

N. Raj Kumar Vs. Sharada

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Court : Andhra Pradesh

Decided On : Jan-04-2002

Reported in : AIR2002AP203

Judge : Dubagunta Subrahmanyam, J.

Acts : Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 - Sections 11 and 11(4)

Appeal No. : C.R.P. No. 5099 of 1998

Appellant : N. Raj Kumar

Respondent : Sharada

Advocate for Def. : R. Subhash Reddy, Adv.

Advocate for Pet/Ap. : A. Narasimha Reddy, Adv.

Disposition : C.R.P. allowed

Judgement :

ORDER

1. This revision petition is filed under Section 22 of A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960 (hereinafter referred to as 'the Act') against the order dated 14.9.1998 in R.A.No.1 of 1998 on the file of Principal Senior Civil Judge, Rangareddy at Saroornagar, setting aside the order dated 5.12.1997 of the Rent

Controller-cum-Principal District Munsif, East and North, Rangareddy, in R.C.No.28 of 1993 on his file.

2. The tenant is the revision petitioner. The respondent landlady filed eviction petition against the tenant on only one ground. The suit premises is a non-residential premises wherein the tenant is doing medical business. The landlady sought for possession of the suit premises on the ground that she is in need of the mulgi for the purpose of opening a medical and general stores and also to put up her residence in the room attached to the said mulgi. The tenant contended that the requirement alleged by the landlady is not a bona fide requirement. On the basis of the evidence adduced by both the parties, the Rent Controller held that the landlady as well as her husband did not depose that the landlady requires the building for starting a medical shop by the landlady and they merely deposed that they require the entire building for their personal occupation and further held that the bona fide requirement of the landlady is not proved by the landlady. However, during the pendency of the eviction petition before the Rent Controller, it was contended on behalf of the landlady that during the pendency of the eviction proceedings, the tenant committed wilful default in payment of rents and on that ground the tenant is liable to be evicted. The tenancy court did not accept that contention holding that the landlady cannot seek the eviction of the respondent on the ground of wilful default when there is no pleading and when there is no amendment to the petition to include the ground of wilful default. Accordingly the Rent Controller dismissed the eviction petition by his order dated 5.12.1997.

3. In the appeal, the appellate court held that in the absence of any evidence that the landlady wanted the suit mulgi for her business, her request for her occupation of the suit premises for her residence cannot be accepted and further held that the landlady failed to establish that she is in bona fide requirement of the suit premises for her residence.

4. During the pendency of the eviction proceedings before the Rent Controller, the tenant deposited in a lump sum the said rent payable by him from June 1993 to December 1996. He paid in lump sum the rent for a period of nearly three and half years. Similarly he made a lump sum payment of Rs.11, 000=00 later for the rent

payable by him for the period from January 1997 to August 1998. The appellate court held that there is a statutory duty fixed on the tenant to deposit the rent every month without fail and deposit of the rent for a period of 42 months together in one instance and later for 19 months in another lump sum is a clear violation of statutory obligation and such deposit shows that the tenant is irregular in payment of rents and he is a wilful defaulter within the meaning of Section 10 of the Rent Control Act. Accordingly the appellate court held that the landlady is entitled to seek the eviction of the tenant on the ground of wilful default during the pendency of the proceedings before the Rent Controller. He accordingly allowed the appeal directing eviction of the tenant on the ground of wilful default.

5. Regarding the ground of wilful default in payment of rent, the revision petitioner tenant relied upon a decision of the Supreme Court in K.A.RAMESH v. SUSHEELA BAI(1). In that case the eviction

(1) : [1998]1SCR892 of the tenant was sought for on the ground of wilful default. Before the landlord commenced eviction proceedings, the tenant sent entire arrears of rent from July, 1988 to December, 1988, by a bank draft to the landlord. The landlord encashed the demand draft after he instituted the eviction proceedings. The Supreme Court observed that by sending demand draft, when there was no litigation between the parties, full payment of arrears was tendered and that was accepted and realized pending the eviction proceedings. The Supreme Court held that this clearly shows that there was no default at all much less wilful default on the part of the tenant in paying the rent for the months from July, 1988 to December, 1988. The Supreme Court held that the eviction petition requires to be summarily rejected. Regarding the contention that even pending eviction proceedings there was default on the part of the tenants, as they had not paid the rent during the pendency of those proceedings, the Supreme Court held as follows:

' That apart, even if there was any default pending such proceedings, it was open to the respondents to enforce the statutory right available to them under Section 11(1) read with Section 11(4) of the Act for getting all further proceedings stopped

before the Rent Controller and for asking immediate decree for possession, and/or in appeal of the appellant-tenants to request the appellate court to dismiss the appeal and put the respondent-landlords forthwith in possession on account of such default. Nothing of this sort was done by the respondents. If they had tried to enforce this right, the appellants would have got an opportunity to show to the Trial Court or the Appellate Court, as the case may be, that there was sufficient cause for not passing such an order under Section 11(4) of the Act. The opportunity never became available to the appellants, as the respondents did not invoke this provision. It can, therefore, easily be said that the respondents waived this right available to them under the statute presumably because they themselves were satisfied on getting full payment of arrears of rent by encashing the bank draft dated 2nd February, 1989. Consequently, even this contention cannot be of any assistance to the respondent'.

6. There is a Full Bench judgment of A.P. High Court in VINUKONDA VENKATA RAMANAVs. MOOTHA VENKATESWARA RAO (2) wherein it was held that if any default is committed subsequent to the filing of the eviction petition in payment of rents, it can be made a ground for ordering eviction provided an application is filed under Section 11 of the Act to put the landlord in possession. In the present case, the landlady did not resort to the provisions contained in Section 11 of the Act. Therefore, on the ground that default is committed in payment of rents during the pendency of the eviction petition, the tenant cannot be evicted.

7. As against these two binding judgments, the learned Advocate for the respondent relied upon two other judgments. One judgment is a judgment of a single Judge of A.P. High Court in GHOUSE MOHIUDDINVs. Dr. L.BHASKER REDDY

(3). This decision has

(2) 2001(6)ALD 27

(3) 1995(2) ALD 108

no application inasmuch as in that case a petition under Section 11(4) of the Act is filed and allowed by the courts. In the present case no petition under Section 11(4) of the Act is filed by the landlady regarding the default in payment of rents during the pendency of the eviction proceedings. Another decision relied upon by the learned Advocate for the respondent is a judgment of A.P. High Court in ADAPA SANTHARAM v. SAIT NATHMAL MANIK (4). It was held by in this decision that mere filing of an application under Section 8(5) of the Act by the tenant without depositing the rent immediately and without complying the other requirements of Section 8 is not sufficient to invoke the provisions in Section 8(5) of the Act. It was held that such application will not come to the aid of a tenant to show his bona fides in not paying the rent in time. This decision also does not apply to the facts on hand inasmuch as the landlady did not invoke the provisions of Section 11(4) of the Act during the pendency of the eviction proceedings either before the tenancy court or in the appellate court.

8. Regarding the ground of bona fide requirement, it is to be held

(4) : AIR 1996 AP149

that the two courts below concurrently found that the requirement of the landlady for her personal occupation is not bona fide requirement. That finding was given based on the evidence adduced by the landlady herself. There is no error committed by the courts below in giving such a finding. In this regard the learned advocate for the respondent relied upon a judgment of the Supreme Court in RAGHAVENDRA KUMAR v. FIRM PREM MACHINARY & CO. (5). The above proceedings arose under the provisions of M.P. Accommodation Control Act, 1961. It was held that the landlord is the best judgment of his requirement for residential or business purpose and he has got complete freedom in the matter. This decision also does not help the landlady inasmuch as she failed to depose before the court that she requires the suit mulgi for her starting business in medicines. She wanted the building during her evidence for her personal occupation and not for the purpose of starting a business which was the ground pleaded in her petition. The foregoing discussion clearly shows that the order of

the appellate court is liable to be set aside. The landlady failed to prove that she is entitled to evict the tenant on the ground of her requirement for her personal non-residential occupation as well as wilful default allegedly committed by the tenant during the pendency of the eviction proceedings.

(5) 2000(1) SCALE 49

9. In the result, I allow the C.R.P., without costs. The order of the Principal Senior Civil Judge, Rangareddy in R.A.No.1 of 1998 is set aside. The order of the Rent Controller-cum-Principal District Munsif, East and North, Rangareddy in R.C.No.28 of 1993 is confirmed.

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