

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF AUGUST, 2023

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

HOUSE RENT REV. PETITION NO.10/2022

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BETWEEN:

1 . SRI KRISHNAPRASAD A.,
S/O LATE DR. A. RAMAMURTHY
AGED ABOUT 68 YEARS
RESIDING AT NO.26
SB COLONY, J.P. NAGAR
1ST PHASE, SARAKKI MARKET
BENGALURU-560078. ... PETITIONER

(BY SRI. SHANTHI BHUSHAN, ADVOCATE FOR
SRI. DEEPAK D.C. ADVOCATE)

AND:

1 . SRI L. DORESWAMY ADVOCATE
S/O LINGAPPA
AGED ABOUT 58 YEARS
R/AT GROUND FLOOR
SITUATED AT NO.34
17TH CROSS, WEST PARK ROAD
MALLESHWARAM
BANGALORE-560 003. ... RESPONDENT

(BY SRI RAVISHANKAR S., ADVOCATE)

THIS HRRP IS FILED UNDER SECTION 46(1) OF
KARNATAKA RENT ACT 1999, AGAINST THE ORDER DATED
22.10.2021 PASSED IN HRC NO.49/2016 ON THE FILE OF THE

CHIEF JUDGE, COURT OF SMALL CAUSES BENGALURU, DISMISSING THE PETITION FILED UNDER SECTION 27(2) (r) OF THE KARNATAKA RENT ACT, 1999.

THIS HRRP HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 27.07.2023 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

Heard the counsel for the revision petitioner and counsel appearing for the respondent.

2. This revision petition is filed under Section 46 of the Karnataka Rent Act, 1999 praying this Court to set aside the order passed by the Chief Judge, Small Causes Court, Bengaluru, in HRC No.49/2016 dated 22.10.2021 and pass an order of eviction against the respondent, directing him to quit and hand over the vacant possession of the schedule property to the petitioner and grant such other relief as deem fit in the circumstances of the case.

3. The factual matrix of case of the petitioner herein is that, he had filed the eviction petition being the owner of the residential premises situated at ground floor of the building

bearing No.34, 17th Cross, West Park Road, Malleshwaram, Bangalore, which is morefully described in the schedule and the same was leased out to the respondent who is an advocate by profession for a monthly rent of Rs.3,400/- and had received security deposit of Rs.10,00,000/-. It is also contended that both of them were friends and respondent requested the petitioner to lease out the premises and the said request was acceded to and the petitioner executed a lease deed, which was drafted by the respondent.

4. It was an understanding between the petitioner and respondent that duration of lease would be for a period of three years. It is the case of the petitioner that, in 2019 he had expressed is inability to pay the rents and requested the petitioner to deduct the rents at Rs.3,400/- per month from the advance so paid by him and to permit him to continue his tenancy till 2013, to which the petitioner agreed. In the year 2013 when the petitioner requested the respondent to vacate the premises as the term of the lease so agreed had expired, the respondent requested for extension of lease and kept on

promising the petitioner to vacate the premises as and when he would find a suitable accommodation.

5. The petitioner had agreed to accommodate the respondent for a further period, but kept on insisting the respondent to vacate the premises since he intend to shift his residence to schedule premises before his retirement.

6. When the petitioner was about to retire in 2016, he met the respondent and requested him to vacate the premises, which request was ignored by the respondent and without any other alternative, sought for an order of eviction.

7. It is contended that the respondent initially deliberately did not appear before the Court and he was placed ex-parte and order of eviction was passed. Again he filed Misc.No.270/2016 and he adopted dilatory tactics and Miscellaneous Petition was allowed and matter was taken up for consideration on merits. But he contend that, the Court is having no jurisdiction and lack of jural relationship between the petitioner and respondent. It is also contended that when the matter was pending, he filed an

application before the Rent Controller for fixation of fair rent to the schedule premises and the same was considered and fixed the rate of rent at Rs.21,000/- per month. The respondent himself confronted the document of lease dated 28.08.2009 and the same was impounded for insufficiency of the stamp duty and he challenged the same in HRRP No.14/2017 and the same was dismissed in coming to the conclusion that he was liable to pay a duty and penalty on the document. The Trial Court having considered the material on record answered point Nos.1 and 3 as affirmative, but dismissed the petition answering point No.2 as negative in coming to the conclusion that petition is not maintainable for want of jurisdiction as per Section 2(3)(e)(1) of the Karnataka Rent Act.

8. Being aggrieved by the finding against point No.2, the present revision petition is filed contending that when the Court held the jural relationship between the parties erroneously dismissed the petition. The Trial Court wrongly arrived that petition is not maintainable for want of jurisdiction as per Section 2(3)(e)(1) of Karnataka Rent Act and the learned Judge

failed to understand that parties are at liberty to enter to any contracts and the fixation of fair rent by the Rent Controller should only be considered as a yard stick for the cases of enhancement of rents and not as a guiding rule for fixation of jurisdiction.

9. The Trial Court committed an error in coming to the conclusion that fair rent is fixed as Rs.21,000/- and admittedly the respondent has not paid the said rent and also he is not willing to pay the rent of Rs.21,000/- and counsel also would vehemently contend that, there is no dispute that premises was taken for lease by paying Rs.1,00,000/- and during the cross examination he categorically admit that he will vacate the premises by receiving an amount of Rs.10,00,000/- subject to allegations made against him in the petition which requires to withdraw the same and when further question was put to him that if the petitioner withdraws the said allegation on the next date itself whether he is going to vacate the premises, again he seeks time to vacate the premises and hence the very intention clearly shows to harass the petitioner. The said contention was

taken and these are the aspects have not been taken note of by the Trial Court. The Trial Court committed an error in not appreciating the material on record.

10. The counsel also relied upon the judgment reported in **2004(1) A.P.L.J. 123**, wherein held that the Court is seized of the matter it does not lose the jurisdiction by precise ascertainment of amount at the time of final disposal of the petition. The jurisdiction is to be determined with reference to the claim made and not to the result of the matter or the amount for which ultimately the decree may be passed by the Court. But jurisdiction must be ascertained at the commencement of the proceedings and the amount proved cannot be known at that stage. In such cases, therefore, there is no initial lack of jurisdiction on the part of the Court in entertaining the petition and the eventual decree passed by the Court is not a nullity.

11. The counsel also relied upon the judgment reported in **2017 SCC Online Hyd. 374** and brought to notice of this Court paragraph No.29 that dual purpose of the Rent Control

Legislation is on one hand to safeguard the unlawful eviction of the tenants and on the other hand the same has to see to it that tenants do not exploit the landlords by defaulting in payment of rents and occupying the property when they have the property of their own. The fixation of fair rent is only an incidental issue of the matter and therefore the same is of no avail and would not impact the eviction of the tenant if the landlord has been found to be in need of the premises and the tenant is found to have own premises as well as the tenant having default in payment of rents.

12. The counsel referring these judgments would vehemently contend that the Trial Court committed an error in answering point No.2 as negative and dismissed the eviction petition and hence it requires interference.

13. Per contra, the counsel appearing for the respondent would vehemently contend that, the very petition is not maintainable and fair rent is fixed as Rs.21,000/- and Trial Court in detail considered the issue involved between the parties and rightly comes to the conclusion that petition is not maintainable

in view of Section 2(3)(e) of Karnataka Rent Act. The counsel would vehemently contend that, the respondent had filed a petition under Section 12 r/w Rule 7 of Karnataka Rent Rules and the same was considered and standard rent is fixed as Rs.21,000/- and when such being the case, the Trial Court has not committed any error. The counsel in support of his argument relied upon the judgment of this Court reported in **2013 0 Supreme (Kar) 343 in the case of SMT.ANUPAMA RAMESH Vs. SHRI VEERCHAND decided on 25.6.0213**, the Court comes to the conclusion that the object of sub-Section (3) of Section 2 of the Rent Act is to exclude certain types of premises from the applicability of the Rent Act and further held that, if the Rent Act is not applicable to a premises in view of any of the clauses i.e., Clauses (a) to (h) in sub-Section (3), such a premises stands excluded from the applicability of the Rent Act and that cannot be defeated by relying on an exception in any other clause in sub-Section (3) as a Legislature will not at the same time give something by one hand and take back the same thing by another.

14. The counsel also relied upon the judgment reported in **2007 0 Supreme(Kar) 767** in the case of **V.G.K.DESIGN AND DEVELOPMENT ENGG (PVT) LTD. Vs. H.N.NARAYANA REDDY** decided on 16.11.2007 and brought to notice of this Court paragraph No.13, wherein discussed the object of the Rent Act is to protect one class of tenants who are residing in residential premises whose monthly rent is not more than Rs.3,500/- in Part A of first schedule and Rs.2,000/- to the residential premises in second schedule and the commercial or shop premises the measurement of which is not more than 14 sq. meters. Therefore, the non fixation of standard rent or deemed rent in respect of the premises alone is not the criteria to exclude the premises from the application of provisions of Rent Act. Even in the absence of fixation of standard rent or deemed rent to a premises and if the contractual rate of rent exceeds Rs.3,500/- per month for a premises in any area referred in Part A of first schedule the provisions of Rent Act are not applicable. Hence, prayed this Court to dismiss the revision petition and no grounds are made out to entertain the same.

15. Having heard the counsel for the revision petitioner and also the counsel for the respondent, the points that would arise for consideration of this Court are:

“i) Whether the Trial Court committed an error in answering point No.2 that the Court has no jurisdiction to entertain the petition under the Karnataka Rent Act, 1999 in coming to the conclusion that the eviction petition is not maintainable under Section 2(3)(e)(1) of the Karnataka Rent Act, 1999?

ii) What Order?”

16. Having perused the material on record and also the arguments of respective counsel and in the eviction petition, the plaintiff has pleaded that he was paying rent of Rs.3,400/- per month with an understanding that rent would not be enhanced since he has paid advance of Rs.10,00,000/- and also it is contended that in the year 2010 respondent had expressed that he would continue his stay in the premises for another three years, he would not be paying rents, monthly rent by adjusted in the advance so held by the petitioner and he sought time up to

2013 and the same has agreed and adjusted an amount of Rs.2,20,000/- from the advance amount and he is payable only Rs.7,80,000/- out of the said amount. The same was denied by the respondent by filing statement of objections. In paragraph Nos.4 to 6 he has denied the averments made in the petition, but in paragraph No.10 he took the specific contention that the petitioner himself has approached him and he has paid Rs.5,50,000/- in 2008 and in the meanwhile, he met with an accident. At that time, respondent requested the petitioner to return the amount, as he has no intention to take the premises, but petitioner himself requested that he will not seek any ejection from the schedule premises till completion of education of the children of the respondent. It is contended that only on that assurance, though the respondent was bed ridden, he had paid further advance of Rs.4,50,000/- on 26.8.2009 and document was reduced into writing on 28.8.2009 and document was also confronted during the course of the evidence of the PW1 and document was also impounded on account of non payment of stamp duty and the same was challenged in HRRP No.14/2017 and the same was dismissed and asked the

respondent herein to pay the stamp duty. It is also not in dispute that, a lease deed dated 25.8.2008 entered into between the parties and the said document was confronted to PW1 during the course of cross examination and he admits the same. It is also emerged in the evidence of PW1 that in order to prove the factum of his claim that the respondent was paying rent of Rs.3,400/- per month, he categorically admits that there is no document to show that monthly rent is Rs.3,400/- per month and further he admits that respondent has not paid rent from the date of his occupation till date, rent of Rs.3,400/- per month is paid and also he categorically admits that he has agreed to repay the amount of Rs.10,00,000/- when the respondent vacate the premises. Hence, it is clear that, though the petitioner claims that he was paying rent of Rs.3,400/- per month, no such material is placed before the Court and oral evidence excludes by way of documentary evidence which is marked as Ex.R5.

17. Having perused the document Ex.R5 it is clear that document came into existence on 28.8.2009, though petitioner claims that he was put in possession in 2008 itself, but explicit

contract between the parties is very clear that in terms of condition No.3 of document Ex.R5 that lessor has delivered the vacant possession to the lessee and has acknowledged the same and hence it is clear that the relationship of landlord and tenant came into existence on 28.8.2009 when the possession was delivered and also it is clear that in terms of condition No.2 the same is for a period of three years, in terms of condition No.5 an amount of Rs.10,00,000/- was paid as a security deposit free of interest and the said amount shall be refunded to the lessee without interest at the time of vacating and delivering the house property. There is a contract between the parties in taking the premises on lease. The Trial Court also discussed while considering the point No.1 referring the judgment of *Amarnath's case* to come to a conclusion that there exists jural relationship between the parties reported in **ILR 1999 KAR 4635**, wherein this Court discussed in detail with regard to the lease as well as the mortgage and rightly comes to the conclusion that there exists jural relationship between the parties. But while answering point No.2, the Trial Court taken note of the provisions of sub-Section (3) of Section 2, which reads as follows:

“Section.2 – Application of the Act-

(1)...

(2)...

(3) Nothing contained in this Act shall apply-

(a)...

(b)....

(c).....

(d)

(e) to any premises, deemed rent on the date of commencement of this Act or the standard rent of which exceeds-

(i) three thousand five hundred rupees per month any area referred to Para A of the First Schedule; and

(ii) two thousand rupees per month in any other area.”

18. Having considered sub-Clause 3 of Section 2, it is very clear that if the premises within the first schedule, rate of rent is fixed as Rs.3,500/-, if the premises in second schedule Rs.2,000/- per month in any other area. In the case on hand, it is not in dispute that, Rs.3,500/- per month in any area referred to Part A of the first schedule. But here is a case of no rent and

only in terms of the document Ex.R5 there was an explicit contract between the parties, no rent is payable and premium amount of Rs.10,00,000/- was paid and in view of interpretation of this Court in *Amarnath case* particularly in paragraph 16 it is clear that 'merely because an amount is advanced and possession is delivered, a transaction will not become a mortgage. As stated above, mortgage contemplates the taking of a loan and delivering possession to secure payment of the loan, the relationship being that of a creditor and debtor. On the other hand, in a lease for money advanced or deposit made, there is no relationship of debtor and creditor between the landlord and tenant. In such a transaction, the tenant who desires to take the premises on lease, agrees to make a deposit, instead of making a monthly payment as rent, with the understanding that the landlord will continue to hold the said advance or deposit so long as the tenant continues in possession and he should refund the same when the tenant vacates the leased premises'. In the case on hand also, the same situation that deposit of Rs.10,00,000/- was paid and no rent for the said premises, only he had collected the premium and principles laid

down in the judgment apply applicable to the case on hand and admittedly there is no contract between the parties with regard to the rate of rent is concerned. When such being the case, the Trial Court ought not to have invoked sub-clause (3) of Section 2(3)(e) of the Karnataka Rent Act and proceeded in an erroneous direction invoking Section 2(3)(e) of the Rent Act.

19. It is important to note that it is the contention of the tenant that he had approached the Rent Controller for fixation of fair rent and he had fixed the rate of rent as Rs.21,000/-. But it is important to note that though he got it fixed the rate of rent at Rs.21,000/- subsequent to filing of eviction petition, it is elicited from his mouth in the cross examination that he has no intention to comply with the order passed by the Rent Controller as per Ex.R1 even after filing the application before the Rent Controller and hence, it is clear that only with an intention to ouster the jurisdiction he had approached the Rent Controller and got it fixed the rent as Rs.21,000/-, but never he intend to comply with the same. It is also important to note that in the cross examination he categorically admits that he intend to

vacate the premises if allegations made against him is withdrawn. But when the question was put to him that, if Rs.10,00,000/- was paid to him tomorrow and allegations are withdrawn, whether he is ready to vacate the premises, but again he says that, he need time to vacate the premises and hence it is clear that he was not having any intention to quit and vacate the premises.

20. This Court would like to refer the judgment of the Apex Court reported in **AIR 1998 SC 2031**, wherein the Apex Court held that bearing in mind the well settled principles that rights of parties crystallize to the date of institution of the suit. The meaningful construction of the provisions granting exemptions to a building from operation of the Act must be that the exemption would apply for a period of 10 years and will continue to be available until suit for eviction is disposed of or adjudicated. Once right crystallize, the adjudication must be in accordance with law. It is common knowledge that unless a suit is instituted soon after the date of letting it, would never be disposed of within 10 years and even then within that time it may not be

disposed of and hence it is clear that the right of the parties crystallized to the date of the institution of the suit and it goes back to the date of suit for crystallizing the rights of the parties i.e. date of institution of the suit. In the case on hand, it has to be noted that eviction petition was filed in 2016 and subsequent to filing of execution petition, the tenant had approached the Rent Controller and subsequent event of fixing the rate from the Rent Controller does not ouster the jurisdiction of the Court.

21. In this regard this Court would like to refer the Judgment of High Court of Andhra Pradesh reported in **(2018) 2 ALD 35 (DB)** and in the similar facts and circumstances of the case with regard to the ousting of jurisdiction in this case matter was referred to the Division Bench with a question whether fair rent fixed by Rent Controller exceeding the upper limit of jurisdiction of Rent Controller takes away the jurisdiction subsequent to filing of petition under Section 4(1) of the Act.

22. The Andhra Pradesh High Court in detail discussed the same particularly in paragraph No.19 held that, if during the pendency of any proceedings rents are fixed, in such an

eventuality, the Rent Control Act would not be applicable. In other words, once the fair rent of any property have been fixed at a rate more than Rs.3,500/- per month, thereafter an application seeking eviction or any other relief in respect of the property could not be filed before the Rent Controller. But in the present matter, as on date of filing of the eviction petition, no fair rent had been fixed.

23. It is also important to note that, the Andhra Pradesh High Court also referred the judgment of the Apex Court which had been referred above and referring the judgment also in paragraph No.24 held that it is well settled principle that right of parties crystallizes to the date of institution of the suit, and in the case on hand also the rights of parties crystallizes to the date of institution of the suit as held in the judgment referred supra and the said decision also speaks about the weightage that has to be given to the meaning of words, language, back ground and context of the legislation in seeking to interpret any statute. Hence, it is clear that, if any event had been taken place subsequent to filing of the eviction petition and even assuming

that respondent had approached the Rent Controller and same will not create any right in favour of the tenant contending that standard rent applicable is Rs.21,000/- though he is not having any intention to pay the said rent, but only for ouster of jurisdiction he made an attempt to fixation of rent and the same is subsequent to filing of eviction petition and the same cannot be considered in view of the principles laid down in the judgment of the Apex Court and Andhra Pradesh High Court, Trial Court fails to take note of the fact that the tenant had made his efforts to fix the standard rent after filing of eviction petition and with an intention not to comply with the said order of Rent Controller also and this aspect has not been considered by the Trial Court and Trial Court lost sight of the very conduct of the respondent in making effort to ouster the jurisdiction.

24. It is also important to note that Andhra Pradesh High Court in Division Bench judgment referred supra also in paragraph No.26 taken note of paragraph No.24 of the Full Bench decision, the judgment of the Hon'ble Supreme Court reported in *Atmaram Mittal Vs. Eswar Singh* was considered. In

that case, the landlord filed a suit for recovery of possession of a building within the exemption period. During the pendency of the suit, the period of 10 years expired. The tenant then moved an application for disposal of the suit on the ground that exemption period expired and consequently, the jurisdiction of the civil court is barred. The Apex Court clearly negated the contention and stated that it is well settled that the rights of the parties will have to be determined on the basis of the rights available to them on the date of the suit and similarly, the Full Bench of the Andhra Pradesh High Court reiterated the findings of the Supreme Court in various cases that when a lis commences, all the rights get crystallized on the date of filing of the case and the same is observed in paragraph No.26 of the judgment referred supra.

25. Having perused the principles laid down in the judgment, it is clear that, if any subsequent conduct of the respondent moving an application subsequent to filing of eviction petition to oust the jurisdiction of the Court and Court has to take note of, as on the date of filing of the petition is the

relevant date to consider the jurisdiction and not subsequent any conduct will not oust the jurisdiction.

26. No doubt, the counsel relying upon the judgment of the Karnataka High Court in *Anupama Ramesh* case brought to notice of this Court Section 2(3)(e) of the Act and the same is not applicable to the facts of the case on hand. In the case on hand, there is no rent at all and only premium was paid and attracting Section 2(3)(e) of the Act does not arise. The counsel also relied upon the other judgment in the case of ***V.GK.DESIGN AND DEVELOPMENT ENGG (PVT) LTD.*** and brought to notice paragraph No.13, but the same is helpful to the revision petitioner wherein the observation is made that the object of the Rent Act is to protect one class of tenants who are residing in residential premises whose monthly rent is not more than Rs.3,500/- in Part A of first schedule and Rs.2,000/- to the residential, in second schedule and the commercial or shop premises, the measurement of which is not more than 14 sq. meters. It is further discussed that non fixation of standard rent or deemed rent in respect of the premises alone is not the

criteria to exclude the premises from the application of provisions of Rent Act. It is further observed that, even in the absence of fixation of standard rent or deemed rent to a premises and if the contractual rate of rent exceeds Rs.3,500/- per month for a premises in any area referred in Part A of first schedule, the provisions of Rent Act are not applicable. But in the case on hand it has to be noted that first of all no rent is fixed by the parties and also it is important to note that, there is a contract between the petitioner and the respondent that no rent is payable and only premium alone is paid and when there is an explicit contract between the petitioner and respondent that no rent is fixed and only premium was paid and he has to continue the possession of the premises until refunding of the premium amount of Rs.10,00,000/-. The question of either fixing of the standard rent or non fixing of the standard rent does not arise. There is an explicit contract between the parties, no rent is payable and only premium amount was paid and this aspect has not been taken note of by the Trial Court while invoking Section 2(3)(e) of Karnataka Rent Act and Trial Court committed an error in coming to the conclusion that Court has no jurisdiction

since it attract Section 2(3)(e) of Karnataka Rent Act and the very approach of the Trial Court is erroneous and fails to consider factual aspects of the case and there is no any contract and even tenant got fixed the standard rent subsequent to the filing of the petition also even he did not comply the same and his intention is only to ouster the jurisdiction of the Court getting fixed the rent from the Rent Controller and the very conduct of the respondent is not taken note of by the Trial Court and also fails to take note of the fact that the respondent is a tenant and he is also a practicing advocate and he indulged in all sorts of efforts made by him and the very admission given by him in the cross examination that he had agreed to vacate the premises on receipt of Rs.10,00,000/- and even during hearing the arguments, the counsel for the petitioner offered to pay the amount of Rs.10,00,000/- what he had paid to the petitioner as premium and the same is not accepted and adopted the dilatory tactics to continue in the premises.

27. Having considered the material available on record, both oral and documentary evidence and also the answers

elicited from the mouth of PW1 as well as RW1 it is clear that possession was delivered in terms of Ex.R5 and premium amount of Rs.10,00,000/- was paid and the agreement is also for a period of three years and though he took the premises in the year 2009, for about 14 years he is squatting on the property without vacating the premises and even not accepting the premium amount what he had paid and instead raised untenable grounds and also approached the Rent Controller for fixation of rent, but he was not intent to comply with the order of the Rent Controller though he got fixed the rent of Rs.21,000/- and he categorically admits that he is not having intention to comply with the order of the Rent Controller, but he wants to take the shelter of fixation of fair rent in terms of Ex.R1 and the very conduct of the respondent is deprecated and instead of receiving an amount of Rs.10,00,000/- which he was paid as premium making all his efforts to squat on the property and these are the aspects has not been considered by the Trial Court while answering point No.2 and hence, the finding of the Trial Court in respect of point No.2 is requires to be set aside

and petition is maintainable and eviction order has to be passed against the respondents.

28. It is important to note that, the Trial Court though answered point Nos.1 and 3 and held that there exists jural relationship between the parties and petitioner has made out the ground to evict the respondent, but on technicalities rejected the petition and hence I answer the point as affirmative.

29. In view of the discussions made above, I pass the following:

ORDER

The Revision Petition is allowed.

The respondent is directed to quit and vacate the premises within 60 days from the date of this order. If fails to do so, take the possession in accordance with law. The petitioner is directed to pay Rs.10,00,000/- which was paid as premium in terms of Ex.R5 to respondent at the time of vacating the premises.

**Sd/-
JUDGE**

AP