

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

C.R.P.No.4652 of 2014

ORDER:

This Revision Petition is filed challenging the order dt.28-11-2014 in I.A.No.2019 of 2014 in O.S.No.1553 of 2013 of the I Senior Civil Judge, City Civil Court, Hyderabad.

2. Petitioner herein is the defendant in the above suit. The respondent-plaintiff filed the above suit against the petitioner contending that the petitioner is his tenant and seeking his eviction from the plaint schedule property.

3. The respondent filed I.A.No.1827 of 2013 under Order 15-A CPC to direct the petitioner to pay Rs.15,000/- per month from 01-09-2013 onwards. The said application was allowed after contest on merits on 07-08-2014 and the Court below passed the following order:

"In the result, petition is allowed with costs. The respondent is directed to pay admitted rent @ Rs.7,750/- per month directly to the petitioner from September 2013 to July 2014 in the open court under intimation within two months and also continue to pay admitted rent of Rs.7,750/- per month directly to the petitioner from August 2014 on or before 10th of every month till disposal of the suit.

Regarding arrears of rent and also rent

claimed by the petitioner of Rs.15,000/- per month, and also about adjustment of arrears of rent with the deposit lying with the petitioner will be decided during course of trial at the time of final judgment.

If respondent fails to comply either of the conditions the defence will be struck off."

4. The two months' period fixed by Court expired on 07-10-2014. On 14-10-2014, on the ground that the petitioner had not complied with the Order dt.07-08-2014, his defence was struck off. On 21-10-2014, the petitioner deposited a sum of Rs.93,000/- purporting to be the arrears of rent for the period September 2013 to September 2014 @ Rs.7,750/- per month by way of a demand draft to the credit of the suit.

5. Petitioner thereafter, on 21-10-2014, filed I.A.No.2109 of 2014 under Section 151 CPC praying the Court below to set aside the Order dt.14-10-2014 striking off the petitioner's defence and give him an opportunity to defend the suit. In the said application, he requested the Court below to receive the payment of Rs.93,000/- offered by way of demand draft dt.21-10-2014 in the name of the respondent by condoning the delay in paying the same.

6. This application was opposed by the respondent. He contended that the application to set aside the order striking off the defence is not maintainable at a belated stage when evidence of plaintiff is in progress; that the Court below has exercised its power

under Order 15A CPC and forfeited the defence; the petitioner ought to have moved the Court for extension of time for complying with the order passed under Order 15-A CPC; and once the time granted in the order passed under Order 15-A CPC has lapsed, there is no scope for extending the time. It was also pointed that the Court, under Order 15-A CPC, had discretion to extend the time only for 15 days from the initial time granted, for compliance of the order; as per the order passed by the Court below, time was given up to 07-10-2014 for payment of arrears, and for payment of future rents i.e. from the month of August 2014, the time was given up to 10th of succeeding month and the present application is moved beyond 15 days from the date fixed by the Court, and hence not maintainable.

7. By order dt.28-11-2014, the Court below dismissed the said I.A. It noticed that when the suit was posted to 14-10-2014, the respondent-plaintiff was present but the petitioner-defendant was absent and there was no representation; that the respondent-plaintiff's counsel stated that the petitioner-defendant had not complied with the order dt.07-08-2014 in I.A.No.1827 of 2013; and after perusing the said order, the Court struck off the defence. It held that on 21-10-2014, the present I.A. has been filed to set aside the said order; on that day, memo was filed by the petitioner stating that he deposited

Rs.93,000/- by way of demand draft; that if the defendant committed default in making deposit, as per the order of the Court, the Court has no option except to strike off the defence as per Order 15-A CPC; therefore it cannot set aside the order passed on 07-08-2014.

8. Challenging the same, this Civil Revision Petition is filed.

9. Learned counsel for the petitioner contends that the petitioner had complied with the order passed by the Court below in I.A.No.1827 of 2013 on 21-10-2014 and therefore the Court below erred in dismissing the said I.A. He also pointed out that two months' period fixed in the order dt.07-08-2014 in I.A.No.1827 of 2013 ended only on 07-10-2014 and since the present application I.A.No.2019 of 2014 filed on 21-10-2014, within 15 days from 07-10-2014, the Court below should have set aside the order dt.14-10-2014 striking off the petitioner's defence.

10. Learned counsel for the respondent on the other hand contended that the order passed by the Court below is correct and did not warrant any interference by this Court under Article 227 of the Constitution of India. He pointed out that in the order dt.07-08-2014 in I.A.No.1827 of 2013, the petitioner was directed to pay not only the arrears of rent from September 2013 to July 2014 within two months but also directed to pay the admitted

rent from August 2014 on or before 10th of every month till disposal of the suit; the order itself specified that if he did not comply with either of the conditions, the defence will be strike off; that the petitioner admittedly did not pay the rents for the period September 2013 to July 2014 before 07-10-2014; the contention of the petitioner that he paid rents for September 2014 is not correct because the amount of Rs.93,000/- deposited by the petitioner comprises rents up to August 2014 only; and therefore there is a default by the petitioner to comply the later direction to pay the rents on or before 10th of every month.

11. I have considered the submissions of both sides.

12. Order 15-A CPC states:

"Order XV-A was incorporated in the Code of Civil Procedure, 1908 (in short, C.P.C) by way of amendment in the State of Andhra Pradesh. Rules 1 and 2 of Order XV-A read as follows:

"(1) In a suit for recovery of possession, on termination of lease, or licence, with or without a prayer for recovery of arrears of rent, or licence fee, known with whatever description, the defendant, while filing his written statement, shall deposit the amount, representing the undisputed arrears, calculated up to that due into the Court and shall continue to deposit such amount, which becomes payable thereafter within one week from the date on which it becomes due, till the judgment is rendered in the suit.

(2) Whether the defendant pleads in the written statement that no arrears of rent or licence fee exists, it shall be competent for the Court to pass an order in this regard, after affording opportunity to both the parties,

and in case any amount is found due, the defendant shall be under obligation to deposit the same, within the time stipulated by the Court and continue to deposit the amount which becomes payable thereafter, as provided under Rule 1:

Provided that the time stipulated for payment of amount, as aforesaid, may be extended by the Court for reasons to be recorded for a period not exceeding 15 days.

If the defendant commits default in making the deposits, as aforesaid, the Court shall strike off the defence.

On such deposit it shall be competent for the plaintiff to withdraw the same.

Explanation:- The expression "the amount representing the undisputed areas" shall mean the sum of rent, or lease fee calculated for the period for which it remained unpaid, after deducting from it any amount.

(a) paid as tax, to a local authority, in respect of the property,

(b) paid to the plaintiff under written acknowledgment, and

(c) deposited into the Court, in any proceedings, in relation to the said property."

13. From the above provision, it is clear that in a suit for recovery of possession against the tenant, the Court has got power to direct the defendant to pay arrears of rent calculated up to the date of application into Court and also to direct him to continue to deposit the amount till the judgment is rendered in the suit. The proviso to sub section (2) in Order 15-A confers power on the ground to extend time for such payment for period not exceeding 15 days by recording reasons. If the defendant continues default in making the deposits as directed, the Court is mandated to strike off defence.

14. By order dt.07-08-2014, I.A.No.1827 of 2013 was allowed. So the amount comprising arrears from September 2013 to July 2014 has to be deposited under intimation within two months. Therefore, this deposit shall take place before 07-10-2014. Admittedly, the arrears from September 2013 to August 2014 were deposited on 21-10-2014 i.e. two weeks after the time was fixed by the Court. Also rent for the month of September 2013 which is payable by 10th of October, 2014 was not deposited. No application was filed by the petitioner seeking extension of time for 15 days in complying with the order.

15. Therefore, the Court below had no option but to strike off the defence on 14-10-2014. So I see no error in the order passed by the Court below dismissing I.A.No.2019 of 2014. So the Civil Revision Petition is dismissed. No costs.

16. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 23-06-2015

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