
(2001) 07 AP CK 0099
In the Andhra Pradesh High Court
Case No : CRP No. 1159 of 2001

Soorampally Venkata Reddy

APPELLANT

Vs

New Tirumala Emporium

RESPONDENT

Date of Decision : 06-07-2001

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10, 10(1), 10(2), 11(1), 11(2)
Andhra Pradesh Civil Courts Act, 1972 — Section 33
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2001) 5 ALD 311 : (2001) 4 ALT 604 : (2001) 2 APLJ 153

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Mr. Venkateswar Rao Gudapati, for the Appellant; Mr. Sesha Sai, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J. 1. This revision petition, filed u/s 115 of the Code of Civil Procedure, 1908 (for brevity "the Code") raises an interesting question as to whether an order passed u/s 11(4) of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for brevity "the Act") is executable in accordance with Section 15 of the said Act?

2. Briefly stated the facts of the case are as follows:

The Petitioner is the owner of a non-residential premises in Vizianagaram Town. The same was let out to the respondent on a monthly rent of Rs. 250/- in June, 1973, and later the rent was enhanced to Rs. 900/-. The petitioner filed Rent Control Case being RCC No. 11 of 1999 on the file of the Principal Junior Civil Judge-cum-Rent Controller, Vizianagaram, for eviction of the respondent on the grounds of wilful default, bona fide requirement for personal occupation, and on the ground that the respondent used the building for purpose other than for which it was leased. The petitioner also filed an interlocutory application being IA

No. 1389 of 1999 praying to stop all further proceedings in RCC No. 11 of 1999, and make an order directing the respondent to vacate the demised shop room and handover possession of the same to the petitioner. The said application was contested by the respondent. The learned Rent Controller, by order dated 8-11-2000, allowed the said application and directed the respondent to deposit arrears of rent from the month of November, 1998 till the date of passing the said order, on or before 27-11-2000, and in default to vacate the premises.

3. The respondent appears to have failed to comply with the order dated 8-13-2000, passed by the Rent Controller in IA No. 1389 of 1999. He, therefore, filed an application on 27-11-2000 u/s 148 of the Code seeking enlargement of time to comply with the orders passed in IA No. 1389 of 1999. The learned Rent Controller while disposing of the said application, passed an order directing the eviction of the respondent from the schedule premises. Aggrieved by the said order, the respondent approached the High Court u/s 33 of the A.P. Civil Courts Act, 1972 by filing Receive and Transmit application. He also prayed for suspension of the order passed in RCC No. 11 of 1999, dated 27-11-2000. This Court by order dated 9-1-2001, passed in CMP No. 161 of 2001 suspended the operation of the order dated 27-11-2000, passed by the Rent Controller in RCC No. 11 of 1999. The matter therefore stood transmitted to the Court of the learned Senior Civil Judge, who is the appellate authority u/s 20 of the Rent Act.

4. The petitioner filed execution petition u/s 15 of the Rent Act in RCC No. 11 of 1999 seeking to execute the order dated 8-11-2001 passed in IA No. 1389 of 1999. The said EP was not registered, and it was assigned EPGR No. 863 of 2001. The learned Rent Controller dismissed the EPGR at the threshold holding that EP is not maintainable in view of the order dated 9-1-2001, passed by the High Court in CMP No. 168 of 2001, suspending the order dated 27-11-2000, passed by the learned Rent Controller in RCC No. 11 of 1999. This order is assailed u/s 115 of the Code in this CRP.

5. The learned Counsel for the petitioner Sri G. Venkateshwara Rao submits that an order passed u/s 11(4) of the Act is an executable order, and therefore, the impugned order passed by the Rent Controller, is vitiated by error. He further submits that even an order passed u/s 11(4) of the Act for non-payment of rent, as directed by the Court, can be said to be an order u/s 10 of the Act, falling squarely within the ambit of Section 15 of the Rent Act.

6. Sri Sessa Sai, learned Counsel for the respondent-tenant submits that the order passed by the learned Rent Controller is not an order passed u/s 11(4) of the Rent Act, but one passed u/s 10 thereof. He submits that since the order passed by the learned Rent Controller u/s 10(2)(i) of the Act, stood suspended by virtue of the order passed by this Court in CMP No. 161 of 2001, the EP filed by the petitioner for execution of the said order is not maintainable. He further submits that the order passed in IA No. 1389 of 2000 by the learned Rent Controller stood merged in the order passed on 27-11-2000 in the main case, and therefore, the order in IA No. 1389 is inexecutable.

7. The short question that falls for consideration before this Court is whether the order dated 8-11-2000 passed by the Rent Controller in IA No. 1389 of 2000 is an executable order?

8. Section 10 of the Act deals with eviction of tenants on various grounds. Subsection (1) of Section 10 lays down that a tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of Section 10 or Sections 12 and 13 of the Act. The petitioner filed eviction case u/s 10(2)(i) (default in payment of rent), Section 10(2)(ii)(b) (using for different purposes), and Section 10(3)(b)(iii) (bona fide requirement for personal occupation). In view of the clear language employed in Section 10(1) of the Act, an order passed u/s 11(4) of the Act, as such, is not executable. It is therefore necessary to examine the scope of Section 11(4) of the Act. The relevant portion of Section 11 reads as under:

11, Payment or deposit of rent during the pendency of proceedings for eviction :--

(1) No tenant against whom an application for eviction has been made by a landlord u/s 10, shall be entitled to contest the application before the Controller under that section, or to prefer any appeal u/s 20 against any order made by the Controller on the application, unless he has paid to the landlord, or deposits with the Controller or the appellate authority, as the case may be, all arrears of rent due in respect of the building upon the date of payment of deposit and continues to pay or deposit any rent which may subsequently become due in respect of the building until the termination of the proceedings before the Controller or the appellate authority as the case may be;

(2) The deposit of rent under subsection (1) shall be made within the time and in the manner prescribed.

(3) Where there is any dispute as to the amount of rent to be paid or deposited under sub-section (1), the Controller or the appellate authority, as the case may be, shall, on application made to him either by the tenant or by the landlord, and after making such inquiry as he deems necessary, determine summarily the rent to be paid or deposited.

(4) If any tenant fails to pay or to deposit the rent as aforesaid, the Controller or the appellate authority, as the case may be, shall, unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building.

(5) x x x

(6) x x x

(7) x x x

(8) x x x

9. The heading of Section 11 makes it clear that the said provision deals with

payment or deposit of rent during the pendency of proceedings for eviction. The same, however, is not a provision, which enable the Rent Controller to order eviction. A reading of sub-section (2) of Section 11 shows that apart from other grounds of eviction, if the tenant fails to pay or deposit the rent as per sub-sections (1), (2) and (3), the Rent Controller or appellate authority shall stop further proceedings and make an order directing the tenant to put the landlord in possession of the building. In this context, a reference may be made to proviso to Section 10(2) of the Act which empowers the learned Rent Controller to give the tenant a reasonable time not exceeding 15 days to pay or tender rent. This power is available to the learned Rent Controller notwithstanding anything in Section 11 of the Act. However, this power can only be exercised if the learned Rent Controller is satisfied that the tenant's default in payment of rent was not wilful. In case the tenant fails to tender rent as directed by the learned Rent Controller under proviso to Section 10(2) of the Act, what are the consequences that follow? The proviso to Section 10(2) of the Act says that when the tenant, who according to the learned Rent Controller is not a wilful defaulter and pays or tenders rent, as directed by the learned Rent Controller, then he shall have to reject the application for eviction. However, if the tenant does not pay the rent, the application shall not be rejected, but shall be proceeded with in accordance with law, and it is for the tenant to show sufficient cause for not complying with the orders of the Court. Sub-section (4) of Section 11 of the Act makes this very clear. Therefore, from a reading of the proviso "to Section 10(1) and Section 11(4) together, it can be reasonably inferred that when the tenant fails to pay or deposit the rent as directed by the Rent Controller during the pendency of eviction proceedings, any order passed by the Rent Controller directing the tenant to vacate the premises and put the landlord in possession, is an order passed under Section 10(2) of the Act itself. Sub-section (4) of Section 11 of the Act also furnishes an additional ground, which may arise during the pendency of the proceedings i.e., failure of the tenant to comply with the orders passed by the Court u/s 11(3) of the Act. Indeed, sub-sections (1) and (2) of Section 11 of the Act purport to deny right to contest the application before the Rent Controller or appellate authority unless the arrears of rent are deposited with the said authorities. This means that if the tenant deposits the rent, he can still contest the eviction petition.

10. Section 15 of the Act reads thus :

15. Execution of orders :--Every order made under Sections 10, 12, 13 or 14 and every order passed on appeal u/s 20, or on revision u/s 22 and every order as to costs u/s 21 shall be executed by the Controller:

Provided that an order passed in execution under this section shall not be subject to an appeal, but shall be subject to revision u/s 22.

11. A plain reading of the above provision makes it clear that orders passed under Sections 10, 11, 12, 13 or 14 and every order passed u/s 20 in appeal or orders passed in revision u/s 22 by the High Court shall be executable by the

learned Rent Controller. As already held by me, an order passed by eviction passed by the Rent Controller on failure of the tenant to deposit the rents, as directed u/s 11(3) and (4) of the Act, shall be deemed to be an order passed u/s 10 of the Act, and therefore, it can be executed by the Rent Controller. In this case, on 27-11-2000, when the application filed by respondent-tenant for enlargement of time came up for consideration, the same was dismissed and the learned Rent Controller passed order of eviction on the same day, and closed the case, which only means that it is an order passed u/s 10(2)(i) read with Section 11(4) of the Act.

12. In *T. Venkatesam v. Krishnaiah*, 1966 (2) An. WR 245, a question came up for consideration as to whether an order passed u/s 11(4) is executable u/s 15 of the Act. The Court after considering the relevant provisions held as under:

.....One of the first principles of law with regard to the effect of an enabling Act is that, if the Legislature enables something to be done, it gives power at the same time, by necessary implication, to do every thing which is indispensable for the purpose of carrying out the purpose of the Act. In other words when the intention of an Act in conferring an express power is likely to be frustrated by not construing it as necessarily implying another incidental power of however substantial in nature, the same must be implied in order not to bring about frustration of the express intention of the Legislature. That being the principle as I comprehend it, if the power to direct eviction of the tenant is expressly given u/s 11(4) to the Rent Controller or the appellate authority and if there is no express provision to enforce that order, it must necessarily be held to imply the power to enforce such a direction. The argument that to infer such an implied power would amount to supplying an important omission and it would not be permissible as a matter of legitimate construction of a statute does not impress me. That the terms of such statute vesting certain powers and authority must have to be construed as giving by implication other necessary and incidental power to enforce it is a well-accepted rule of construction of a statute. It cannot be in doubt that if the opposite view is accepted that an order passed u/s 11(4) is incapable of being enforced under the terms of the law, it would make Section 11 itself nugatory.....

13. In *Venkataswami's* case, this Court proceeded on the ground that if orders passed u/s 11(4), are incapable of being executed, then the same would be rendered nugatory, I have taken the view that even an order passed u/s 11(4) directing the tenant to put the landlord in possession shall be deemed to be an order u/s 10(2) of the Act, falling within the ambit of Section 15 of the Act. There is yet another reason for the said view. u/s 20 of the Act, any person aggrieved by an order passed by the Rent Controller can prefer an appeal to the Chief Judge, Small Causes Court, in twin cities of Hyderabad and Secunderabad, or to the Court of Subordinate Judge elsewhere. This shows that an order of eviction is passed u/s 11(4) of the Act by the Rent Controller, is also an appealable order. As per Section 15 of the Act, any order passed u/s 20 of the Act is appealable, and

therefore, any order passed u/s 11(4) of the Act, as confirmed by the appellate authority u/s 20 of the Act, would also become executable.

14. It is not denied before me that against the order dated 27-11-2000 passed by the learned Rent Controller in RCC No. 11 of 1999, the respondent preferred an appeal, and at the stage of Receive and Transmit petition, this Court suspended the eviction order dated 27-11-2000, by an order dated 9-1-2001, passed in CMP No. 168 of 2001. Whether the said order passed by this Court is an order passed u/s 11(4) of the Act or u/s 10(2) of the Act, makes no difference because the same stood suspended. The learned Rent Controller dismissed the EPGR 863 of 2001 as not maintainable in the following terms:

The contention of the learned Counsel for the decree-holder that the respondent herein did not obtain any stay orders in IA No. 1389 of 1999 in RCC No. 11 of 1999 is not a tenable contention in view of the operative portion of the order passed in IA No. 1389 of 1999 as the Rent Controller by allowing the said petition directed the respondent to deposit the arrears of rent from the month of November, 1999 till the date of passing of order on or before 27-11-2000 failing which the respondent is liable to vacate the petition schedule building and consequent to failure of the deposit of the arrears of rent, the Rent Controller passed eviction orders in RCC No. 11 of 1999. So, the order passed in IA No. 1389 of 1999 is by itself not an executable order and the consequent order passed by the Rent Controller for eviction from the petition schedule property is the consequential order of the order passed in IA No. 1389 of 1999 against which the judgment-debtor herein preferred an appeal in SRCASRA No. 663 of 2001 on the file of Rent Controller, appellate authority, Vizianagaram, and in the meanwhile obtained the order of suspension of the order passed in RCC No. 11 of 1999 by filing CMP No. 161 of 2001 wherein the Hon'ble High Court suspended the operation of the order passed by the Rent Controller in RCC No. 11 of 1999, dated 27-11-2000, pending further orders on the said RC No. 663 of 2001.

15. The learned Rent Controller came to the conclusion that the order impugned does not suffer from any error on the face of the record. A passing reference may be made at this stage that though the CRP is filed u/s 115 of the Code, no effort has been made to sustain the maintainability of the CRP under the said Section 115, more so when Section 22 of the Rent Act specifically provides for a revision to the High Court.

16. In the result, for the reasons aforementioned, the CRP fails, and it is accordingly dismissed. There shall, however, be no order as to costs.