

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

C.R.P.No.2472 of 2015

ORDER:

Defendant in O.S.No.173/2015, on the file of the Court of the Judge, Family Court-cum-Additional District Judge, Ongole is the petitioner in the present revision filed under Article 227 of the Constitution of India.

2. This revision challenges the order dated 24.02.2015 passed by the said Court, allowing I.A.No.1411/2013 filed by the respondent under Order XV-A read with Section 94 (E) and Section 151 of the Code of Civil Procedure for a direction to the defendant/petitioner herein to deposit the arrears of rent and for subsequent period.

3. The circumstances, leading to the filing of the present revision are, as *infra*:

3.1. The respondent herein instituted the above said suit against the petitioner herein for recovery of a sum of Rs.5,02,11,560/- with subsequent interest @ 36% per annum as per the agreement and for a direction to the defendant/petitioner herein to vacate the plaint 'B' schedule property and to handover the possession and for costs.

3.2. Resisting the said plaint averments, the defendant/petitioner herein filed written statement. In the said suit, plaintiff/respondent herein filed the instant I.A.No.1411 of 2013. Opposing the said application and resisting the contents therein, the defendant/petitioner herein filed a counter. The learned Additional District Judge, by virtue of an order dated 02.04.2015, allowed the application.

4. Calling question, the validity and the legal sustainability of the said order, the present revision has been filed.

5. Heard Sri Vedula Venkata Ramana, learned Senior counsel,

appearing for the learned counsel for the petitioner on record, Sri A.H.Chakravarthy and Sri M.V.S.Suresh Kumar, learned counsel for the respondent apart from perusing the material available before the Court.

6. Submissions/contentions of learned Senior Counsel on behalf of the petitioner:

6.1. The order under challenge is erroneous, contrary to law and opposed to the very spirit and object of the provisions of order XV-A of the Code of Civil Procedure and if the said order is allowed to sustain the same would result in failure and miscarriage of justice.

6.2. The term 'licence' as stipulated under Order XV-A does not include sub-licence, as such, the instant application is not maintainable.

6.3. The finding of the Court below that the petitioner herein admitted the execution of sub-licence and quantum of rent is an erroneous conclusion and completely devoid of any foundation.

6.4. There is no legally enforceable contract between the plaintiff and the defendant, as such, the provisions of Order XV-A cannot be pressed into service.

6.5. In the absence of necessary ingredients, the learned Judge grossly erred in allowing the application filed under order XV-A of the Code of Civil Procedure.

6.6. The learned Additional District Judge grossly erred in allowing the application without being preceded by the quantification of the amount.

7. Submissions/contentions of the learned counsel for the respondent:

7.1. The Court below is perfectly justified in allowing the application filed by the plaintiff/respondent herein and there is no illegality nor there is any procedural infirmity in the impugned order

and in the absence of the same, the present revision is not maintainable and the questioned order is not amenable for any interference under Article 227 of the Constitution of India.

7.2. The case of the petitioner herein is directly in contravention of the order of this Court in CRP.No.2313 of 2014 and the pleadings in the affidavit filed in support of W.P.No.4878 of 2014 filed by the petitioner herein and in view of the said conduct also the revision is liable to be dismissed.

7.3. The order under challenge is strictly in accordance with the provisions of Order XV-A of the Code of Civil Procedure and only after elaborately appreciating all the aspects, the Court below passed the impugned order.

7.4. The contention that there is no quantification of the amount payable is absolutely incorrect and far from truth and contrary to the material available on record.

8. In the above backdrop, now the issue that emerges for consideration of this Court is- "Whether the order under Challenge is in accordance with the provisions of Order XV-A of the Code of Civil Procedure or whether the same warrants any interference of this Court under Article 227 of the Constitution of India?"

9. Apart from the legal issues, the conduct of the parties to the Lis undoubtedly plays a significant, vital and pivotal role during the adjudicatory process. The parties cannot be permitted to have different and contradictory stands to have match with their stands at different points of time and if the same is allowed, there would be no meaning for the administration of justice and the said conduct by any stretch of imagination cannot be regarded as wise-ness and should necessarily be deprecated to uphold the moral and legal values in the system guided by Rule of Law. In the guise of such unwarranted wise-ness the parties should not be permitted to invade the process of law and win over the

situation.

10. The provision of law, which is germane and relevant for the purpose of resolving the issue in the present revision, is Order XV-A of the Code of Civil Procedure, which reads as under:

“ORDER XV: (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 upto 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.

Subs. by G.O.Ms.No.1559, dated 23.08.2005

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 licence 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.”

11. It is very much evident from a reading of the above provision of law that in a suit for eviction based on license also, it is obligatory on the part of the defendant to deposit arrears and continue to deposit the licence fee

and in the event of failure to do so, the defendant will have to suffer the contingency of striking off defence. It is also a settled law that the said deposit shall not be construed as pre-judging the claim of the plaintiff.

12. The issue in the present revision is required to be examined in the light of the above aspects. The case of the plaintiff/respondent in the present I.A filed on 12.12.2013 is that he is the licensee of the APSRTC under a licence agreement dated 02.05.2006 and in pursuance of the same, he constructed a big complex with the name "Jyothi Plaza" and as per the agreement, plaintiff need to pay licence fee every month and any default carries interest @ 36%. In terms of the said agreement, the plaintiff constructed various commercial spaces and in respect of one of the spaces, the defendant/petitioner herein entered into sub-licence agreement with the plaintiff on 09.02.2009 and by depositing the same with a bank, the defendant obtained loan for running the business. As the defendant stopped paying the licence amount despite exchange of notices, the respondent herein filed the present O.S.No.173/2013 on 15.07.2013 for recovery of amount and for eviction from the subject premises.

13. On the contrary, it is the case of the defendant/petitioner herein that the plaintiff did not make the construction as per the plan sanctioned by the Ongole Municipality and there is no driveway or parking facility and the plaintiff did not provide basic amenities like power, septic tank, drainage, water for running the lodge in the premises and did not provide lifts and the defendant could not get permission or trade licence for establishing bar and restaurant, as such, could not put the premises for use and occupancy rate could not be achieved because of the teething troubles and the plaintiff blocked the entrance by constructing the shops and the defendant is reserving his rights to claim damages by filing comprehensive suit.

14. It is significant to note that earlier during the course of hearing of the present I.A before the Court below, the defendant raised the objections on

the admissibility of the subject licence agreement dated 02.05.2006 on the ground that the same being insufficiently stamped and the other on the admissibility of the Photostat copy. When the said objections were turned down by the learned Additional District Judge, the defendant carried the matter by filing CRP.No.2313/2014, and this Court by way of an order dated 28.06.2014, dismissed the revision and the paragraphs 5 and 6 of the said order reads as under:

“5. Both the aforesaid objections were heard by the trial Court and under the order impugned, the trial Court came to the conclusion that the basic license agreement dated 02.05.2006 under which the respondent was granted license is not required to be compulsorily registered, as it is a license and not a lease agreement. To the extent of the second objection of the petitioner, the trial Court held that the photocopy of the sub-license dated 09.02.2009 is admissible in evidence. Aggrieved by the said findings, the petitioner has filed the present revision petition.

6. The question relating to admissibility and registration, as claimed, with regard to the basic license agreement as well as the subsequent sub-license agreement, is a matter, which has not yet fallen for consideration in detail inasmuch as the trial of the suit is yet to take place and the trial Court is only at the stage of considering interlocutory application filed by the respondent/plaintiff under Section XV-A CPC. Since the enquiry, in question, is only interlocutory in nature and to the extent of limited enquiry in the said I.A., the trial Court has recorded its findings with regard to the objections of the petitioner. In my view, therefore, the findings under the impugned order are required to be treated as findings only for the purpose of interlocutory adjudication and the questions/objections raised by the petitioner can always be gone into by the trial Court as and when the suit comes up for trial. The findings at the interlocutory stage recorded in the impugned order, therefore, shall not prevent the petitioner from raising these objections at appropriate stage during the trial of the suit. In view of that, I am not inclined to interfere with the impugned order. The trial Court, however, is directed to consider and dispose of the application filed by the respondent under Section XV-A CPC without further loss of time and expeditiously.?”

15. In pursuance of the said order, the learned Additional District Judge, basing on the material available on record, framed the following points for consideration:

“1. Whether there is sub licence agreement dated 09.02.2009

between the parties in pursuant of the licence agreement dated 02.05.2008 between the petitioner and the A.P.S.R.T.C?

2. Whether there are any arrears of rent payable by the respondent to the petitioner as claimed and if so from period and the quantum of arrears of monthly license fee?
3. To what relief?

16. The learned Additional District Judge, passed the order under challenge, directing the defendant/petitioner herein to pay the arrears of rent @ Rs.5,85,000/- from 01.12.2010 to 31.03.2012 and @ Rs.7,02,000/- per month from 01.04.2012 to 31.03.2015 without interest and to pay the admitted rent on or before 10th of every succeeding month. A perusal of the order impugned clearly and candidly demonstrates that the learned Additional District Judge, after elaborately analysing various issues and after meticulously and thoroughly assessing the entire material on record and after recording categorical reasons on various issues, passed the order under challenge. The learned Judge considered the effect of Ex.A-13 licence agreement dated 02.05.2006 between the APSRTC and the defendant and Ex.A.14 sub-licence agreement dated 09.02.2009 between the petitioner and the respondent herein and the contents of the same and also the filing of W.P.No.4878 of 2013 and the pleadings of the petitioner contained therein and the orders of this Court in CRP.No.2313 of 2014 and their impact on the conduct of the defendant and passed the impugned order. The Court below also took into consideration the effect of the provisions of Section 17 of the Registration Act. The learned Judge also considered the specific pleading in the plaint on the custody of Ex.A.14 with the defendant and absence of denial by the defendant and the judgment of the Hon'ble Apex Court in the case of **SANTOSH JAYASWAL AND ANOTHER v. STATE OF M.P., AND OTHERS**^[1]. At paragraph 24 of the impugned order, the learned Additional District Judge dealt with the aspects of deviations also.

17. The contention that the provisions of Order XV-A are not applicable to the sub-licence cannot be sustained in the considered opinion of this

Court in view of the language of the said provisions which cover the description of whatever nature. On quantification also, there is sufficient material on record in the form of evidence in the written statement and the affidavit filed in support of the present I.A and the documents enclosed. Therefore, the contention advanced contra by the learned counsel falls to ground.

18. It is a settled and well established proposition of law as per the Judgments of the Hon'ble Apex Court in ***M/S. ESTRALL RUBBER v. DASS ESTATE (PVT) LIMITED***^[2], ***OUSEPH MATHAI AND OTHERS v. M.ABDUL KHADIR***^[3] and ***SURYA DEV RAI v. RAM CHANDER RAI AND OTHERS***^[4] that unless the orders in question are patently perverse and illegal, the jurisdiction under Article 227 of the Constitution of India is not available. This Court, does not find any fundamental defect nor foundational infirmity nor any jurisdictional error in the orders under revision so as to interfere under Article 227 of the Constitution of India and this Court also does not find any valid reasons to disturb the well considered orders passed, in accordance with the provisions of law, by the learned Additional District Judge.

19. In view of the above reasons, this Court has no scintilla of hesitation nor any traces of doubt to hold that the petitioner has failed in making out a case, warranting indulgence of this Court under Article 227 of the Constitution of India.

20. For the aforesaid reasons, the revision fails and it is accordingly dismissed. As a sequel, pending miscellaneous petitions, if any, shall stand closed. No costs.

A.V.SESHA SAI, J

Date:18.09.2015

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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

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C.R.P.No.2472 of 2015

Date:18-09-2015

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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

C.R.P.No.2472 of 2015

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Between:

S.R.R. Hospitalities Private Limited.

... Petitioner

And

Sri Balina Sreemannarayana.

... Respondent

JUDGMENT PRONOUNCED ON: 18th September, 2015

SUBMITTED FOR APPROVAL: 18th September, 2015

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THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

1. Whether Reporters of Local Newspapers
May be allowed to see the Judgment?

Yes/No

2. Whether the copies of judgment may be
Marked to Law Reporters/Journals?

Yes/No

3. Whether Their Lordship wish to see the
Fair copy of the judgment?

Yes/No

[\[1\]](#) AIR 1996 SC 207

[\[2\]](#) (2001) 8 SCC 97

[\[3\]](#) (2002) 1 SCC 319

[\[4\]](#) (2003) 6 SCC 675