

HON'BLE SRI JUSTICE R. SUBHASH REDDY

SECOND APPEAL No.683 of 2015

JUDGMENT :

This Second Appeal is filed under Section 100 of CPC by the defendant in the suit in O.S.No.480 of 2007, aggrieved by the judgment and decree dated 27.09.2013, passed by the VI Senior Civil Judge, City Small Causes Court, Hyderabad, as confirmed by the III Additional Chief Judge, City Civil Court, Hyderabad, in A.S.No.365 of 2013.

Respondent-plaintiff is the owner and possessor of house property bearing Municipal No.21-1-252 to 263. The open terrace on the 2nd floor, with a plinth area of about 2700 square feet is let out to the appellant on 01.11.1999, for carrying on the business of polishing sarees on a monthly rent of Rs.2,000/- and the rent was to be enhanced by 10% per annum, and accordingly, for the period from 01.11.2006 to 28.02.2007, the rent payable was Rs.3,896/- per month. On the ground that the appellant has defaulted in payment of rent, by issuing quit notice under Section 106 of the Transfer of Property Act, suit is filed for eviction, for arrears of rent and for mesne profits at the rate of Rs.8,000/- per month.

The appellant-defendant has filed written statement before the trial Court, denying the allegations made by the respondent-plaintiff. While disputing the validity of the notices issued under Section 106 of the Transfer of Property Act, it is alleged that the respondent-landlord has agreed to sell the terrace portion and received substantial amounts from him.

On behalf of respondent-plaintiff, her son as GPA holder, was examined as PW-1 and Exs.A-1 to A-9 documents were marked. No oral or documentary evidence was adduced on behalf of appellant-defendant.

During the pendency of suit, on the ground that there are dues amounting to Rs.1,20,152/-, respondent-plaintiff has filed I.A.No.130 of 2007 under Order XV(A) of CPC, to direct the appellant-defendant to pay or deposit the arrears of rent and shall continue to deposit the same. The said I.A. was allowed directing the appellant-defendant to deposit the rent at the rate of Rs.2,000/- per month from the period from 01.02.2004 to 28.02.2010. The appellant, without complying with said order, carried the matter to this Court in C.R.P.No.1889 of 2010, which was dismissed on 02.01.2012. Subsequent to dismissal of CRP, respondent-plaintiff has filed an application in I.A.No.33 of 2012 under Order XV(A)(ii) of CPC, praying the Court to strike off the defence of defendant on the ground that he had failed to deposit rents as per the orders passed in I.A.No.130 of 2007. The said I.A. was allowed after due contest, on 23.04.2012, and defence of the appellant-defendant was struck off. After appreciating the evidence, the suit is decreed for eviction and also for payment of arrears of rent amounting to Rs.1,20,152/- with interest at the rate of 6% per annum till the date of realization.

As against the said judgment and decree, the appellant has preferred appeal in A.S.No.365 of 2013 before the III Additional Chief Judge, City Civil Court, Hyderabad and the same is dismissed by judgment and decree, dated 17.08.2015. Hence, this Second Appeal.

In this Second Appeal, it is contended by the learned counsel for appellant that the notice issued under Section 106 of the Transfer of Property Act is defective, as much as it is not issued six months prior to filing of suit. It is submitted that as the petitioner is using the premises for small scale industry, notice of six months ought to have been issued. It is further submitted that though rent was not payable as pleaded, the trial Court and the 1st appellate Court have assumed jurisdiction. It is submitted that if the rent is payable at the rate of Rs.2,000/- per month, petition was to be filed before the Rent Controller, but not before the Civil Court.

Having heard learned counsel for appellant, I have carefully

perused the judgments of trial Court as well as the 1st appellate Court. It is the case of appellant that the premises was originally let-out for the period from 01.11.1999 to 31.10.2000, at an agreed rent of Rs.2,000/- per month, with increase at the rate of 10% per annum. With the aforesaid increase, rent payable is Rs.3,896/- per month during the relevant year in which the suit is filed. In view of such findings, and more over, when the defence of appellant herein is struck off in I.A.No.130 of 2007 and such order has become final in view of dismissal of the C.R.P., it is not open for the appellant to raise such objection now. Further, the plea of appellant with regard to validity of notice issued under Section 106 of the Transfer of Property Act also, it is to be noticed that it is not a manufacturing activity so as to issue six months notice as it is not in dispute that the terrace is being used for the purpose of polishing sarees, as such, it cannot be treated as a manufacturing activity, so as to accept the plea of the appellant. In view of the concurrent finding of fact recorded by both the Courts and in the absence of any substantial question of law for consideration, I do not find merit in this Second Appeal so as to interfere with the judgment and decree passed by the trial Court as confirmed by the 1st appellate Court. The Second Appeal is accordingly dismissed at the stage of admission.

However, as it is pleaded that the appellant needs some time for vacating the premises, two months time is granted from the date of receipt of this order, to vacate the premises, subject to filing an undertaking before the Registry of this Court within a period of two weeks from the date of receipt of this order, undertaking to vacate the premises within a period of two months.

Subject to the above directions, the Second Appeal is dismissed. No costs.

Pending miscellaneous applications, if any, shall stand closed.

R. SUBHASH REDDY, J

18th September 2015

ajr