

(2001) 10 AP CK 0019

Andhra Pradesh High Court

Case No: C.R.P. No. 46 of 2000

Kolipaka Suseela

APPELLANT

Vs

Sri Padmanabha Prasad and
Others

RESPONDENT

Date of Decision: Oct. 19, 2001

Acts Referred:

- Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 - Section 22, 8, 8(2), 8(5)

Citation: (2002) 1 ALD 153 Supp : (2001) 5 ALT 668 : (2002) 1 AnWR 293

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: V.S.R. Anjaneyulu, for the Appellant;

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.

This Civil Revision Petition is filed u/s 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (hereinafter referred to as the "Act") against the order of the Appellate Authority under the Rent Control Act cum Senior Civil Judge, Avanigadda (for short "the appellate Court") in C.M.A.No. 1 of 1998 dated 10-8-1998. The C.M.A. in turn was filed against the order of the Rent Controller cum District Munsif, Avanigadda (for short "the Rent Controller"), in R.C.C.No. 45 of 1992 dated 20-10-1997. The petitioner in the R.C.C. and the appellant in the C.M.A. is the petitioner in this revision. The respondents in the Civil Revision Petition are the respondents in the R.C.C. as well as the C.M.A.

2. R.C.C.No. 45 of 1992 was filed by the petitioner u/s 8(5) of the Act seeking permission of the Rent Controller to deposit the rents of the premises into the Court. It was claimed by the petitioner that she is the tenant in respect of the

premises bearing D.No. 11/21 (Old D.No. 7/119) of Challapalli village and mandal, Krishna District. Originally, the premises was let out by one Mr. S.R.Y. Sivarama Prasad and on his death in 1976, respondents 1 and 2 succeeded to his interest. Till October, 1991, the respondents 1 and 2 have been receiving the rents and thereafter they refused to receive the same. When the 3rd respondent sought to dispossess the petitioner, she filed O.s.nO. 150/91 in the Court of the District Munsif, Machilipatnam, for permanent injunction and obtained a temporary injunction pending disposal of the suit. When the rent was not being received by respondents 1 and 2, she got addressed a notice (Ex. A-1) to them. In the reply (Ex. A-2), respondents 1 and 2 stated that the property was sold in favour of the 3rd respondent. When a copy of the said notice was also marked to the 3rd respondent, there was no reply from him. When the rents were sent to respondent No. 3, he refused to receive the same. Accordingly, the petitioner sought permission of the Court to deposit the rents.

3. The 3rd respondent filed a counter denying the allegations made by the petitioner against him.

4. On appreciation of facts and law, the Rent Controller dismissed the R.C.C. through its order dated 20-10-1997. Aggrieved thereby, the petitioner filed C.M.A.No. 1/98 before the appellate Court. The appeal was also dismissed through order dated 10-8-1998. Thus arises the Civil Revision Petition.

5. Notices in the Civil Revision Petition were served on respondents 1 and 2 on 14-8-2000 and on the 3rd respondent on 16-8-2000. However, they have not chosen to enter appearance in this revision.

6. Mr. V.S.R. Anjaneyulu, the learned Counsel for the petitioner, submits that the ground upon which the Rent Controller dismissed the R.C.C., viz., that the petitioner was not certain as to who among the respondents was the landlord, was not at all justifiable. He also submits that the petitioner had fulfilled the conditions for invoking the power of the Rent Controller u/s 8 of the Act and the R.C.C. ought to have been allowed. He also submits that the appellate Court has not appreciated the contentions, both on facts and in law, in their proper perspective.

7. Before the Rent Controller as well as the appellate Court, it was not in dispute that respondents 1 and 2 are the landlords in respect of the premises let out to the petitioner. The petitioner contended that they are refusing to receive the rents subsequent to November, 1991 and despite notice they have not come forward to name the bank in which the amount should be deposited. Their reply was that the premises have since been sold in favour of the 3rd respondent. The 3rd respondent was also issued a copy of the same notice. Still he did not come forward to name the bank. In my opinion, these facts were sufficient for the Rent Controller to permit the petitioner to deposit the rents in the Court. Both the Courts have adopted a hyper-technical view of the matter. According to both the Courts, respondent No. 3

ought to have been issued a separate notice and marking of the copy of the notice addressed to respondents 1 and 2 was not sufficient compliance with Section 8(2) of the Act. It was not the case of the respondents that the factum of transfer of the premises in favour of the 3rd respondent was got intimated to the petitioner either by respondents 1 and 2 or by the 3rd respondent. In the absence of this intimation or attornment of tenancy, the petitioner is not expected to entertain correspondence exclusively with the 3rd respondent. At any rate, the 3rd respondent was also intimated of the intention of the petitioner to deposit the rents into the bank account of the landlord and nothing more was expected from the side of the petitioner. Therefore, the view taken by both the Courts in this regard is contrary to the scope, letter and spirit of the provisions of Section 8 of the Act.

8. The appellate Court had undertaken a discussion as to whether non-compliance with the provisions of Section 8(2) in its strict sense would render, non-payment of the rents of the corresponding period, a wilful default. Such a discussion is not at all warranted, having regard to the underlying purpose, scope and ambit of the provisions of Section 8(2) of the Act. The Courts below also failed to see that according permission to the tenant to deposit the rents into the Court will not at all change the character of the default, if any, already committed. The respondents have neither issued a notice intimating the petitioner that he has committed a wilful default, nor did they initiate proceedings for eviction of the petitioner on that ground. Under these circumstances, the discussion as to whether the acts and omissions on the part of the petitioner constitute a wilful default was uncalled for.

9. In view of the above, the orders of the Rent Controller and the appellate Court are set aside. R.C.C.No. 45/92 is allowed. The petitioner is permitted to deposit the rent of the premises before the Court of the Rent Controller to the credit of the R.C.C. The 3rd respondent shall be entitled to withdraw the same. This order, however, does not have any impact on the nature of the default, if any, committed by the petitioner. The Civil Revision Petition is accordingly allowed, but in the circumstances of the case, there shall be no order as to costs.