

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

C.C.C.A. No.54 of 2006

JUDGMENT :

The appellants 1 to 3 are the defendants in O.S No.167 of 2000 on the file of Senior Civil Judge, City Civil Court, Secunderabad. The sole plaintiff filed the suit for eviction against all the defendants from the plaint schedule property saying that the defendants occupied the premises as lessees and even after expiry of lease period and even after notice, they failed to vacate and thereby they are liable to be evicted and they are also liable to pay damages for use and occupation, claimed at Rs.40,000/- per month w.e.f. 01.04.2000. The sole plaintiff obtained a decree on 29.01.2006 for eviction and also for recovery of profits or damages @ Rs.30,000/- per month from April/ May, 2000 till vacating the premises together with costs. It is impugning the said decree, the defendants preferred the appeal and pending appeal, initially they obtained an interim order staying all further proceedings including execution of decree, which was thereafter modified and the appellant bank was directed to pay monthly rent at Rs.20,000/- per month till the disposal of the appeal, subject to deposit of Rs.20,000/- per month. It is subsequently, even though claimed by the appellants as vacated the premises on 31.12.2011, there is nothing to show that either before this Court that they have vacated the subject premises or filed any memo before the appellate Court in intimating in writing to the landlord i.e., sole respondent/ plaintiff since died now respondents 2 to 6 were impleaded as LR's vide CCA MP No.470 of 2012 dated 06.12.2012. Undisputedly, there is no intimation with regard to vacating the premises and unless the premises is stated to be given back or surrendered even allegedly bank officials shifted the bank to some other premises and kept the schedule property in

the lock and key, they are liable for damages. It is even to say on the vacate petition filed by the respondents in the appeal, the LRs of sole plaintiff, stay was vacated on 23.09.2014. It is to say till then there is no execution or dispossession or eviction pursuant to the stay obtained by Bank Officials. Apart from it, the decree holders, who are LRs of the sole plaintiff pursuant to the decree and after stay vacated on 23.09.2014 filed execution petition and obtained an order on 03.08.2015. It is to say thus the bank officials are fraudulently in possession and liable for damages. Now coming to the quantum of damages awarded by the trial Court of Rs.30,000/-, the same is modified pending appeal subject to deposit of Rs.20,000/- by order in CCCA MP No.290 and 158 of 2006 dated 26.06.2006. In fact before the trial Court, there is no documentary evidence placed as to what is the reasonable rent for using in and around the suit schedule property even to fix any damages therefrom as a basis for use and occupation after efflux of time for continuation in the premises by the bank officials. There is only oral evidence of PW.1 on behalf of plaintiff and DW.1 on behalf of defendants Bank. In the Defendants bank averments and through DW.1, there is no evidence established regarding what is the amount that could fetch for the subject premises for awarding damages. However, the plaintiffs evidence through PW.1 sole witness examined orally with no documentary support stated as claimed in the complaint of getting Rs.40,000/- per month as rent. Undisputedly, the cross examination of PW.1 shows a suggestion from the defendants side to say Rs.40,000/- claimed as damages is unreasonable and Rs.20,000/- per month is proper. In fact, as can be seen from the above, it could have been taken the basis for interim order passed by this Court on 26.06.2006. As it is the duty of the Court to appreciate the evidence under Section 134 from the material available on record and as the material cogently shows Rs.20,000/- per month is reasonable to award damages for

use and occupation at that rate.

In the result, the appeal is disposed of by modifying the amount awarded by the Lower Court at Rs.30,000/- per month to Rs.20,000/- per month from 01.04.2006 till 31.07.2015. The appellants are directed to pay the damages as awarded supra, within one month from today, failing which they are liable for payment of interest at 12% per annum till realization. There is no order as to costs in the appeal.

Miscellaneous Petitions pending, if any, in this Appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

25.11.2015
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