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Shaik Rasool Vs. Rathi Mohan Rao

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Court : Andhra Pradesh

Decided On : Oct-15-1999

Reported in : 2000(1)ALT123

Judge : G. Bikshapathy, J.

Acts : Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 - Sections 10

Appeal No. : C.R.P. No. 880 of 1993

Appellant : Shaik Rasool

Respondent : Rathi Mohan Rao

Advocate for Def. : P.V.R. Sarma, Adv.

Advocate for Pet/Ap. : M.V. Ramana Reddy, Adv.

Disposition : Petition dismissed

Judgement :

G. Bikshapathy, J.

1. The C.R.P. is filed challenging the orders of the learned Subordinate Judge, Nellore in R.C.A. No. 18/1985, dated 10-2-1993 setting aside the orders of the learned Rent Controller, Nellore in R.C.C. No. 66/1980, dated 29-11-1985.

2. The petitioner is the tenant. Respondent-landlord filed an application in R.C.C. No. 66/1980 for eviction on the ground of wilful default. The said application was allowed (sic. dismissed) by the learned Rent Controller by an order dated 29-11-1985, against which an appeal was filed by the tenant (sic. landlord) in R.C.A. No. 18/1985. The said appeal was allowed on 10-2-1993 holding that the tenant had committed wilful default in payment of rent, against which the present revision has been filed.

3. The learned senior Counsel for the petitioner submits that the order of the lower appellate Court is wholly erroneous and contrary to law. He submits that the finding of the appellate Court that the rent was Rs. 60/- and not Rs. 15/- is not based on any evidence and therefore such a finding is liable to be disturbed. On the other hand, he also submits that the deposition of the landlord in civil suits clearly confirmed that the tenant has been paying Rs. 15/- per month and therefore the appellate Court ought to have relied on the said statement and erred in discarding this piece of evidence. He relied on the judgment of the Supreme Court reported in Modern Hotel, Gudur v. K. Radhakrishnaiah, : [1989]2SCR725 . On the other hand, the learned Counsel for the respondent-landlord submits that the deposition given in the civil suit which is unconnected with the facts of the present case, cannot be relied on and the parties have to prove the rent paid during the subsistence of lease is the criteria. In the instant case, it was the contention of the tenant that he has been paying the rent @ Rs. 15/- per month whereas it is the stand of the landlord that the tenant has been paying Rs. 60/- per month. On the basis of the evidence, the lower appellate Court found that the agreed rent was Rs. 60/- and not Rs. 15/-. Therefore, there was a wilful default in payment of rent and the order of the lower appellate Court cannot be said to be found fault with, He relied on number of decisions. He also relied on the judgment of this Court in Juvvaladinne Venkaiah v. Pathi Mohan Rao, CRP No. 2527/89, dated 19-4-1996 delivered by C.V.N. Sastri, J. in identical and similar situations. In the said case and in the present C.R.P. the landlord is the same person. Tenants are different. A similar stand was taken by the tenant in the earlier case stating that the rent was Rs. 50/- whereas the case of the landlord was Rs. 100/-. The Rent Controller Court found that there was a wilful defualt as the rent payable was Rs. 100/-, against which an appeal was carried. The appellate authority placing

reliance on the rental deed and also the evidence of P.W.I came to the conclusion that the rent was Rs. 100/- and that not relying on Exs.13-1 and B-2 namely the depositions of the landlords in the civil suits for getting protection under the provisions of A.P. Act 7 of 1977 cannot be said to be illegal or contrary to law. There is no dispute about the fact that the landlord filed an application on the ground of the wilful default. According to the landlord, the rent payable was Rs. 60/- per month and according to the tenant the rent payable was Rs. 15/-. The Rent Controller after considering the matter held that the rent payable was Rs. 50/- and that there was no wilful default. The learned appellate Court considered this matter with reference to the rental agreement and also the deposition of the scribe and other witnesses came to the conclusion that the rent payable was Rs. 60/- per month. The lower appellate Court refused to rely on Exs.B-1 and B-2 on the ground that the statement made by the landlord in another civil suit is not conclusive proof of payment of rent. In the rent control proceedings, it has to be independently established. The lower appellate Court is entitled to re-appreciate the evidence and come to the conclusions which are fair and reasonable. The finding of fact recorded by the lower appellate Court that the rent payable was Rs. 60/- was based on appreciation of evidence. May be upsetting the findings of the original Court, yet, the reasons assigned by the appellate Court for coming to such conclusions cannot be said to be illegal or contrary to law. Moreover, the finding of fact recorded by the appellate Court after appreciation of the evidence is not susceptible for interference by exercising the revisional jurisdiction of this Court. Since it is a finding purely on appreciation of the evidence on record, I am not inclined to interfere with the order of the appellate Court. More over the judgment rendered in Juvvaladinne Venkaiah's case (2 supra), aptly applies to the facts of this case. Considering the facts and circumstances of this case, I am of the view that the order of the lower appellate Court cannot be interfered with. Accordingly, I find no merits in the C.R.P.

4. The petitioner-tenant shall vacate the premises within a period of three months from to-day. The C.R.P. is dismissed. No costs.

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