

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

CIVIL REVISION PETITION No.4457 of 2013

ORDER:

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This Civil Revision Petition is filed challenging the order

dt.04-02-2013 in I.A.No.305 of 2011 in O.S.No.839 of 2011 of the

II Senior Civil Judge, City Civil Court, Hyderabad.

2. The petitioner herein is defendant in the said suit.

3. The respondent herein filed the said suit against petitioner for eviction of petitioner from the suit schedule premises, for recovery of arrears of rent and also damages for illegal and unauthorized use and occupation of the premises from the date of filing of suit till the date of realization and for costs.

4. Written statement was filed by petitioner opposing the suit claim.

5. Shortly after the suit was filed in the year 2011, the respondent filed I.A.No.305 of 2011 under Order XV-A C.P.C. to direct the petitioner to deposit the monthly admitted rent of Rs.10,000/- to the credit of suit along with

arrears of rent from 01-04-2008 amounting to Rs.2,46,262/- and also future rents pending disposal of the suit.

6. In the affidavit filed in support of this application, it was clearly averred by respondent that the admitted rent is Rs.10,000/- p.m. since 2007 and from January, 2008, the petitioner did not pay any rent to respondent claiming that he was depositing the rents @ Rs.10,000/- p.m. in the bank account of respondent's mother Smt.J.Sarala Devi.

7. Counter affidavit was filed by petitioner opposing this application stating that the amount of Rs.10,000/- p.m. was not voluntarily agreed by it and the actual rent payable was only Rs.1,883/- p.m. and that the petitioner had in fact claimed that it had paid an excess amount of Rs.12,02,812/- to respondent. It was also contended that the suit notice dt.01-09-2010 issued by respondent was not in conformity with Section 106 of the Transfer of Property Act, 1882 and the suit itself is liable to be dismissed since the petitioner was not in illegal occupation of the suit schedule property.

8. By order dt.04-02-2013, I.A.No.305 of 2011 was allowed and the petitioner was directed to pay or deposit monthly rent of Rs.10,000/-from December, 2011 onwards

to the credit of the suit and to continue to deposit the same rent until disposal of the suit or until further orders. The Court observed that the object of Order XV-A C.P.C. is to ensure that the admitted rents are paid pending the suit for eviction and since the respondent is claiming that arrears of rent from

01-04-2008 @ Rs.10,000/- p.m. are due, and the petitioner had taken a plea in his counter that he is depositing rents from November, 2011, and since the respondent is entitled to only undisputed rents, the petitioner is liable to pay the undisputed rents from December, 2011 onwards @ Rs.10,000/- p.m. It held that the contention of petitioner that the rent payable is only Rs.1,883/- p.m. and that the petitioner had been forced to pay rents @ Rs.10,000/- p.m. illegally, would be decided in the main suit.

9. Challenging the same, this Revision is filed.

10. The learned counsel for petitioner Sri G.Dhananjai contended that the Court below was not correct in allowing the application under Order XV-A C.P.C when there is a serious dispute as to whether the sum of Rs.10,000/- p.m., was being paid voluntarily by petitioner to the respondent or not. He also contended that it is the case of petitioner that excess payment had been made

and a counter-claim was also made in the suit and since the trial in the suit has been concluded now, the order passed by the Court below should be set aside and the Court below should be directed to decide the suit.

11. The learned counsel for respondent Sri B.Chandrasen Reddy, on the other hand, refuted the above contentions. He stated that the order passed by the Court below is correct and did not warrant any interference in exercise of the revisionary jurisdiction under Article 227 of the Constitution of India inasmuch as rents were not being paid by petitioner from 01-04-2008 and the Court below had directed the petitioner to pay rent only from December, 2011.

12. I have noted the submissions of both sides.

13. Order XV-A C.P.C. states:

“Striking off Defence in a Suit by a Lessor:

(1) In any suit by a lessor or a licensor against a lessee or a licensee, as the case may be, for his eviction with or without the arrears of rent or licence fee and future mesne profits from him, the defendant shall deposit such amount as the Court may direct on account of arrears up to the date of the order (within such time as the Court may fix) and thereafter continue to deposit in each succeeding month the rent or licence fee claimed in the suit as the Court may direct. The defendant shall, unless otherwise directed, continue to deposit such amount till the decision of the suit.

In the event of any default in making the deposits, as aforesaid, the Court may subject to the provisions of sub-rule (2) strike off the defence.

(2) Before passing an order for striking off the defence, the Court shall serve notice on the defendant or his Advocate to show cause as to why the defence should not be struck off, and the Court shall consider any such cause, if shown in order to decide as to whether the defendant should be relieved from an order striking off the defence.

(3) The amount deposited under this rule shall be paid to the plaintiff lessor or licensor or his Advocate and the receipt of such amount shall not have the effect of prejudicing the claim of the plaintiff and it shall not also be treated as a waiver of notice of termination.”

14. A reading of the above provision indicates that in order to mitigate the hardship of recovery of admitted rents by landlords pending a suit for eviction against a tenant when rents might be withheld by tenant, this provision has been inserted. This provision entitles only undisputed rents to be paid or deposited in Court at the instance of the landlord. The enquiry in any application under Order XV-A C.P.C. is necessarily a summary enquiry and the Court would only see what the undisputed rent or arrears of rents are and then direct the defendant to deposit the same within a stipulated time and if not, the Court can even strike off the defence.

15. Admittedly, O.S.No.839 of 2011 has been filed by

respondent in April, 2011. The application I.A.No.305 of 2011 was also filed under Order XV-A C.P.C. simultaneously. Written statement was filed by petitioner and in para-8 thereof, there is a specific statement by petitioner that it had been paying amounts of Rs.10,000/- every month although it was contended that such payment was being made by force or undue influence.

16. The Court below decided I.A.No.305 of 2011 only on 04-02-2013 holding that it would go into the question whether Rs.10,000/- p.m. was being collected by respondent from petitioner by force or not in the suit; since the petitioner claimed to have deposited rents upto November, 2011 in a bank account, although the respondent has alleged that rents from 01-04-2008 are due, petitioner can be directed to deposit monthly rent of Rs.10,000/- to the credit of the suit and continue to deposit the same until further orders.

17. Petitioner has clearly admitted in para-8 of his written statement that he was paying rent @ Rs.10,000/- p.m. So the Court below was right in asking him to deposit rents at that rate and stating that whether the said payment was voluntary or not will be decided in the suit. All the contentions raised by petitioner would be gone into in the suit and the Court below would decide the same in

accordance with law. The mere fact that evidence in the suit had been concluded as on date, cannot be of any assistance to petitioner and he cannot escape the liability under Order XV-A C.P.C. and refuse to comply with the order passed by the Court below on this count.

18. Therefore, I do not find any merit in this Revision.

19. The petitioner is granted four (04) weeks time from today to deposit the monthly rents @ Rs.10,000/- from December, 2011 till date and he shall continue to deposit the same till disposal of the suit. In default of complying with this direction, the defence of the petitioner shall be struck off.

20. The Civil Revision Petition is dismissed with the above directions. No costs.

21. As a sequel, miscellaneous petitions pending if any, in these Revisions shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 17-08-2015

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