

**THE HONOURABLE SRI JUSTICE A.SANTHOSH REDDY**

**C.R.P.No.1812 OF 2016**

**ORDER:**

This civil revision petition is directed against the judgment dated 19.01.2016 in R.C.A.No.1 of 2013, on the file of the Senior Civil Judge, Sangareddy, whereunder the said appeal filed by the respondent herein/landlady, was allowed, setting aside judgment dated 05.11.2012 passed by the learned Principal Junior Civil Judge, Sangareddy in R.C.C.No.03 of 2007, dismissing the case filed by the respondent herein/landlady seeking payment of arrears of rents and for eviction of the petitioner herein/tenant from the premises in question.

2. Heard learned counsel for the petitioner and learned counsel for the respondent. Perused the record.

3. The respondent herein, who is landlady, filed R.C.C.No.3 of 2007 against the petitioner herein, who is tenant, for eviction and delivery of vacant possession and also to pay arrears of rent of Rs.24,000/-. The petitioner herein filed counter and resisted the claim of the respondent.

4. The trial court examined the respondent herein as P.W.1 and marked Exs.P-1 to P-5 and also examined the petitioner herein as R.W.1 besides another witnesses and marked Exs.R-1 to R-7. On a consideration of the evidence, oral and documentary, the trial court while dismissing the rent control case held that the respondent failed to turn up for cross-examination and also failed to establish *prima facie* relationship of landlady and tenant and that the petitioner herein established that he entered into agreement of sale and by virtue of the same, he is residing in the suit schedule premises and accepting the contention of the petitioner herein, the trial court dismissed the case. Aggrieved by the same, the respondent herein preferred appeal in R.C.A.No.1 of 2013. The appellate court, after hearing both the parties, by judgment dated 19.01.2016, allowed the appeal by setting aside the judgment passed by the trial court on the ground that the trial court failed to appreciate that the contract for sale entered into between the petitioner and the respondent is subject matter of a suit filed for specific performance of agreement of sale, pending between them before the Senior Civil Judge and the same would be decided by the said court and that the jural relationship of the parties is

established by the respondent and petitioner herein and till the petitioner herein establishes his title over the suit schedule property, he is liable to pay the rent and that as the petitioner herein failed to pay the arrears of rent, he is liable to vacate the petition schedule premises. Accordingly, the appeal was allowed directing the petitioner herein to vacate schedule premises within two months from the date of judgment i.e., 19.01.2016. Challenging the said judgment, the present revision is filed.

5. A perusal of the record discloses that the respondent-landlady was examined-in-chief as P.W.1 and marked Exs.P-1 to P-4 and thereafter she failed to turn up for cross-examination. The respondent herein presented herself and did not adduce any further evidence in support of her contention. The trial court has rightly refused to place any reliance on the evidence of P.W.1 and held that the respondent failed to establish the jural relationship of landlady and tenant, whereas the appellate court, without any acceptable evidence, held that the petitioner herein in his counter filed before the trial court has admitted the relationship of landlady and tenant and holding so set aside the judgment of the trial court.

6. Thus, on a consideration of the material on record, the sole question that arises for consideration is – whether the evidence of the respondent/landlady, who failed to submit herself for cross-examination, shall be rejected or not?

7. On a perusal of the judgment of the trial court, it appears that the respondent, as P.W.1, in order to prove her case, was examined-in-chief and marked Exs.P-1 to P-4. Subsequently, she failed to appear before the court for cross-examination. Surprisingly, the appellate court has not seriously considered the above aspect while deciding the appeal, which is one of main grounds urged by learned counsel for the petitioner.

8. The Hon'ble Apex Court in **VIDHYADHAR v. MANIKRAO**<sup>1</sup> observed as under:

“Where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the Privy Council beginning from the decision in Sardar Gurbakhsh Singh v. Gurdial Singh and Anr. . This was followed by the Lahore High Court in

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<sup>1</sup> AIR 1999 SC 1441

Kirpa Singh v. Ajaipal Singh and Ors. AIR (1930) Lahore 1 and the Bombay High Court in Martand Pandharinath Chaudhari v. Radhabai Krishnarao Deshmukh AIR (1931) Bombay 97. The Madhya Pradesh High Court in Gulla Kharagjit Carpenter v. Narsingh Nandkishore Rawat also followed the Privy Council decision in Sardar Gurbakhsh Singh's case (supra). The Allahabad High Court in Arjun Singh v. Virender Nath and Anr. held that if a party abstains from entering the witness box, it would give rise to an inference adverse against him. Similarly, a Division Bench of the Punjab & Haryana High Court in Bhagwan Dass v. Bhishan Chand and Ors, drew a presumption under Section 114 of the Evidence Act against a party who did not enter into the witness box".

9. It is imperative to analyze the judgment of the appellate court as to whether the above situation prevailed in the instant case to apply the above ratio. Undisputedly, in any suit, subject to exceptions, the plaintiff being the *dominus litis* is bound to prove his case. Normally, a case is projected by the plaintiff, especially based on introduction of facts through plaint averments, supported by oral and documentary evidence. It can be controverted only through cross-examination and the veracity of the evidence can be tested by other side. The onus is more on him to prove the case, unless the burden is shifted to the opposite side. If it is shown that the cross-examination was avoided or delayed at the instance of the opposite

party, in such circumstances, probative value of the available evidence would be taken into consideration.

11. In the case on hand, the conduct of the respondent/landlady is quite evident to the effect that after having filed proof affidavit and marked the documents, she remained absent for cross-examination and the same will amount to denial of opportunity to the opponent to disprove the claim and render the evidence as complete one. The evidence of P.W.1 was eschewed, as she failed to examine any witness in support of her contention. In such circumstances, there is no complete evidence in the eye of law in favour of the respondent. Since the respondent could not appear before the court and even though there is no provision to eschew the evidence, the evidence of the respondent in the instant case is not tested by cross-examination on account of her non-interference and does not have the probative value to be considered to decide the case of the respondent.

12. The appellate court has not properly appreciated the material on record. In the circumstances discussed above, once the evidence of respondent is eschewed and as there is no other evidence in support of her contention, the question of proving her case that

the petitioner herein is the tenant and respondent is the landlady ought to have been accepted by the appellate court. The appellate court has committed error in giving a finding that the jural relationship between the petitioner and respondent is proved and the petitioner is liable to pay the arrears of rent and failure to pay the arrears of rent renders him liable for eviction.

13. The appellate court also has committed error in not considering the evidence adduced by the respondent that there was an agreement of contract for sale of the petition schedule property entered into between the petitioner and respondent on 16.10.2014 under Ex.R-7 and a suit was filed by the respondent herein and the same is pending on the file of the Senior Civil Judge, Sanga Reddy in respect of specific performance of contract for sale of the petition schedule premises.

14. For the foregoing reasons, I am of the view that the impugned judgment of the appellate court suffers from infirmity and is liable to be set aside.

15. In the result, the civil revision petition is allowed and the impugned judgment is set aside. There shall be no order as to costs.

16. Miscellaneous petitions, if any pending, stand closed.

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**A.SANTHOSH REDDY, J**

05.01.2023

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