
(1979) 10 AP CK 0001
In the Andhra Pradesh High Court
Case No : CRP 704 of 1979

Siva Venkata Ramanayya

APPELLANT

Vs

Vajrapu Venkata Appala Sanyasayya

RESPONDENT

Date of Decision : 12-10-1979

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10, 12, 13

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3

Citation : (1979) 10 AP CK 0001

Hon'ble Judges : Narasinga Rao, J

Bench : Single Bench

Advocate : T. Veerabhadraiah, for the Appellant; D. Satyanarayana and Mr. D. Mangalamba, for the Respondent

Judgement

Narasinga Rao

1. This revision petition by the landlord is directed against the order of the Rent Controller (Principal District Munsif) Vizianagaram whereby he held that the order of the eviction passed by the Rent Control Appellate Authority on the basis of a compromise is inexecutable. Facts necessary for the disposal of this revision petition briefly stated are these:

The revision petitioner-landlord filed A.B. 7/71 on the file of the Rent Controller Vizianagaram for eviction of the respondent on the ground that the petition schedule premises was required for his own business. In the enquiry by the Rent Controller the landlord examined two witnesses and filed Exs. A-1 to A-5. The tenant-respondent examined R. Ws. 1 to 3 disputing the claim of the landlord. No documentary evidence was however tendered by him. Thus after the trial the Rent Controller dismissed the petition. An appeal was preferred to the Appellate Authority (Subordinate Judge (Vizianagaram)). While the appeal was pending the parties entered into a compromise. The compromise memo reads as follows:

It is submitted that due to the intervention of gentlemen mediators interested in

both parties the respondent agreed to vacate the schedule premises by 11-8-78 (nineteen seventy eight) and deliver vacant possession to the petitioner. The appellant-petitioner agreed for the same. It is therefore prayed that the Honourable Court may be pleased to pass suitable eviction orders in the light of this memo and to render justice.

On this compromise memo the Appellate Authority subordinate Judge, (Vizianagaram) passed the following Judgment:

This is an appeal filed by the petitioner in A.B. 7/1971 on the file of the Rent Controller, Vizianagaram against the order dt. 8-2-1974 dismissing the petition filed for eviction of the respondent from the petition schedule premises.

(2) Joint Memo filed. Accordingly the appeal is allowed granting time to the respondent to vacate the premises by 11-8-1978 and give vacant possession to the appellant. No cost.

2. An the tenant failed to vacate the premises by the stipulated dated of 11-8-1978 the landlord filed E.P. 15 of 1978 in R.C.C: 7 of 1971 for delivery of the possession of the petition schedule building and for realisation of the costs of the Execution Petition. The tenant resisted this Execution Petition on ground that the eviction order passed by the Appellate Court is inexecutable in-as-much as the said order emanated on account of a compromise and that the said compromise does not contain any specific admission of the tenant with regard to the existence of any statutory ground for eviction contemplated by Section 10 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. Thus his contention was that the compromise decree or order is not capable of execution. The learned Rent Controller referred to rulings including two rulings of the Supreme Court reported in K.K. Chari Vs. R.M. Seshadri, and Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others, and held that the compromise eviction order is incapable of execution as it is a nullity in as much as in the order of the Appellate Court there is no specific mention of any admission of the existence of any statutory ground contemplated by Section 10 of the Act, that enables the landlord to seek eviction of the tenant.

3. A perusal of the order under revision and also the two Supreme Court rulings referred to above wouldlead to the conclusion that the learned Rent Controller while quoting the said rulings has not properly understood their import of the rationale laid down therein. I may refer to the latest ruling of the Supreme Court reported in Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others, That was a case under the Bombay. Rents Hotel and Lodging House Rates Control Act. Before proceeding to extract the relevant observations in the said ruling it must be noted that it is not material whether the provisions of Or. 23 R.3, of the CPC are made applicable to the proceedings under the Rent Control Act. O. 23 R. 3 would enable the parties to enter into a compromise. But the application of that rule cannot be said to have any direct bearing so far this case is concerned. It would appear that the learned Rent Controller got confused

himself and was more guided by the fact whether such a provision is made applicable to the proceedings under the Rent Control Act. As noted above the application of O. 23 R. 3 has no relevant bearing at all. It is laid down in Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others,

The consent decree for possession passed by the Court is not necessarily a nullity. If there was a clear admission in the compromise, incorporated in the decree, of the fundamental facts that could constitute a ground for eviction under S. 12 or S. 13, it will be presumed that the Court was satisfied about the existence of such statutory ground and the decree for eviction though apparently passed on the basis of a compromise, would be valid.

Their Lordships of the Supreme Court further proceeded hypothetically with regard to a case where there is no specific admission of the existence of a statutory ground in the compromise memo. They held that whether such a ground existed on the date when the consent petition came up for hearing has to be gathered from the material on record in that particular case. They thus observed--

Such material may take the shape either of evidence recorded or produced in the case, or, it may partly or wholly be in the shape of an expressed or implied admission made in the compromise agreement itself. Admissions if true and clear are by far the best proof of the facts admitted and thereby themselves can be made the foundation of the rights of the parties.

It can thus be noticed that if there is a clear admission in the compromise memo as to the existence of statutory requirement contemplated under Sec. 10 which enables the land-lord to seek eviction of the tenant no thing more is required and even though the order of an eviction has been emanated on such a compromise it must be presumed that the Rent Controller court or the Appellate Court was satisfied about the existence of a statutory ground within the meaning of Section 10 of the Act. The difficulty however arises when there is no clear admission and in this case there is no such admission by the tenant that the petition schedule premises is bonafide required for the landlord to carry on his business. It is then the executing court is called upon to find out whether there was any material before the Appellate Court acting on the compromise which would have enabled the Appellate Court to satisfy itself about the existence of any statutory ground for eviction. Needless to say that u/s 10 of the Act a landlord is entitled to ask for the eviction of the tenant where the petition schedule premises leased out by him is required for his bonafide personal occupation. Any way that was the averment in the petition before the Rent Controller. In support of that plea he also examined two witnesses including himself and relied upon Exs. A-1 to A-5 in documentary evidence. Thus before the Rent Control Court some material was placed in proof of the alleged requirement of the landlord. It is true that the finding of the Rent Controller went against the landlord. What was strenuously contended by Mrs. Mangalamba, the learned counsel for the respondent is that in view of the finding of the Rent Controller there must be some additional material

before the appellate Court so as to say that the Appellate Court was satisfied about the existence of a statutory ground for passing an order of eviction even though there was a compromise. Her further contention in this context is that the compromise memo does not specifically recite any admission of the existence of any statutory ground. The latter contention of course is well-founded. But there is no warrant for the supposition that even the Rent Controller's finding has gone against the landlord there must be additional material before the Appellate Court. All that the Supreme Court has held is that there must be some material in the case which could have enabled the appellate court even to satisfy itself that a statutory requirement existed. Applying the above test to the present case it can be said that the landlord himself examined as a witness and also examined another witness in support of his plea that the requirement for personal occupation is a bonafide one. It is not open to the executing Court to find out whether that material itself was sufficient to warrant the grant of the relief of eviction. All that it has to see is whether there was some material on the basis of which the Rent Control Court could have been satisfied as to the statutory ground for eviction. The Supreme Court further held in that ruling.

to allow the executing court to go beyond that limit would be to exalt it to the status of a super, court sitting in appeal over the decision of the rent court.

The facts of the present case would appear to fall within the four corners of the decision of the Supreme Court rendered in.

4. K.K. Chari Vs. R.M. Seshadri, page 1311. There the memo of compromise lead as follows:-- 1. The respondent hereby withdrawn his defence in the aforesaid petition and submits to a decree for eviction unconditionally.

2. The respondent prays that time for vacating upto 15th June, 1969 might please be given and the petitioner agrees to the same.

3. The Respondent agrees to vacate the petition premises and handover possession of the entire petition premises to the petitioner on or before the said date viz., 5th June, 1969 without fail under any circumstances and undertakes not to apply for extension of time.

4. It is agreed by both the parties that this Memo of Compromise is executable as decree of Court.

The order that ensued on that compromise memo read as follows:--

Compromise memo filed and recorded, By Consent eviction is ordered granting time to vacate till 5-6-1969. No costs.

It cannot be said that by mere withdrawing the defence was an expressed admission of the existence of a statutory ground. That apart in the instant case the Appellate court sitting in appeal over the order of the Rent Controller could have come to a different conclusion and could have equally allowed the petition on the ground of bona fide requirement. The ratio laid down by the Supreme

Court is that there must be some material which could have enabled the court to satisfy itself about the existence of the statutory requirement and not that the Appellate Court should have rendered any finding about such existence of a statutory ground. If there was a finding on the material then the search for the other material would be redundant and it cannot be said that it was so intended by the Supreme Court. Similarly if there was an expressed admission of the existence of a statutory ground in the compromise memo one need not go beyond the recitals of the compromise memo and find out whether there was any material which would make out a statutory ground for the satisfaction of the Rent Controller. As noted above though the learned Rent Controller referred to the two rulings, I am constrained to say that he has not properly understood them. Suffice it to say that merely because the order of eviction also happened emanate under a compromise it does not necessarily follow that it was a nullity. There was other material from which it can be said that the Appellate Court while passing the eviction order, satisfied itself as to the existence of a statutory ground contemplated u/s 10 of the Act. Since the above view the order of the Rent Controller cannot be sustained. It is accordingly reversed and it is further held that the eviction order is executable. The revision petition is allowed accordingly but there would however be no order as to costs in this revision petition.

The learned Rent Controller is directed to dispose of the Execution petition itself within one month from the date of the receipt of this order in the lower court