

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Civil Revision Petition No.1609 of 2015

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ORDER:

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The aggrieved plaintiff/respondent in the First Appeal had preferred this revision under Article 227 of the Constitution of India assailing the orders dated 25.03.2015 of the learned Principal Senior Civil Judge, Kothagudem passed in IA.No.159 of 2015 in AS.No.5 of 2015 filed by the appellants/defendants under Order XLI rule 5 read with Section 151 of the Code of Civil Procedure, 1908 praying the Court below to grant stay of execution of the decree and judgment dated 30.01.2015 in OS.No.5 of 2013 on the file of the Court of the Principal Junior Civil Judge, Kothagudem.

2. I have heard the submissions of the learned counsel for the petitioner/respondent/plaintiff ('the plaintiff', for brevity) and the learned counsel for the respondents/appellants/defendants ('the defendants', for brevity). I have perused the material record.

3. The facts, which are necessary for consideration, in brief, are as follows: - 'The sole plaintiff brought the suit against the defendants for eviction and recovery of arrears of rent and damages. On merits, the trial Court had decreed the suit for eviction and had directed the defendants to pay Rs.46,080/- towards arrears of rent besides costs of Rs.7,134/- and had further ordered that the future damages be determined in a separate application that may be filed by the plaintiff. Aggrieved of the decree and judgment of the trial Court, the defendants 1 and 2 had preferred the first appeal before the Court below and also moved the aforementioned application for grant of stay pending disposal of the appeal. In that application, the Court below having heard both the

parties had passed the impugned order. In the operative portion of the impugned order, the Court below had held that stay of operation of judgment and decree passed by the trial Court is granted until further orders subject to the defendants depositing half of the decretal amount within ten (10) days from the date of the said order before the trial Court and that the defendants shall continue to regularly deposit the rent amounts into Court till the disposal of the appeal. As already noted, aggrieved of the said orders the plaintiff/respondent in the first appeal had preferred this revision.

4. The learned counsel for the plaintiff would submit that the amount for which the decree was passed being the arrears of rent the Court of first appeal while granting stay ought to have directed the defendants to deposit the entire arrears of rent of Rs.46,080/- as per the decree of the trial Court and also the costs as taxed in the decree of the trial Court. It is also submitted that the defendants/appellants in the first appeal have no bona fide requirement of the premises.

5. On the other hand, the learned counsel for the defendants would submit that the aspects like *bona fide* requirement will have to be gone into when the appeal comes to be decided on merits and that the order passed by the Court below is a reasoned order and that as per the conditions imposed in the order, half of the arrear of rent out of Rs.46,080/- was already deposited and that the defendants are regularly paying the subsequent rents and that the said order needs no interference.

6. I have bestowed my attention to the facts and the submissions. The order passed by the Court below, as could be seen from the observations in the order, appears to be an interim order as it is clearly observed that stay of operation of the decree and judgment of the trial Court is granted until further orders subject to conditions imposed.

Therefore, the plaintiff/revision petitioner can approach the Court below for hearing the stay application on merits and for passing appropriate orders. If for any reason the stay application stood already disposed of finally by the impugned order, the plaintiff/revision petitioner is at liberty to seek modification of the order in regard to the conditions imposed on monetary aspects while maintaining the stay orders insofar as eviction is concerned as otherwise the pending appeal would become infructuous. In view of the said remedies open to the plaintiff/revision petitioner, there is no need to pass any orders in this revision and the order impugned does not call for any interference.

7. In the Result, the Civil Revision Petition is dismissed giving liberty to the plaintiff/revision petitioner to request the Court below to hear the stay application in IA.No.159 of 2015 on merits and pass appropriate orders insofar as the conditions imposed in regard to the monetary aspects. However, in case the said application stood already disposed of, it is needless to mention that the plaintiff is at liberty to seek modification of the orders in regard to conditions directing deposit of monies imposed by the Court below. If any such application is necessary and comes to be filed, the Court below shall entertain and dispose of the same and pass appropriate orders in accordance with the procedure established by law. However, it is made clear that the Court below shall maintain the orders of stay of execution insofar as eviction is concerned pending final disposal of the first appeal while considering any requests that may be made for hearing the application for stay and/or while disposing of the application which the plaintiff may file before the Court below pursuant to the observations of this Court in this order. There shall be no order as to costs.

Miscellaneous petitions, pending if any, in this revision petition shall stand closed.

10th June,, 2015
Vjl

10.06.2015

Vjl

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