

MARIYAM BEGUM  
v.  
BASHEERUNNISA BEGUM AND ORS.

SEPTEMBER 26, 2001

[SYED SHAH MOHAMMED QUADRI AND S.N. PHUKAN, JJ.]

*Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 :*

*S.10(2)(i)—Eviction of tenant on ground of wilful default in payment of rent—Landlady's petition for eviction of tenant for default in payment of rent—Another petition for eviction on ground of sub-letting—A third petition for eviction on ground of wilful default in payment of rent for a different period—Eviction on ground of wilful default and sub-letting allowed by Rent Controller and High Court—Tenant's plea that since an I.A. u/s. 11 filed in the first petition was pending she thought that she need not deposit rent till matter was decided by Court and immediately after decision in the matter she deposited rent and as such there was no wilful default—Held, during pendency of I.A. tenant was represented by advocate—She had the advantage of seeking advice from him, if she had any doubt—There has been indifference rather supine indifference to the obligation of payment of rent—Tenant's appeal dismissed.*

*J. Jermons v. Aliammal & Ors., [1999] 7 SCC 382, relied on.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1715 of 1997.

From the Judgment and Order dated 7.8.96 of the Andhra Pradesh High Court in C.R.P. No. 873 of 1993.

WITH

Civil Appeal No. 1716 of 1997.

Ms. K. Amreshwari, P. Venkat Reddy, Ms. R. Madhvi Lata and Guntur Prabhakar for the Appellant.

Mahender Anand and Rajiv Nanda for the Respondents.

The following Order of the Court was delivered :

A The parties in these two appeals are common. The appellant is the tenant in these appeals and the first respondent is the landlady.

B Civil Appeal No. 1715/97 is from the order of the High Court of Andhra Pradesh in CRP 873/93 passed on August 7, 1996. Civil Appeal No. 1716/97 is from the judgment of the High Court of Andhra Pradesh in CRP 17/93 passed on December 10, 1996.

C To appreciate the questions that arise in these cases, it will be appropriate to refer to the facts giving rise to these appeals briefly. The respondent filed RC 244/83 in the Court of IInd Additional Rent Controller, Hyderabad, for eviction of the appellant from the premises No. H. No. 11-4-773 & 11-4-773/1, Bazar Street, Hyderabad, (for short 'the building') on various grounds including default in payment of rent for the period - May 1, 1983 to October 31, 1983 under Section 10 of the A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960 (for short 'the Act'). While the said RC was pending, she filed RC 20/85 before the Rent Controller seeking eviction of the respondent under Section 10(2)(ii)(a) of the Act on the ground that she has sublet a portion of the suit premises to the second respondent therein who is carrying on the business of supplying building material in the name of and style of M/s Shyama Traders. She also filed RC 115/84 in the Court of Principal Rent Controller, on the ground that the respondent committed wilful default in payment of rent for the period - November 1, 1983 to 31st March, 1984, under Section 10(2)(i) of the Act. While these cases were pending the first case, RC 244/83, was dismissed on April 4, 1988. The order of dismissal in that R.C. has become final.

F In so far as the RC 115/84 (filed on the ground of wilful default) is concerned, the learned Rent Controller found that the respondent committed wilful default in payment of rent and ordered eviction. That order was upheld in appeal as well as in revision by the High Court. It is from this order Civil Appeal 1716/97 arises.

G On the ground of sub-letting the learned Rent Controller ordered eviction taking the view that subletting was proved. However, on appeal the learned Chief Judge, City Small Causes Court, Hyderabad, set aside the judgment of the Rent Controller and allowed the appeal on October 28, 1992. The matter was carried to the High Court in CRP 873/93 and by order dated 7.8.96 the High Court set aside the order of the appellate authority and restored the order of the learned Rent Controller and thus allowed the revision. From that order

H

Civil Appeal 1715/97 arises.

So far as Civil Appeal 1716/97 is concerned Ms. K. Amreshwari, the learned senior counsel appearing for the appellant contends that non-payment of rent during the said period - November 1, 1983 to March 31, 1984 - was due to the reason that I.A. filed in RC 244/83 under Section 11 of the Act was pending before the learned Rent Controller, the appellant therefore thought that she need not deposit the rent till the matter was decided by the Court, therefore the default in payment of rent cannot be treated as wilful default. The learned counsel submits that immediately after passing the order on April 28, 1984, the appellant paid the amount due under Exbts. R1 and R2 on May 8, 1984 and July 17, 1984. Thus the default in payment of rent cannot be treated as wilful default and therefore the order of the High Court under challenge confirming the order of the appellate court is fit to be set aside. We are afraid, we cannot accede to the contention of the learned counsel, firstly because the learned Rent Controller found the ground of wilful default against the appellant and the learned appellate Judge confirmed the same. The High Court thought it fit not to interfere as the finding was a concurrent finding. And secondly on merit. What amounts to wilful default has been restated by this Court in *J.Jermans v. Aliammal & Ors.*, [1999] 7 SCC 382 as under :-

“...‘wilful default’ implies intentional or conscious violation of obligation to pay the rent due; it may also be on account of supine indifference or callous or recalcitrant conduct. But if the default has occasioned on account of ignorance, accident or compulsion or circumstances beyond the control of the tenant, it cannot be termed as ‘wilful default’. This has to be determined as a question of fact on the facts and in the circumstances of each case.”

It is this dicta which is also relied upon by the learned counsel to contend that the default in payment of rent is not a wilful default. The learned counsel submits that she is an illiterate lady and on account of ignorance she could not pay the rent in time; she believed that as I.A. No. 11 was pending in the Court, she could pay the rent only when the I.A. is decided. We are unable to accept this contention. When the I.A. was pending in the Court, she was represented by an advocate in all the three cases, noted above. She had the advantage of seeking advice from her advocate appearing on her behalf, if she had any doubt. This shows that there has been indifference rather supine indifference to the obligation of the payment of rent to the landlady. In this view of the matter we do not find any merit in the appeal. It is accordingly dismissed.

A In the view we have taken in this appeal we do not consider it necessary to go into the other question, of subletting, in regard to the very same premises which is subject matter of Civil Appeal 1715/1997. The appeal is accordingly disposed of.

B In the circumstances of the case the parties are directed to pay their own costs.

C The learned counsel submits that the tenant is carrying on restaurant in the premises and it is difficult to secure accommodation for shifting the business, so a year may be granted to vacate the premises. In these circumstances, we grant time to the appellant till 30th April, 2002 to vacate the premises and hand over peaceful possession of the same to the respondent subject to the appellant's filing a usual undertaking within three weeks from today.

However, we make it clear that this order does not preclude the parties from settling the matter if they so desire within the aforesaid period.

D R.P.

Appeals disposed of.