IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

HONOURABLE SRI JUSTICE M. VENKATA RAMANA

SECOND APPEALs Nos.416 and 453 of 2014

Between:

L.Nageswara Rao, S/o.Subba Rao

… APPELLANT

AND

A.Srinivasa Rao, S/o.late Nageswara Rao

... RESPONDENT

DATE OF JUDGMENT PRONOUNCED :20.10.2021

SUBMITTED FOR APPROVAL

HONOURABLE SRI JUSTICE M. VENKATA RAMANA

1. Whether Reporters of Local Newspapers may be allowed to see the order? Yes/No

2. Whether the copy of order may be marked to Law Reporters/Journals? Yes/No

3. Whether His Lordship wish to see the fair copy of the order? Yes/No

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M.VENKATA RAMANA, J

***IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

***HONOURABLE SRI JUSTICE M. VENKATA RAMANA**

+ S.As.Nos.416 and 453 of 2014

% Dated : 20.10.2021
Between:

L.Nageswara Rao

… APPELLANT

AND

$ A.Srinivasa Rao

... RESPONDENT

! Counsel for appellant : Mr. S.Sreeramachandra Murthy

^Counsel for Respondent : Mr.Challa Ajay Kumar

<GIST :

>HEAD NOTE:

? Cases referred:

1. AIR 1958 AP 218
2. 2018(2) ALT 1
3. 2012(8) SCC 148
4. 1989(2) SCC 69
5. 2007(4) ALT 348(L.B.)
6. 2015(17) SCC 128 = 2015(4) ALD 155(SC)

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M.VENKATA RAMANA, J

HON'BLE SRI JUSTICE M. VENKATA RAMANA

SECOND APPEALs Nos.416 and 453 of 2014

COMMON JUDGMENT:

S.A.No.416 of 2014 is filed against the decree and judgment in A.S.No.17 of 2013 on the file of the Court of learned XVI Additional District Judge, Krishna, at Nandigama (earlier A.S.No.186 of 2011 on the file of the Court of learned II Additional District Judge, Krishna at Vijayawada) dated 03.04.2014. It was presented against the decree and judgment in O.S.No.69 of 2009 on the file of the Court of learned Senior Civil Judge, Nandigama, dated 07.04.2011.

2. The defendant is the appellant in S.A.No.416 of 2014 and whereas the respondent was the plaintiff.

3. O.S.No.69 of 2009 was initially presented in O.S.No.509 of 2003 on the file of the Court of learned Junior Civil Judge, Nandigama for eviction of the appellant from the plaint schedule property and for recovery of arrears of rents. By virtue of orders in Tr.O.P.No.41 of 2009 dated 09.06.2009 on the file of the Court of learned District Judge, Krishna, at Machilipatnam, it was transferred on to the file of the Court of learned Senior Civil Judge, Nandigama, where it was renumbered as O.S.No.69 of 2009.

4. S.A.No.453 of 2014 is presented against the decree and judgment in A.S.No.19 of 2013 dated 03.04.2014 on the file of the Court of learned XVI Additional District Judge, Krishna at Nandigama(it was earlier A.S.No.220 of 2011 on the file of the Court of learned II Additional District Judge, Krishna, at Vijayawada). It was inturn presented against the decree and judgment in O.S.No.13

of 2006 dated 07.04.2011 on the file of the Court of learned Senior Civil Judge, Nandigama. The defendant therein is the appellant and the respondent in the above suit is the plaintiff in this second appeal. It was a suit filed for specific performance of contract basing on an agreement for sale dated 26.11.2002 executed by the respondent in favour of the appellant in respect of the plaint schedule property.

5. Both the suits were decreed in favour of the respondent and they were also confirmed in the appeals.

6. The plaint schedule property relating to both these suits is

> "A house bearing Door No.18/121A and assessment No.2561 situated in Main road of Nandigam village and Mandal, Krishna District.
>
> It shall be referred to hereinafter as 'the suit house'.

7. Since arguments are addressed in both these second appeals in common at admission stage by the learned counsel appearing for the parties, they are being disposed of by this common judgment.

8. In S.A.No.416 of 2014 relating to eviction suit, the case of the respondent is that the appellant was tenant of the suit house since the year 1998, on a monthly rent of Rs.1500/- under a oral tenancy. It is further case of the respondent that the appellant paid rent up to February 2003 and thereafter defaulted from March 2003. There was exchange of notices between these parties and by the legal notice dated 25.08.2003, the respondent terminated the tenancy of the appellant demanding to handover peaceful and vacant possession of the suit house as well as pay arrears of rent.

9. The appellant did not deny the tenancy. However, he contended that the agreed rent was Rs.1000/- per month to be paid on or before 5th of every succeeding month and that he had paid an advance of Rs.20,000/-.

10. The appellant also contended that the respondent had agreed to sell the suit house for Rs.3,61,000/- to him, received Rs.1,01,000/- towards advance, and balance to be paid on or before 01.03.2003 under an agreement for sale dated 26.12.2002. He further contended that in default of paying the balance amount within such stipulated time, it was agreed that he should pay interest at 12% per annum. He further contended that the respondent had agreed to deduct deposit amount of Rs.20,000/- from the balance payable at the time of entering this contract and therefore, his liability to pay balance sale consideration stood at Rs.2,40,000/-.

11. It is further contention of the appellant that on 05.02.2003 he approached the respondent offering balance sale consideration of Rs.2,40,000/-, requesting to execute a regular sale deed and to register. However, according to him, the respondent expressed his inability on account of pending litigation between him and his wife stating that his wife would bring a lot of pressure on him taking away major part of the sale consideration. Thus, the respondent requested him, according to the appellant to wait till the dispute between him and his wife got settled.

12. The appellant did not deny the exchange of notices and contended that he offered the balance sale consideration which according to him being Rs.2,40,000/- by a demand draft to the

respondent, which he sent through his reply notice dated 03.09.2003 to the legal notice dated 25.08.2003 issued by the respondent. However, according to the appellant, the respondent returned this demand draft requiring him to pay the balance sale consideration at Rs.2,60,000/- along with interest at 12% per annum from 01.03.2003 and also rent from 01.03.2003.

13. It is further contention of the appellant that he expressed his ready and willingness to perform his part of contract at all material times and complained that the respondent did not cooperate with him to perform his part of contract.

14. The appellant denied that there was valid termination of tenancy by the notice dated 25.08.2003 and questioned the maintainability of the suit.

15. In the suit for specific performance concerned to S.A.No.453 of 2014, the appellant had set out his case in terms with the defence set up in the eviction suit referred to above demanding the respondent to execute a regular sale deed and to register upon receiving balance sale consideration and in the event of his failure, the appellant requested the Court to execute a sale deed in his favour.

16. The respondent in his defence while refuting that the appellant is entitled for relief of specific performance, referring to the alleged default of the appellant in paying the balance sale consideration along with interest as agreed upon, including the rents from March 2003, mainly contended that the appellant was never ready and

willing to perform his part of contract under the agreement for sale and thus, he is not entitled for the relief as requested.

17. In both the suits, the trial Court settled the following issues:

O.S.No.13 of 2006 (S.A.No.453 of 2014):

1. Whether the suit agreement of sale is still in force?
2. Whether the plaintiff is entitled to the specific performance of the suit agreement of sale?
3. If not whether the plaintiff is entitled to the alternative relief of refund of Rs.1,01,000/- with interest as prayed for?
4. To what relief?

O.S.No.69 of 2009 (S.A.No.416 of 2014):

1. Whether the plaintiff is entitled for eviction of the defendant from the schedule property and delivery of vacant possession thereof?
2. Whether the defendant paid the rent upto July 2003?
3. Whether the plaintiff is entitled to recover a sum of Rs.10,500/- with subsequent interest at the rate of 24% per annum towards rental due from the defendant in respect of the schedule property?
4. To what relief?

18. Trial was conducted in both the suits separately. In the eviction suit, the respondent examined himself as P.W.1 and another witness P.W.2 while relying on Ex.A1 to Ex.A6 in support of his contention. The appellant in that suit examined himself as D.W.1 and relied on Ex.B1 to Ex.B8 in support of his contention.

19. In specific performance suit, the appellant examined himself as P.W.1, P.W.4 and P.W.5 being the attestors to the suit agreement for sale and further examined P.W.2 and P.W.3 in support of his contention, while relying on Ex.A1 to Ex.A8. The respondent

examined himself as D.W.1 in that suit, who relied on Ex.B1 to Ex.B4 in support of his contention.

20. In S.A.No.416 of 2014 substantial questions of law are stated in the memorandum of appeal. In S.A.No.453 of 2014 similarly substantial questions of law are stated in the memorandum of appeal.

21. A separate memo setting out substantial questions of law is filed on behalf of the appellant in S.A.No.416 of 2014.

22. All these substantial questions of law as claimed by the appellant, relate to the procedure followed by the trial Court holding trial separately in both the suits contending that it is against the directions of learned District Judge, Krishna, at Machilipatnam as per orders dated 09.06.2009 in Tr.O.P.No.41 of 2009.

23. Another question sought to be raised in respect of additional evidence permitted by the appellate Court under Order XLI Rule 27 CPC and also in considering the question of jurisdiction of the civil Court to entertain a suit for eviction, claiming that the agreed and proved rent for the suit house stood at Rs.1000/- whereby an action for eviction could be tried only by a Rent Controller under A.P.Buildings (Lease, Rent and Eviction) Control Act.

24. Another question sought to be raised is with reference to validity of the notice dated 25.08.2003 terminating the tenancy in terms of Sections 106 and 111 of Transfer of Property Act.

25. These are all the questions required to consider and determine in these second appeals and if, in the given facts and circumstances form the basis to apply Section 100 CPC.

26. The factual matrix in these two appeals is based on admitted situation. The respondent is the owner of the suit house. The appellant was his tenant under a oral tenancy on a monthly rent to be paid in the succeeding month.

27. An agreement for sale was entered into between the appellant and the respondent on 26.12.2002 admittedly, whereby the respondent had agreed to sell the suit house for a total consideration of Rs.3,61,000/-. An advance of Rs.1,01,000/- was paid by the appellant to the respondent there under. One of the terms of this contract included payment of balance consideration of Rs.2,60,000/- on or before 01.03.2003 and in default, the appellant should pay an interest at 12% per annum till the terms under this agreement are completely performed.

28. It was also agreed in between these parties that the appellant should pay rent every month and that he defaulted in doing so from March 2003. Thus, he fell in arrears.

29. The respondent got issued a legal notice dated 25.08.2003 referring to terms of this agreement and alleged default in performing his part of contract. He also stated in this notice that the appellant defaulted to pay the rents from March 2003 and finally stated that the tenancy of the appellant stood terminated (this legal notice is Ex.A1 in O.S.No.69 of 2009 and Ex.A2 in O.S.No.13 of 2009).

30. A reply dated 06.09.2003 was issued on behalf of the appellant (Ex.A3 in O.S.No.13 of 2009) enclosing Ex.A4 pay order dated 06.09.2003 for Rs.2,40,000/- on behalf of the appellant stating that

Rs.20,000/- paid towards advance for the tenancy was deducted out of the balance sale consideration. A cheque for Rs.1,000/-(original of Ex.A5) dated 08.09.2003 was also sent to the respondent claiming being the agreed rent, which the appellant had returned.

31. Further notices dated 08.09.2003, 27.09.2004 and 14.10.2004 are referred to by the parties. In reply notice dated 14.10.2004, the respondent reiterated his stand in relation to tenancy as well as the agreement for sale as to termination of tenancy and demanding performance of the terms of the contract under the agreement for sale dated 26.10.2002. Further demand was made to pay the arrears of rent at Rs.1500/- per month by this reply notice.

32. Basing on the evidence and material, learned trial Judge accepted the claim of the respondent in both the suits, that there was valid termination of tenancy in terms of legal notice dated 25.08.2003 requiring eviction of the appellant from the suit house and that the appellant defaulted to abide by the terms of the contract, who failed to establish that he was always ready and willing to perform his part of contract in terms of Section 16(c) of the Specific Relief Act.

33. Learned appellate Judge agreed with these findings of the trial Court on reappraisal of the material and confirmed the decrees and judgments of the trial Court in both the suits.

34. Sri S.Sreeramachandra Murthy, learned counsel for the appellant in both these appeals mainly contended that the very process of going on with trial separately in both these suits is against

the order in Transfer O.P.No.41 of 2009 of the District Court, Krishna at Machilipatnam and this procedure without conducting a common and join trial in both the suits resulted in serious prejudice to the appellant in setting out his case.

35. A reference is also made by Sri Sreeramachandra Murthy, learned counsel for the appellant, of the order of transfer of the suit, of the District Court, referred to supra.

36. This order of transfer did not specifically direct consolidation of both these suits, which learned District Judge would not have possibly done, in terms of Section 24 CPC. All that was required was to try both these suits, by the Court of learned Senior Civil Judge, Nandigama.

37. It is pertinent to note that both the parties did not request the trial Court for consolidation of the suits, making out a cause of convenience and possible prejudice the parties would suffer in the event such consolidation is not directed. Both the parties went on with the trial knowing full well the consequences and invited the decision from the trial Court in both these suits separately. Further pertinent to note that both these suits were disposed of albeit by separate judgments by the trial Court on 07.04.2011. The manner of disposal in these facts and circumstances by the trial Court is in accordance with the directions of the District Court while transferring the suit for eviction to the Court of learned Senior Civil Judge, Nandigama.

38. A cause, which was not adverted to or canvassed at the stage of trial, cannot be made out being of substantial importance in the second appeal.

39. Sri Challa Ajay Kumar, learned counsel for the respondent referring to these facts and circumstances contended that there is no procedural infraction, due to trial of both the suits separately and even otherwise relying on ***DRONAVAJJULA VIDYAMBA v. VALLABHAJOSYULA LAKSHMI VENKAYAMMA***[1]a judgment of Division Bench of the then High Court of A.P. at Hyderabad, further contended that any violation or contravention of order of transfer under Section 24 CPC and separate trial of transferred suit did not render the proceedings invalid. This ruling was later followed by one of the learned Judges of this Court in ***SMT.G.B.PRASANNA v. SMT.M.D.VEDANAYAKI(DIED) AND ANOTHER***[2].

40. Having regard to facts and circumstances of this case and the law stated above, the contention of Sri Sreeramachandra Murthy, learned counsel for the appellant cannot stand. No prejudice as such is suffered by both the parties, much less the appellant in this process. This question did not fall within the purview of Section 100 CPC nor has the status of substantial question of law.

41. Sri Sreeramachandra Murthy, learned counsel for the appellant further contended that both the Courts below accepted the rent for the suit house being Rs.1000/- per month and therefore, in view of G.O.Ms.No.636 dated 26.10.1983, which came into effect from

[1] AIR 1958 AP 218
[2] 2018(2) ALT 1

02.01.1984, the civil Court has no jurisdiction to direct eviction of the appellant and it is only the Court of learned Rent Controller in terms of A.P.Buildings (Lease, Rent and Eviction) Control Act, the landlord could seek eviction of the appellant under Section 10 thereunder.

42. In this respect, Sri Sreeramachandra Murthy, learned counsel for the appellant further contended that the appellate Court went wrong in considering such plea in the appeal upon permitting the respondent to lead additional evidence at that stage, ordering I.As.111 and 112 of 2013. Thus, permitting the respondent to lead further evidence on the question of jurisdiction of civil Court to entertain a suit for eviction is seriously assailed. This according to learned counsel for the appellant is highly irregular, which is impermissible in law amounting to abuse of Order XLI Rule 27 CPC.

43. In support of his contention, Sri Sreeramachandra Murthy, learned counsel for the appellant relied on a judgment of Hon'ble Supreme Court in ***UNION OF INDIA v. IBRAHIMUDDIN AND ANOTHER***[3]referring to application of Order XLI Rule 27 CPC and as to when reception of additional evidence in an appeal be permitted, only upon consideration of the material placed before the trial Court. In paras 47 to 52 of this ruling, it is stated as under:

> 47. Section 100 CPC provides for a second appeal only on the substantial question of law. Generally, a Second Appeal does not lie on question of facts or of law.
>
> 48. In State Bank of India & Ors. v. S.N. Goyal, AIR 2008 SC 2594, this Court explained the terms "substantial question of law" and observed as under :

[3] 2012(8) SCC 148

"The word 'substantial' prefixed to 'question of law' does not refer to the stakes involved in the case, nor intended to refer only to questions of law of general importance, but refers to impact or effect of the question of law on the decision in the lis between the parties. 'Substantial questions of law' means not only substantial questions of law of general importance, but also substantial question of law arising in a case as between the parties. ……..... any question of law which affects the final decision in a case is a substantial question of law as between the parties. A question of law which arises incidentally or collaterally, having no bearing on the final outcome, will not be a substantial question of law. There cannot, therefore, be a straitjacket definition as to when a substantial question of law arises in a case." (Emphasis added) Similarly, in Sir Chunilal V. Mehta & Sons Ltd. v. Century Spinning and Manufacturing Co. Ltd., AIR 1962 SC 1314, this Court for the purpose of determining the issue held:-

"The proper test for determining whether a question of law raises in the case is substantial, would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties….." (Emphasis added)

49. In Vijay Kumar Talwar v. Commissioner of Income Tax, New Delhi, (2011) 1 SCC 673, this Court held that, a point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be 'substantial' a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law 'involving in the case' there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. It will, therefore, depend on the facts and circumstance of each case, whether a question of law is a substantial one or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis."

(See also: Rajeshwari v. Puran Indoria, (2005) 7 SCC 60).

50. The Court, for the reasons to be recorded, may also entertain a second appeal even on any other substantial question of law, not formulated by it, if the Court is satisfied that the case involves such a question. Therefore, the existence of a substantial question of law is a sine-qua-non for the exercise of jurisdiction under the provisions of Section 100 CPC. The second appeal does not lie on the ground of erroneous findings of facts based on appreciation of the relevant evidence.

There may be a question, which may be a "question of fact", "question of law", "mixed question of fact and law" and "substantial question of law." Question means anything inquired; an issue to be decided. The "question of fact" is whether a particular factual situation exists or not. A question of fact, in the Realm of Jurisprudence, has been explained as under:-

"A question of fact is one capable of being answered by way of demonstration. A question of opinion is one that cannot be so answered. An answer to it is a matter of speculation which cannot be proved by any available evidence to be right or wrong." (Vide: Salmond, on Jurisprudence, 12th Edn. page 69, cited in Gadakh Yashwantrao Kankarrao v. E.V. alias Balasaheb Vikhe Patil & ors., AIR 1994 SC 678).

51. In Smt. Bibhabati Devi v. Ramendra Narayan Roy & Ors., AIR 1947 PC 19, the Privy Council has provided the guidelines as in what cases the second appeal can be entertained, explaining the provisions existing prior to the amendment of 1976, observing as under:-

"..... that miscarriage of justice means such a departure from the rules which permeate all judicial procedure as to make that which happen not in the proper sense of the word 'judicial procedure' at all. That the violation of some principles of law or procedure must be such erroneous proposition of law that if that proposition to be corrected, the finding cannot stand, or it may be the neglect of some principle of law or procedure, whose application will have the same effect. The question whether there is evidence on which the Courts could arrive at their finding, is such a question of law.

'That the question of admissibility of evidence is a proposition of law but it must be such as to affect materially the finding. The

> question of the value of evidence is not sufficient reason for departure from the practice....."

> 52. In Suwalal Chhogalal v. Commissioner of Income Tax, (1949) 17 ITR 269, this Court held as under:-

> "A fact is a fact irrespective of evidence, by which it is proved. The only time a question of law can arise in such a case is when it is alleged that there is no material on which the conclusion can be based or no sufficient evidence."

44. In the event of reception of additional evidence prior to hearing the appeal, it has to be ignored, is stressed upon by learned counsel for the appellant.

45. Sri Challa Ajay Kumar, learned counsel for the respondent sought to repel the contention of the learned counsel for the appellant, referring to the circumstances under which learned appellate Judge permitted additional evidence to be let-in. Inviting attention of this Court to para-21 of the judgment of the appellate Court in A.S.No.17 of 2013, learned counsel for the respondent further contended that this question raised of, ouster or want of jurisdiction of civil Court to entertain a dispute of this nature was never a part of the defence of the appellant either in the written statement or at the trial nor any issue was cast, for this purpose.

46. When the question of jurisdiction was raised for the first time in the appeal, learned counsel for the respondent contended that learned appellate Judge recorded right reasons in permitting to lead additional evidence. Even otherwise, objection relating to jurisdiction when not raised at the earliest point of time in the course of trial, in terms of Section 21(1) CPC, it is further contended that the appellate Court cannot permit such objection to be taken.

Raising such question for the first time in the appeal under Section 96 CPC without foundation at the trial was sought to be cured by the procedure followed by the learned appellate Judge, according to the learned counsel for the respondent.

47. It is true, it was never the defence of the appellant either in the written statement or at the trial that the civil Court did not have jurisdiction to try his eviction case and that it is only the Court of learned Rent Controller, who has jurisdiction for this purpose.

48. As seen from the judgment in the appeal in A.S.No.17 of 2013, considering that such an objection was raised for the first time in the appeal as one of the grounds, learned appellate Judge thought it fit to consider such question and for such purpose, when applications in I.A.Nos.111 and 112 of 2013 were filed under Section XLI Rule 27 CPC for reception of additional evidence, they were allowed. The orders passed in those applications became final. The appellant did not choose to question or challenge them by means of a revision petition, to this Court. Thus, the appellant submitted himself to the jurisdiction of the appellate Court in that process.

49. The documents sought to be adduced in additional evidence, to a major part, were available in the records of the trial Court and only the sanction plan, approved by the Gram Panchayat, Nandigama relating to the suit house was an additional document produced at that stage.

50. When the respondent was examined as P.W.1 in the appeal pursuant to the orders in those two applications dated 29.01.2014,

this witness was not subjected to any cross-examination. In para-21 of the judgment in the appeal, it is specifically stated that on behalf of the appellant, no cross-examination of this witness was reported. Thus, at that stage, the procedure so followed was not in question. The appellant remained a conscious observer and who willingly participated in such proceedings. Therefore, he cannot make out a reason on this score as if there has been serious infraction of procedure.

51. In the above ruling of Hon'ble Supreme Court, the effect of Order XLI Rule 27(1)(b) CPC was considered in recording such observations. It was not an instance with reference to application of Order XLI Rule 27(1)(aa) CPC. This clause gets attracted in those cases, where the party seeking to produce additional evidence establishes that inspite of exercise of his due diligence and his best efforts, such evidence was not within his knowledge or he could not produce such evidence in the trial Court. In respect of application of this clause, the appellate Court is expected to enquire for limited purpose whether the party who is making such application had exercised required due diligence and despite it, he could not come to know of such evidence and which he could not produce during trial.

52. The circumstances in the present case need consideration to know if the respondent has met the requirements in terms of Order XLI Rule 27(1)(aa)CPC.

53. Necessity for the respondent to adduce additional evidence was on account of a ground urged on behalf of the appellant in the appeal questioning the jurisdiction of the civil Court to maintain the suit for

eviction against him. Obviously, this ground is based on a finding recorded by the learned trial Judge that the rent for the suit house was only Rs.1000/- per month and therefore, the suit stood within the purview of G.O.Ms.No.636 dated 26.10.1983 issued under Section 26 of A.P.Buildings (Lease, Rent and Eviction) Control Act.

54. It was a new introduction at the appellate stage without any foundation laid by the appellant in pleadings as well as evidence. Therefore, it was a compelling need for the respondent to meet this situation.

55. These circumstances surrounding this situation are within the purview of Order XLI Rule 27(1)(aa) CPC since requirement to lead such evidence was not to the knowledge of the respondent at the trial stage.

56. In fact, the reasons that impelled learned appellate Judge to pass such an order, can be gathered from the observations in para – 21 of the appellate Court judgment. It is desirable to extract the same for convenience hereunder:

> "When the rent for the schedule property is only Rs.1,000/-, a genuine doubt will arise whether the Civil Court is having jurisdiction or Rent Controller Court. In the trial Court the defendant had not taken any plea that the Civil Court had no jurisdiction to entertain the suit for eviction, but it is only a Rent Controller Court. But, surprisingly before this Court at the stage of appeal he had taken such a plea. The plaintiff filed an application in I.A.No.112 of 2013 and another application in I.A.No.111 of 2013 before this Court to recall P.W.1 and receive the documents, the same were allowed by passing a common order, because that is very crucial to decide whether the Civil Court is having jurisdiction or the Rent Controller. Naturally, as it is a settled law that no

party should be allowed to take plea which he had not taken at the earliest point of time better before the trial Court to take a plea but not at the stage of appeal. Tomorrow ultimately if the plaintiff succeeds the suit and files any execution petition, it would be open for the defendant to raise objection at the stage of execution about lacking inherent jurisdiction of the Court, which passed the decree. In other words suppose if the Civil Court has no jurisdiction to entertain the suit and it is only a Rent Controller, the defendant can take plea of lack of inherent jurisdiction to the civil Court. To overcome the same, the petitions were allowed. To get a clear case of both parties the petitions are allowed. P.W.1 was recalled. He filed Ex.A7 building approval plan. The defendant reported no cross-examination."

57. Therefore, no abnormality or unusual feature is seen in following such procedure by the learned appellate Judge. Hence, the ruling of Hon'ble Supreme Court relied on by the learned counsel for the appellant did not cover the situation, which is seen in this case on hand. Therefore, there is no reason or necessity to reject additional evidence so adduced at the appellate stage. Thus, this proposed substantial question of law basing on alleged infraction of Order XLI Rule 21 CPC did not exist. The appellant is trying to make out a cause taking advantage of his own wrong or serious deficiency in conducting the case at the trial stage.

58. It is also pertinent to state at this juncture that learned trial Judge was not right in considering the rent at Rs.1,000/-, as if admitted. A careful consideration of the judgment of the trial Court reflected that an application was filed requiring the appellant to deposit rent, which he claimed at Rs.1000/- per month though the contention of the respondent was Rs.1500/- per month. The claim of the respondent that rent being Rs.1500/- was consistent which he had

raised in his legal notices, in the plaint as well as in his deposition at the trial. The appellant did not bring out any material to contradict such stand of the respondent.

59. Learned trial Judge relied on such circumstance of deposit of Rs.1000/- per month as per orders in I.A.No.783 of 2012. What all directed by this order was to deposit such rent claimed by the appellant payable for the suit house and it remained a disputed fact. Withdrawal of the amount so deposited was also considered as a circumstance to support an inference that the rent remained at Rs.1000/- per month and not Rs.1500/-. These reasons assigned by the learned trial Judge are apparently on misreading of the material and improper understanding of the facts and situation leading to deposit of Rs.1000/- per month by the appellant.

60. Learned appellate Judge did not discuss more on this aspect obviously hindered by the reason, for want of challenge of this finding before him either by means of cross-objections or cross-appeal. Hence, there is only a passing reference in the judgment in the appeal in this respect without much of discussion. The difficulty faced by learned appellate Judge in these circumstances is understandable. When the respondent himself did not choose to question such findings basing on which quantum of arrears was also arrived at by the trial Court passing a decree to that extent, failure to offer appropriate assistance on the part of the respondent to the appellate Court, at that stage is definitely a cause for concern.

61. Thus, this situation is more based on fact nor can be stated being a substantial question of law as sought to be made out by learned counsel for the appellant.

62. Sri Sreeramachandra Murthy, learned counsel for the appellant further contended that the relationship in between these parties as tenant and landlord was not appreciated properly by both the Courts below and learned appellate Judge went on mechanically in this context. In support of such contention, reliance is placed by learned counsel for the appellant in ***PRABHA MANUFACTURING INDUSTRIAL COOPERATIVE SOCIETY v. BANVARILAL***[4]. The judgment of the appellate Court has considered this question properly and basing on fact situation recorded appropriate findings. Therefore, this question also did not remain a substantial question of law.

63. Sri Sreeramachandra Murthy, learned counsel for the appellant further contended that learned appellate Judge went wrong in holding that the suit house falls within exception under G.O.Ms.No.636 dated 29.12.1983 and having regard to the judgment of larger bench of this Court in ***RAMVILAS BAJAJ AND OTHERS v. ASHOK KUMAR AND OTHERS***[5] that was considered by Hon'ble Supreme Court later in ***NOORUNNISSA BEGUM v. BRIJ KISHORE SANGHI***[6].

64. Learned appellate Judge considered that this suit house was constructed upon obtaining permission from the Gram Panchayat in February 1985. Considering that the suit was filed on 15.10.2003,

[4] 1989(2) SCC 69
[5] 2007(4) ALT 348(L.B.)
[6] 2015(17) SCC 128 = 2015(4) ALD 155(SC)

learned appellate Judge observed that the construction of the building was within 10 years period, under G.O.Ms.No.636 and therefore, the Rent Controller did not have jurisdiction and institution of the suit in Civil Court is proper. Larger bench of this Court in the ruling referred to application of these provisions of Rent Control Act as well as the effect of amendment brought out to this Act in the year 2005. Majority opinion in this larger bench judgment held that application of this amendment is prospective particularly having regard to the effect given by this amendment to Section 32 of A.P.Buildings (Lease, Rent and Eviction) Control Act. Minority opinion is expressed by Sri Justice Ramesh Ranganathan in this decision.

65. In para – 67 of this part of this ruling, conclusion drawn by the majority that Section 32-C of A.P.Buildings (Lease, Rent and Eviction) Control Act, as brought into force by Section 3 of amendment Act of 2005 is prospective in operation and that it did not affect the proceedings pending as on the date when it came into force, before Civil Courts or appellate, revisional or executing Courts. Thus, it was held that these cases were required to be decided without reference to and application of the provisions of the amendment Act.

66. In ***Noorunnisa Begum*** judgment of larger bench was interfered with to certain extent and holding that such part of G.O.Ms.No.636, being redundant was set aside. Ultimately, regarding clause – B in para-52 of judgment of Hon'ble Supreme Court(as reported in 2015(4) ALD 155) it is held as follows:

> "(a) Part of Section 32 of prospective and some part of it is retrospective.

(b) The exemption granted by the State Government under Section 26 of the Act by G.O.Ms.No.636, dated 29.12.1983 has overriding effect over rest of provisions of the Act.

(c) The buildings whose rents are upto Rs.3,500/- in the Municipal areas and Rs.2,000/- in other areas were already covered by the Act and after amendment it continues to be covered by the Act but the tenants of buildings, rent of which is more than Rs.1,000/- and does not exceed Rs.3,500/- in the Municipal area or Rs.2,000/- in other area even after amendment of Section 32 cannot claim protection in view of the exemption granted under Section 26 of the Act.

(d) Section 26 and Section 32 of the Act operate in two different fields. Section 32 relates to non-applicability of the Act to a class of building(s) whereas Section 26 deals with the power of the State to exempt the building or class of buildings to which Act is applicable. In fact, there is no clash between Section 26 and Section 32, as they operate in two different fields and, therefore, the question of overriding of one over another does not arise.

(e) Clause (a) of G.O.Ms.No.636, dated 29-12-1983 has become redundant. However, clause (b) of the G.O.Ms.No.636, dated 29-12-1983 still holds good.

(f) The suit(s), appeal(s), revision application(s) or execution case(s) which are pending for determination under the General Law are not affected by amended Section 32 and will continue to be decided in accordance with General Law."

67. Applying this ruling of Hon'ble Supreme Court to the fact situation obtaining now in this case, it is manifest that the finding recorded by learned appellate Judge that the suit house is not governed by A.P.Buildings (Lease, Rent and Eviction) Control Act, on account of its date of construction, is proper. Observations of Hon'ble Supreme Court in this context holding that Section 32(b) being retrospective in operation, comes to the aid of the respondent in as much as even by the amended Act, the buildings which constructed or substantially renovated for a period of 15 years from the date of completion of such construction or substantial renovation

did not remain within the meaning of Section 2(9) of A.P.Buildings (Lease, Rent and Eviction) Control Act. Thus, the tenancy of the suit house lost protection under this Rent Control Act in view of amended Section 32(b).

68. Therefore, even this substantial question of law sought to be raised on behalf the appellant did not exist for consideration and learned appellate Judge had drawn right conclusions basing on material before him.

69. There is consistent claim of the respondent terminating the tenancy by issuing appropriate quit notices including the first one dated 25.08.2003. No circumstances are made out to invalidate this notice and that it is not in accordance with Section 106 and Section 111 of Transfer of Property Act.

70. Therefore, all the substantial questions stated to be of law sought to be raised relating to this eviction suit on behalf of the appellant, did not exist. This Court is satisfied that it is not an instance calling for application of Section 100 CPC. The entire case is more governed by fact situation. Hence, this second appeal has no merit and has to be dismissed.

71. In respect of the claim for specific performance of the appellant basing on agreement for sale dated 26.12.2002 (Ex.A1) in O.S.No.13 of 2006, the predominant consideration is ready and willingness on the part of the appellant to perform his part of contract and in such circumstances, discretion exercised by the trial

Court, reconsidered by the appellate Court, needs no interference. Admitted facts have already referred to supra in this context.

72. The documentary proof itself reflected that the appellant did not pay the balance sale consideration of Rs.2,60,000/- as stipulated before the time fixed for performance under this contract, viz. 01.03.2003. He also failed to pay interest at 12% per annum from 01.03.2003 even though he tendered Ex.A4 pay order for Rs.2,40,000/- on 06.09.2003 to the respondent.

73. The contention of the appellant that advance of Rs.20,000/- paid towards his tenancy was disbelieved by both the Courts and it is being a question of fact when such a finding was returned in the first appeal, this Court cannot lightly interfere in this second appeal. Learned appellate Judge infact took into consideration the testimony of P.W.2 and P.W.3 as well as P.W.4 and P.W.5, who are the attestors of Ex.A1 in this context. On reappraisal of such evidence, learned appellate Judge held that their testimony did not reflect that Rs.20,000/- was considered as an advance received by the respondent from the appellant.

74. The terms of Ex.A1 and calling upon the appellant to perform his part of contract thereunder are clearly stated in the first notice issued on behalf of the respondent on 25.08.2003 that was reiterated by his later reply notices dated 08.09.2003 and 14.10.2004. The stand of the respondent was obviously clear and was abiding by the terms of the contract under the agreement for sale. He was prepared to execute a sale deed and register it subject to the appellant's performing his part of contract. The conduct of the appellant did not

reflect as was considered by both the Courts below that he was always ready and willing to perform his part of contract at all material times. Thus, a clear infraction of Section 3 of Specific Relief Act was observed by both the Courts below.

75. In the backdrop of this fact situation, when the refund of advance of Rs.1,01,000/- was directed instead of ordering specific performance of contract under the agreement for sale dated 26.12.2002, in exercise of discretion, this Court in second appeal cannot interfere.

76. Therefore, this Court is satisfied considering the material and claims of both the parties in both these second appeals that there are no substantial questions of law requiring determination upon their admission. Therefore, these two appeals should fail.

77. In the result, S.A.No.416 of 2014 is dismissed and without costs and S.A.No.453 of 2014 is dismissed and without costs. The decrees and judgments of both the Courts below stand confirmed. The appellant is granted time to vacate the suit house on or before 01.01.2022. Otherwise, the respondent is at liberty to approach the trial Court by means of an execution petition to get the appellant evicted, if so advised.

M. VENKATA RAMANA, J

Dt: 20.10.2021
Rns

HON'BLE SRI JUSTICE M. VENKATA RAMANA

SECOND APPEALs Nos.416 and 453 OF 2014

Date:20.10.2021

Rns