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Court : Andhra Pradesh

Decided On : Jan-31-2007

Reported in : 2007(3)ALD149; 2007(4)ALT49

Judge : Bilal Nazki, J.

Acts : Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 - Sections 8(5), 9 and 11; Evidence Act - Sections 114; Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Rules, 1960 - Rules 5(1), 5(4) and 16

Appeal No. : C.R.P. No. 3982 of 2006

Appellant : Munnalal (Died) and ors.

Respondent : Englarg Pershad

Advocate for Def. : W.V.S. Rajeswari, Adv.

Advocate for Pet/Ap. : M.V.S. Suresh Kumar, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Bilal Nazki, J.

1. This is a revision filed by the tenants against an order of eviction dated 29- 06- 2006 passed by the learned Additional Chief Judge, City Small Causes Court, Hyderabad, in R.A. No. 326 of 2002.

2. The landlord filed an eviction petition being R.C. No. 306 of 2000 on the file of the I Additional Rent Controller, Hyderabad, on various grounds and it was dismissed by order dated 11th September, 2002. In appeal, the order was reversed and eviction was ordered on the ground of willful default. Aggrieved thereby, the tenants preferred the present revision petition.

3. The only question agitated before this Court is that there had been no willful default by the tenants and the rents had been deposited regularly and intimation of deposit of rents had also been given to the landlord in terms of the A.P.Buildings (Lease, Rent & Eviction) Control Rules, 1960 (for short 'the Rules').

4. The learned Rent Controller observed that the case of the landlord was that the tenants had not deposited the rents for the months of June, July and August, 2000. But, the landlord himself exhibited Ex.P.3-ledger extract, which showed at Serial Nos. 4, 5 and 6 that the rent for the months of June, July and August, 2000 had been deposited. The tenants also placed on record Ex.R.12-certified copy of the deposition of the landlord in another case being R.C. No. 703 of 1999, in which the landlord, who was examined as P.W.1 admitted that the rent had to be paid on or before 10th of every succeeding month. But however, the learned Counsel for the landlord contended that the deposit of rents into the Court has to be intimated to the landlord and in the absence of such communication, even after deposit of the rents, the case would fall within the term 'willful default'.

5. The learned Counsel for the tenants contended that they had sent the communication through certificate of posting, which was filed along with a challan before the Court below.

6. The learned Counsel for the landlord contended that even if it is taken to be true that the rents had been deposited and the information was communicated, even then, the rent had been deposited beyond time. But, the appellate Court as well as the trial Court concurrently found that the rents had been paid for all the three

months within the time agreed by the parties.

7. Now, the only question that falls for consideration before this Court is, whether the information communicated under a certificate of posting would amount to payment of rent in accordance with the rules.

8. In this connection, the learned Counsel for the landlord relied on Rules 5(4) and 16 of the Rules.

9. Rule 5(1) of the Rules lays down the procedure, when a tenant is desirous of depositing the rent under Sub-section 5 of Section 8, or 9 or Section 11 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short 'the Act'). Rule 5(4) of the Rules lays down the procedure for service of a notice of deposit and specifies that it shall be done in accordance with Rule 16 of the Rules.

10. Rule 16 of the Rules reads as under:

16. (1) All notices under the Act issued by the Controller or the appellate authority and all orders passed by the controller or the appellate authority if not pronounced in open court shall be served on the person concerned;

(a) personally by delivering or tendering to him the notice or order; or

(b) if such person is not found, by leaving the notice or order at his last known place of abode or business or by giving or tendering the same to some adult member of his family; or

(c) if such person does not reside in the area within the jurisdiction of the Controller or the appellate authority, by sending the same to him by registered post, with acknowledgment due; or

(d) ... (not relevant for the present controversy.)

Admittedly, none of the three modes prescribed under Rule 16 of the Rules have been followed in this case.

11. Such questions have been considered by a learned single Judge of this Court in a judgment reported in Hari Prasad Badurka v. Tellakunta Lakshmi and Ors : 2000(1)ALT551 and by a Division Bench of this Court in a judgment reported in Linga Pentamma and Ors. v. T.Jagadiswar Rao and Ors. : 2006(1)ALT111 and also by the Supreme Court in a judgment reported in N.D.Tandani (dead) by L.Rs v. Arnavaz Rustom Printer and Anr. AIR 2004 SC 495

12. Since the tendering of rents was not communicated by way of a notice in terms of Rules 5(4) and 16 of the Rules, the appellate Court was right in coming to a conclusion that it was a case of willful default.

13. The learned Counsel for the petitioner, however, relies on a judgment of this Court reported in Dinshaw N. Chenoy and Ors. v. Govt. of A.P. rep. by Secretary and Ors. 1996(3) ALD 743. In this case, the Court was considering the impact of Section 114 of the Indian Evidence Act as far as a certificate of posting was concerned. It may be pointed out that there would not be any question of presumption where the Rules provide that the notice of deposit had to be given in a particular manner and the notice is not given in that manner. It may also be pointed out that the Court relied in this case on Section 114(f) of the Indian Evidence Act, which reads as under:

The Court may presume that the common cause of business has been followed in particular cases.

14. In my view, Section 114 of the Indian Evidence Act has no application to the present case as the Rules provide the method, by which, the intimation of deposit of rents has to be given to the landlord.

15. For these reasons, the Civil Revision Petition fails and it is, accordingly, dismissed. No costs.

16. At this stage, the learned Counsel for petitioners-tenants submits that the petitioners may be given sufficient time to vacate the schedule premises, as it may take some time to arrange for an alternate accommodation. In the interest of justice, the petitioners are permitted to continue with possession of the schedule

premises for the time being and shall hand over the possession to the landlord by or before 31st of July, 2007. The petitioners shall give an undertaking before the Rent Controller within two weeks from today, that they shall continue to pay the rents for the period they occupy the schedule premises and that they shall vacate the premises on or before 31st of July, 2007 and shall handover the vacant possession to the landlord-respondent. There shall be stay of eviction for fifteen days from today and the stay shall continue till 31st of July, 2007, if undertaking is given within the stipulated period. If no undertaking is given within the stipulated period, the landlord shall be at liberty to seek eviction of the petitioners-tenants.

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