

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.3622 OF 2015

ORDER:

This revision petition is filed under Article 227 of the Constitution of India challenging the order dated 17.06.2015 passed in I.A.No.495 of 2014 in O.S.No.138 of 2013 by the Principal Junior Civil Judge, Nizamabad, directing the petitioner to deposit Rs.6,000/- per month, and arrears from May, 2012 to May, 2015 within two months from the date of order and also to deposit future rents from June, 2015 on or before 10th of every succeeding month to the credit of the suit.

2. The respondent herein filed a petition before the trial Court under Section 151 CPC seeking direction against the petitioner to deposit rent into the Court alleging that he purchased the petition schedule property from the original owners i.e Smt Atiya Ansari Alias Atiya Begum and others under registered sale deed bearing document No.5086 of 2012, dated 04.05.2012. The petitioner is a tenant in one mulgi that is part of the suit schedule property, running optical shop under the name and style of M/s Indur Opticals and his previous owner already informed him about the sale of the suit mulgi to the respondent and that he never raised any objection for registration of the suit schedule property in favour of the respondent. Thereupon, the respondent demanded the petitioner to vacate the schedule premises and deliver vacant possession of the suit mulgi. After negotiations the petitioner agreed to pay rent @ Rs.6,000/- per month from May, 2012 onwards payable on or before 10th of every succeeding month. The lease between the petitioner and the respondent is oral. After oral agreement between the

petitioner and the respondent, the petitioner failed to pay rent as agreed and committed wilful default in payment of rent. Even after filing the suit for ejectment, the petitioner did not pay rent for the said mulgi.

3. The petitioner herein filed counter before the trial Court admitting that he is in possession of the property under the original landlord, running optical shop under the name and style of M/s Indur Optical. He denied about the sale of the property and his contention as tenant under the respondent herein. The respondent never informed about the purchase of mulgi and demanded to vacate the schedule mulgi and that he never agreed to pay monthly rent @ Rs.6,000/- per month from May, 2012 onwards and that there was no jural relationship of landlord and tenant between them.

4. During enquiry, no witnesses were examined and no documents were marked before the trial Court.

5. The trial Court framed the point for consideration and answered the same in affirmative, issued a direction to the petitioner to deposit rent @ Rs.6,000/- per month from May, 2012 onwards within two months and continue to deposit future monthly rent to the credit of the suit only on the ground that the petitioner did not disclose the rent payable for the premises in the entire counter.

6. Learned counsel for the petitioner contended that the rent payable for the mulgi, which is in occupation of the petitioner is only Rs.1650/- and not Rs.6,000/- and the said fact was disclosed in para 3 of the written statement, but the trial Court did not consider the same. It is further contended that there was no relationship of landlord and tenant between the petitioner and the respondent since the sale was not within his knowledge. Hence, the order of the trial Court is liable to be set aside.

7. One of the contentions of the learned counsel for petitioner is that the petitioner filed O.S.No.224 of 2011 for grant of perpetual injunction against the original landlord, the vendor of the respondent herein, and obtained a decree and judgment on 29.04.2015, and that the respondent herein did not produce any evidence in support of his contention that the petitioner agreed to pay monthly rent @ Rs.6,000/- per month without considering this issue passed the impugned order erroneously.

8. Learned counsel for the petitioner vehemently argued that the rent payable for the mulgi is only Rs.1650/- under original owner, but not Rs.6,000/- as contended by the respondent and the said plea was urged in the written statement filed in the main suit and an issue was also framed to that effect. Merely because, the petitioner did not disclose the rent payable by him, the trial Court ought not to have concluded that the rent payable for the premises is Rs.6,000/- per month in the absence of proof of fact by any evidence and apart from that the pleadings, which includes both plaint and written statement under Order VI Rule 1 of CPC have to be considered liberally. It is contended that if no plea was taken before the trial Court or before this Court, the petitioner is entitled to raise any plea which he wants and placed reliance on several judgments of the Apex Court and this Court, which will be referred at appropriate stage.

9. It is contended that the petition under Section 151 CPC is not maintainable when there is a specific provision under Section XV-A of the A.P. Amendment to CPC is available.

10. Learned counsel for the respondent argued totally supporting the order passed by the trial Court and contended that the scope of

revision is limited while exercising power under Article 227 of the Constitution and the Court cannot look into the fact in issue since the power under Article 227 of the Constitution is supervisory in nature. Hence, prayed for dismissal of revision petition.

11. Considering the rival contentions and perusing the order under challenge, the point that arises for consideration is:

Whether the trial Court while passing the order exercised discretion which is not conferred on it or failed to exercise its jurisdiction which conferred on it, if so, the order under challenge is liable to be set aside?

12. Before proceeding to the real controversy between the petitioner and the respondent based on the material, I feel that it is appropriate to advert to Article 227 of the Constitution, so as to limit the decision in this petition to the grounds available under Article 227 of the Constitution. Article 227 of the Constitution reads as under:

Every High Court shall have superintendence over all courts and Tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may--

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:

Provided that any rules made, forms prescribed or tables settled under Clause (2) or Clause (3) shall not be inconsistent with the provision of any law for the time

being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or Tribunal constituted by or under any law relating to Armed Forces.

13. A bear look at Article 227 of the Constitution shows that the powers of the High Court are limited and they are supervisory in nature. In one of the judgments of the Apex Court in **Essen Deinki v. Rajiv Kumar**^[1] discussed about the jurisdiction of the High Court under Article 227 of the Constitution, held that the jurisdiction of the Court under Article 227 of the Constitution is limited and restrictive in nature, revisional and not appellate and finding of fact cannot be gone into normally. Generally speaking, exercise of jurisdiction under Article 227 of the Constitution is limited and restrictive in nature and it is so exercised in the normal circumstances for want of jurisdiction, errors of law, perverse findings and gross violation of principles of natural justice, to name a few. It is merely a revisional jurisdiction and does not confer an unlimited authority or prerogative to correct all orders or even wrong decisions made within the limits of the jurisdiction of the Courts below. The finding of fact being within the domain of the inferior Tribunal, except where it is a perverse recording thereof, or not based on any material whatsoever resulting in manifest injustice, interference under the Article is not called for. Therefore, the jurisdiction so conferred is by no means appellate in nature for correcting errors in the decision of the subordinate Courts or Tribunals but is merely a power of superintendence to be used to keep them within the bounds of their authority.

14. In another judgment of the Apex Court in **Nibaram Chandra**

Bag v. Mahendra Nath Ghughu^[2], it is ruled that the Court has been rather categorical in recording finding that the jurisdiction so conferred is by no means appellate in nature for correcting errors in the decision of the subordinate Courts or Tribunals but is merely a power of superintendence to be used to keep them within the bounds of their authority. In view of law declared by the Apex Court in the two judgments referred above, the powers of the High Court under Article 227 of the Constitution are limited.

15. Whereas, learned counsel for the petitioner would submit that while exercising jurisdiction under Article 227 of the Constitution, this Court can look into the contentions, which are not based on any pleadings and placed reliance on the judgment of the Apex Court in **Rattanlal Sharma v. Managing Committee, Dr Hari Ram (Co-Education) Higher Secondary School and others**^[3]. In the said judgment, the Apex Court while deciding the powers of the High Court about the power of review under Article 226 of the Constitution concluded that when plea of bias not specifically raised before the administrative authorities/ tribunal, but raised for the first time in writ proceeding before High Court. Since such course goes to the root of the matter and based on admitted and uncontroverted facts should not have been rejected.

16. The power under Article 227 of the Constitution is limited, however, the same is only a power of superintendence over the subordinate Courts by the High Courts. Moreover, in the facts of the above judgment, the plea of bias is admitted and uncontroverted fact. Therefore, the principle laid down in the above judgments cannot be applied while deciding the present revision petition.

17. Now, I would like to turn to the facts of the present case and

decide the controversy between the parties based on specific contentions urged before this Court by the learned counsel for petitioner.

18. The first and foremost contention raised by the learned counsel for petitioner is that the rent payable for the premises is only Rs.1650/-, and not Rs.6,000/- as contended by the respondent, the respondent herein filed suit and petition contending that the rent payable for the premises as per the oral agreement is Rs.6,000/- per month, from the month of May, 2012 onwards. In the counter therein, the revision petitioner made a bald allegation that there was no relationship of landlord and tenant, since, the purchase of property was not intimated to him by the respondent and denied the alleged oral agreement to pay rent @ Rs.6,000/- per month without disclosing the alleged actual rent agreed to be paid by the revision petitioner to the landlord.

19. The main endeavour of learned counsel for the petitioner is that when the petitioner filed written statement before the trial Court, issues have been framed and it is the duty of the Court to look into the pleadings i.e. plaint and written statement as defined under Order VI Rule 1 CPC and decide the interlocutory applications.

20. According to Order XIX Rule 1 CPC any Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable. The facts pleaded in a petition filed under Order XXXIX Rules 1 and 2 or under Section 151 CPC or any other provision under interlocutory applications, such can be decided based on proof of fact by filing an affidavit under Order XIX Rule 1 CPC.

21. According to Rule 60 of the A.P. Civil Rules of Practice any fact required to be proved in an interlocutory proceeding shall unless otherwise provided by these, rules, or ordered by the Court, be proved by affidavit but the Judge may, in any case, direct evidence to be given orally, and thereupon the evidence shall be recorded, and exhibits marked, in the same manner as in a suit and lists of the witnesses and exhibits shall be prepared and annexed to the judgment. A conjoint reading of Order IX Rule 1 CPC and Rule 60 of A.P. Civil Rules of Practice a fact in interlocutory stage can be proved by an affidavit and the Court may mark documents as exhibits and at some time may record the evidence of the witnesses also, if the Court finds that it is necessary. Strangely, none of the parties to the petition marked any document and curiously, learned counsel for the petitioner produced copy of notice and reply dated 01.10.2012 and 14.10.2012 respectively as additional material.

22. This revision is filed against the order in interlocutory application and unless those documents are marked as exhibits as required under Rule 60 of A.P. Civil Rules of Practice, such documents, as additional material, cannot be looked into. Therefore, there is no need for this Court to look into the additional material. Even otherwise, the fact cannot be gone into while exercising power under Article 227 of the Constitution in view of the judgments referred supra. Therefore, these notices need no consideration in the present revision.

23. Learned counsel for the petitioner further contended that the written statement and plaint shall be taken into consideration while deciding the dispute between the parties and pleadings have to be construed liberally and placed reliance on judgment of this Court in

K.Chengalraya Chetty (died) by LRs. V. Gomatheeswari ^[4]

wherein this Court expressed a view that the Court shall not adopt pedantic approach to defeat justice on hair splitting technicalities and question of lack of pleadings, when raised, instead of placing undue emphasis on form of pleadings, substance of pleadings should be considered. A similar view has been expressed by the Apex Court in **Madan Gopal Kanodia v. Mamraj Maniram and others**^[5].

At para 13, the Apex Court ruled out that it is well settled that the pleadings are loosely drafted in the Courts, and the Courts should not scrutinise the pleadings with such meticulous care so as to result in genuine claims being defeated on trivial grounds.

24. There is no quarrel about the law declared by the Apex Court. Strangely, learned counsel for the petitioner while contending that the plaint and written statement are only pleadings, the other material is not the pleading. The plaint and written statement even need not be adverted to while deciding the interlocutory application, in view of the Order XIX Rule 1 CPC and Rule 60 of A.P. Civil Rules of Practice. Therefore, I find no substance in the contention raised by the learned counsel for petitioner about non-consideration of written statement by the trial Court while deciding interlocutory application.

25. On the other hand, learned counsel for the respondent would submit that in the entire counter before the trial Court, the petitioner herein did not request the Court to treat the written statement as part and parcel of the counter. From a perusal of the counter, I find no such request to read the written statement as part and parcel of the counter. In such a case, the Court need not go into the pleadings and other material available on record and it is for the petitioner and respondent to produce necessary evidence before the

Court and mark the documents, if they feel necessary as required under Rule 60 of A.P. Civil Rules of Practice. But neither the petitioner nor the respondent did mark any documents to substantiate their contentions.

26. In view of the power conferred under Article 227 of the Constitution on this Court, it is difficult to accept the contention of the learned counsel for petitioner that the pleadings have to be construed liberally and the petitioner can raise any plea whatever he wants even though no material is available on record when it goes to the root of the matter.

27. The second contention raised by the learned counsel for petitioner is that he is not aware of the purchase of property by the respondent. Section 109 of the Transfer of Property Act deals with rights of the lessor's transferee: if the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him. When the petitioner accepted to continue in possession in view of transfer of property by the vendors of the respondent herein, the petitioner herein stepped into shoes of the landlord. The petitioner contested the suit by filing written statement and made an allegation that there is no jural relationship of landlord and tenant. Thus, denied the very relationship itself, but in view of Section 109 of the Transfer of Property Act, the petitioner is deemed to be continuing as tenant

under the respondent herein. Therefore, I find no force in the contention raised before this Court to reverse the order passed by the trial Court.

28. The other contention raised before this Court is that the petition under Section 151 CPC is not maintainable when a remedy under Order XV-A of A.P. Amendment to CPC is available. Under Section 151 CPC the Court can exercise its inherent powers, but whereas Order XV-A of A.P. Amendment to CPC deals with the power of the Court to issue a direction to the tenant for payment of arrears of rent and future rents within the specified time with a rider to struck down the evidence set up by the tenant in the event of default. In the present case, the respondent herein sought a direction against the petitioner herein to deposit arrears of rent and continue to deposit the future rent and no direction was sought to strike of the defence set up by the petitioner herein for issuance of direction to deposit arrears of rent and future arrears and there is no other proviso which enables the Court to issue such direction in CPC except Section 151 CPC. Order XV-A of the A.P. Amendment to CPC can be applied in a totally different circumstances. Therefore, this contention of the petitioner does not stand to any legal scrutiny and the same is not accepted.

29. Finally, it is contended that if the rent payable for the premises is Rs.1650/- per month, the civil Court has no jurisdiction, but rent controller alone has jurisdiction. No doubt there is substance in this contention, but subject to establishing that the rent payable to the premises is Rs.1650/- per month. At this stage, it is not proper to record any finding about the quantum of rent as a specific issue No.2 framed by the trial Court and the quantum of rent is required to be proved by adducing oral evidence. Therefore, I

am not inclined to record any finding on this contention. Learned counsel for the petitioner has drawn the attention of this Court to a judgment in **Sri Vasavi Boys Hostel and Mess, Hyderabad v. K.Satya Prasad**^[6] wherein this Court while deciding an application under Section XV-A of the A.P. Amendment to CPC observed that the tenant can be directed only to deposit undisputed rent. This legal decision is not in dispute, but the same cannot be applied for the present facts, for the reason that the petition filed under Order XV-A and Section 151 CPC and that apart the petitioner did not disclose the rent as agreed to be paid to the respondent herein except making a bald allegation that he did not agree to pay Rs.6,000/- per month.

30. It is also contended that there is earlier civil litigation between the original landlord and the petitioner, who filed a suit in O.S.No.224 of 2011 for grant of perpetual injunction and the same was decreed on 29.04.2015. Though the respondent herein purchased the property on 04.05.2012, conveniently, the petitioner did not implead the respondent herein as party to the said suit and obtained an exparte decree since the original owner defendant therein is not interested in the property. When the respondent herein is not a party to the decree and judgment passed in O.S.No.224 of 2011, it is not binding on the respondent. Hence, the decree and judgment in O.S.No.224 of 2011 is of no assistance to substantiate the contention of the petitioner.

31. The last contention of the learned counsel for petitioner is that the suit claim is based on rent @ Rs.6,000/- per month and if the order under challenge is upheld, it amounts to deciding the main suit itself. The suit was filed for ejectment and for recovery of arrears of rent @ Rs.6,000/- per month from May, 2012. An issue was

framed i.e Issue No.2 regarding quantum of rent and if any order is passed at interlocutory stage that will merge in the judgment for the reason that the order is passed on a prima facie material or admitted facts. In any view of the matter, it is the duty of the Court to protect the interest of the petitioner. Hence, I am of the view that it is a fit case to direct the revision petitioner to deposit rent @ Rs.6,000/- per month while permitting the respondent herein to withdraw the undisputed rent of Rs.1650/- per month out of the amount deposited. The trial Court is directed to decide the suit uninfluenced by the observations or findings recorded herein and that the entitlement of the respondent herein to withdraw the balance amount will depend upon the result of the main suit.

32. With the above modification, the civil revision petition is dismissed. There shall be no order as to costs.

33. Miscellaneous petitions, if any, filed in this appeal shall stand closed.

M.SATYANARAYANA MURTHY,J

04.09.2015
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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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[2] AIR 1963 SC 1895

- [\[3\]](#) (1993) 4 SCC 10
- [\[4\]](#) 2014(6) ALD 236
- [\[5\]](#) (1977) 1 SCC 669
- [\[6\]](#) 2012(4) ALD 140