

Siddiah Vs. Kamath

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Court : Andhra Pradesh

Decided On : Mar-06-1967

Reported in : AIR1968AP121

Judge : P. Jaganmohan Reddy, C.J., ;Kumarayya and ;Krishna Rao, JJ.

Acts : Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954 - Sections 15, 15(2), 15(3) and 15(7); Madras Buildings (Lease and Rent Control) Act, 1946 - Sections 7 and 7(6); Hyderabad House Rent Control Order, 1353

Appeal No. : Civil Revn. Petn. No. 23 of 1962

Appellant : Siddiah

Respondent : Kamath

Advocate for Def. : B.V. Seetharama Sastry, Adv.

Advocate for Pet/Ap. : K. Ramachandra Rao, Adv. for V.S. Ashoka and ;K. Sripathi Rao, Adv.

Disposition : Petition dismissed

Judgement :

Krishina Rao, J.

1. The above Civil Revision petition has been referred to a Full Bench by our learned brother Basi Reddy, J. under the following circumstances. In *Sitaramanjaneyulu v. Krishnayya*, : AIR1952 Mad283 it was held by a Division Bench of the Madras High Court, construing Section 7(6) of the Madras Building (Lease and Rent Control) Act, 1946, that when a landlord files an application for eviction on the ground that the tenant committed default in payment of rent, it is not open to him to file a subsequent application for eviction based on a subsequent default committed by the tenant during the pendency of the first petition for eviction. The above decision was later overruled by a Full Bench of the Madras High Court in *Perumal Chettiar v. Muthuswami*, : AIR1962 Mad447 (FB), and hence the ruling of the Division Bench ceased to be good law so far as the Madras High Court is concerned

In view of the decision of the Full Bench of the Andhra High Court in *Subbarayudu v. State of Andhra*. : AIR 1955 AP87 (FB) the decisions of the Madras High Court rendered prior to July 1954 are binding on the Andhra High Court. Hence the ruling of the Division Bench referred to above though superseded by a subsequent Full Bench decision of the Madras High Court, is still binding on this Court. But in view of the fact that it was subsequently overruled in the Madras High Court, it may be necessary for this Court to consider whether the ruling of the said Division Bench requires reconsideration and hence the matter has been placed before us.

2. The petitioner in the present C. R. P. is the tenant of the respondent who is himself a tenant of the original owner of premises No. 5717 Subhas Road, Secunderabad. On 20-6-1956, the respondent filed an eviction petition R. C. 352/56 in the Court of the Rent Controller Secunderabad against the petitioner on the ground that the petitioner tenant fell into arrears of rent due from January to the end of May 1956. The petitioner tenant, while denying that there was any wilful default raised an objection that the present eviction petition is not maintainable in view of the fact that a previous eviction petition by the landlord viz R. C. 14/55 was still pending on the date of the institution of the present eviction petition. though it was subsequently dismissed on 18-6-1958, that is, before the disposal of the present eviction petition on 29-8-1960. The Rent Controller decided the question of maintainability as a preliminary point and held that the present petition was

maintainable. The tenant took up the matter in appeal questioning the decision on the preliminary point but was unsuccessful. After the petition was taken up for trial on merits, the Rent Controller held that the tenant was guilty of wilful default and passed an order of eviction. The said order having been confirmed in Appeal No. 319/3/60 by the Appellate Authority on 29-8-1960, the tenant has filed the present revision petition in this Court.

3. The only point raised on behalf of the petitioner tenant is that the present eviction petition is not maintainable in view of the pendency of a prior petition for eviction though based upon a prior cause of action

4. The Revision Petition arises under the Hyderabad Houses (Rent, Eviction and lease) Control Act (XX of 1954) the provisions of which are almost ad idem with those of the Madras Act. Section 15 of the Hyderabad Act reads as follows:

(15) Eviction of tenants--(1) A tenant shall not be evicted, whether in execution of a decree or otherwise except in accordance with the provisions of this section,

(2) A landlord who seeks to evict his tenant shall apply to the Controller for direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application is satisfied,

(i) that the tenant has not paid or tendered the rent due by him in respect of the house within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement by the last day of the month next following that for which rent is payable: or

(ii) that the tenant has after the commencement of the Hyderabad House Rent Control Order of 1353 F, or this Act without the written consent of the landlord

(a) transferred his right under the lease or sublet the entire house or any portion thereof, if the lease does not confer on him any right to do so, or

(b) used the house for a purpose other than that for which it was leased, or

(iii) that the tenant has committed such acts of waste as are likely to impair materially the value or utility of the house, or

(iv) that the tenant has been guilty of such acts and conduct as are a nuisance to the occupiers of other portions in the same house or of houses in the neighbourhood, or

(v) that the tenant has secured alternative house or Ceased to occupy the house for a continuous period of four months without reasonable cause, or

(vi) that the tenant has denied the title of the landlord or claimed a right of permanent tenancy and that such denial or claim was not bona fide, the Controller shall make an order directing the tenant to put the landlord in possession of the house, and if the Controller is not so satisfied, he shall make an order rejecting the application.

Provided that in any case falling under Clause (i) if the controller is satisfied that the tenant's default to pay or tender rent was not wilful he may, before making an order as aforesaid, give the tenant a reasonable time, not exceeding 15 days, to pay or tender the rent to the landlord upto the date of such payment or tender.

(3) (a) A landlord may subject to the provisions of Clause (d) apply to the Controller for an order directing the tenant to put the landlord in possession of the house --

(i) in case it is a residential house, if the landlord requires it for his own occupation and if he is not occupying a residential house of his own in the city, town or village concerned;

(ii) In case it is a non-residential house which is used for the purpose of keeping a vehicle or adapted for such use, if the landlord requires it for his own use and if he is not occupying any such building in the city, town or village concerned which is his own or to the possession of which he is entitled:

(iii) in case it is any other non-residential house, if the landlord is not occupying for purpose of a business which he is carrying on, a non-residential house in the city, town or village concerned which is his own or to the possession of which he is entitled.

(iv) if the landlord desires to carry out essential repairs or alterations to the house which cannot be made without the tenant vacating the house, bona fide requires the house for the purpose of building or re-building or for making substantial additions which cannot be made without the tenant vacating the house:

Provided that a person who becomes landlord after the commencement of the tenancy by any instrument inter vivos shall not be entitled to apply under this clause before the expiry of three months from the date on which the instrument was registered:

Provided further that where a landlord has obtained possession of a house under this clause, he shall not be entitled to apply again under this clause--

(i) in case he has obtained possession of a residential house, for possession of another residential house of his own.

(ii) in case he has obtained possession of a non-residential house of his own for possession of another non-residential house:

Provided further that where a landlord has obtained possession of a house under Sub-clause (iv), he shall on the completion of the work of repairs, alterations building, re-building or making additions giving the tenant the first preference for occupying the house on such terms as may be settled by the Controller.

(3) (e) The Controller Shall, if he is satisfied that the claim of the landlord is bona fide make an order directing the tenant to put the landlord in possession of the house on such date as may be specified by the Controller and if the Controller is not so satisfied, he shall make an order rejecting the application: Clauses (4), (5), (6) omitted.

15(7) Where an application under Subsection (2) or Sub-section (3) for evicting a tenant has been rejected by the Controller, the tenancy shall subject to the provisions of this Act, be deemed to continue on the same terms and conditions as before and shall not be terminable by the landlord except on one or more of the grounds mentioned in Sub-section (2) or Sub-section (3)'. It may here be noted that the above subsection (7) of Section 15 of the Hyderabad Act is exactly the

same as Sub-section (6) of Section 7 of the Madras Buildings (Lease and Rent Control) Act (XV of 1946). We will now refer to the few rulings touching this point.

5. In : AIR1952 Mad283 the correctness of which is now challenged before us, a landlord filed an eviction petition on the ground of default in payment of rent during the pendency of the eviction petition before the Controller. The tenant committed a fresh default in paying the rent on the basis of which the landlord filed a second application for eviction. On an objection having been raised to the maintainability of the second application it was held that having regard to the provisions of Sub-section (6) of Section 7 of the Madras Act, the second petition was not maintainable on the ground that once the first application is rejected, the tenancy is deemed to continue as per the said provision of law and that the landlord cannot therefore allege in a subsequent application that the tenancy has come to an end before the date of the rejection. It was therefore held that the landlord can only rely upon a default on other grounds committed or available after the date of the rejection of the first application.

In coming to this conclusion, the learned judges Rajamannar, C. J. and Somasundaram, J. relied upon a prior unreported decision of a Division Bench consisting of Raja-mannar, C. J. and Chandra Reddy, J. in C. M. P. 4966/49 = (1949) 2 Mad LJ (NRC) 55 wherein it was held:

'Once the application is rejected the tenancy is deemed to continue. The landlord cannot allege in a subsequent application that the tenancy has come to an end before the date of rejection. That would be in the teeth of the express provisions of the enactment.'

According to the learned Judges, the reason behind the provision contained in Sub-section (6) of Section 7 of the Act is that once a landlord has exhibited an unequivocal intention to terminate the tenancy and the matter was sub judice he should not be entitled to avail himself on the benefit of any default or other act of the tenant to serve as a foundation of a second application for eviction in case he failed to obtain the requisite relief in the first application.

6. In *Bandi Appa Rao v. Salimunnisa Bibi Saheba*, 1955 Andh WR 894 a prior application for eviction was dismissed by the Rent Controller. Thereafter, the landlord filed a second application for eviction relying upon a default in payment of rent committed by the tenant before the prior application for eviction. Following the Division Bench ruling in : AIR1952 Mad283 . Viswanatha Sastri, J. held that the previous applications having been dismissed, the tenancy is deemed to continue as per the provisions of Sub-section (6) of Section 7 of the Madras Act and that the landlord is not entitled even to rely upon a prior default in support of his second application. According to the learned Judge, the Second application should be based upon a default accruing only after the rejection of the prior application and that the object of Section 7(6) was apparently to avoid multiplicity of applications for eviction by the landlord

7. In : AIR1962 Mad447 (FB), during the pendency of an application for eviction based on the ground of default in payment of rent, the landlord filed a second application for eviction on the ground of fresh default committed by the tenant during the pendency of the prior eviction petition and on an additional ground that he required the house for his personal occupation. Ramachandra Iyer, C. J. speaking for the Court, overruling the decision in : AIR1952 Mad283 held that it will be an unwarranted extension of the fiction underlying Sub-section (6) of Section 7 of the Madras Act to hold that the dismissal of an earlier application for eviction will put a landlord at a disadvantage by not being able to rely on defaults or necessities which arise subsequent to the filing of the application, but before its termination and that a landlord can file a second application for any, relief against a tenant even during the pendency of an earlier application and that the dismissal of the earlier application cannot affect the right of the landlord to continue the latter application.

8. In the latest case in *Veeresham v. Uttamchand Bhandari*. : AIR 1967 AP129a where during the pendency of an eviction petition, the landlord filed a second petition for eviction on a cause of action which has accrued to him during the pendency of the earlier application, it was held by Sharfuddin, J. after referring to the Full Bench decision of the Madras High Court cited supra, that the second application of the landlord is maintainable.

9. The legal position may now be examined in the light of the above decisions and the provisions of the Act. The object of the Act is to make provision for the control of rent of houses and to prevent unreasonable eviction of tenants by their landlords. At the same time, the Act confers on the landlord a right to evict a tenant who is guilty of certain specified acts, namely, default in paying rent, sub-letting, acts of waste, nuisance, etc and also in cases where the landlord requires the house for his own personal occupation. The provisions of Section 15 of the Hyderabad Act corresponding to Section 7 of the old Madras Act which lay down the various grounds for eviction of a tenant are prima facie available to the landlord on all occasions when the cause of action arises as per the said provisions. We are not able to find any limitation or restriction in the provisions of the said sections or in any other provision of the Act, either expressly or by necessary implication, that the operation of this section is kept in abeyance during the pendency of an eviction petition at all its stages including an appeal and a revision. A party is always entitled under law to avail himself of any cause of action unless he is debarred from doing so.

The only bar under the Act is one based upon the principle of *res judicata*, that is to say where there was an adjudication in a prior proceeding with respect to an identical issue. If it is held that the landlord is precluded from taking advantage of any cause of action for evicting his tenant accruing during the pendency of a prior application for eviction, it not only results in great hardship to the landlord but also renders the relevant provisions of the Act nugatory during the pendency of an eviction petition. It enables the tenant to commit with impunity continuous default in payment of rent or to sublet the premises or to commit other serious acts of waste or nuisance, causing considerable damage to the very premises itself, and even if the landlord genuinely requires the premises for his own occupation during such pendency of an eviction petition he would be debarred from obtaining any relief under the Act. Such a result would never have been contemplated by the legislature. Hence in the absence of a specific provision precluding the landlord from relying upon subsequent causes of action, we are inclined to hold that the landlord is always entitled to rely upon any such sub-sequent ground for eviction which accrues during the pendency of a prior eviction petition.

Turning to the language of Section 15(7) of the Hyderabad Act corresponding to Section 7(6) of the Madras Act, we are not able in the first place to understand the reason for making any such provision that on the rejection of the eviction petition by the land-lord, the tenancy shall be deemed to continue. If there had been any provision in the Act laying down that the tenancy is terminated by the mere filing of an eviction petition, there might have been need for such a provision of law. But no such provision has been brought to our notice which declares that the mere filing of an application for eviction terminates the tenancy. It may be that the said provision has been enacted in anticipation of a possible contention that an application for eviction operates to determine a tenancy on the analogy of an ejectment suit under the general law. The words 'subject to the provisions of this Act, be deemed to continue on the same terms and conditions as before and shall not be terminable by the landlord except on one or more of the grounds mentioned

cannot, by any stretch of reasoning, be construed as making the tenant immune from eviction by any act committed by him during the pendency of the eviction petition.

The reasoning of the learned judges in : AIR1952 Mad283 is that the landlord cannot allege in any subsequent application that the tenancy has come to an end before the date of rejection. This reasoning is based on the assumption that the tenancy comes to an end by the mere filing of a subsequent application alleging certain grounds. As already stated, the provisions of the Act do not warrant such an inference. The other reason given by the learned Judges in the said ruling (1) for the legislature inserting such a provision of law is that once a landlord has exhibited an unequivocal intention to terminate the tenancy and the matter was sub judice, he should not be entitled to avail himself of the benefit of any default or other act of the tenant to serve as a foundation of a second application for eviction. But this view is not supported on any logical basis and there is no reason why subsequent grounds which have nothing to do with a matter already sub judice should not be the subject matter of a different application.

We do not also agree with the view of Viswanatha Sastri. J. in (1955) 1 Andh WR 894 that the said provision of law has been enacted to avoid multiplicity of proceedings. When a party is entitled under law to institute more than one

proceeding, he cannot be debarred on the ground that it amounts to multiplicity of proceedings. The object of the said provision is apparently to remove all doubts and merely to emphasise the fact that the tenancy continues under the same old terms and conditions and subject to the provisions of this Act. It gives protection to the tenant from incurring any liability for damages for use and occupation and entitling him to pay only the agreed rent or the fair rent, as the case may be. The provision is intended to relieve the tenant of any onerous obligation entered into by him with the landlord during the pendency of any eviction petition. The words 'subject to the provisions' and 'continue' clearly indicate on the other hand, that the rights of the landlord and the tenant under the Act and the particular provision of law relating to eviction, are preserved intact. In this view of the matter, the only reasonable conclusion which emerges on a plain reading of the above provision is that a landlord, far from being precluded from relying upon any subsequent ground of eviction, is entitled to rely upon all such provisions of the Act which enable him to obtain eviction, irrespective of the pendency of a prior application. For all the above reasons, we' agree with the Full Bench ruling 1962-2 Mad LJ 218 = (AIR 1962 Mad 4471 (FB) and respectfully disagree with the view expressed in : AIR1952 Mad283 and dissent with it. WE also overrule the decision in (1955) 1 Andh WR 894 which followed the same view.

10. To sum up our conclusion, notwithstanding the pendency of an application for eviction filed by a landlord against his tenant under the provisions of the said Act. the landlord is entitled to file a second application for eviction either during the pendency of the first application or after its disposal, relying upon a ground of eviction which has accrued to the landlord during the pendency of the earlier application for eviction. In view of the above conclusion. this Civil Revision Petition is dismissed with costs. The petitioner, is however granted on' month's time from today for vacating the premises

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