

HON'BLE SRI JUSTICE R. SUBHASH REDDY

SECOND APPEAL No.609 of 2015

JUDGMENT:

This Second Appeal, under Section 100 CPC, is filed by the defendant in O.S.No.888 of 2009 on the file of the I Senior Civil Judge, City Civil Court, Hyderabad, aggrieved by the judgment and decree dated 20.06.2011, as confirmed by judgment and decree dated 01.06.2015 passed in A.S.No.299 of 2011 by the III Additional Chief Judge, City Civil Court, Hyderabad.

2. The trial court, by the aforesaid judgment and decree, ordered eviction of the appellant-lessee from the suit schedule premises and further directed to pay an amount of Rs.48,702/- towards arrears of rent upto 25.04.2009, Rs.4,500/- towards property tax from 01.04.2006 to 31.03.2009 and Rs.10,495/- towards mense profits from 26.04.2009 to 04.06.2009 at the rate of Rs.7,935/- per month and, further, permitted the respondent herein to file separate application for future mesne profits.

3. The aforesaid suit is filed by the respondent-plaintiff alleging that appellant obtained the suit schedule premises on lease under registered lease deed dated 10.02.2004 on monthly rent of Rs.6,000/- exclusive of electricity consumption charges and property tax; tenancy commenced from 01.12.2004 and came to an end on 31.01.2006. It is alleged by the respondent-plaintiff that in spite of expiry of lease, the appellant herein has not vacated the suit schedule premises and paid enhanced rent at Rs.6,900/- per month upto December, 2007 and thereafter failed to pay rents; by issuing quit notice under Section 106 of the Transfer of Property Act, under Ex.A.6, by terminating the tenancy, suit has been filed.

4. The claim of the respondent-plaintiff is resisted by the appellant herein by filing written statement. While pleading that he is paying rents regularly, it is stated that there are no grounds for eviction and there is no proper termination of tenancy as contemplated under Section 106 of the Transfer of Property Act.

5. Before the trial court, respondent-plaintiff was examined as P.W.1 and on his behalf Exs.A.1 to A.7 were marked. On behalf of the appellant herein, she herself was examined as D.W.1 and Exs.B.1 to B.5 were marked. The trial court, having considered the oral and documentary evidence on record, has recorded finding that there is default in payment of rents by the appellant, and, further holding that the period of lease covered by Ex.A.3 is expired, has also recorded finding that quit notice is issued in accordance with law and ordered eviction, payment of arrears of rent and also mesne profits, by judgment and decree dated 20.06.2011.

6. As against the same, matter was carried in appeal before the III Additional Chief Judge, City Civil Court, vide A.S.No.299 of 2011, who, by judgment and decree dated 01.06.2015, dismissed the appeal with costs, confirming the judgment and decree of the trial court.

7. Heard the learned counsel for the parties and perused the material on record.

8. It is submitted by the learned counsel for the appellant that no proper notice was issued under Section 106 of the Transfer of Property Act and, in any event, there was no basis for granting mesne profits for the period from 26.04.2009 to 04.06.2009 by the trial court, as confirmed by the first appellate court.

9. From the material on record, it is clear that lease period is only for period of two years as per the registered lease deed dated 10.02.2004 commencing from 01.02.2004 for a period of two years and the said period had come to an end by 31.01.2006. Even as per the appellant herein, he was entitled to continue for a further period of two years, by paying enhanced rent. Admittedly, tenancy had come to an end and there was no lease deed after expiry of lease on 31.01.2006. Further, from the evidence on record, it is clear that quit notice dated 23.03.2009 is issued under Ex.A.6 and the same is received by the respondent under Exs.A.7 and A.8 at the suit

schedule premises on 25.03.2009 and 26.03.2009. As per the said notice, lease is terminated from 26.04.2009. In view of the provision under Section 106 of the Transfer of Property Act, after expiry of the lease period under Ex.A.3, lease is deemed to be month to month, as such, the same is terminable by 15 days notice. In view of the same, notice issued under Ex.A.6 on behalf of the respondent-plaintiff terminating the tenancy is in accordance with law. Even with regard to mesne profits, it is to be noticed that suit is filed for arrears of rent and also for mesne profits. An amount of Rs.10,495/- is directed to be paid from 26.04.2009 to 04.06.2009. It appears, it is also arrears of rent, but not mesne profits as stated. It is clear from the judgment and decree of the trial court, as confirmed by the first appellate court, that with regard to future mesne profits enquiry is ordered on separate application to be filed from the date of filing of the suit. Having regard to the concurrent findings of fact, this Court is of the view that there is no substantial question of law at all in this appeal as contemplated under CPC, so as to interfere with the reasoned judgment of the trial court as confirmed by the first appellate court.

10. The Second Appeal is accordingly dismissed at the stage of admission. No order as to costs.

11. However, as it is pleaded that appellant needs sometime to secure alternative accommodation, four months time from today is granted to the appellant to vacate the suit schedule premises on condition of paying costs and rents regularly apart from paying municipal taxes if any due to the authority concerned. The grant of four months time as above is subject to the appellant filing an undertaking before the Registry of this Court within two weeks from today to the effect that she will vacate the suit schedule premises before the expiry of the period of four months from today.

As a sequel, miscellaneous petitions if any pending in the Civil Revision Petition stand closed.

R. SUBHASH REDDY, J

October 1, 2015

MRR

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

Civil Revision Petition Nos.3778 & 3827 of 2015

Between:

Sher Yar Khan ...Petitioner

and

Fazalunnisa Begum and others ... Respondents

Date of order pronounced: 18th September, 2015

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HON'BLE SRI JUSTICE R. SUBHASH REDDY _____

1. Whether Reporters of Local newspapers :

may be allowed to see the order?

2. Whether the copies of order may be :

marked to Law Reporters/Journals?

3. Whether His Lordship wishes to :

see the fair copy of the order?