THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CRP.MP.No.7107 of 2015
IN/AND
CIVIL REVISION PETITION No.2607 of 2015

COMMON ORDER:

Heard Sri M.S.Prasad, the learned Senior Counsel appearing for the petitioner and Sri P.Veera Reddy, the learned Senior Counsel appearing for respondents 1 to 3.

2. The petitioner herein is respondent No.1 in E.P.No.8 of 2015 in O.S.No.291 of 2012 on the file of the Family Court-cum-IV Additional District & Sessions Judge at Vijayawada (for short, executing Court). Respondents 1 to 3 herein filed the said suit against the defendants (petitioner and respondent No.4 herein) on the file of the Court of II Additional District Judge, Vijayawada (for short, trial Court) seeking eviction and delivery of vacant possession of the plaint schedule premises consisting of ground, first and second floors in the building bearing door No.40-1-65 (Noorani Plaza), situated at M.G. Road, near Benz Circle, Patamata, Vijayawada, Krishna District. The suit was also filed for recovery of arrears of rent of Rs.31,71,980/- and for damages. The defendants filed their written statements in the said suit. Immediately thereafter the parties entered into a compromise and they filed a petition before the Lok Adalat at Vijayawada which passed an Award on 03.04.2013 in Lok Adalat Case No.593 of 2013. The suit was accordingly decreed/disposed of in terms of the said Award. The relevant clauses of the said Award read as follows:

> "1. That the plaintiffs and the defendants have admitted the monthly rent of the plaint schedule premises as Rs.4,75,000/- less T.D.S. to be deducted at 10% of the monthly rent which amounts to Rs.4,27,500/- per month payable by the defendants to the plaintiffs.
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> 2. That both the plaintiffs and the defendants agreed and admitted that the total arrears of rent of the plaint schedule premises as on March 2013 amounts to Rs.53,98,226/- after the

deduction of T.D.S.

3. That the plaintiffs agreed and accepted to pay a sum of Rs.24,94,500/- to the defendants towards the costs of the lift and the transformer which have been arranged by the defendants. That the defendants undertook and assured to transfer the lift and the transformer in the name of the plaintiffs by duly effecting the transfer of the deposits with A.P. Transco and by releasing the hypothecation of the bank charges as against the lift and transformer in favour of the plaintiffs.

4. That the net payable amount towards arrears of rent after deducting the sum of Rs.24,94,500/- out of the total arrears of rent of Rs.53,98,226/- amounts to Rs.53,98,226/- less Rs.24,94,500/- = Rs.29,03,726/- which is to be paid by the defendants to the plaintiffs by 10th April 2013 and 4-5-2013. Thus, the defendants herein admitted and assured to pay the sum of Rs.10,00,000/- (rupees ten lakhs only) to the plaintiffs on 10th April 2013 and issued a cheque bearing No.42790 drawn on Indian Bank, Vijayawada, dt.10.04.2013. The defendants agreed and accepted to pay the remaining balance amount of Rs.19,03,726/- to the plaintiffs on 04.05.2013 and accordingly, issued a cheque bearing No.42791 drawn on Indian Bank, Vijayawada, dt. 04.2013.

5. That the defendants/tenants are liable to pay service tax to the Central Excise Department upon the annual rent at the rate of 12.36% p.a., and the said amount is accumulated to Rs.21,13,560/- which amount, the defendants/tenants shall pay to the Central Excise Department on behalf of the plaintiffs towards service tax without no costs and liability to the plaintiffs/landlords before 30th May 2013 for which a cheque for the said amount is issued dt.30.05.2013 bearing No.42792 of Indian Bank, Vijayawada. Any penalties or interest levied by the Central Excise Department for the belated payments of the service tax shall be the sole responsibility and liability of the defendants/tenants, if failed to pay in time. Thus, the plaintiffs are not responsible for the payment of service tax, interest of penalties upon the same and the plaintiffs will be entitled to collect the same from the defendants in the event of their failure to pay the service tax amounts mentioned above as on date and if any accumulated in future and the defendants shall be liable to pay the same to the plaintiffs.

6. That upon receipt of the sum of Rs.29,03,726/- from the defendants, the plaintiffs shall fix and arrange the required and necessary fire extinguishing equipment within the building premises and shall also obtain the requisite N.O.C. from the concerned department within 50 days from the date of receipt of the sum of Rs.29,03,726/-. The plaintiffs shall obtain occupancy certificate/completion certificate from V.M.C. and shall submit

the same to the defendants within 50 days.

7. That the defendants assured and undertook to pay the monthly rent from April 2013 as per the lease deed with 12.5% enhancement regularly and promptly and if the defendants remain regular and prompt in the payment of the monthly rents due and accrued with effect from April 2013 for the total tenure of the lease upto March 2015, the plaintiffs shall have no objection to renew the lease in favour of Positive Pulse Hospitals Pvt. Litd., Vijayawada belonging to the defendants for another period of four years with an enhanced monthly rent of Rs.6,75,000/- per month and in such an event the total cost of the registration of such renewed lease deed shall be borne by the defendants/tenants only.

8. That the plaintiffs shall submit the occupancy certificate and if the defendants fail to honour any one of the above terms and conditions more particularly the payment of arrears of rent of Rs.10,00,000/- by 10th April 2013 and the remaining balance of Rs.19,03,726/- by 04.05.2013 the payment of service taxes by 30th March 2013, the plaintiffs shall be entitled for a decree of eviction against the defendants/tenants immediately and the defendants/tenants shall vacate and deliver the vacant possession of the plaint schedule tenanted premises to the plaintiffs/owners the Hon'ble Court is at liberty to pass a decree as prayed for by the plaintiffs."

3. After the suit was decreed, respondents 1 to 3 herein filed E.P.No.29 of 2014 in O.S.No.291 of 2012 on 30.07.2013 before the trial Court seeking execution of the decree. The petitioner herein filed Tr.CMP.No.89 of 2015 before this Court seeking transfer of E.P.No.29 of 2014 from the trial Court to any other Court and this Court allowed the same by transferring E.P.No.29 of 2014 from the file of the trial Court to the file of the executing Court. After transfer, E.P.No.29 of 2014 was re-numbered as E.P.No.8 of 2015. Thereafter, the petitioner herein filed E.A.No.9 of 2015 under Section 47 of the Civil Procedure Code before the executing Court challenging the filing of said EP and the executing Court rejected the said application, by order dated 10.04.2015, holding that the said application, E.A.No.9 of 2015, is not maintainable. Challenging the said order, the petitioner herein preferred CRP.No.1540 of 2015, but the same was withdrawn on 24.04.2015. E.P.No.8 of 2015 was ultimately allowed, by order of the executing Court dated 02.07.2015,

directing the judgment debtor, petitioner herein, to vacate the petition schedule premises and deliver vacant possession to the decree holders, respondents 1 to 3 herein, within one week from the date of that order. Challenging the said order, the present Civil Revision Petition is filed.

4. This Court, while ordering notice before admission on 07.07.2015, ordered *status-quo* to be maintained with regard to the possession initially for a period of three weeks and the same was extended from time to time. But, as the counsel for the petitioner was not present on 26.11.2015, 27.11.2015 and 04.12.2015, the CRP was dismissed for non-prosecution on 04.12.2015. Thereafter, the petitioner filed CRP.MP.No.7107 of 2015 seeking restoration of the CRP by setting aside the order of dismissal dated 04.12.2015. In the affidavit filed in support of the CRP MP No.7107, the petitioner averred as follows:

> "4. It is further submits that since there is no alternative remedy to the petitioner, finally constrained to file CRP.No.2607 of 2015 before this Hon'ble Court after hearing the matter this Hon'ble Court was pleased to grant status quo on 07.07.2015 and subsequently same was extended for 2 weeks on 24.07.2015. Thereafter, above said CRP.No.2607 of 2015 listed and in 1 of 2 occasions same was not reached. In fact, I frequently contacting my earlier counsel to know the status of the case. When I contacted my earlier counsel on Sunday i.e., 06.12.2015, he informed me that said CRP has been dismissed for non-prosecution. He further informed me that he instructed his colleagues to represent the matter on 26.11.2015 and 27.11.2015 since he suffered from ill-health and due to work pressure they could not represent the matter on above said dates including on 04.12.2015. Accordingly, this Hon'ble Court was dismissed the said CRP.No.2607 of 2015 for non prosecution on 04.12.2015. The absence of my earlier counsel on the above said dates neither willful nor wanton. If the said CRP.No.2607 of 2015 is not restored, I would suffer irreparable loss and damage."

5. The respondents have not filed any counter-affidavit. Since CRPMP.No.7107 of 2015 was filed within four days of passing of dismissal order, the same is allowed and the main CRP is taken up for consideration.

6. The learned Senior Counsel appearing for the petitioner submits that as per clause (8) of the Award, it cannot be construed as a decree and a separate decree has to be obtained for eviction. He also submits that even before filing the present CRP, the petitioner paid Rs.34,90,000/- on 19.05.2015, 15.06.2015 and 22.06.2015 and three receipts were issued by the first respondent herein. The petitioner is running a hospital by investing lot of money, and if reasonable time is granted, he would comply with the terms and conditions mentioned in the Award in toto.

7. The learned Senior Counsel appearing for respondents 1 to 3 on the other hand submits that in view of the order passed in E.A.No.9 of 2015 in E.P.No.8 of 2015 in O.S.No.291 of 2012, the contention raised by the learned Senior Counsel for the petitioner that the Award passed by the Lok Adalat cannot be executed as a decree is not tenable and the order passed by the executing Court in E.A.No.9 of 2015 has become final. He further submits that the three receipts produced by the petitioner are created one and the same were disputed in the counter-affidavit filed in the present case. The petitioner did not file any rejoinder disputing the said averment in the counter-affidavit.

8. Now the executing Court passed a detailed order dated 02.07.2015 in E.P.No.8 of 2015 giving a finding that the cheques issued by the petitioner herein were dishonoured and the same was agreed by him in his evidence. The executing Court noticed that when the petitioner herein had to pay an amount of Rs.29,03,726/- in two instalments on 10.04.2013 and 04.05.2013 as per clause (4) of the Award, he paid only an amount of Rs.10,00,000/-, as evidenced by the bank transaction dated 12.04.2013 and the remaining amount of Rs.19,03,726/- was not paid by him. The executing Court also noticed that though the petitioner agreed to pay rents promptly and regularly from 01.04.2013, he failed to pay the same and as a result of such non-payment, respondents 1 to 3 filed a suit for recovery of arrears of rents for a sum of Rs.75 lakhs in O.S.No.160 of 2015. The executing Court also observed that a legal

notice was issued by respondents 1 to 3 with regard to the dishonour of the cheques and thus the petitioner was put on notice with regard to the dishonour of the cheques.

9. Before the executing Court, the first respondent was examined as P.W.1 and the petitioner was examined as R.W.1. Exs.A.1 to A.4 were marked on behalf of the petitioner. The executing Court recorded the above findings after considering the oral and documentary evidence. There is nothing on record to show that the petitioner had complied with the conditions mentioned in the Award.

10. In the circumstances, it is not open to the petitioner to re-agitate the matter which was already decided in E.A.No.9 of 2015 with regard to the maintainability of the EP. The reasoned order passed by the executing Court dated 02.07.201 does not warrant any interference in view of the clear finding of fact recorded. I see no reason to interfere with the impugned order of the trial Court and hence the Civil Revision Petition is liable to be dismissed.

11. At this stage, the learned Senior Counsel appearing for the petitioner submitted that since the petitioner is running a hospital, it would cause inconvenience to him, if immediate steps are taken for his eviction. The learned Senior Counsel appearing for respondents 1 to 3 submitted that the petitioner has already filed an undertaking before the executing Court to vacate the premises by 24.12.2015, but he did not vacate the premises.

12. In the circumstances, time of one month till 31.01.2016 is granted for eviction of the premises, subject to condition of the petitioner filing an undertaking before the executing Court on or before 31.12.2015 to vacate the premises and handover the physical possession of the same to respondents 1 to 3 on or before 31.01.2016.

13. Accordingly, the Civil Revision Petition is dismissed. No order as

to costs. Miscellaneous Petitions, if any pending, shall stand closed.

A.RAMALINGESWARA RAO, J

Date: 29.12.2015
Note: Issue CC by 31.12.2015.
B/o. TJMR