***HON'BLE SRI JUSTICE P.S. NARAYANA**

+CIVIL REVISION PETITION No.6430 of 2006
and
CIVIL REVISION PETITION No.55 of 2008

% 31-5- 2010

CIVIL REVISION PETITION No.6430 of 2006

Between:
#Omkar Tele … Petitioner/Respondent
Respondent-Tenant

And

$1. Mohd. Abdul Rahman and 12 others … Respondent/Appellants/
Petitioners-landlords

CIVIL REVISION PETITION No.55 of 2008

Between:
1. Mohammed Abdul Rahman
and 12 others. … Petitioners/Respondents/
Petitioners

And

Omkar Tele … Respondents/Appellants/
Respondent

!Counsel for the petitioner: Smt. Manjiri S. Ganu
Counsel for the respondents: Sri Hanumanthu Rajagopal Rao

<Gist:

>Head Note:

?Cases referred:
1. AIR 1985 Supreme Court 582
2. 2008 (4) ALT 147 (F.B.)
3. 2006 (1) ALT 111 (D.B.)
4. 2008 (6) ALT 645
5. 2007 (4) ALT 49
6. AIR 2004 Supreme Court 495
7. 2008 (6) ALT 446
8. 2000 (1) ALT 551
9. 2006 (1) ALT 423

10. AIR 1971 Andhra Pradesh 298
11. AIR 1983 Andhra Pradesh 244
12. AIR 2007 SC (Supp.) 74
13. 2008 AIR SCW 6201
14. AIR 2008 Supreme Court 773
15. (2010) 1 Supreme Court Cases 503
16. 2005 (4) ALD 249

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Date: May 31, 2010

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COMMON ORDER:

These two civil revision petitions are filed under Section 22 of the A.P. Buildings (lease, rent and eviction) Control Act, 1960 (hereinafter in short referred to as "Act" for the purpose of convenience) by the tenant and the landlords respectively as against the common order made in R.A.No.220 of 2002 and R.A. No.192 of 2002 being aggrieved of the portions of the order and the relief made in R.C.No.476 of 1998 on the file of IV Additional Rent Controller, Hyderabad.

2. In view of the commonality involved in both these civil revision petitions and in the light of the fact that both the R.As. aforesaid also had been disposed of by a common order by the learned Additional Chief Judge, City Small Causes Court, Hyderabad, the Appellate Authority, these civil revision petitions are being disposed of by a common order by this Court.

3. Heard Smt. Manjiri S Ganu, learned counsel representing tenant and Sri Hanumanthu Rajagopal Rao, learned counsel representing landlords.

4. Smt. Manjiri S Ganu, the learned counsel representing tenant would maintain that the order of eviction made by the Appellate Authority is not in accordance with law. The learned counsel also would maintain that the Appellate Authority had not appreciated that eviction petition had been thought of the landlords after six years after the order in the deposit of rent case Ex.B-29. The learned counsel also would maintain that the landlords never pleaded any ground of alleged failure of Rule 5 (4) in the eviction petition and when that being so the Appellate Authority cannot take aid of the same. The learned counsel also further pointed out to the evidence available on record and specifically pointed out to the chief-examination of P.W.1 and

would maintain that there is not even whisper about non-issuance of deposit. The learned counsel also would maintain that the Appellate Authority failed to appreciate the fact that there are no amounts due or payable as on the date of eviction petition inasmuch as the tenant has been complying with Ex.B-29 order throughout. Notwithstanding the said deposit up-to-date, the Appellate Authority ordered eviction on erroneous ground. The learned counsel also pointed out to the oral and documentary evidence available on record and the findings recorded by the Appellate Authority and also the learned Rent Controller, the original authority. The learned counsel also pointed out that the suit R.C.No.476 of 1998 was filed praying for eviction of the tenant on the ground of wilful default and the ground of securing alternative accommodation and on the ground of personal requirement. The learned counsel also would maintain that the learned Rent Controller negatived the ground of wilful default, but however, after recording findings at paras 12 and 13 came to the conclusion that the tenant had secured alternative accommodation and recorded further findings at paras 15, 16 and 17 and came to the conclusion that the *bona fide* personal requirement had been established and accordingly the eviction was ordered. The learned counsel also pointed out that the landlords and tenants, aggrieved by the same, had carried R.A.192 of 2002 and R.A. No.220 of 2002 respectively and the Appellate Authority came to the conclusion that the learned Rent Controller committed a grave error in ordering eviction on those grounds, but however, came to the conclusion that the ground of wilful default had been made out i.e., for the period from September 1992 till the end of June 1998 for 70 months and accordingly ordered eviction. The learned counsel would maintain that the C.R.P. filed by the landlords being aggrieved of the order negativing the other grounds to be dismissed and the C.R.P. filed by the tenant to be allowed. The learned counsel also would maintain that it may be prerogative of the landlord to choose the mulgi, but there is

no plea and there is no evidence and, hence, the burden expected to be by the landlord had not been discharged. Incidentally the memos and challans also had been pointed out. The learned counsel also relied on several decisions to substantiate her submissions.

5. *Per contra*, Sri Hanumanthu Rajagopal Rao, the learned counsel representing landlords would maintain that in the light of the clear evidence available on record, apart from wilful default, the eviction should have been ordered even on the ground of *bona fide* personal requirement and also on the ground of securing alternative accommodation. The mere fact that there are certain other mulgis may not alter the situation, since it is for the landlords to choose which premises would be suitable. Since it is the choice of the landlord to choose his own building, the findings recorded in this regard cannot be sustained. The learned counsel also pointed out to the availability of alternative accommodation and, hence, negativing the reliefs on those grounds cannot be sustained. The learned counsel also would maintain that in the light of the convincing reasons recorded by the Appellate Authority while ordering eviction on the ground of wilful default, the said findings are to be confirmed. The learned counsel also placed strong reliance on certain decisions to substantiate his submissions.

6. In the light of the submissions made by the counsel on record, the following points arise for consideration in these civil revision petitions.

(1) Whether the findings recorded by the learned Additional Chief Judge, City Small Causes Court, Hyderabad, in R.A.No.192 of 2002 and R.A. No.220 of 2002 by a common order to be disturbed or to be confirmed in the facts and circumstances of the case?

(2) If so, to what relief the parties would be entitled?

7. **Point No.1**:

For the purpose of convenience, the parties hereinafter would be referred to as landlords and tenant as shown in R.C.No.476 of 1998.

8. Averments made in the R.C. No.476 of 1998 as hereunder:

The petitioners-landlords are the owners and landlords of the property bearing mulgi No.5-2-1021 situated at Mozamjahi Market, Hyderabad and the respondent is tenant on a monthly rent of Rs.100/-. The tenancy is month to month as per the English calendar and the rent is payable in advance.

9. It is also averred that the respondent-tenant was willful defaulter in payment of rents from September 1991 onwards. The petitioners-landlords, in order to cover the default committed by him, had filed R.C.No.205 of 1992 on the file of IV Additional Rent Controller, Hyderabad. The respondent-tenant was permitted to deposit the rents from September 1991 to August 1992. The respondent-tenant was further directed to tender the rent from September 1992 onwards to the petitioners-landlords directly and in case of refusal, the respondent-tenant was permitted to deposit the rent. The respondent-tenant failed to comply with the orders of the court and without tendering the rent or sending through M.O., the respondent-tenant had started depositing the rents directly and thereby committed default from September 1992 to June 1998.

10. Further it is averred that the respondent-tenant is having his own mulgi bearing No.5-2-733, New Osmangunj, Hyderabad, and the same was let out to third person. The respondent-tenant, instead of keeping the same for himself, let out the same to third parties on higher

rents. The respondent-tenant also let out the property to different tenants at Risala Abdullah, Osmangunj, Hyderabad, by collecting huge amount as deposit and, hence, the respondent-tenant secured alternative accommodation.

11. It is also further averred that petitioner No.4 was intending to commence electrical appliances and general goods business in the petition mulgi. The petitioners are not in possession and enjoyment of their own property except the petition mulgi. The petitioners-landlords demanded the respondent-tenant to vacate the premises. The respondent-tenant promised to vacate, but failed to comply with the same.

12. Respondent-tenant filed counter as hereunder:

The respondent-tenant was not aware whether P6 to P13 are the owners of the petition building and there was no attornment of tenancy and as such there was no jural relationship of tenancy. It was admitted that the rent was Rs.100/- per month. The petitioners' vendor collected rents up to August 1991 and subsequently he refused to receive the rents and informed the respondent-tenant that he had sold the petition schedule premises to respondents 1 to 3 and one Mohd. Afzal Rasheed. The respondent filed R.C.No.205 of 1992 on the file of IV Additional Rent Controller for deposit of rents and was depositing the rents since September 1991 till today.

13. It is denied that the respondent-tenant had secured alternative accommodation at premises No.5-2-733, New Osmangunj, Hyderabad. The said premises was purchased by the respondent-tenant about 15 years back and it is old house wherein one Praveen Kumar Gupta was residing as tenant. As the building was old, the respondent-tenant reconstructed the same and let out the same to the tenant as per the provisions of Section 12 of the Act. The respondent-tenant is not liable to be evicted on the same ground.

14. The first petitioner had demanded enhancement of rent and huge pagdi amount and the respondent-tenant failed to comply the same. The allegation of personal requirement of 4th petitioner is vague. The petition building is having five mulgies on the ground floor without four back halls in the first floor. The petitioners are in possession of mulgi No.5-2-1023 wherein they were carrying on zarda business and storing materials in the first floor and using the same for commercial purpose. As such, the requirement of the petitioner is not legally tenable. The petitioners are owners of house No.20-4-662 situated at Shah Gunj Chowk consisting of six commercial mulgies and residential house in the first floor. Out of six mulgies which bear M.No.20-4-662/1 to 6, the petitioners-landlords were carrying business in two mulgies. In one of the mulgies zarda business is being carried out and in another mulgi, there was a Star Enterprises and also Sattar Binding Works. The petitioners were also owners of H.No.5-2-701 Risala Abdullah, Hyderabad and petitioner No.4 was carrying on business under the name and style of Liberty Book Manufacturing with the help of other petitioners. Apart from it, petitioners were also getting huge rents from other tenants not only at petition property, but also from Shahgunj property and other places.

15. Further it is stated that abutting the petition schedule premises, there was a staircase, which is an open space and there is 10' wide frontage and 15' wide in length and the same is not in use. If really the petitioners intend to carry on business of their own, they can utilize the said space by making necessary repairs. Hence, the petition is liable for dismissal.

16. Before the learned Rent Controller, the following points had been formulated:

(1) Whether the respondents are committed wilful default in payment of rents from September 1992 to June

1998?

(2) Whether the respondent secured alternative accommodation at premises No.5-2-733, New Osmangunj, Hyderabad?

(3) Whether the petitioner No.4 requires the petition premises bona fidely for carrying electrical appliance and general good business?

17. The learned Rent Controller examined the first petitioner as P.W.1 and further recorded the evidence of P.W.2 and Exs.A-1 to A-16 were marked. The respondent-tenant examined himself as R.W.1 and R.W.2 also was examined and Exs.B-1 to B-80 were marked.

18. Before the learned Rent Controller, the under noted evidence had been recorded and the documents had been marked.

Appendix of evidence
Witnesses examined

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For petitioners

P.W.1: Mohammed Abdul Rahman
P.W.2: Mohd. Abdul Bari

For respondent:

R.W.1: Omkar Tele
R.W.2: Praveen Kumar Gupta

Documents marked

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For petitioners:

Ex.A-1: Letter of attornment
Ex.A-2: Postal receipt
Ex.A-3: Tax payment receipt
Ex.A-4: Rough sketch plan
Ex.A-5: Photograph with negative
Ex.A-6: Envelop cover
Ex.A-7: Wedding card
Ex.A-8: Translation of Ex.A-7
Ex.A-9: Envelope cover

Ex.A-10: Wedding card
Ex.A-11: Translation of Ex.A-10
Ex.A-12: Envelope cover
Ex.A-13: Wedding card
Ex.A-14: Translation of Ex.A-10
Ex.A-15: Certified copy of sale deed dt.23.8.76
Ex.A-16: Invitation card

For respondent:

Ex.B-1: Notice
Ex.B-2: Reply notice dt.2.10.91
Ex.B-3: Notice dt.17.11.91
Ex.B-4: Invitation card
Ex.B-5 to : M.O. commission receipts and M.O. coupons Ex.B-20
Ex.B-21: Office copy of legal notice dt.13.2.92
Ex.B-22: M.O. commission receipt
Ex.B-23: Refused M.O. coupon
Ex.B-24: Triplicate challan
Ex.B-25: Letter dt.18.2.92
Ex.B-26: Letter
Ex.B-27: Postal receipt
Ex.B-28: Returned postal cover
Ex.B-29: Certified copy of order in R.C.205/92
Ex.B-30 to : Triplicate challans Ex.B-75
Ex.B-76: Rent receipt
Ex.B-77 & : Receipts Ex.B-78
Ex.B-79: Office copy of reply notice dt.25.2.92
Ex.B-80: Certified copy of ledger extract.

19. As already aforesaid while negativing the ground 'wilful default' on other grounds eviction was ordered by the learned Rent Controller. Being aggrieved of the respective portions of the said order, two appeals, R.A. No.192 of 2002 and R.A.No.220 of 2002, had been preferred and the learned Appellate Authority at para 21 formulated the under noted points for consideration.

(1) Whether the tenant committed default in payment of

rent from September 1992 till the end of October 1998 for 70 months at the rate of Rs.100/- per month and failure to intimate about deposit of rent to the credit of R.C.No.205 of 1992 amounts to wilful default?

(2) Whether the tenant secured a building alternative to the schedule premises subsequent to commencement of tenancy if so, the premises bearing door No.5-2-733, New Osmangunj amounts to securing alternative accommodation and is the tenant liable for eviction under Section 10(2)(v) of the Act?

(3) Whether the requirement pleaded by the landlords for occupation of 4th landlord is true, honest and bona fide if so, the tenant is liable to be evicted from the schedule premises under Section 10 (3)(a)(iii) of the Act?

20. The Appellate Authority, after recording elaborate reasons commencing from paras 22 to 48, came to the conclusion that the learned Rent Controller committed a grave error in ordering eviction on the other grounds, but however, reversed the findings of the learned Rent Controller as far as the ground of wilful default is concerned held that on facts the ground of wilful default had been established and ordered eviction. Aggrieved by the same, the present civil revision petitions specified supra, had been preferred.

21. The burden is on the tenant when eviction had been prayed for under Section 10(2)(i) of the Act to establish that he had not committed any default, much less, wilful default in payment of rent. It is not in controversy that the tenant obtained permission to deposit rent to the credit of R.C. No.205 of 1992. Ex.B-29 is the relevant document to be appreciated whether the blow of wilful default can be warded off by the tenant in the light of the same. This is the certified copy of the order in R.C.No.205 of 1992, dated 17th August 1992 wherein it was specified

that the tenant is directed to deposit monthly rents of Rs.100/- per month to the credit of R.C. from September 1991 onwards till this month i.e., August on or before 31.8.1992. The petitioner tenant was permitted to deposit future rents month to month to the credit of RC on due dates or to the respondents herein directly. In case, the respondents refused to receive rent, he is at liberty to deposit the monthly rent to the credit of RC.

22. The order being self explanatory, the same need not be further elaborated. The specific stand taken by the landlords is that no notice of deposit of rent had been given to them after obtaining the order under Section 8 (5) of the Act in compliance of Rule 5(4) of the Rules. The evidence of P.W.1 is clear and categorical about the failure to issue notice of deposit of rent every month after obtaining the order Ex.B-29. P.W.1 deposed that the tenant was not paying rents regularly and committed default in payment of rent from 1991 onwards and the tenant did not pay rents from September 1992 to June 1998 for a period of 70 months at the rate of Rs.100/- per month despite demands. P.W.1 had not specifically deposed in chief-examination. The same had been elicited in cross-examination.

23. R.W.1 in chief-examination asserted that he was depositing rent regularly into Court and strongly relied on Exs.B-30 to B-75, triplicate challans, for the period from August 1992 to March 1999. No doubt, it was suggested that R.C. No.205 of 1992 was thought of only to get over the ground of wilful default and the same had been denied and relating to non-intimation also when it was suggested, the same was denied. R.W.1 voluntarily deposed that he was giving intimation orally. The inconsistent stands taken by the tenant in the pleading and evidence had been taken note of by the Appellate Authority and the procedure to be followed under Rule 5 (4) and Rule 16 of the Rules also had been taken note of. Ultimately, the learned Appellate Authority came to the conclusion that the learned Rent Controller had

not considered the effect of failure to issue notice of deposit under Rule 5(4) read with Rule 16 of the Rules and committed grave error in dismissing the eviction petition under Section 10 (2)(i) of the Act and inasmuch as the ground of wilful default had been established, the learned Appellate Authority came to the conclusion that the said finding of the Rent Controller to be reversed and on that ground eviction to be ordered.

24. Reliance was placed on the decision in **S. Sundaram Pillai v. V.R. Pattabiraman**[1] wherein the Apex Court at paras 21 to 25 observed as hereunder.

> "Before, however, going into this question further, let us find out the real meaning and content of the word 'wilful' or the words 'wilful default'. In the book A Dictionary' of Law by L. B. Curzon, at page 361 the words 'wilful' and 'wilful default' have been defined thus:
>
> 'wilful' - deliberate conduct of a person who is a free agent, knows what he is doing and intends to do what he is doing.
>
> 'wilful default' - Either a consciousness of negligence or breach of duty, or a recklessness in the performance of a duty.
>
> In other words, 'wilful default' would mean a deliberate and intentional default knowing full well the legal consequences thereof. In Words and Phrases, Volume 11-A (Permanent Edition) at page 268 the word 'default' has been defined as the non-performance of a duty, a failure to perform a legal duty or an omission to do something required. In volume 45 of Words and Phrases, the word 'wilful' has been very clearly defined thus :
>
> 'wilful' - intentional: not incidental or involuntary;
> - done intentionally, knowingly, and purposely, without justifiable excuse as distinguished from an act done carelessly; thoughtlessly, heedlessly or inadvertently;
>
> - in common parlance word 'wilful' is used in sense of

intentional, as distinguished from accidental or involuntary.

P. 296-'wilful' refers to act consciously and deliberately done and signifies course of conduct marked by exercise of volition rather than which is accidental, negligent or involuntary.

In Volume III of Webster's Third New International Dictionary at page 2617, the word 'wilful' has been defined thus:

governed by will without yielding to reason or without regard to reason obstinately or perversely self-willed

The word 'default' has been defined in Vol. I of Webster's Third New International Dictionary at page 590 thus:

to fail to fulfil a contract or agreement, to accept a responsibility ; to fail to meet a financial obligation.

In Black's Law Dictionary (Fourth Edn.), at page 1773 the word 'wilful' has been defined thus:

'wilfulness' implies an act done intentionally and designedly; a conscious failure to observe care; conscious; knowing; done with stubborn purpose, but not with malice.

The word 'reckless' as applied to negligence, is the legal equivalent of 'wilful' or 'wanton'.

Thus, a consensus of the meaning of the words 'wilful default' appears to indicate that default in order to be wilful must be intentional, deliberate, calculated and conscious, with full knowledge of legal consequences flowing therefrom. Taking for instance a case where a tenant commits default after default despite oral demands or reminders and fails to pay the rent without any just or lawful cause. it cannot be said that he is not guilty of wilful default because such a course of conduct manifestly amounts to wilful default as contemplated

either by the Act or by other Acts referred to above."

25. In **Mohammed Izhar Ali v. Smt. Olive founseca (died per L.Rs. and others**[2] the Full Bench of this Court following the view expressed in N.D. Thadani (dead) by Lrs. V. Arnavaz Rustom Printer, Mumbai and another (2004 (3) ALT 1 (SC)) answered the reference in the following terms.

> "Therefore, the reference has to be and is answered accordingly in the following terms:
>
> (1) Though Section 8 of the Andhra Pradesh Buildings (Lease, Rent and eviction) Control Act, 1960 is directory and optional, a tenant taking advantage and benefit of the said provision has to strictly and mandatorily comply with the procedure prescribed under Rule 5 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Rules, 1961.
>
> (2) While deposit of rent in terms of the provisions of the Act and the Rules amounts to valid tender of rent to the landlord, the failure to comply with sub-rule (3) of Rule 5 requiring delivery of a copy of the challan for the deposit of rent in the office of the controller or the appellate authority, as the case may be, so as to enable the Controller or the appellate authority to cause maintenance of proper accounts under sub-rule (5)and give notice of deposit to the person or persons concerned within seven days of such delivery of copy of the challan in one or the other of the modes specified in Rule 16 (paying within a reasonable time the prescribed fee as per Rule 17 for service of such notice, if the tenant himself did not serve such notice directly on the landlord or the advocate appearing for the landlord)under sub-rule (4), amounts to wilful default in making valid payment or lawful tender of the rent by the tenant to the landlord;

(3) Sub-rule (1) and/or sub-rule (3) of rule 5 of Rules do not prescribe any time limit for depositing rent after obtaining permission for such deposit from Rent Controller under section 8 (5) of the Act. A perusal of sub-rules (2) and (3) of Rule 5 of rules, however, shows that after obtaining permission a tenant has to deposit rent every month and as required under sub-rule (3) of Rule 5 of the Rules shall deliver rent challan in the office of Rent Controller or appellate authority as the case may be. A perusal of Section 10 (2) (i) of the Act would show that in the absence of any agreement, rent has to be paid by the last day of month next following that for which rent is payable or if there is agreement of tenancy within 15 days after expiry of time fixed in the agreement. This indicates some guidance as to reasonable time for deposit of rent. Thus, where a tenant obtains an order to deposit rent, same shall be deposited at least by the last day of the month following that for which rent is payable and rent challan shall be delivered in the office of Controller within a reasonable time so that Rent controller can take necessary action for service of notice of deposit under sub-rule (4) of Rule 5 of the Rules within seven (7) days of such delivery. In the absence of compliance in so depositing rent and delivering challan in the office of controller, tenant shall be deemed to have committed wilful default, as per conclusions on question Nos. 1 and 2 above. (4) There is no conflict between section 10 (2) (i) and Section 10 (2) proviso on one hand and Rule 5 on the other."

26. The Full Bench, in fact, had referred to the under noted decisions:

(1) Pratap Singh v. Shri Krishna Gupta and others (AIR 1956 SC 140)

(2) Administrator, Municipal Committee Charkhi Dadri and

another v. Ramjilal Bagla and others ((1995) 5 SCC 272.

(3) Kailash v. Nanhku and others (2005 (3) SCJ 303 = 2005 (4) ALT 30.2 (DN SC)

(4) M.P. Purushothaman v. Govt. of A.P. and others ((2004) 11 SCC 547.

(5) Ganesh Prasad Sah Kesari and another v.Lakshmi Narayan Gupta ((1985 3 SCC 53).

(6) Shaikh Salim Haji Abdul Khayumsab v. Kumar and others (2006 (1) ALT 1 (SC).

(7) Bharat Petroleum Corporation Limited v. N.R. Vairamani and another ((2004) 8 SCC 579 = 2005 (1) ALT 32.1 (DN SC).

(8) Vemuri Somisetti v. M/s. Vagicherla Guravaiah and sons (1975 (2) An.W.R. 370)

(9) Nagula Konda Marayya v. P.V.G. Raju (1985 (1) An.W.R. 433)

(10) Nimmagadda Krishna Hari and another v. Manepalli Mangamma (2001 (6) ALT 765 (DB).

(11) Hari Prasad Badruka v. T. Lakshmi and others (2000 (1) ALT 551).

(12) Smt. Amavaz Rustom Printer, Mumbai and another v. N.D. Thadani and another (2001 (4) ALT 509).

(13) J.M. Benedict v. Mithileswari Jaiswal (2002 (4) ALT 509).

(14) Vinukonda Venkata Ramana v. Mootha Venkateswara Rao and another (2001 (5) ALT 479 (F.B.).

(15) Fakruddin Ali Tarwala v. Ved Prakash Mishra and others (2002 (6) ALT 421).

(16) Munnalal and others v. Englarg Pershad (2007 (4) ALT 49).

(17) N.D. Thadani (dead) by Lrs. V. Amavaz Rustom Printer,

Mumbai and another (2004 (3) ALT 1 (SC)).

(18) Suganthi Suresh Kumar v. Jagdeeshan (2002 (1) ALT (Crl.) 250 (SC).

(19) Ammena Bee v. Noorjahan Bedum and others (2001 (1) ALT 510).

(20) Linga Pentamma and others v. T. Jagadishwar Rao and others (2006 (1) ALT 111 (D.B.).

(21) E. Palanisamy v. Palanisamy (2002(7) Supreme 574).

(22) Balwanth Singh and others v. Anand Kumar Sharma and others (2003 (6) ALD 69 (SC) = 2003 (3) ALT 17.3 (DN SC).

(23) Lakhan Rai v. Ram Kumar Aggarwal (AIR 1979 SC 824).

(24) Duli Chand v. Maman Chand ((1980) 1 SCC 246).

(25) Rakapalli Raja Rama Gopala Rao v. Naragani Govinda Sehararao and another (AIR 1989 SC 2185).

(26) M. Bhaskar v. J. Venkatarama Naidu ((1996) 6 SCC 228 = 1996 (4) ALT 32 (DN).

(27) Kanigalupula Subbamma v. Jangala Venkata Ramamma (1965 (2) An.W.R. 381 (D.B.).

(28) Dekaya alias Dakaiah v. Anjani (1996 (1) ALT 1 (SC).

(29) Maiku v. Vilayat Hussain through L.Rs. (AIR 1986 SC 1645).

(30) Kuldeep Singh v. Ganpat Lal and another ((1996) 1 SCC 243).

(31) Inter-State Transport Agency v. Bibi Habiba Khatoon ((1998) 4 SCC 70).

27. Reliance also was placed on the decision in **Linga Pentamma and others v. T. Jagadishwar Rao and others**[3].

28. The aspect of burden of proof and the acceptance of rent by landlord under protest had fallen for consideration in **S. Pentaiah and others v. Khatija Bee and others**[4].

29. In **Munnalal (died) and others v. Engiarg Pershad**[5] it was observed at paras 9, 10, 11 and 12 as hereunder.

> "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 Section 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. 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.
>
> 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

others and by a division Bench of this Court in a judgment reported in Linga Pentamma and others. v. T. Jagadiswar Rao and others and also by the Supreme Court in a judgment reported in n. D. Tandani (dead) by LRs v. Arnavaz rustom Printer and another.

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 wilful default."

30. Further reliance was placed on the decision in **N.D. Thandani (dead) by LRs., v. Arnavaz Rustom Printer and another**[6] wherein at paras 7 and 8 it was observed as hereunder.

"The case at hand projects a picture where in spite of the leaning of the law in favour of the tenant, if anyone deserves sympathy it is the landlord and not the tenant. As already noticed, this is the third round of litigation complaining of default in payment of rent by the tenant. In the first round of litigation the rate of rent was alleged by the landlord to be Rs.160/- per month which was denied by the tenant who pleaded the rate of rent to be Rs.80/- per month only. In the litigation which ended in the apex court, the rate of rent was finally adjudged to have been Rs.160/- per month and not Rs.80/- as was pleaded by the tenant. Not only does the law itself require the tenant to pay or tender the rent month to month, the order of this Court mandated the tenant to clear all the arrears of rent within two months and thereafter to deposit the rent month by month and strictly observe compliance with the orders of the Supreme Court. The tenant did not even thereafter comply with the provisions of Rule 5. Huge amount of arrears

accumulated, which were cleared in one go. Even other deposits were not regularly made. The tenant did not keep the landlords informed of the deposits either directly or by complying with the provision of the Rule. The obligation of the tenant to pay or tender the rent cannot be said to have been discharged unless and until the landlords were posted with the information along with particulars enabling them to withdraw the amount. The legal notices served by the landlords were not responded to in the desired manner so as to put an end to their grievance. A claim for eviction founded on the simple ground of default in payment remained pending for years, obviously because of the reluctance and the procrastinating tactics of the tenant. If this is not 'wilful default' then what else can it be? We are clearly of the opinion that the High Court has rightly held the tenant to be a chronic wilful defaulter. The decree for eviction is fully justified.

Before parting, and, in fairness to the learned counsel for the parties, we may place on record a submission made on behalf of the appellant that in spite of the tenant having defaulted in payment of rent for any period prior to the institution of the suit, if the arrears have been cleared (though belatedly) and the landlord has accepted the same, the default, if any, stands wiped out and the cause of action for seeking eviction of the tenant based on the preceding default does not survive. Reliance was placed on a Full Bench decision of Andhra Pradesh High Court in Vinukonda Venkata ramana vs. Mootha Venkateswara Rao and am.- AIR 2002 AP 52. This decision takes notice of two decisions of this Court (both by two judges benches) reported as Dakaya Alias dakaiah vs. Anjani (1995) 6 SCC 500 and k. A. Ramesh and Ors. vs. Susheela Bai (Smt.)and Ors.- (1998) 3 SCC 58. An earlier decision by a Five-Judges Bench of the Andhra pradesh High Court, namely, Pallapothu

narasimha Rao and Anr. vs. Kidanbi Radhakrishnamacharyulu - AIR 1978 AP 319 was brought to the notice of the Full Bench deciding Vinukonda Venkata Ramana's case (supra) but the Full Bench commented that the five-Judges Bench decision in Pallapothu Narasimha Rao and Anr. (supra) is not good law because it fails to take note of the Supreme court's decision in the case of Dakaya Alias Dakaiah (supra). The learned counsel for the respondent pointed out that the Five-Judges bench decision of Andhra Pradesh High Court in Pallapothu Narasimha Rao and Anr. 's case (supra) is based on a Constitution Bench judgment of this Court in Mangilal vs. Suganchand Rathi - (1964) 5 SCR 239, which was not noticed in the two Supreme Court decisions noted and followed by the Full Bench in Vinukonda Venkata Ramana's case (supra). The learned counsel for the respondent further submitted that this Court should hold the decision of the Andhra Pradesh High Court in Vinukonda Venkata Ramana's case not to be good law in view of the larger Bench decision of that very court in Pallapothu Narasimha Rao and Anr. The issue is substantial and we would have certainly going into it but we find the present case is not an appropriate case for doing so. It is not the finding arrived at either by the trial court or by the High Court that the amount of arrears had stood paid by the tenant to the landlord prior to the initiation of proceedings for eviction by the latter. The question of examining the effect of such payment does not, therefore, arise in the present case. On the contrary, the finding is that the tenant was and has continued to remain in arrears up to the date of the initiated of the proceedings, and the only question arising for decision in the present case is whether the default can be said to be 'wilful' or not."

31. The scope and ambit of revisional jurisdiction had been explained in **Challa Maheswara Rao and another v. Vadagam Venkata Subba Rao and another**[7].

32. Reliance also was placed on the decision in **Hari Prasad**

Badruka v. Tellukunta Laxmi and others[8] wherein at paras 11 and 14 the learned Judge observed as hereunder.

> "Deposit of rent by a tenant into court, as per the provisions of Section 8 of the Act, is for the benefit of the landlord, so that the landlord can withdraw the amount immediately after it is deposited. If the tenant who makes a deposit does not file the challans evidencing the deposit into the bank into Court, the landlord cannot have the benefit of amount deposited by the tenant, and therefore it is as good as the tenant not paying the money to the landlord. Though Rule 5 of the Rules does not stipulate any time within which the tenant should file the challans evidencing the deposit of money in the Bank into the court, by necessary implication it should be taken that he should file the challans into the Court within a reasonable time from the date of deposit. It is well known that where no time is stipulated for performing an obligation the person who has to perform the obligation has to perform it within a reasonable time. The tenant who deposits money into Bank, as per the order of the court under Sections 8,9 and 11 is under an obligation to file the challans evidencing deposit of money in Bank, into the Court as per Rule 5 (3) of the Rules. Rule 5 (4) of the rules contemplates notice of deposit being given to the person (s) concerned within seven days of delivery of the challan by the tenant. If the tenant himself gives a notice to the landlord, or if the landlord is appearing through a Counsel to the Counsel for the landlord, there is no further need for the rent Controller to serve notice of deposit on the landlord. If no such notice is given, the tenant has to deposit process fee for the court to serve the notice of deposit on the person (s) concerned. If process fee is not deposited, the Court cannot serve notice of deposit on the landlord. In this case, admittedly, notice of deposit was not given to the landlord or his Counsel and it is not even the case of the tenant that process fee was deposited, as per Rule 16 for sending notice of deposit to the landlord. Thus it is clear that the tenant has not complied with the provisions of Rule 5 (4) read with Rule 16 of the Rules, for the Rent Controller taking steps for service of notice of deposit on

the landlord, because without the tenant depositing the process fee for service of notice, Court cannot cause service of notice of deposit on the landlord.

When a tenant takes recourse to section 8 of the Act for deposit of rents into the Court, he has to follow the procedure prescribed therein. If he fails to deposit challans into Court and give notice of deposit or fails to deposit process fee to enable the Court to cause service of notice of deposit on landlord for a considerably long time, it cannot but be held that he becomes a wilful defaulter, thereby creating a right in the landlord seeking his eviction from the demised premises on the ground of wilful default."

33. Further reliance was placed on the decision in **Mohammed Gulam Mustafa v. Mohammed Abdul Jabbar**[9] and **Mallampalli Mallikarjuna Rao and another v. Godavarthi Seshamma and another**[10].

34. On a careful appreciation of the evidence available on record, this Court is thoroughly satisfied that inasmuch as the mandatory requirement as contemplated by the provisions of the Act and the Rules had not been satisfied. The reasoning adopted by the Appellate Authority in ordering eviction on the ground of wilful default cannot be found fault and the same is hereby confirmed. Further submissions had been made relating to securing alternative accommodation and also the ground of *bona fide* personal requirement.

35. It is no doubt true that the prerogative of the landlords to choose a particular building, but there should be a plea and there should be evidence in this regard and that is exactly the ground on which after recording findings in elaboration the Appellate Authority was not inclined to affirm the findings of the learned Rent Controller.

36. Reliance was placed on the decision in **Palichetty**

Latchanna v. Giduthuri Appa Rao[11]; **Rishi Kumar Govil v. Maqsoodan and others**[12]; **Shamshad Ahmad and others v. Tilak Raj Bajaj (D) by L.Rs. and others**[13]; **Yadvendra Arya and another v. Mukesh Kumar Gupta**[14] and **Uday Shankar Auadhyay and others v. Naveen Maheshwari**[15].

37. Yet another ground is that the tenant secured alternative accommodation in a building door No.5-2-733, New Osmangunj, Hyderabad, and let out the same to R.W.2. The premises was purchased about 15 years ago and the same became old and with the help of the tenant, the building was reconstructed and there was letting of two mulgies. The premises was acquired by the tenant under a registered sale deed. The tenant obtained the schedule premises on lease from Manik Rao Antoo, the original landlord and after his death his son Pasupathi Rao Antoo continued to be a landlord, but the actual date of commencement of tenancy had not been disclosed.

38. The tenant pleaded in the counter that he purchased the property bearing No.5-2-733, New Osmangunj, about 15 years back and it became old and it was demolished and reconstructed and the same was re-let to the tenant Praveen Kumar Gupta adhering to the mandatory provisions of Section 12 of the Act.

39. In **Satyanarayana v. Moizuddin Khan**[16] it was held at paras 12 and 16 as hereunder.

> "Be that as it may, the attornment of lease took place on 1-3-1989 and terms and conditions have been settled afresh by means of rental deed dated 1-7-1978. It cannot be believed by this Court that the respondent has no knowledge about the additional accommodation of the tenant and also the constructions thereon.
>
> I state here that tenant has acquired alternative building even prior to the attornment and such

> acquisitions made even prior to entering into the rental deed or attornment of the lease cannot be taken into consideration for the purpose of seeking eviction of the tenant. It is a case where both Courts have given concurrent findings without proper appreciation of the facts. They have not considered about the legal aspect that emanates from attornment of lease and execution of a rental deed. The acts which are prior to the attornment cannot be considered. In this case both Courts have committed error in taking into consideration the said aspect, which is prior to the attornment of lease and it cannot give rise to a cause of action for the present landlord to approach the Rent Controller seeking eviction on that ground. On a reappraisal of the entire material, I am of the considered view that both Courts have failed to look at the facts from proper angle and did not arrive at correct conclusions by considering the legal rights that flow from rental deed and attornment of lease. The past conduct of the tenant prior to attornment cannot be considered and the present landlord cannot take advantage thereof. That led to miscarriage of justice and the concurrent findings arrived at due to misappreciation of law and are liable to be set aside. Accordingly, I set aside the finding of fact arrived at by the Rent Controller that the additional accommodation acquired by the tenant can form the basis for eviction, which has been confirmed by the Appellate Court."

40. The landlords purchased the property in the month of September 1991, whereas the tenant purchased the property under original of Ex.A-15 prior to the attornment of the tenancy under Ex.A-1. Thus, acquiring a building will amount to securing alternative accommodation in view of the principle specified supra and thus on appreciation of evidence available on record, the said ground was reversed by the Appellate Authority.

41. The stand taken relating to *bona fide* personal requirement is that the landlords are in occupation of several mulgies. The Appellate Authority appreciated oral and documentary evidence available on

record and had taken into consideration the suppression of several material facts and arrived at a conclusion that it cannot be said that the ground of *bona fide* personal requirement had been established.

42. This Court, as a revisional court, had carefully gone through the evidence available on record and also the findings recorded by the Appellate Authority, since almost all the findings had been reversed i.e., the grounds on which the eviction had been ordered by the learned Rent Controller had been reversed and on yet another ground i.e., the ground of wilful default, the eviction had been ordered.

43. The Appellate Authority appreciated the evidence of P.Ws.1 and 2, R.Ws.1 and 2 and also Exs.A-1 to A-16 and Ex.B-1 to B-80 in proper perspective and recorded elaborate reasons. As already aforesaid, the finding of the Appellate Authority ordering eviction of the tenant on the ground of wilful default from September 1992 till the end of June 1998 for about 70 months cannot be found fault. Equally, the findings of the Appellate Authority reversing the findings of the learned Rent Controller relating to the other grounds also cannot be found fault for the reasons specified supra. Further, in the light of the limitations imposed on this Court as revisional court under Section 22 of the Act, this Court is not inclined to interfere with those findings recorded by the Appellate Authority and the said findings are hereby confirmed.

Point No.2:

44. In the result, these two civil revision petitions shall stand dismissed with costs. The tenant is granted two months time to vacate the premises.

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(P.S. NARAYANA, J)

Date: May 31, 2010
BSB
L.R. Copy to be marked

[1] AIR 1985 Supreme Court 582
[2] 2008 (4) ALT 147 (F.B.)
[3] 2006 (1) ALT 111 (D.B)
[4] 2008 (6) ALT 645
[5] 2007 (4) ALT 49
[6] AIR 2004 Supreme Court 495
[7] 2008 (6) ALT 446
[8] 2000 (1) ALT 551
[9] 2006 (1) ALT 423
[10] AIR 1971 Andhra Pradesh 298
[11] AIR 1983 Andhra Pradesh 244
[12] AIR 2007 SC (Supp) 74
[13] 2008 AIR SCW 6201
[14] AIR 2008 Supreme Court 773
[15] (2010) 1 Supreme Court Cases 503
[16] 2005 (4) ALD 249