

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.491 of 2015

ORDER :

This Revision is filed under Section 115 C.P.C. challenging the order dt.26.11.2014 in E.A.No.18 of 2014 in E.P.No.17 of 2013 in O.S.No.81 of 2000 on the file of XIX Junior Civil Judge, City Civil Court, Hyderabad.

2. The petitioners herein are Judgment-Debtors in the above suit.
3. The said suit was filed for eviction of petitioners, arrears of rent and *mesni* profits by 1st respondent. The said suit was decreed on 22.11.2006 and petitioners were directed to deliver vacant possession of the plaint schedule property within forty-five days from the date of decree. The 1st respondent was also held entitled to recover arrears of rent from May, 1998 to January, 1999, apart from *mesne* profits from 01.02.1999 till delivery of vacant possession at the rate of Rs.7,000/- per month subject to payment of Court Fee on *mesne* profits.
4. Thereafter, the petitioners challenged the said judgment in A.S.No.29 of 2007 before the XIII Additional Chief Judge, Fast Track Court, City Civil Court, Hyderabad. The said appeal was partly allowed; the judgment of the trial court was set aside on the ground that it was the Rent Controller under the provisions of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 had jurisdiction to try the matter; and the suit for eviction was not maintainable; that the 1st respondent is not

entitled to any *mesne* profits. The Court however granted relief insofar as recovery of rent of Rs.18,000/- for the period May, 1998 to January, 1999.

5. The said judgment was questioned in Second Appeal No.803 of 2010 before this Court by 1st respondent therein.
6. By judgment dt.17.08.2012, the Second Appeal was allowed holding that the judgment of the 1st appellate court is erroneous and that the jurisdiction of the civil court is not ousted. The judgment of the 1st appellate court was set aside and the judgment of the trial court was restored in the Second Appeal.
7. Thereafter, E.P.No.17 of 2013 was filed by 1st respondent for execution of the decree of the trial court.
8. In that E.P. the petitioners/Judgment-Debtors filed E.A.No.18 of 2014 under Section 47 to dismiss the execution petition contending that since no findings were given in the Second Appeal with regard to *mesne* profits, the findings with regard to *mesne* profits given by the 1st appellate court in A.S.No.29 of 2007 are deemed to have been sustained and have to be taken as having attained finality. They contended that the claim for *mesne* profits cannot be granted in the E.P. in view of the judgment of the 1st appellate court. They contended that assuming without admitting that there was a decree for *mesne* profits, unless they are decided on an application under Order 20 Rule 12 C.P.C., there can be no execution of the said decree. Lastly, they contended that the findings of the trial court that *mesne* profits are fixed at Rs.7,000/- having been set aside by the 1st appellate Court, and since the 2nd appellate Court did not

state anything about this aspect, there cannot be an E.P. for recovery of *mesne* profits as determined by the trial court.

9. Counter-affidavit was filed by 1st respondent refuting the above contention and pointing out that in the judgment of the High Court in the Second Appeal it was clearly observed that “judgment of the 1st appellate court is set aside and the judgment of the trial court is restored”, and therefore, the executing court cannot go beyond the judgment passed by the Second Appellate court.
10. By order dt.26.11.2014, the Court below dismissed E.A.No.18 of 2014 taking the view that in the Second Appeal, the judgment of the 1st appellate court was set aside and the judgment of the trial court was restored and that a reading of the High Court judgment indicates that the entire trial court judgment was restored, and not part thereof. It rejected the plea of the counsel for petitioners that the High Court had decided only the point of rent in the Second Appeal, and held that whatever it may be, once the High Court restored the entire judgment of the trial court, the petitioners are liable to pay the *mesne* profits as adjudicated by the trial court.
11. Challenging the same, the present Revision is filed.
12. Heard Sri K. Lakshman, counsel for petitioners. None appears for respondents.
13. The counsel for petitioners contended that the Court below did not appreciate the fact that the 1st appellate court had set aside the relief of *mesne* profits granted by trial court in its judgment; in

the Second appeal filed by 1st respondent to the High Court, there is no finding given regarding the aspect of *mesne* profits at all; therefore, merely because the High Court in the Second Appeal has stated that the judgment of the trial court is restored, the 1st respondent cannot claim *mesne* profits as decreed by the trial court.

14. I am unable to agree with the said submissions.

15. It is no doubt true that in the judgment dt.17.08.2012 in S.A.No.803 of 2010, there is no discussion with regard to the aspect of *mesne* profits and the court mainly focused on whether the Civil Court had jurisdiction to hear the suit or not. The High Court reversed the finding of 1st appellate court that the Civil Court had no jurisdiction to entertain the suit for eviction after considering the submissions of both parties. While doing so, it allowed the Second appeal entirely setting aside the judgment of 1st appellate court and it restored the judgment of trial court. So, it is not open to petitioners to contend that some portion of the judgment of the 1st appellate court, particularly on the aspect of *mesne* profits has not been set aside by the High Court. Once the judgment of the trial court is restored, everything which is granted in the trial court judgment becomes capable of execution. Therefore, the Court below is correct in stating that the E.P. cannot be dismissed as not maintainable. Also the executing court cannot go behind the decree.

16. Therefore, I do not find any merit in the Revision and it is accordingly dismissed. No order as to costs.

17. Miscellaneous applications, pending if any in this Revision, shall

stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 10-07-2015

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