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Court : Karnataka

Decided On : Aug-31-2015

Judge : B.S. Patil

Appeal No. : House Rent Revision Petition No. 59 of 2015

Appellant : Udechand

Respondent : B.V. Krishna Murthy

Judgement :

1. This revision petition is filed by the tenant under Section 46(1) of the Karnataka Rent Act, 1999 (for short, the Act') challenging the order of eviction dated 21-2-2015 passed in H.R.C.No.30 of 2010 by the XII Additional Small Causes Judge, Bengaluru.

2. Respondent herein filed petition under Section 27(2)(a) and 27(2)(r) of the Act seeking eviction of the tenant-revision petitioner from the petition schedule premises.

3. Petition averments disclose that respondent herein is the landlord of the residential premises situated in the first floor of building No.133/22, Mamulpet, Bengaluru. The same was purchased in the name of the respondent herein and was leased to Sri Megharaj Ji, father of the revision petitioner on 5-1-1968 as the revision petitioner was minor at the time of lease. The said lease was initially for a period of 11 months on a monthly rent of Rs.130/-. Duration of lease was extended

from time to time and the monthly rent was also being enhanced. Upon the death of Sri Megharaj Ji, father of the revision petitioner, revision petitioner continued to be the tenant and paid the rent to the respondent-landlord till March 2007, but from April 2007, revision petitioner stopped paying rent and thus committed continuous default in payment of rent.

4. It was contended that despite repeated request, revision petitioner did not vacate the schedule premises though the premises was required for the use of landlord's wife, who is a practicing Advocate, to open Advocate's Chamber. It was also contended that revision petitioner was due in a sum of Rs.54,250/- as arrears of rent.

5. On issuance of legal notice by the landlord, while denying the relationship of landlord and tenant, revision petitioner enclosed a cheque for a sum of Rs.54,250/-, dated 4-10-2009 along with his reply. The landlord contended that as the premises was required for the use and occupation of the wife of the respondent and as the tenant had committed persisted default in paying rent, he was constrained to file a petition for eviction. Along with the petition, he has filed a separate affidavit stating that his wife has been practicing as an Advocate and has decided to start her own office and therefore, he needed the premises for the use and occupation of his wife. He also reiterated the fact that he requested the tenant-revision petitioner to vacate and handover possession of the schedule premises on the said ground.

6. Petition was resisted denying the very right of the respondent herein as landlord of the premises and also by taking up several contentions alleging that false story had been set up by the respondent-landlord on baseless grounds to evict the revision petitioner. He has contended in the statement of objections that a sum of Rs.54,250/- was paid without prejudice to his contention that respondent herein was not the landlord of the premises. He further contended that respondent herein had other alternative premises and that he had resorted to induct new tenants in the ground floor of the petition schedule premises, wherein three shops had become vacant.

7. In support of his case, respondent-landlord examined himself as P.W.1. Exs.P.1 to P.19 were produced and marked. For the revision petitioner-Rajesh Kumar, son of the revision petitioner was examined as R.W.1. Exs.R.1 and R.2 were produced and marked.

8. The Trial Court, on consideration of the pleadings and evidence on record, has come to the conclusion that respondent-landlord had proved that he was the landlord of the premises and the revision petitioner was tenant under him. It also found that petition schedule premises was required for the use of the wife of the landlord to establish an Advocate's Chamber. As regards default committed in payment of rent regularly, though the Court below has found that the grounds urged under Section 27(2)(a) were established, during the course of arguments, it is submitted by the learned Counsel for the respondent-landlord that in the light of the findings recorded stating that arrears of rent has been paid, the said ground virtually pales into insignificance.

9. It is also brought to the notice of the Court, at the time of arguments, by the learned Counsel for both parties that Court below has proceeded on a wrong premises to hold that Section 5(1) of the Act was applicable to the case. Indeed, as fairly submitted by the learned Counsel for the respondent-landlord, Section 5(1) of the Act has no application to the facts of the case because petition averments disclose that the petition schedule premises was leased in favour of the revision petitioner. Eviction was not sought on the ground enumerated under Section 5(1) of the Act. Therefore, what remains for consideration is the ground urged under Section 27(2)(r) of the Act.

10. The Court below has held that in the light of Explanation I to Section 27(2)(r) of the Act and in view of the affidavit filed by the landlord along with the petition stating that the premises was required by him for occupation of his wife to open Advocate's Chamber, it shall be presumed that the premises was so required. Though a faint attempt was made by the learned Counsel for the revision petitioner that no such affidavit was filed and therefore, this ground has been wrongly invoked by the landlord and erroneously accepted by the Court below, on perusal of the original records, I find that an affidavit dated 1-2-2010 has been

indeed filed by the landlord, wherein it is clearly stated that his wife was a practicing Advocate and had been so practicing for the last 10 years; during 2007, she decided to become independent and therefore, she had decided to open a separate Advocate's Chamber and hence the petition schedule premises was required for her use and occupation. In that view of the matter, contention of the learned Counsel for the revision petitioner that no such affidavit was filed and therefore, this ground was not available cannot be accepted.

11. The next contention of the learned Counsel for the revision petitioner is that there were alternative premises available to the respondent-landlord for the purpose of making use as Advocate's Chamber. He takes me through the evidence to contend that respondent herein is the owner of several premises at Bengaluru and many of the shop premises in Santhosh Complex had become vacant and plaintiff is not making use of the same for the purpose of Advocate's Chamber for his wife. Therefore, bona fide requirement of premises as pleaded has not been proved.

12. Evidence on record including the cross-examination of P.W.1 makes it very clear that respondent-landlord was the owner of two premises in Bengaluru one being the residential premises wherein he is currently residing and the other being the petition schedule premises. The rest of the premises such as Santhosh Complex, Triveni Theatre, according to the respondent-landlord were not owned by him. They were used for commercial purpose as property belonging to the firm and that they were neither available, nor suitable for his wife to open Advocate's Chamber.

13. In the light of this evidence and having regard to the judgment in the case of Ragavendra Kumar v Firm Prem Machinary and Company (AIR 2000 SC 534: (2000) 1 SCC 679), on which learned Counsel for the respondent-landlord has placed reliance, it is clear that the landlord being the best Judge of his requirement for the purpose of opening Advocate's Chamber for his wife, he had the freedom in the matter and neither the revision petitioner-tenant nor this Court can find fault with the choice made by the respondent-landlord and his wife to prefer the petition schedule premises for the purpose of establishing an Advocate's Chamber.

14. As rightly held by the Court below, nothing worthwhile is elicited in the cross-examination of P.W.1 to the contrary and therefore, the Court below was right and justified in invoking Explanation I to Section 27(2)(r) of the Act. Therefore, I do not find any illegality much less any irregularity in the findings recorded and the conclusion reached by the Court below. Therefore, this petition being devoid of merits is dismissed.

15. The Court below has granted two months time to vacate the premises. HRC proceeding was instituted in the year 2010 and the same was pending for the last 5 years. Counsel for the petitioner seeks one year time to vacate. Taking note of these aspects and the urgent need established by the landlord to establish Advocate's Chamber for the purpose of his wife, I find it just and reasonable to grant six months time to vacate and handover possession of the premises.

16. Accordingly, revision petitioner is directed to voluntarily vacate and handover vacant possession of the premises to the respondent-landlord on or before 29-2-2016 without seeking further extension and without forcing the respondent-landlord to initiate execution proceedings. Revision petitioner shall pay the rent at the rate of Rs.2,500/- per month till he vacates the premises without committing any default. He shall not induct any third party into the premises. He shall file an affidavit incorporating the above terms and undertaking to abide by the same, within two weeks from today. Rent in deposit shall be released to the respondent-landlord.

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