

(2001) 08 AP CK 0034

Andhra Pradesh High Court

Case No: C.R.P. No. 595 of 1998

G. Peddi Reddy

APPELLANT

Vs

P. Govinda Rao

RESPONDENT

Date of Decision: Aug. 28, 2001

Acts Referred:

- Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 - Section 10, 22
- Civil Procedure Code, 1908 (CPC) - Section 115

Citation: (2001) 5 ALT 342

Hon'ble Judges: P.S. Narayana, J

Bench: Single Bench

Advocate: S. Niranjan Reddy, for the Appellant; Rajendra Babu, for the Respondent

Final Decision: Dismissed

Judgement

P.S. Narayana, J.

This civil revision petition is filed u/s 22 of the A.P. Buildings (Lease, rent and Eviction Control) Act, 1960 (herein after, in short, called as "the Act") by the revision petitioner/tenant, who was unsuccessful in both the courts below. The respondent landlord filed R.C.C. No. 52 of 1984 on the file of the Rent Controller (Principal District Munsif), Warangal in which the trial court ordered eviction of the tenant. Aggrieved by the same the tenant filed R.C.A. No. 7 of 1992 on the file of the learned Rent Control Appellate Tribunal (Principal Subordinate Judge) at Warangal, which was dismissed by an order dated: 6-4-1992 confirming the order of the court of the first instance. The unsuccessful tenant aggrieved by the said order had preferred the present civil revision petition.

2. The facts of the case, in brief, are that the revision petitioner-tenant (for the purpose of convenience hereinafter called as "the tenant") obtained the petition schedule premises for residential purpose on a monthly rent of Rs. 70.00 in the year 1974 and the rent was enhanced to Rs. 200.00 from 1-8-1982. The tenant failed to

pay the agreed rent. On the other hand he paid rents at the old rate upto 30-11-1982 and thus he fell due an amount of Rs. 520.00, being the difference in rent at Rs. 130.00 per month for the said period. From 1-12-1982, the tenant stopped payment of rent altogether. Though repeated demands were made by the landlord the tenant did not pay the agreed rent. On 16-4-1984, the landlord had issued a notice calling upon the tenant demanding payment of arrears of rent and also to vacate the premises and ultimately it was found that even by that time the tenant was due in a sum of Rs. 4,980.00 upto 31-3-1984. It was also pleaded that the petition schedule premises require extensive repairs which have to be carried out.

3. The tenant filed a counter denying all these allegations. The relationship of the landlord and tenant, no doubt, is admitted and the tenant had narrated as to how his conduct cannot be styled as a willful default within the meaning of the Act. The defence of the tenant is that the suit premises is a old one without proper facilities and he approached the landlord for carrying on the repairs and with his permission only he spent about Rs. 5000 to 6000.00 for its repairs. That is the reason why the contention of the landlord that the tenant had committed willful default is not correct. Further the tenant also contended that in view of the intimacy he was paying the rents once in three months, six months and once in a year and without any protest the landlord has been receiving the rents and now he cannot take advantage of this situation and contend that on the ground of willful default he is liable to be evicted.

4. Ms. Hema, representing Mr. Niranjan Reddy, learned counsel for the revision petitioner had submitted that the landlord was receiving the rents at irregular intervals and at no point of time, the tenant was put on notice either as a protest to the said irregular payments or complained about the alleged willful default. The learned counsel had also contended that the evidence of RW-1 clearly goes to show that he has invested some amounts for the purpose of carrying out repairs with the understanding that the landlord would adjust the rents and in the light of the fact situation it cannot be said that the tenant had committed willful default. The learned counsel also had drawn my attention to the evidence of PW-1 and RW-1 and also Exs. A-1 and A-2 marked on behalf of the parties. It was further contended that the courts below had not properly appreciated this part of the evidence adduced on behalf of the tenant. Learned counsel had placed reliance on the decisions in [Ramala Ramaiah died per L.Rs. Vs. Moostiala Narasimha Rao](#), and Premchand Ranka v. A. Vasanthairaj Khatod, (1992) 1 SCC 369 .

5. Sri Seetharam, learned counsel representing Mr. Rajendra Babu, learned counsel appearing for the respondent/landlord had contended that RW-1 himself had admitted that he had committed default and such irregular payments and total stoppage of payment of rents will definitely fall under the ground of willful default within the meaning of the Act. The learned counsel also contended that both the courts below concurrently held, on appreciation of evidence, that the tenant had

committed willful default and he is liable to be evicted on that ground, inasmuch as this concurrent findings of fact recorded by both the courts below, on appreciation of evidence, u/s 22 of the Act, need not be interfered with.

6. Now the point for consideration is, in the facts and circumstances of the case, whether the default committed by the tenant in payment of rent, is a willful default within the meaning of the grounds specified u/s 10 of the Act.

7. In [S. Sundaram Pillai and Others Vs. `R. Pattabiraman and Others](#), the Apex Court had an occasion to consider the word "willful default" in detail. The Supreme Court observed that:

"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 11A (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 & Phrases", the word "wilful" has been very clearly defined thus:

"Wiful" - 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."

8. 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."

9. In Black's Law Dictionary (4th Edition) 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 "willful or Wanton".

10. Thus, a consensus of the meaning of the words "wilful default" appears to indicate that default in order to be willful must be intentional, deliberate, calculated and conscious, with full knowledge of legal consequences flowing there from. 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 willful default because such a course of conduct manifestly amounts to willful default as contemplated either by the Act or by other Acts referred to above."

11. It is no doubt true that certain line of decisions had taken a view that though irregular payments are made and such payments are being accepted by the landlord without any protest and for the convenience of the parties, it may not amount to deliberate act amounting to willful default. Now, the question that has to be decided is on the facts and circumstances available on record and taking into consideration the conduct of the tenant, can it be said that irregular payments and total stopping of the payment will fall under the term "wilful default". Here it is pertinent to note what has been observed by the appellate authority in this regard at page -6 of its Judgment:

"He admitted that he has not paid the rents after December, 1982. He added to say that he has been depositing rents in the Court. He admitted a suggestion as true that he fell due Rs. 4,980.00 towards the rent by the date of filing of the RCC. He added to say that he might have deposited the said arrears in RCA. 10/85 preferred by him against the orders in the present RCC. Even during the RCC, he admitted a suggestion as true that he deposited Rs. 600.00 on 9-11-1986 Rs. 600.00 on 17-2-1987; Rs. 600.00 on 5-6-87; Rs. 600.00 on 13-8-1987; Rs. 600.00 on 29-1-1988; Rs. 1,200.00 on 6-9-88; Rs. 800.00 on 15-2-1989; Rs. 1,000.00 on 6-8-1989; Rs. 2,000.00 on 10-7-1991 and Rs. 600.00 on 9-9-1991 towards the arrears of rents for the schedule premises. even pending RCC, the admission of appellate clearly shows that he paid rents with three months, four months, two months, five months, eight months, five months, six months, five months and two months intervals. Even

pending the Rent Control proceedings, the admission of the appellant in depositing rents with delay of many months shows that his claim about regular payment of rents is unsupported by any material on record."

12. This finding of fact is a fact which had been confirmed by the appellate authority and the Rent Controller also clearly held that "in the circumstances the tenant had committed wilful default".

13. This court in [Ramala Ramaiah died per L.Rs. Vs. Moostiala Narasimha Rao](#), observed "when the tenant is paying the rents at irregular intervals and the landlord is receiving the same without protest and without issuing notice to payment regularly, he cannot be termed as a willful defaulter."

14. In *Premchand Ranka v. A. Vasanthairaj Khatod*, (1992) 1 SCC 369 the Apex Court observed "when payment of rent had been made in lump sum by the tenant and accepted by the landlord and such practice was in vogue for a long time, the tenant cannot be termed as a willful defaulter"

15. In [Sona Optics Vs. Shyam Sunderbargava and Others](#), this court observed that "when no notice was given to the tenant pointing out delayed payments requiring him to pay rent regularly, the default if any, will not fall under the ground "wilful default".

16. In [P. Rajanna Vs. K. Lalitha Reddi alias Chinnamma Devi and another](#), the term "wilful default" was discussed in detail.

17. In *S. Srinivasa Rao v. Sabjan Saheb* ILR 1974 AP 220 it was held as follows:

"The term "wilful default" means deliberate or intentional nonpayment or non payment due to gross indifference. Whether a particular default in payment of rent committed by the tenant is willful or not, is to be determined upon the facts of each case. Whatever justification there might have been, earlier to the first lawyer's notice in the year 1964, there is absolutely no justification thereafter for the tenant to think that he can pay when at any time he likes and at any time it is possible for him and still claim immunity from being evicted. The tenant's liability to pay rent cannot be a ground to make a default not willful. The word "wilful" is used in contradistinction to the words "accidental or inadvertent". The expression "wilful default" also takes in, default on account of inability to pay. The word "wilful" relates only to the mental disposition of the defaulter and not of his inability to pay. Even after a lawyer's notice if the tenant continues to persist in paying rents irregularly, the tenant is guilty of willful default."

18. In *A. Kotayya & Venkatasubba Rao firm vs. A. Prabhakara Babu* 1993 (2) AnWR 304 it was held:

"If the landlord out of grace received rent for several months in lump sum in order to accommodate the tenant it cannot be said that there was an understanding or

agreement that the rent will be collected once in six months or one year".

19. In the light of the above legal position, now on the facts and circumstances of the case, it has to be decided whether the tenant herein had committed willful default. Ex A-1 is the notice given by the landlord. It was not received by the tenant. The evidence of PW-1 is clear on the aspect of willful default committed by the tenant and, in fact, PW-1 had denied the defence taken by the tenant in toto. As against the evidence of PW-1, except the evidence of RW-1, no independent evidence is forthcoming to substantiate the contention that the tenant had undertaken repairs with the consent of the landlord that the said amount has to be adjusted out of the rents. Even otherwise, it is pertinent to note that the conduct of the tenant negatives his own defence and at no point of time, the tenant, at least, had put the landlord on notice about these aspects. Be that as it may, the clear findings recorded by both the courts below on the question of willful default, are based on the evidence available on record and on appreciation of the evidence. Both the courts below concurrently held that the tenant had committed willful default. I am of the opinion that the revisional court should be slow in disturbing such concurrent finding of fact arrived at by both the courts below. May be that the jurisdiction of the revisional court u/s 22 of the A.P. Buildings (Lease, rent and Eviction Control) Act, 1960, is wider when compared to S. 115 of the Code of Civil Procedure, 1908; but, at the same time, it cannot be equated with that of the appellate powers.

20. Hence for all the foregoing reasons, I feel that the civil revision petition is devoid of merits and is liable to be dismissed. Accordingly the civil revision petition is dismissed. The revision petitioner is granted three months time to vacate the premises on condition of depositing the arrears of rent upto date within two weeks, failing which the revision petitioner is at liberty to proceed further in accordance with law.