 are as follows:

" The petitioner is the landlord and the respondent is the tenant under him for the schedule mentioned house property on an agreed monthly rent of Rs.70/-. The respondent took the said house for rent, while he was working in the Survey Department at Vizianagaram. Later on, he was transferred from Vizianagaram about four years back and working in distant places like Narasipatnam for some time, K. Kotapadu, Visakhapatnam and other places and from the last more than two years at Bhimunipatnam. During all this time, he did not choose to shift his family to the places where he was working and keeping it in the schedule house. The respondent is a chronic defaulter in the payment of the monthly rents. The rents from 1-6-1981 till 31-7-1982 totalling a sum of Rs.980/- were paid by the respondent to the petitioner on 7-3-1983 under a receipt. Thereafter from 1-8-1982 till now, the respondent has not at all been showing any interest in the payment of monthly rents to the petitioner. The respondent was, therefore, called upon to pay the arrears of rent with interest at 24% p.a., which is the minimum rate at which credit worthy people are able to get loans. The petitioner is in need of the schedule mentioned house to provide accommodation to his paternal aunt's son by name Manem Ramachandrarao, an employee in the education department, who is transferred to Vizianagaram about two years back, as his services are very useful to the petitioner for his childrens' education. The respondent was called upon to vacate the schedule mentioned premises by way of a notice dated 18-8-1984, the respondent evaded to receive the same. A copy of the said notice addressed to K. Kotapadu was similarly returned. During the third attempt the respondent appears to have thought fit to receive the notice addressed to Sabbavaram and after playing dilatory tactics for a long time, ultimately he got issued a reply notice dated 21-10-1984 with false and untenable allegations, stating for the first time that he is not at all in arrears of rent, that the petitioner does not require the building as stated above, that the petitioner demanded enhancement of rent from Rs.70/- to Rs.150/- per month, that the petitioner is offering to sell away the schedule house and that when the respondent offered to purchase the same, the petitioner demanded more than the reasonable price. Admittedly the petition schedule house is a very old one and it is in bad state of disrepair. It has got to be pulled down or heavy repairs have to be undertaken for the same for which purpose also the respondent has to vacate the same."

4. The revision petitioner, respondent-tenant in RCC No. 46 of 1984 filed a counter denying the allegations in the eviction petition. It was further pleaded by the tenant as follows:

"It is true that the respondent has been occupying the building mentioned in the schedule as a tenant agreeing to pay rent at Rs.70/- p.m. But it is false to state that he is a chronic defaulter in payment of rents. The respondent paid the rent upto the end of August, 1984. But the petitioner is not in the habit of issuing receipts for the rents paid. To the notice dated 13.9.1984 issued by the petitioner, this respondent sent a reply on 21-10-1984 intimating that he paid rents upto date. In the 1st week of August, 1984 the petitioner demanded for the

enhancement of rent from Rs.70/- to Rs.150/- p.m. to which the respondent did not agree. Therefore, the petitioner demanded the respondent to vacate the building threatening that in case of default he would like a petition for eviction on the ground that he is in arrears of rent and also on the ground that he would effect repairs to the building for his personal use and occupation. The petitioner's paternal aunt's son is not a member of the family of the petitioner and the petitioner is not bound to make a provision for his residence. The requirement of petitioner's paternal aunt's son for house cannot be treated as a personal requirement of the petitioner. It is absolutely false to state that the petitioner is going to employ his paternal aunt's son as a resident tutor for his children. It is absolutely false to state that the petitioner is going to pull down the building and reconstruct the same. Repairs can be effected without disturbing the respondent from the building. The respondent is offering the building for sale and this respondent is offering a reasonable price. This application for eviction is filed with a dual object either to get enhanced rent or to get more than reasonable price by sale after evicting the respondent. The respondent has applied for challan for deposit of rent from August, 1984 upto date, as the petitioner refused to receive the same after issue of registered notice."

5. The learned Rent Controller had recorded the evidence of PW-1 and also RWs. 1 and 2 and Exs.A-1 to A-6 were marked. The learned Rent Controller at paragraphs 6,7, and 8, after discussing the oral and documentary evidence, came to the conclusion that the eviction cannot be ordered on any one of the grounds and had dismissed the eviction petition. The unsuccessful landlord filed RCA No. 3 of 1993 on the file of the Rent Control Appellate Authority-Senior Civil Judge, Vizianagaram, and the appellate authority by order dated 4.8.2000 had reversed the order of the learned Rent Controller on the ground of wilful default only. But, however, confirmed the other ground of bonafide personal requirement.

6. As already stated supra, the unsuccessful tenant, aggrieved by the same, had filed the present Civil Revision Petition. Ms. Maamu Vani, the learned counsel representing the revision petitioner, had strenuously contended that the approach of the appellate authority in paragraphs 9 and 10, while discussing the aspect of wilful default, is totally erroneous. She also placed strong reliance in a judgment reported in P. Rajanna Vs. K. Lalitha Reddi alias Chinnamma Devi and another, , and had drawn my attention to the relevant portions of the judgment and had contended that even if there is some irregularity in payments in the light of the conduct of both the parties, at any stretch of imagination, it does not fall within the expression "wilful default". The learned counsel had drawn my attention to the findings of the Rent Controller on this aspect and had contended that the order of the appellate authority reversing the said findings relating to the wilful default of the Rent Controller, are not based on any sound reasons. The learned counsel also had contended that the admissions, which had been discussed at paragraph (10) of the judgment of the appellate authority are of no consequence at all, in the light of the fact that the notice itself was issued on 8.10.1984 and the reply was given on 21.10.1984 and immediately the eviction

petition was filed on 7.11.1984. These events clearly go to show that the landlord is more interested in throwing the tenant out by hook or crook. The learned counsel also had drawn my attention to the documentary evidence Exs. A-1 to A-6 and also the oral evidence of RWs. 1 and 2 in this regard.

7. Smt. A. Padma, the learned counsel representing the respondent-landlord had drawn my attention to paragraphs 9 and 10 of the order of the appellate authority and had pointed out the clear findings relating to wilful default and it is contended that the appellate authority is justified in ordering eviction on the ground of wilful default on appreciation of the evidence available on record, especially the admission made by RW-1 himself. The learned counsel also had contended that the irregular payments made by the tenant are not in dispute at all, and the only question is whether such payments also constitute a mere default which can be condoned or they should be treated as intentional, conscious and deliberate default falling within the meaning of the expression "wilful default". The learned counsel also had drawn my attention to the evidence of PW-1, the landlord, in the eviction petition.

8. The appellate authority, while dealing with Ex.A-1 at paragraph 8, had no doubt observed that the landlord having accepted the rent for the months of June 1981 to July 1982 without any objection, cannot take the plea that the tenant is a chronic defaulter in payment of monthly rents. Having observed so about the said period, relating to subsequent period at paragraphs 9 and 10, the appellate authority had arrived at a conclusion that the tenant had committed wilful default. The observations made by the appellate authority in this regard at paragraph 10 may be relevant for this purpose and which is as follows:

"On perusing the entire evidence of RW.1/Tenant I find that the plea set up by him that he is regularly making payments of monthly rent to the Landlord is untenable and his evidence is not trustworthy. Because according to RW.1 admittedly he deposited the arrears of rent into court covering for the period from August, 1984 to September, 1985 that means the tenant has not paid the rent for the month of August, 1984 to the Landlord. At one stage of his cross-examination RW.1 admitted that he paid rent for the month of August, 1984 to the petitioner. At the same time he again says that he deposited the rent in court. The above part of demeanor of the witness itself throws some doubt in his payments of rent regularly to the Landlord. If really it is a fact that the Landlord refused to receive rents for the months of August 1984 and September, 1984 the tenant ought to have got the same mentioned in his counter filed by him before the Rent Controller Court. But RW.1 at the same time clearly admits in his cross-examination that he did not get it mentioned in the counter filed by him before the Rent Controller Court that inspite of his offer the petitioner did not receive the rent for the months of August and September, 1984. From the above part of the admission made by RW.1 it can also be said that the evidence of RW.1, tenant clearly admitted that he did not offer the rent to the petitioner in the month of October, 1984, even by Money Order. At another stage of his cross-

examination RW.1 admits that in spite of refusal by the petitioner to receive rent for the months of August to October, 1984, he did not file any separate application to permit him to deposit the rent into court. The above part of admission made by RW.1 also proves that he is a wilful chronic defaulter in payments of monthly rent. For the reasons stated above it is clear from the very evidence of RW.1 that the tenant/Rw.1 is a wilful defaulter in payment of monthly rents to the landlord."

9. These findings of the appellate authority are based on evidence and also certain admissions made by RW-1 himself. It is also pertinent to note that for sufficiently long time, certain irregular payments were made and at no point of time, there was any attempt on the part of the tenant either to raise any objection relating to the non-acceptance of rents or an attempt on the part of the tenant to follow the procedure contemplated under the Act. It is no doubt true that as far as passing of receipts is concerned, it may be that at certain times, the receipts had not been passed and taking this circumstance alone into consideration, one cannot infer that the conduct on the part of the tenant is justified so as to protect him from being evicted on the ground of wilful default. In the light of the detailed discussion by the appellate authority on the aspect of the wilful default, for the subsequently period i.e. after July 1982, the findings of the appellate court in this regard cannot be said to be perverse in any way, but based on the material available on record, Exs. A-1 to A-6 and also the evidence of PW-1 and certain admissions made by RW-1 himself coupled with the evidence of RW-2. Hence, in my considered opinion, the appellate authority is justified in reversing the finding of the learned Rent Controller as far as the ground of wilful default is concerned. Hence, I do not see any reason to interfere with the order of eviction made by the appellate authority on the ground of wilful default. It is needless to observe that as far as bonafide personal requirement is concerned, both the courts have negated the said ground and the same cannot be disturbed at the stage of revision.

10. For the foregoing reasons, the Civil Revision Petition is devoid of merits and accordingly the Civil Revision Petition is dismissed. However, the revision petitioner-tenant is granted four months time to vacate the petitioner schedule premises. No order as to costs.