

## **Smt. M. Savithri Bai Vs E. Babamian and brothers and Mohd. Abdul Rawoof**

**Court:** Andhra Pradesh High Court

**Date of Decision:** July 14, 2011

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€” Section 151

**Citation:** (2011) 5 ALD 617

**Hon'ble Judges:** R. Kantha Rao, J

**Bench:** Single Bench

**Advocate:** M.R.S. Srinivas, for the Appellant; Komireddy Karamchand Linganna, for the Respondent

### **Judgement**

@JUDGMENTTAG-ORDER

R. Kantha Rao, J.

Heard the learned Counsel appearing for the Petitioner and the second Respondent.

2. The brief facts alleged in the affidavit filed by the Petitioner in support of the contempt petition may be stated as follows:

3. The Respondents obtained the schedule premises on lease and when there was willful default in payment of rent by the first Respondent-tenant

and when the Petitioner required the premises for his personal use, he was constrained to file R.C. No. 194 of 2006 on the file of the Principal

Rent Controller, Secunderabad. On contest and on considering the merits of the case, the learned Rent Controller ordered eviction on the ground

of bona fide requirement for personal occupation by his order dated 31.03.2008. Against the said order, the second Respondent filed R.A. No.

89 of 2008 on the file of the Chief Judge, City Small Causes Court, Hyderabad which was dismissed by judgment dated 19.10.2009. Again

feeling aggrieved by the said judgment, the second Respondent filed C.R.P. No. 5998 of 2009 before this Court and on 19.12.2009 the said

revision petition was also dismissed taking into account the undertaking given by the first Respondent that he would vacate the premises by 30-06-

2010. The SLP No. 12398 of 2010 filed by the first Respondent was dismissed by the Supreme Court on 31.05.2010 granting liberty to make an

appropriate application before this Court. Later on, the first Respondent filed Review CMP Nos. 3141 of 2010 and 3142 of 2010 and the said

applications were dismissed on 15.07.2010. The first Respondent once again filed a petition CMP No. 3788 of 2010 seeking extension of time to

vacate the premises which was disposed of extending the time till 29.10.2010. Thereafter, the first Respondent filed CMP No. 6606 of 2010 for

further extension of time and they were dismissed by this Court by order dated 29.10.2010.

4. Thus, the contempt case came to be filed by the Petitioner-landlord for violating the order passed by the learned single Judge in Crl.M.P. No.

3788 of 2010 in C.R.P. No. 5998 of 2009 extending the time up to 30.10.2010 to vacate the schedule premises in terms of undertaking given by

the first Respondent-tenant.

5. The second Respondent filed counter-affidavit in the contempt case contending as follows:

The family of the second Respondent has been doing business in the schedule premises since 1924 in the name and style of ""Supreme Cycle

Company"" and he was surprised to know about his brother's (first Respondent) intention to shift business suddenly to another business premises

and subsequently, he learnt that his brother lost the Court litigation in respect of the business premises and therefore, he was vacating the same

pursuant to the orders of the Court.

The second Respondent further contended that on learning about the situation, he approached his counsel immediately on 27.10.2010 and the

counsel made enquiries in the appropriate Court and informed that the matter was at E.P. stage and on the advise of the counsel, he filed E.A. No.

68 of 2010 in E.P. No. 9 of 2010 in R.C. No. 194 of 2006 on the file of the Principal Rent Controller, Secunderabad which is a claim petition

under Rule 23(7) of the A.P. Buildings (Lease, Rent & Eviction) Control Rules, 1961 and the matter is pending consideration before the learned

Rent Controller.

6. He asserts that upon hearing his counsel at length, the Rent Controller admitted the claim petition and that he has to establish and prove before

the Rent Controller that he is in independent possession of the schedule mentioned property and that he is running a separate shop in the name and

style of ""Supreme Cycle Company"".

7. He seeks to explain that he is not a contemnor, he was not aware of the proceedings which had been run by his brother all these years and the

contempt petition is filed only to defeat his rights in the claim petition and therefore, he sought to dismiss the contempt petition.

8. The learned Counsel appearing for the Petitioner would submit that having lost the litigation although and despite seeking extension of time

several times to vacate the premises after furnishing the undertaking before the learned single Judge, the first Respondent deliberately set up his

own brother and got filed claim petition through him claiming independent possession in the schedule premises and it is nothing but frivolous attempt

to protract the litigation by both the Respondents. The learned Counsel for the Petitioner therefore prays to pass necessary orders in the contempt

petition against the Respondents for willful and deliberate violation of undertaking given before this Court by the first Respondent.

9. The learned Counsel appearing for the Petitioner relied on a decision reported in Noorali Noorali Babul Thanewala Vs. Sh. K.M.M. Shetty and

others, wherein it was laid down that if the undertaking given by a tenant to vacate the possession of the premises breached he is guilty of

committing contempt of court and therefore liable to be convicted.

10. In K.C.G. Verghese Vs. K.T. Rajendran and Another, a case wherein the tenant did not mention in the undertaking furnished to the court that

he was in possession of the portion of premises only and that remaining portion was occupied by his brother and thereafter vacating the only

portion occupied by him, the Supreme Court dealing with the said situation held that the stand taken by the tenant that remaining portion could not

be vacated being occupied by his brother is not tenable and further held that the order of eviction is equally binding on the tenant as well as his

brother and the brother is also held liable to vacate the said premises.

11. In Rama Narang Vs. Ramesh Narang and Another, dealing with the identical situation the Supreme Court laid down the same proposition as in

K.C.G. VERGHESE's case (2nd cited supra) and held that the action of the Respondents is absolutely contrary to letter and spirit of undertaking

given by parties to the Court and the Respondents deliberately flouted undertaking given to the Court and the Supreme Court imposed two

months simple imprisonment and fine on the Respondents. However, the Supreme Court kept the sentence of imprisonment in abeyance

considering its impact on company and its employees.

12. In the counter-affidavit filed by the second Respondent, he did not mention as to how he came into possession of the schedule premises, he did

not claim title to the schedule premises and he also did not state as to under whom he was a tenant. He simply stated that his family is solely

dependant on the income generated from the business carried on in the schedule premises and he has been doing business by running a separate

shop. The said stand taken by the second Respondent is not specific. It is vague and evasive.

13. However, since both the Respondents have been running business in the same premises, the contention of the second Respondent that he is not

aware of the Rent Control proceedings and also the undertaking given by the first Respondent who is No. other than his brother seems to be ex

facie false. This is a clear case wherein the first Respondent had set up the second Respondent to see that the premises shall not be vacated

somehow or the other in the face of the undertaking given by the first Respondent to this Court. The learned Principal Rent Controller,

Secunderabad should have considered the conduct of the Respondents and ought not have entertained the claim petition filed by the second

Respondent. The entire lis in relation to tenancy of the schedule premises came to an end as soon as the first Respondent furnished undertaking to

vacate the premises and No. cause survives in respect of the tenancy relating to the schedule premises.

14. Before parting with the order in the contempt case, I would like to refer to the order passed by the Hon"ble Supreme Court in Contempt

Petition (C) Nos. 140-144/2011 in SLP (C) Nos. 27755-27759 of 2010.

15. The Special Leave Petitions were filed before the Supreme Court against the judgment of the Delhi High Court dated 14.09.2010 by which the

Delhi High Court had rejected the second appeal filed by the tenant against the decree of eviction. The Supreme Court on 06.10.2010 dismissing

the Special Leave Petitions passed the following order:

Taken on Board. Heard. We find No. merit in the special leave petitions and they are dismissed accordingly. However, we grant six months" time

from today to the Petitioner to vacate the premises in question on furnishing usual undertaking before this Court within six weeks from today.

16. In spite of the specific orders passed by the Supreme Court which is extracted hereinabove, the tenant did not vacate the premises even on the

expiry of six months i.e. 06.10.2010 and on the advise of his counsel, he had put up some other person claiming independent right against the

landlord as a sub-tenant and started a fresh round of litigation to remain in the possession. In the execution proceedings filed by the landlord, the

alleged sub-tenant raised objection asserting his independent right which was rejected by the executing Court, latter against the said order of the

executing Court, an appeal was filed to the Additional District Judge (Archana Sinha) who by a detailed order dated 23.04.2011, has granted stay

of warrant of possession.

17. The Supreme Court observed as follows:

It is extremely unfortunate that neither an undertaking was furnished nor did the tenant vacate the premises in question on the expiry of six months

i.e., 06.04.2011. Instead, frivolous objections were raised in the execution proceedings, and our order was flouted.

It is deeply regrettable that in our country often litigations between the landlord and tenant are fought up to the stage of the Supreme Court and

when the tenant loses in this Court then he starts a second innings through someone claiming to be a co-tenant or as a sub-tenant or in some other

capacity and in the second round of litigation the matter remains pending for years and the landlord cannot get possession despite the order of this

Court. The time has come that this malpractice must now be stopped effectively.

To frustrate the order of this Court dated 06.10.2010 it got some persons to file frivolous objections before the executing court. One objector is

none else than the son of one of the trustees of the tenant-trust, another objector is one of the trustees claiming to be the sub-tenant.

In our opinion, such conduct is contemptuous and is simply unacceptable. It prima facie seems to us that the alleged contemnors are only creating

frivolous objections to start a second round of litigation, and frustrate the order of this Court dated 06.10.2010.

When the contempt case was taken up for hearing at 11.25 a.m. Senior Counsel appeared on behalf of the alleged subtenants and stated that their

clients will vacate the premises. Hence, we directed that possession be handed over to the landlord by 12.30 p.m. and directed that the case to be

put up again before us at 12.30 p.m. today.

18. The Supreme Court further observed as follows:

It seems to us that in this country certain members of the Subordinate Courts do not even care for orders of this Court. When this Court passed an

order dated 06.10.2010 granting six months' time to vacate, the contemnor Archana Sinha, Additional District Judge had No. business to pass the

order dated 23.04.2011 but instead she has stayed the warrants of possession, meaning thereby that she has practically superseded our order and

overruled us.

We are constrained to say that a certain section of the subordinate judiciary in this country is bringing the whole judiciary of India into disrepute by

passing orders on extraneous considerations. We do not wish to comment on the various allegations which are often made to us about what certain

members of the subordinate judiciary are doing, but we do not want to say that these kind of malpractices have to be totally weeded out. Such

subordinate judiciary Judges are bringing a bad name to the whole institution and must be thrown out of the judiciary.

In this case, the contemnor Archana Sinha had No. business to pass the order dated 23.04.2011 and it is hereby quashed as totally void.

We further direct the Hon"ble Chief Justice of the Delhi High Court to enquire into the matter and take such disciplinary action against Archana

Sinha, Additional District Judge, as the High Court deems fit. Let a copy of this order be sent forthwith to Hon"ble the Chief Justice of the Delhi

High Court for appropriate orders on the administrative side against Archana Sinha.

19. Again turning to the facts of the case on hand, while dealing with the claim petition under Rule 23(7) of the A.P. Buildings (Lease, Rent and

Eviction) Control Rules, 1961, the Court is not supposed to make a roving enquiry into the title of the claim Petitioner or independent possession

of the claim Petitioner. If it seems to the executing Court that the possession claimed by the claim Petitioner is not bono fide, it can straightaway

dismiss the claim petition and hand over the possession of the property to the Petitioner-landlord. When once the undertaking given by the first

Respondent was brought to the notice of the learned Rent Controller, the learned Rent Controller ought to have examined the maintainability of the

claim petition filed by the second Respondent who is No. other than the brother of the first Respondent in the backdrop of the events which are

mentioned hereinabove. The learned Rent Controller without examining the maintainability of the claim petition filed by the second Respondent

mechanically entertained the same and proceed with the enquiry in the claim petition. From the fact situation of the instant case, it is obvious that

the second Respondent is well aware of the entire litigation from the beginning and filed the claim petition at the behest of his brother-first

Respondent. Since both the Respondents are aware of the entire Court proceedings, the undertaking furnished by the first Respondent before the

learned single Judge virtually is an undertaking given on his behalf as well as on behalf of his brother, the second Respondent. The claim petition

filed by the second Respondent before the learned Rent Controller therefore is not at all maintainable and by virtue of the order passed by this

Court in this contempt case, it becomes infructuous and declared as non-est in exercise of inherent powers of this Court available under Sections

151 of CPC to meet the ends of justice and to prevent the abuse of process of the Court. The Respondents are granted two weeks time to vacate

the premises and hand over the premises to the Petitioner-landlord, failing which the Petitioner will take the possession of the schedule premises

with the aid of the police. The police having territorial jurisdiction over the schedule premises are directed to assist the Petitioner-landlord in

obtaining the possession of the schedule premises from the Respondents. The Principal Rent Controller, Secunderabad before whom the E.P.

proceedings are pending is directed to issue a warrant of delivery of possession of the schedule premises and if it becomes necessary, the learned

executing Court shall direct the police concerned to assist the bailiff of the Court in handing over possession of the schedule premises to the

Petitioner-landlord.

20. With the above directions, the Contempt Case is disposed of.