

(1996) 02 AP CK 0018

Andhra Pradesh High Court

Case No: Civil Revision Petition No. 3680 of 1994

Sampat Patalia

APPELLANT

Vs

Ghulam Fayazuddin and Another

RESPONDENT

Date of Decision: Feb. 7, 1996

Acts Referred:

- Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 - Section 15, 20, 22
- Civil Procedure Code, 1908 (CPC) - Section 115

Citation: (1996) 1 ALT 635

Hon'ble Judges: A.S. Bhate, J

Bench: Single Bench

Advocate: Milind G. Gokhale, for the Appellant; N. Ashok Kumar, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

A.S. Bhate, J.

This revision will have to be disposed of on the short ground that a revision does not lie u/s 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act (for short "the Act"). This revision has been filed against an order directing restitution of possession to the tenant, who was earlier evicted under eviction orders passed u/s 10(2) of the Act. It need not be emphasised that a revision does not lie when an appeal lies against the said order. In the instant case the order passed was of restituting the property. On merits there was a dispute as to whether the property existed or did not exist when the order passed. We are not concerned with that at the present stage. The question only narrows down to the material question as to whether the said order was passed under execution of the orders of eviction. The order passed was not in execution of any order passed by the Rent Controller or any authority under the Act. It is true that the powers of revision can be exercised by the High Court relating to any order passed or proceedings taken under the Act by the

Controller in respect of execution of orders u/s 15. However, the restitution order is independent of the execution and is in no way covered by the provisions u/s 22 of the Act. If any authority is required one may find it in [Hidayathullah Vs. Appellate Authority \(Rent Controller\) III Judge, Court of Small Causes, Madras and Others,](#) where in it was held that the order of restitution of possession is not an order under execution and it does not fall u/s 18(1) of the Tamil Nadu Building (Lease, Rent and Eviction) Control Act. The provisions of that Act and A.P. Rent Act are in pari materia. An appeal u/s 20 of the Act lies against such order as held even by that Court. I am in agreement with the said ratio and hold that appeal does lie against the order of restitution. Unfortunately, what had happened in the present case was that earlier in C.R.P. was filed by the petitioner and on objection raised by the Registry, that as there was alternative remedy available meaning thereby that an appeal could be preferred, an appeal was preferred before the learned Chief Judge, Small Causes Court but there it was held that as the proceedings were in execution only a revision would lie and not an appeal. That is an erroneous finding that the order was passed in execution under the Act. The said order dated 30-9-1994 is bad. An appeal does lie. In the meantime lot of period has expired. In the circumstances, the petitioner is directed to file an appeal within 15 days from to-day to the appropriate Court.

2. Status quo as on today shall be maintained during the above said period of 15 days, by the parties.

3. The revision is therefore, disposed of accordingly. No order as to costs.