

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

Civil Revision Petition No.410 of 2015

Between:

M/s.Amistad Holdings and Investments and two others

... Petitioners

and

K.Sreenivas Reddy and four others.

... Respondent (s)

Civil Revision Petition No.411 of 2015

Between:

M/s.Amistad Holdings and Investments and two others

... Petitioners

and

K.Sreenivas Reddy and four others.

... Respondent (s)

DATE OF JUDGMENT PRONOUNCED: ***31st July, 2015.***

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

1	Whether Reporters of Local newspapers may be allowed to see the Judgments?	Yes/No
---	---	--------

2	Whether the copies of judgment may be marked to Law Reports/Journals	Yes/No
---	---	--------

3	Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?	Yes/No
---	---	--------

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

Civil Revision Petition Nos.410 and 411 of 2015

COMMON ORDER:

These two revisions arise between the same parties and from the same suit. Therefore, they are being disposed of by this common order.

2. These two Civil Revision Petitions are filed under Article 227 of the Constitution of India by the defendants in the suit in O.S.No.516 of 2014 on the file of XXV Additional Chief Judge, City Civil Court, Hyderabad.

3. The respondents filed the suit for eviction of the petitioners and for recovery of balance rents and mesne profits with interest and costs against the petitioners.

4. Along with the suit, respondents filed I.A.No.1782 of 2014 under Order 15(A) CPC seeking a direction from the Court to the petitioners for deposit of undisputed arrears of rent up to the date of the suit.

5. The 1st petitioner was set ex parte in I.A.No.1782 of 2014 on 20.10.2014; 2nd petitioner was served summons on 30.10.2014 but did not choose to appear; summons of 3rd petitioner were returned unserved; however, publication was carried out, at the direction of the Court, by the respondents to petitioners 2 and 3 in the newspapers (by way of substituted service); and since there was no representation on their behalf, they were set ex parte on 27.11.2014 in I.A.No.1782 of 2014 and also in

the suit on the same day.

6. Petitioners filed I.A.No.2954 of 2014 under Order IX Rule 7 CPC on 05.12.2014 to set aside the orders dt.20.10.2014 and dt.27.11.2014 setting the petitioners ex parte in I.A.No.1782 of 2014. They also filed I.A.No.2955 of 2014 under Order IX Rule 7 CPC to set aside the order dt.27.11.2014 setting them ex parte in the suit.

7. In both the applications, the petitioners contended that they came to know about the filing of the suit by the respondents and passing of the orders therein only on 03.12.2014. Further they raised a plea that the suit itself is not maintainable in view of an arbitration clause in the lease agreement.

8. On 29.12.2014 the Court below allowed I.A.No.2954 of 2014 in I.A.No.1782 of 2014 in O.S.No.516 of 2014 on condition that the petitioners pay admitted rent and also directed them to file counter by 29.01.2015. Since, the said order was not complied with, on 29.01.2015 the said I.A. was dismissed.

9. On 29.12.2014 the Court below also allowed I.A.No.2955 of 2014 subject to the condition that petitioners file written statement in the main suit by 29.01.2015 and since the said order was not complied with, on 29.01.2015, the I.A.No.2955 of 2014 was also

dismissed.

10. Challenging the said orders dt.29.01.2015 in both the applications, these two Revisions are filed.

11 Counsel for the petitioners contended that while ordering I.A.No.2954 of 2014, the Court below was not entitled to impose an onerous condition on the petitioners that they shall deposit the admitted rent on or before 29.01.2015 pointing out that the admitted rent was Rs.1,92,000/- every month. He contended that this order is prima facie contrary to law and that such a direction could have been given only while disposing of the I.A.No.1782 of 2014 after hearing the petitioners and not otherwise. He also contended that the Court below ought not to have directed the petitioners to file written statement in the suit by 29.01.2014, having regard to the fact that there exists an arbitration clause in the agreement between the parties. He contended that the suit itself cannot be entertained in view of Section 8 of the Arbitration and Conciliation Act, 1996.

12. Counsel for the respondents on the other hand contended that the petitioners have been avoiding to pay rents to the respondents from June, 2013 and that no illegality has been committed by the Court below in imposing the above condition while allowing I.A.No.2954 of 2014 that the petitioners shall pay admitted rent to the

respondents on or before 29.01.2015. He also contended that since the order in I.A.No.2955 of 2014 was passed on the application filed by the petitioners, merely asking them to file a written statement on or before 29.01.2015, they should have filed the written statement raising all the pleas open to them and since they deliberately did not do so, no indulgence shall be shown to them.

13. There is no dispute that the petitioners had been set ex parte both in I.A.No.1782 of 2014 and in the suit on 27.11.2014. They had filed I.A.No.2954 of 2014 and I.A.No.2955 of 2014 praying the Court below to set aside the said orders.

14. The respondents had admittedly reported no objection to the allowing of the said applications, but they had sought a condition to be imposed on the petitioners of paying admitted rent in I.A.No.2954 of 2014 and on filing a written statement in I.A.No.2955 of 2014 on or before 29.01.2015.

15. It is settled law that while setting aside the orders setting a party ex parte in the suit or while setting aside the ex parte decree in a suit, onerous conditions shall not be imposed.(see ***Kumud Lata Das v. Indu Prasad***^[1] and ***Jeypore Sugar Co. Ltd., v. Parnerla Surya Rao***^[2]).

16. The admitted rent which was directed to be deposited by the Court below by the petitioners as a condition precedent for setting aside its orders setting them ex parte, is Rs.1,92,000/- every month. In my opinion, this condition is an onerous condition and when such a condition cannot be imposed even while setting aside an ex parte decree, the Court below could not have imposed such condition in I.A.No.2954 of 2014 as a condition precedent for allowing the petitioners to contest I.A.No.1782 of 2014 filed by the respondents under Order 15(A) CPC.

17. Therefore, I am of the opinion that the order dt.29.12.2014 and the consequential order dt.29.01.2015 passed in I.A.No.2954 of 2014 cannot be sustained. The said orders are accordingly set aside and I.A.No.2954 of 2015 is allowed on condition of the petitioners depositing a sum of Rs.20,000/- as costs to the credit of the suit within a period of two weeks from date of receipt of copy of this order. In default of complying with this condition, the CRP No.410 of 2015 shall stand dismissed. The costs as directed above, if deposited by the petitioners, shall be withdrawn by respondents without furnishing any security. It is made clear that the petitioners shall also file a counter in I.A.No.1782 of 2014 within two weeks from date of receipt of copy of this order without fail, in default of which also, the CRP No.410 of 2015 shall stand

dismissed.

18. Coming to CRP.No.411 of 2015, which arose out of the order dt.29.01.2015 in I.A.No.2955 of 2014, according to the petitioners there is an arbitration clause and the very suit is not maintainable. Though such a plea has specifically been taken by the petitioners in the affidavit filed by them in I.A.No.2955 of 2014, the Court has not adverted to the said plea at all in the impugned order passed by it, while directing the petitioners to file a written statement in the suit by 29.01.2015. The Court below ought to have decided adverted to the said issue in the light of Section 8 of the Arbitration and Conciliation Act, 1996.

19. Therefore the order dt.29.12.2014 in I.A.No.2955 of 2015 is set aside; consequently, the order dt.29.01.2015 in I.A.No.2955 of 2015 is also set aside and the I.A.No.2955 of 2014 is remitted back to the Court below to decide in accordance with law by adverting to the contentions of the petitioners within four (04) weeks from the date of receipt of a copy of this order.

20. Accordingly, both the CRPs are allowed to the above extent, with costs.

21. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

31st July, 2015.

gra

[\[1\]](#) 1996(11) SCC 195

[\[2\]](#) 1996(2) ALT pg. 68