

Tammana Ramesh Babu Vs. Allah Bux

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Court : Andhra Pradesh

Decided On : Mar-03-1998

Reported in : 1998(3)ALD685; 1998(3)ALT607

Judge : Syed Saadatulla Hussaini, J.

Acts : Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 - Sections 9(3, 4 and 5) and 11(4); Assam Urban Areas Rent Control Act, 1972 - Sections 5(4); [West Bengal Premises Tenancy Act, 1956](#) - Sections 4(2) and 17(1 and 4); [Constitution of India](#) - Article 136

Appeal No. : CRP No. 2083 of 1996

Appellant : Tammana Ramesh Babu

Respondent : Allah Bux

Advocate for Def. : Mr. T.S. Anand, Adv.

Advocate for Pet/Ap. : Mr. P.M. Gopal Rao, Adv.

Judgement :

1. Heard both the Counsel.

2. This CRP is filed by the petitioner alleging to be the owner of the suit premises on the ground that the respondent has committed wilful default in payment of rents.

3. The learned Counsel for the petitioner submits that the petitioner is the owner and landlord of the suit premises and that he has filed RCC 15/89 before the Rent Controller for eviction of the respondent on the ground of wilful default in payment of rents. Thereafter, the petitioner filed IA No.1143/1992 under Section 11(4) of Rent Control Act (for short 'the Act') praying to evict the respondent summarily from the suit premises on the ground that the respondent did not pay the rents since the date of filing of the rent control case. It is also submitted by him that there was a dispute with regard to the title of the suit premises between the petitioner and the third party and as such, he preferred OS 157/ 1982 on the file of the Principal District Munsif, Machilipamam. It is further stated that after the disposal of the said suit, the petitioner intimated the same to the respondent and demanded the payment of rent. But, before filing of the said suit, it is stated that the respondent had already approached the Rent Controller in RCC No.22/81 under Section 9(3) of A.P. Building Lease, Rent and Eviction Control Act, and as per the orders passed in the said petition on 20-10-1982, the respondent-tenant is depositing the rents regularly in the Court. As the respondent-tenant did not pay the rent to the petitioner-landlord, he filed RCC No.15/89 against the respondent on the ground that his title to the suit premises has been established and he also filed IA No.1143/1992 under Section 11(4) of the Act to direct the respondent-tenant to pay or deposit the rent to the petitioner-landlord. The respondent-tenant set up a defence that he has been regularly depositing the rents as ordered on 29-10-1982 by the Rent Controller in RCC No.22/81, and as the respondent-tenant has not paid the rent to the petitioner, an appeal was preferred in AS No.34/89 on the file of the Additional District Court, Krishna, Machilipatnam by the defendant therein, JVR and Sons, in civil suit, which is pending. The respondent has no objection to pay the monthly rent after the disposal of the AS No.34/89 and denied that the respondent has failed to pay the rent from 13-4-1989. The Rent Controller as well as the lower appellate Court held that as the respondent has showed the sufficient cause for not paying the rent to the petitioner, but deposited the same in the Rent Control Court under Section 9(3) of the Act, and dismissed the petition of the petitioner. The petitioner questions the impugned order on the ground that both the Courts have erred in rejecting the plea of the petitioner that the respondent-tenant has failed to pay the rents to the petitioner after decree was passed in his

favour and when the same was intimated to him.

4. The facts in this case are not disputed before me.

5. Mr. Srinivas representing Mr. P.M. Gopal Rao, learned Counsel for the petitioner, submits that the respondent, having come to know of the decision in respect of the suit property that the decree has been passed in favour of the petitioner when the same was also intimated to him, has failed to pay the rents to the petitioner and as such the petitioner is entitled for an order to be passed in his favour under Section 11(4) of the A.P. Rent Control Act and he has to be put in possession of the premises. Disregarding this fact, the respondent is already depositing the rents of the suit premises in RCC 22/81 after intimation of the decree obtained by the petitioner from a competent Court.

6. It is admitted by both the Counsel that when the petitioner instituted the suit OS 157/82 on the file of the Principal District Munsif, Machilipatnam for declaration of his title against the defendant JVR and Sons, he did not implead the respondent-tenant even as a party to the suit. It is also not disputed that the judgment and decree passed by the Principal District Munsif is subjudice in AS No.54/89 on the file of the Additional District Court, Krishna, Machilipatnam.

7. It is also not disputed that even after the decree was passed by the Principal District Munsif in favour of the petitioner, the petitioner has not approached the Rent Controller under Section 9(5) of the Act to withdraw the deposited rents by the respondent before or even after the filing the eviction petition by him against the respondent.

8. On the facts of the case whether the respondent-tenant could be held to have committed default to be evicted under Section 11 (4) of the Act? To appreciate this contention, it is necessary to look at the following provision of the Rent Control Act. Section 9(3), (4)(a), 4(b) and Section 9(5) and sub-section (4) of Section 11 is to the following effect:

Section 9(3)

'Where any bona fide doubt or dispute arises as to the person who is entitled to receive the rent for any building the tenant may deposit such rent before such authority and in such manner as may be prescribed and shall report to the Controller the circumstances under which such deposit was made by him, and may continue to deposit any rent which may subsequently become due in respect of the building before the same authority and in the same manner until the doubt is removed or the dispute is settled by the decision of a competent Court or by a settlement between the parties or until the Controller makes an order under clause (b) of sub-section (4), as the case maybe.

Section 9(4)(a) :

The Controller to whom a report is made under sub-section (3) shall, if satisfied that a bona fide doubt or dispute exists in the matter, direct that, pending removal of the doubt or settlement of the dispute as aforesaid, the deposit be held by the authority concerned. (b) If the Controller is not so satisfied, he shall forthwith order payment of the amount deposited to the landlord.

Section 9(5):

Where the Controller passes an order under clause (a) of sub-section (4), any amount or amounts deposited under sub-section (3) may be withdrawn only by the person who is declared by a competent Court to be entitled thereto, or in case the doubt or dispute is removed by a settlement between the parties, only by the person who is held by the Controller to be entitled to the amount or amounts in accordance with such settlement.'

Sub-section (4) of Section 11 :

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.'

9. The only point for consideration in this case is whether the tenant has shown sufficient cause for non-deposit of rent within the meaning of sub-section (4) of

Section 11 of the Act.

10. The above provisions under Sections 9 and 11 of the Act are couched in clear and simple English. The facts of the above case are not disputed. The tenant had already approached and deposited the rents after an order was passed by the Rent Controller in RC 22/81, dated 29-10-1981 and he continued to deposit the rents. Further, it is admitted that the petitioner has not approached the Rent Controller to collect the rents deposited by the respondent in respect of the suit premises even after passing of the decree in his favour with regard to the declaration of the title by the Principal District Munsif, Machilipatnam. It is also not disputed by the petitioner that the defendant in the said case has already filed the appeal AS 34/89 on the file of the Additional District Judge, Krishna at Machilipatnam which is pending. The tenant specifically took up the defence that as per the order of the Rent Controller, he is depositing the rents in the Rent Controller Court regularly and has not made the payment to the petitioner as an abundant caution that the appeal is pending before the Additional District Judge and the same has not yet been decided. If the appeal is decided in favour of the defendant the respondent would be put to irreparable loss and it would lead to multiplicity of proceedings as he continued to deposit the rents regularly before the Rent Controller in RC 22/81 and he is not liable to be evicted from the suit premises as he is depositing the rents in respect of the suit premises regularly.

11. Mr. Srinivas learned Counsel for the petitioner relies on a decision of Apex Court in Jagat Prasad v. Dist. Judge, Kanpur and others, 1995 Supp. (1) SCC 318(1), wherein it was held as under :

'Rent Control and Eviction - Arrears of rent/default - Tender of rent in Court -Held, would constitute a valid defence to a petition for eviction on the ground of arrears of rent only when done in accordance with statutory provisions and not otherwise.'

He also relies on a decision of Apex Court in Rameswarlal Chaudhury v. Ram Niranjana Mour, 1995 Supp. (3) SCC 44, wherein it was held as under:

'Rent Control and Eviction - Assam Urban Areas Rent Control Act, 1972 (17 of 1972) - Section 5(4) - Tenant cannot deposit rent into Court without first tendering

it to the landlord.'

The learned Counsel has not shown me that Section 5(4) of the Assam Act is analogous to the provisions of Section 9 of A.P. Rent Control Act. As such, this judgment is wholly inapplicable.

12. Similarly he has relied upon the Apex Court in *Ram Bagas Taparia v. Ram Chandra Pal*, 1988 (2) RCR 596 (SC), wherein it was held as under:

'[West Bengal Premises Tenancy Act, 1956](#), Sections 4(2), 17(1) and 17(4) - Finding of Fact-Non-payment of rent-suit for ejectment on ground of default-Tenant had already deposited rent in the Court of Rent Controller-Despite that tenant held guilty of default-Tenant should have withdrawn the amount and deposited afresh in accordance with provisions of Sections 17(1) and 17(4) - Finding effect by Court below that tenant was guilty of default-No ground to re-agitate the point in appeal by special leave under Article 136 of Constitution.'

13. This is a case under the [West Bengal Premises Tenancy Act, 1956](#). The learned Counsel has not shown me whether this section is in pari materia/analogous to Section 9(3) of the Act. That was a case where the tenant has illegally deposited the rent. In the present case the tenant is regularly depositing the rent under Section 9(3) and (4) of the Act. This judgment on facts and on provisions are not applicable.

14. Keeping in view the totality of the facts and in view of the fact that the respondent-tenant has been depositing the rents continuously as directed by the Rent Controller in RCC No-22/1981, dated 29-10-1981 and that the civil suit filed by the petitioner in OS No. 157/1981 on the file of the Principal District Munsif, Machilipatnam, against the third party with regard to the title of the suit property, is still subjudice in AS No.34/1991 on the file of the Additional District Court, Krishna, the respondent has shown sufficient cause for non-deposit of rents under Section 11(4) of the Act.

15. There is no illegality or irregularity in the order passed by the Courts below. The CRP is accordingly dismissed. No costs.

