

**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA  
RAO**

**C.R.P.No.1690 OF 2014**

**ORDER :**

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.25.03.2014 in I.A.No.303 of 2013 in OS.No.128 of 2013 of the II Junior Civil Judge, City Civil Court, Hyderabad.

2. The petitioner herein is the plaintiff in the said suit. He purchased the suit schedule property under a registered sale deed dt.23.06.2012 from Smt Anwarunnisa Begum and 12 others.

3. The respondent had been inducted into possession as tenant by Smt Anwarunnisa Begum. After purchase by the petitioner, by a letter dt.17.07.2012 Smt Anwarunnisa Begum appears to have informed the respondent about transfer of title and directed him to pay rents to the petitioner.

4. On 21.07.2012, one Md.Riyaz Jaffar, who is the Power of Attorney holder of the petitioner, entered into agreement of sale with the respondent agreeing to sell the plaint schedule property for a sum of Rs.24,00,000/- on receiving Rs.3,00,000/- as an advance.

5. It is not disputed that the respondent had filed a suit

O.S.No.41 of 2013 before the III Additional Chief Judge, City Civil Court, Hyderabad for specific performance of the said agreement of sale against the petitioner.

6. Petitioner herein filed I.A.No.303 of 2013 under Order XVA of Civil Procedure Code, 1908 for a direction to the respondent to deposit rents @ Rs.4,470/- per month and maintenance @ Rs.450/- per month from July 2012 onwards till the disposal of the suit. He contended therein that under the lease deed dt.03.02.2000 entered into by the respondent with Smt Anwarunnisa Begum, the latter was liable to pay @ Rs.4,470/- as monthly rent and Rs.450/- per month towards maintenance charges.

7. The respondent filed counter contending that under the agreement of sale dt.21.07.2012, the petitioner had agreed to sell the suit schedule property to him for a sum of Rs.24,00,000/- and received Rs.3,00,000/- as advance; that the petitioner is not executing registered sale deed in his favour even though a letter dt.17.10.2012 was addressed to the petitioner; therefore the suit for eviction, mesne profits and recovery of rents is not maintainable in law, since the respondent has become a purchaser of the suit schedule property under the said agreement and also enjoying possession thereof. He therefore contended that there is no relationship of landlord and tenant between the parties, that the original owner Smt Anwarunnisa Begum did not issue any notice of attornment to the respondent and that the

petitioner cannot claim the status of his landlord. He also contended that once the agreement of sale is entered into by the petitioner with the respondent, the respondent had ceased to be a tenant.

8. Before the Court below, petitioner marked Exs.P1 to P6 and respondent marked Exs.R1 to R3.

9. By order dt.25.03.2014, the Court below dismissed the said application stating that *prima facie* there is no jural relationship of landlord and tenant between the petitioner and the respondent, since no rental receipts have been filed by the petitioner to show that respondent is his tenant. It also observed that the respondent had addressed a letter dt.17.10.2012 under Ex.R2 to the petitioner to perform his part of contract as stipulated in Ex.R1 agreement of sale, and without issuing a reply to Ex.R2, the petitioner straightaway issued quit notice under Section 106 of the Transfer of Property Act, 1882. It therefore held that even if the petitioner is the owner of the suit schedule property, unless the relationship of landlord and tenant is established between the petitioner and respondent, and more particularly since the agreement of sale relied upon by the respondent is also admitted by the petitioner, the relief under Order XVA cannot be granted to the petitioner. It held that at the stage of deciding the application under Order XVA CPC, no finding can be given about the existence of jural relationship of landlord and tenant, since it is a matter of evidence to be adduced in

trial. It therefore directed both parties to cooperate with the Court for a speedy disposal of the case.

10. Challenging the same, this Revision is filed.

11. Counsel for the petitioner contended that merely because no reply had been issued to Ex.R2 letter, no presumption can be drawn against the petitioner and in favour of the respondent, as was done by the Court below.

On this count, the petitioner is undoubtedly correct, because, mere non reply to a legal notice cannot be a ground to infer any admission under Sections 17 to 21 of the Indian Evidence Act, 1872 as held by the Division Bench of this Court in ***Manepalli Udaya Bhaskara Rao vs Kanuboyina Dharmaraju***<sup>[1]</sup>.

12. Be that as it may, there is no dispute about the execution of Ex.R1- agreement of sale by the petitioner in favour of the respondent on 21.07.2012. There is also no evidence placed on record that after execution of agreement of sale on 21.07.2012, the status of the respondent was that of the tenant. No evidence of payment of rents after 21.07.2012 by the respondent to the petitioner has been filed.

13. As rightly held by the Court below, in the circumstances at the stage of determining the application under Order 15A CPC, where the relationship of landlord and tenant between

the petitioner and respondent is not admitted but is strongly contested, it is not possible to draw any conclusion on the said issue. Only after trial is conducted and evidence is adduced by both parties, the Court will be in a position to determine whether there is a jural relationship of landlord and tenant between the petitioner and respondent. Therefore, I do not find any error or infirmity in the order passed by the Court below in refusing to grant relief in I.A.No.303 of 2013 to the petitioner.

14. Accordingly, this Civil Revision Petition is dismissed. However, since the suit is an old suit of the year 2013, the Court below shall endeavour to dispose it off expeditiously, preferably within a period of six (06) months from the date of receipt of a copy of this order uninfluenced by any of the observations made either in its order dt.25.03.2014 in I.A.No.303 of 2013 or by this Court in this order. There shall be no order as to costs.

15. Consequently, Miscellaneous Petitions pending if any, shall stand closed.

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**M.S. RAMACHANDRA RAO, J**

26<sup>th</sup> October, 2015.  
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