

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.79 of 2015

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.15.12.2014 in I.A.No.386 of 2014 in R.C.No.149 of 2008 on the file of IV Additional Rent Controller, City Small Causes Court, Hyderabad.

2. The respondent herein filed the said R.C. against petitioner for eviction on the ground that petitioner has committed willful default in payment of rents for seventy-seven (77) months commencing from December, 2001.

3. Counter-affidavit is filed by respondent stating that there has been no default in payment of rent by him; that respondent has a large sum of Rs.80,000/- deposit with him initially and subsequently, a further sum of Rs.1,70,000/- was also given as deposit; and that the respondent was not in a habit of issuing any receipts either for the rent or for the deposits paid by petitioner to respondent.

4. Thereafter, the petitioner filed I.A.No.386 of 2014 at the stage when the case was posted for arguments, to summon one Mohammed/Mir Firasat Ali, S/o.Late Mohammed Yakoob Ali for giving evidence invoking

Section 25 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Act, 1960 (for short, 'the Act') *inter alia* contending that a similar case to the one filed against petitioner has also been filed against the said person, which ended in a compromise; the petitioner along with the said person used to pay rents regularly; since petitioner was on site with contract engagements, he used to pay the rents through the said person to respondent; and prayed that the said person be summoned to give evidence with regard to payment of rents by petitioner to respondent and his family members.

5. Although no counter-affidavit was filed, this application was opposed by respondent.

6. By order dt.15.12.2014, the Court below dismissed I.A.No.386 of 2014. It held that there was a specific pleading by respondent that rental receipts used to be passed for every payment, that petitioner had not denied the same in the counter-affidavit in the main case; and therefore, the oral evidence of Mohammed/Mir Firasat Ali is not helpful to prove payment of rents without receipts which the petitioner should have obtained at the time of payment of rents.

7. Challenging the same, this Revision is filed.

8. Heard Sri Ali Farooq, counsel for petitioner; and Sri Suresh Shiv Sagar, counsel for respondent.

9. The counsel for petitioner contended that the reasoning given by the Court below is incorrect; that although the respondent had alleged that he was issuing rent receipts for payment of monthly rents, the petitioner had denied in his counter the said fact at more than one place; the Court below has not correctly comprehended the pleadings raised by petitioner in the R.C.; under Section 25 of the said Act, there is power conferred on Rent Controller to summon witnesses; and therefore he ought to have exercised that power and allowed the said I.A.

10. On the other hand, the counsel for respondent contended that nowhere in the counter-affidavit filed by petitioner in the R.C. the petitioner has taken a plea that rents were paid through Mohammed/Mir Firasat Ali, and without such a pleading the evidence of that person would be irrelevant.

11. I have noted the submissions of both sides.

12. It is no doubt true that as contended by counsel for petitioner, the petitioner had denied that any receipts were issued by respondent at the time when rents were received by respondent, and this fact was not noted by the Rent Controller in his order.

13. Be that as it may, since it is the case of petitioner that he paid rents to the landlord through Mohammed/Mir

Firasat Ali, nothing prevents the petitioner from examining the said person as his witness. Nowhere in the affidavit filed in support of I.A.No.386 of 2014 has the petitioner taken any plea that the said individual has refused to depose in the Rent Control case at the request of petitioner. The proceeding before the Rent Controller is a summary proceeding, and for the last seven years it has been pending.

14. I am of the opinion that no error of jurisdiction has been committed by the Court below in refusing to summon Mohammed/Mir Firasat Ali as a witness at the instance of petitioner. It is not the duty of Rent Controller to assist petitioner to establish his case. It is made clear that it is open to petitioner to examine him as his witness, if he so chooses.

15. Therefore, the Revision is dismissed. No order as to costs.

16. Miscellaneous applications, pending if any in this Revision, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 23-06-2015

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