

HON'BLE SRI JUSTICE R. SUBHASH REDDY

CIVIL REVISION PETITION Nos.
3774 of 2012, 3752 & 5311 of 2013

COMMON ORDER :

As all these revision petitions arise out of proceedings in Rent Control Case No.40 of 2008 on the file of the Rent Controller-cum-IV Additional Junior Civil Judge, Visakhapatnam between the same parties, they are heard together and are being disposed of by this common order.

C.R.P.No.3774 of 2012 is filed by the tenant, aggrieved by order dated 17.07.2012, passed in I.A.No.61 of 2012 in I.A.NO.133 of 2010 in R.C.C.No.40 of 2008. Respondent herein has filed the aforesaid RCC for eviction of petitioner/tenant on the ground that he committed default in payment of rents. It was his case before the Rent Controller that petitioner had taken the schedule premises on lease on a monthly rent of Rs.650/- on 01.01.1987 for residential purpose and he used to deposit the rents to the credit of landlord's savings bank account in State Bank of India, Maharanipeta branch, Visakhapatnam till August 1994 and thereafter, he failed to pay rents. Pleading default from September 1994, respondent has sought for eviction of petitioner from the petition schedule premises under the provisions of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (hereinafter referred to as 'the Rent Control Act'). In

the aforesaid petition filed by the landlord in the year 2008, petitioner has filed an application in I.A.No.133 of 2010 under Order 7 Rule 11 of CPC, seeking to reject the petition on the ground that the Rent Controller had no jurisdiction to entertain the said application, as the rent payable for the schedule premises is Rs.3,000/- per month. The said petition was filed on 26.04.2010, and as the petitioner was not ready for inquiry even after several adjournments, when the matter was listed on 07.03.2012, it was conditionally adjourned to 12.03.2012 for submitting arguments. On 12.03.2012, as the petitioner was called absent and failed to advance his arguments and as there was no representation on his behalf, petition was dismissed for default on 12.03.2012. I.A.No.61 of 2012 was filed under Order 9 Rule 9 r/w. Section 151 CPC, seeking to set aside the order of dismissal dated 12.03.2012, and the said application was dismissed by the Rent Controller by order dated 17.07.2012. As against the same, petitioner filed CRP.No.3774 of 2012 under Article 227 of the Constitution of India.

Respondent/landlord has filed application in I.A.No.20 of 2010 in the aforesaid RCC, seeking directions against the petitioner/tenant for deposit of arrears of rent. The said application was allowed by order dated 30.08.2012, directing the petitioner/tenant to pay arrears of rent at the rate of Rs.650/- per month within a period of 15 days from the date of order and shall

continue to pay future rents at the same rate on or before 10th of every succeeding month. When the said order was confirmed by the appellate Court i.e. the learned Senior Civil Judge-cum-Appellate Court of Rent Control Cases in RCA.No.9 of 2012 by order dated 12.02.2013, CRP.No.5311 of 2013 is filed.

Further, alleging that inspite of orders passed in I.A.No.20 of 2010, the rent and arrears of rent were not paid, respondent/landlord has moved an application under Section 11(4) of the Rent Control Act for eviction of petitioner/tenant. The Rent Controller at Visakhapatnam, by order dated 20.09.2012, ordered for stopping of all further proceedings in the petition and directed the petitioner to vacate the schedule premises within one month from the date of order. When the said order is confirmed by the appellate Court in RCA.No.22 of 2012 by order dated 12.02.2013, CRP.No.3752 of 2013 is filed under Section 22 of the Rent Control Act.

Heard Sri Venkateswara Rao Gudapati, learned counsel appearing for petitioner and Sri M.S.R.Subrahmanyam, learned counsel appearing for respondent.

In these revision petitions, it is contended by the learned counsel for petitioner that inspite of showing sufficient cause for his absence on 12.03.2012, Rent Controller has dismissed I.A.No.61 of 2012 without considering the same in proper perspective. It is

submitted that on 12.03.2012, when the matter was listed for arguments, due to sudden demise of the father-in-law of the Advocate on record, his Counsel could not attend the Court and that as the petitioner was also at Hyderabad on his urgent personal works, he could not attend the Court, and inspite of such explanation offered by the petitioner, the application for restoration of I.A.No.133 of 2010 was not considered. It is further submitted that though he was initially a tenant by paying rent at Rs.650/- per month, thereafter, there was an oral agreement to purchase the schedule premises and he had also advanced an amount of Rs.1,00,000/- with an understanding that the accrued interest of Rs.36,000/- per month i.e. at the rate of Rs.3,000/- per month should be adjusted towards rent. It is further submitted that he also spent an amount of Rs.10,00,000/- towards renovation, replacement and maintenance of the building, and as no landlord-tenant relationship exists, respondent is not entitled either for any arrears of rent or for eviction of petitioner under Section 11(4) of the Rent Control Act. It is further submitted that though there is a dispute with regard to tenancy itself, the Rent Controller and the appellate Court committed serious error in allowing the application for payment of arrears of rent and ordered eviction on the ground that the arrears of rent were not paid. The learned counsel has placed reliance on an order of reference passed by a Full Bench of this Court in the case of

Changanlal & others Vs. Narsingh Pershad [1]

On the other hand, it is submitted by Sri M.S.R.Subrahmanyam, learned counsel appearing for respondent that the petitioner herein obtained the residential premises belonging to him on a monthly rent of Rs.650/- and he was depositing such rents to the credit of his Savings Bank account, but he stopped paying rent and committed default, which necessitated the respondent to file RCC.No.40 of 2008 for eviction. It is submitted that in the year 2010 i.e. on 26.04.2010, petitioner has filed I.A.No.133 of 2010 under Order 7 Rule 11 of CPC, seeking to reject the petition disputing the quantum of rent alleging that the rent was Rs.3,000/- per month but not Rs.650/- as pleaded. It is submitted that inspite of several opportunities, as the petitioner herein was not ready for inquiry, the matter was adjourned several times, and when the matter was listed on 07.03.2012, it was conditionally adjourned to 12.03.2012 for submitting the arguments and even on 12.03.2012, the petitioner was not present nor was there any representation on his behalf, as such, it was rightly dismissed for non-prosecution. It is submitted that as the petitioner is trying to prolong the litigation and having filed I.A.No.133 of 2010, he failed to pursue the same inspite of giving number of adjournments, the Rent Controller has rightly dismissed the application in I.A.No.61 of 2012, which was filed for restoration of I.A.No.133 of 2010. It is

further submitted that having taken the schedule premises on rent at the rate of Rs.650/- per month, the petitioner had committed default in paying rents. It is submitted that the alleged oral agreement is a false and concocted one, only to dispute the quantum of rent and also the landlord-tenant relationship. It is submitted that as the petitioner has failed to pay rents inspite of the orders passed in I.A.No.20 of 2010, he has filed an application under Section 11(4) of the Rent Control Act for stopping further proceedings and to order for eviction.

Having heard learned counsel for the parties, I have also carefully gone through the orders passed by the Rent Controller, the Appellate Court and the other material placed on record.

In this case, it is not in dispute that the respondent is the landlord and the petitioner is the tenant of the petition schedule premises, which is a residential house. Petitioner has occupied the premises as a tenant by paying rent at Rs.650/- per month and he was directly remitting the rent to the credit of savings bank account of respondent. There is a specific allegation made by the respondent with regard to default in payment of rent by the petitioner. It is the case of petitioner that in view of his depositing Rs.1,00,000/-, there was an understanding to adjust the interest accrued thereon i.e. Rs.3,000/- per month towards rent, which is denied by the respondent. It is the case of petitioner that by entering into oral

agreement of sale, such an amount of Rs.1,00,000/- was advanced, and he also pleaded that a further amount of Rs.10,00,000/- was spent for making improvements to the petition schedule property. Neither any written agreement is produced by the petitioner nor any proof is filed to show that he paid Rs.1,00,000/- to the respondent. The alleged agreement of sale and payment of Rs.1,00,000/- by the petitioner, is denied by the respondent, in the absence of which, it is clear that the petitioner is continued in the premises only as a tenant, but not as a purchaser. When an application is filed either for deposit of arrears of rent or for eviction on the ground that arrears of rent are not deposited by the tenant under Section 11 of the Rent Control Act, the tenant, in the absence of any material, by merely disputing the tenancy, cannot be allowed to continue in possession. The allegation of entering into agreement of sale and receipt of Rs.1,00,000/- is denied by the respondent/landlord. In view of the plea of respondent, it is not possible to accept the plea of the petitioner, who is continuing as a tenant by paying rent at the rate of Rs.650/- per month, that he deposited Rs.1,00,000/- in cash and spent Rs.10,00,000/- towards improvements to the premises, without there being any written agreement to that effect. In any event, when an order is made by the Rent Controller for deposit of rents and arrears of rent after considering the pleas of both the parties, it is for the petitioner/tenant to comply with such

order so as to continue in possession pending adjudication of the matter, but, by disobeying the directions for deposit of rents and arrears of rent, petitioner/tenant is not entitled to continue in possession. It is also to be noticed that when the Rent Control case was filed in the year 2008, nearly after two years, he filed the application under Order 7 Rule 11 of CPC, seeking rejection of the application on the ground that rent is Rs.3,000/- per month, only on the premise that he had advanced an amount of Rs.1,00,000/- and there was an oral understanding to adjust interest of Rs.3,000/- per month towards rent. Even in the application filed in I.A.No.133 of 2010, which was filed on 26.04.2010, inspite of giving several opportunities, the petitioner was not ready to argue the matter and when the matter was listed on 07.03.2012, it was conditionally adjourned to 12.03.2012 for submitting arguments. Inspite of the same, when the matter was called on 12.03.2012, neither the petitioner was present nor was there any representation on his behalf, and in that view of the matter, the application in I.A.No.133 of 2010 was dismissed. In view of the reasons stated in the order passed by the learned Rent Controller, this Court is of the view that the petitioner/tenant is not diligent in pursuing I.A.No.133 of 2010, as such, the learned Rent Controller has rightly dismissed the application in I.A.No.61 of 2012, which was filed for restoration of I.A.No.133 of 2010. The order

passed by the Rent Controller for payment of rents and arrears of rent and the consequential order for eviction passed under Section 11(4) of the Rent Control Act, is also in conformity with law. Though the learned counsel for petitioner has placed reliance on the reference order passed by a Full Bench of this Court in **Changanlal**'s case (1 supra), in the aforesaid order, this Court has held that when the relationship of landlord and tenant is denied, the question has to be decided finally by making a regular inquiry, but not provisionally by a summary inquiry before assuming jurisdiction in the matter and orders be passed under Section 11, and that such determination will be the decision in the main eviction petition itself. But, this Court is of the view that the aforesaid judgment would not render any assistance in support of the petitioner in this case. In the case on hand, it is not in dispute that the respondent is the landlord and petitioner is the tenant, who was inducted into possession only as a tenant initially and the allegation of respondent/landlord that the petitioner was inducted on a monthly rent of Rs.650/- is not in dispute. By creating an artificial dispute merely pleading that there was an oral agreement and he deposited Rs.1,00,000/-, without there being any proof, the petitioner/tenant cannot get-over the clutches of provision under Section 11 of the Rent Control Act. A reading of the provision under Section 11 of the Rent Control Act makes it clear that it is a beneficial provision in

avour of landlord, safeguarding his interest to receive rents during the pendency of eviction proceedings. As this Court is of the view that there is no dispute with regard to the relationship of landlord and tenant of the petition schedule premises and as the claim of purchase through oral agreement and advancing an amount of Rs.1,00,000/- and spending of Rs.10,00,000/- towards imprements to the premises is not supported by any material, the judgment in **Changanlal**'s case (1 supra) would not render any assistance in support of the case of petitioner. As the petitioner has failed to pay rents inspite of the orders passed in I.A.No.20 of 2010, the learned Rent Controller has rightly ordered for his eviction under Section 11 (4) of the Rent Control Act, and the learned Appellate Court has also rightly dismissed both the appeals by common order dated 12.02.2013.

When an application of the tenant is rejected, normally this Court will grant reasonable time for his eviction, but in this case, it is to be noticed that the respondent/landlord has been struggling to get the petitioner/tenant evicted from the premises, from the year 2008 onwards and on one ground or the other, the petitioner/tenant is prolonging the same, denying possession to the respondent/landlord, who is now aged about 88 years.

For the aforesaid reasons, all these revisions petitions are dismissed and the petitioner/tenant is

granted two weeks time to evict the premises and handover the vacant possession of premises to the respondent/landlord, failing which, it is open to the respondent to take steps for eviction of petitioner in accordance with law.

R. SUBHASH REDDY, J

28th February 2014

ajr

[1] AIR 1973 AP 1