

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

CRP No. 5060 of 2009

O R D E R :

This civil revision petition is filed against the order dated 05.09.2009 in RCC.MA.No.182 of 2008 on the file of the Principal Senior Civil Judge, Vijayawada.

The brief facts of the case are that the first appellant is a tenant of the respondent in respect of shop bearing No.16, situated at Durga Market Complex, Vijayawada. The agreed monthly rent is Rs.800/- per month. The first appellant had been carrying on business in the schedule premises under the name and style of "Sri Mohan Stationery Centre" being the sole proprietor of the said business. The first appellant (as per the respondent) committed willful default in payment of rents from the month of September, 2004 onwards. In spite of repeated demands made by the respondent, the first appellant did not pay the rents. It is also alleged by the respondent that the first appellant had sublet the premises to the second appellant i.e. a partnership firm. Hence, the second appellant was added as a party to the eviction petition. The appellants had resisted the petition. It was contended *inter alia* that the second appellant is a partnership firm and the first appellant and one N.Rama Rao representing the firm as its Managing Partner. The schedule property was originally taken on lease by the first appellant during 1985 from the then landlord Sujanam Naga Deva

Kumar. When the landlord proposed to sell the shops giving preference to the existing tenants or persons through the tenants, the first appellant due to financial problems could not purchase the schedule property and the respondent purchased the said property along with some other shops during 2000. The respondent agreed to continue the first appellant as a tenant. The first appellant converted the proprietary concern into a partnership firm with effect from 01.04.2001 and is continuing the business in the same name and style. The second appellant filed RCC.No.59 of 2004 to permit it to deposit the rents and as per the order in IA.No.1072 of 2004, the second appellant has been depositing the rents from the month of September, 2004 onwards regularly. The appellants have prayed for dismissal of the petition.

Considering the material placed before the Court, the learned Rent Controller dismissed the eviction petition filed by the landlord and observed that the landlord has not proved the grounds of willful default or sublease. Aggrieved by the same, the unsuccessful landlord preferred the appeal questioning the correctness of the order. The same was allowed in the appeal. The Appellate Court's order is now impugned before this Court in this revision.

The question, therefore, now falls for consideration is, whether there was subletting of the property by the first

appellant to the second appellant and whether the tenant/appellant committed willful default in payment of the rent.

This Court has heard Sri Ambadipudi Satyanarayana, learned counsel for the appellants and Smt. M.S.V.S.Sudha Rani, learned counsel for the respondent.

The learned counsel for the appellants argued that there is no willful default on the part of his client. He clearly argued that in October, 2004, the landlord informed his client of the closure of the Bank account. Thereafter, a money order for rent was sent on 17.10.2004. After the same was returned, a DD was sent and after the DD was returned, RCC.No.59 of 2004 was filed for permission to deposit the rent and the Court gave permission to deposit the rent. The learned counsel submitted that all of these above described incidents occurred in October and November 2004. Therefore, it is his contention that there is no willful default at all. He also argued that the ledger extract of the Courts account was filed, which shows the deposit of the money also. Therefore, it is the submission of the learned counsel appearing for the appellants that the first Appellate Court took a technical view of the matter and reversed the findings of the lower Court. It is his contention that overall behaviour and conduct of the tenant shows that he was always interested in depositing the rent and that by taking a hyper technical view of Rule 5 of the A.P.Buildings (Lease, Rent and Eviction) Control Rules, 1961 (for short 'the Rules'), the

Appellate Court misdirected itself. Therefore, he prays that the order of the first Appellate Court should be reversed and the order of the Rent Controller should be upheld.

On the contrary, it is the submission of the learned counsel for the respondent/landlord that there was an issue about the subletting of the property. According to the learned counsel, the evidence on record and the documents show that the second appellant is a partnership firm to whom the landlord had never given the property on rent and there is no relationship of landlord and tenant between the respondent/landlord and the second appellant. The cause title also shows that the second appellant is M/s.Mohan Stationery Center represented by its partner N.Rama Rao. The contention of the learned counsel for the respondent is that the rents in this case were always tendered by partnership firm. Therefore, as the landlord never consented to any tenancy with the said partnership firm, they were right in refusing the rents/amounts that were tendered. He submits that the conduct of the appellants was to somehow cling on to the property. He submits that the conversion of M/s. Mohan Stationery Centre from a sole proprietorship to a partnership firm brings about a fundamental change in the legal status of the firm. Therefore, he submits that his client was right in rejecting the rents that were tendered by the firm.

This Court notices that the appeal is only filed by the tenant challenging the findings of the Rent Controller-the Appellate Authority on “willful default”. The other finding of lack of subletting is actually not challenged by the landlord.

Both the counsels also submitted the arguments only on the issue of willful default. This Court is also confining its discussion to the question of willful default.

In the peculiar facts and circumstances of the case, it is clear that the second appellant secured permission from the Court to deposit the rent by filing RCC.No.59 of 2004. He, in fact, deposited the rents. However, the lower Court noticed that notice of the deposit of rent into Courts has not been made as per Rule 5 of the Rules, 1961. Rule 5 of the Rules mandates that a copy of the challan should be delivered to the Office of the Controller and the Controller shall acknowledge the receipt of the challan on the tenants copy. The Controller shall then take necessary action for service of the challan on the landlord. The notice of the deposit shall have to be served as per Rule 5(4) of the Rules on the persons or persons concerned as per Rule 16. Rule 16 of the Rules mandates the following alternatives for service:- (a) personal service, (b) service by registered post acknowledgement due or by affixture also. Admittedly, in this case, none of the above methods was utilized to send the notice.

The first Appellate Authority relied upon a Full Bench decision of this Court reported in ***Mohammed Izhar Ali v.***

Smt.Olive Founseca (died) per legal representatives and

others¹. In this case, after survey of the entire law, the Full Bench of this Hon'ble Court laid down that the tenant shall have to deposit the rent and deliver a copy of the challan in the Office of the Rent Controller for onward service to the landlord. If such compliance is not there, the Hon'ble Full Bench held as follows:

“In the absence of compliance in so depositing rent and delivering challan in the office of Controller, tenant shall be deemed to have committed willful default, as per conclusions on question Nos1 and 2 above.”

In view of the fact that this judgment of the Hon'ble Full Bench of this Court is on the very same Rule and involves a clear exposition of law, this Court and every other Court in the State are bound by the same. This Court, therefore, concurs with the findings of the Appellate Court. In this case, the first Appellate Authority rightly came to a conclusion that there is a breach of duty cast upon the appellant. When Rules of procedure prescribed that an action is to be done in a particular manner, it has to be done in that manner alone. Procedural laws, which are meant to regulate procedure and bring about certainty, cannot be ignored or overlooked. The purpose of enacting a procedure or method will be defeated if they are ignored. The judgment of the Hon'ble Supreme

¹ AIR 2008 AP 196

Court of India reported in ***Bhagwan Swaroop and Others V. Mool Chand and Others***², wherein it is held as follows:

“.....Procedural laws are no doubt devised and enacted for the purposes of advancing justice. Procedural laws, however, are also laws and are enacted to be obeyed and implemented. The laws of procedure by themselves do not create any impediment or obstruction in the matter of doing justice to the parties. On the other hand, the main purpose and object of enacting procedural laws is to see that justice is done to the parties. In the absence of procedural laws regulating procedure as to dealing with any dispute between the parties, the cause of justice suffers and justice will be in a state of 'confusion and quandary. Difficulties arise when parties are at default in complying with the laws of procedure. As procedure is aptly described to be the hand-maid of justice, the Court may in appropriate cases ignore or excuse a mere irregularity in the observance of the procedural law in the larger interest of justice. It is, however, always to be borne in mind that procedural laws' are as valid as any other law and are enacted to be observed and have not been enacted merely to be brushed aside by the Court. Justice means justice to the parties in any particular case and justice according to law.

Both the judgments mentioned above are clearly applicable to the facts of this case. It is mandatory for a tenant to deposit the rents as per the orders of the Rent Controller and to follow the procedure strictly. Any slippage or lapse will lead to the conclusion that there is willful

² AIR 1983 SC 355

default. This is the law as decided by a Full Bench of this Court.

Hence, this Court holds that there is no mistake or error in the order dated 05.09.2009 passed by the first Appellate Authority in RCC.MA.No.182 of 2008.

The appeal is, therefore, dismissed. No order as to costs. The appellant is given 4 months time from today to vacate the premises.

As a sequel, miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 29.03.2018
KLP

