

THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

C.R.P.Nos. 4443 & 4444 of 2014

COMMON ORDER:

Heard learned Counsel for the petitioner and learned counsel for the respondent.

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2. These two Civil Revision Petitions are directed against the orders dated 10.07.2014 in I.A.No.219 of 2014 in A.S.No.67 of 2014 and I.A.No.221 of 2014 in A.S.No.68 of 2014 on then file of the learned XIII Additional District Judge at Gajuwaka, Visakhapatnam (for short "the lower appellate court).

3. The petitioner in these two civil revision petitions is the appellant in the above referred appeals. The respondent obtained money decree as well as the eviction decree against the petitioner. O.S.No.63 of 2003 was filed for the recovery of an amount of Rs.1,20,000/-, whereas O.S.No.193 of 2003 was filed for eviction of the petitioner herein. Both the suits were decreed. Challenging the judgment and decrees in the above suits, the petitioner preferred the above appeals and sought stay of execution of decrees. In the affidavit filed in support of the stay petition, the petitioner stated as follows:

"...I have got fare chances to succeed in the above appeal. The respondent/plaintiff has no right to evict me and that has there is no jural relationship between me and the respondent/plaintiff. Moreover the respondent plaintiff failed to prove her title and further she has not pressed the declaration relief too. So also the question of rent absolutely does not arise in this matter.

I further submit that since 12 days I reliably learnt that the respondent/plaintiff has been making frantic efforts to execute the decree and dispossess me from the schedule property. There is a clear lacuna I

the very schedule property itself. If the respondent is successful in doing so, I will be put to serious and irreparable loss. I am not having any other dwelling house for shelter and equally any property. I have to maintain a big family in the suit property I have invested huge amounts in the schedule property and unless the Honourable court pleased to grant stay of operation of decree and judgment in O.SNo.193/2003 on the file of the Senior Civil Judge, Gajuwaka by way of suspension lest I will be put to serious and irreparable loss and damage...”

4. In the above affidavit filed, since the petitioner did not disclose the furnishing of security or deposit of amount while seeking stay, the lower appellate court dismissed the application for stay by order dated 10.07.2014.

5. Learned counsel for the petitioner submits that the lower court should have applied its mind and imposed some terms as condition for grant of stay and it cannot dismiss the application on the sole ground that the petitioner did not deposit the amount or furnish the security.

6. In the circumstances, the impugned orders dated 10.07.2014 are set aside and the matter is remanded to the learned XIII Additional District Judge, Gajuwaka for passing appropriate orders in accordance with Order 41 Rule 5 of CPC within a period of one month from the date of receipt of a copy of this order.

7. Accordingly, these two Civil Revision Petitions are allowed to the extent indicated above. There shall be no order as to costs. As a sequel, miscellaneous petitions, if any pending in these revision petitions, shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 31.12.2015

**Note: The copy of the order may be dispatched
within one week.**

B/o
gv/