

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

+ C.R.P.No.2175 of 2015

% Dated 23.06.2015

Sunil Saraogi

....Petitioner

Vs.

\$ Smt. A. Sravanthi

....Respondent

! Counsel for the petitioner : Sri K.B.Ramanna Dora

^ Counsel for the Respondent : Sri Chetluru Srinivas

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> HEAD NOTE:

? Cases referred

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

C.R.P.No.2175 of 2015

ORDER:

The petitioner herein, who is the defendant in the civil suit, O.S.No.704 of 2014, is aggrieved by the orders passed by the learned XVI Additional District & Sessions Judge, Ranga Reddy District at Malkajgiri in I.A.No.315 of 2014.

The plaintiff / respondent herein filed the suit for eviction of the

defendant petitioner from the suit scheduled property and for delivering the vacant position thereof to her. The plaintiff also prayed for a sum of Rs.54,41,874/- to be paid towards arrears of rent together with the interest at the rate of 12% per annum from the date of the suit till the same is realized and also sought for future mesne profits.

The plaintiff has also filed I.A.No.315 of 2014 for a direction to the respondent to pay her an amount of Rs.52,79,713/- being the arrears of rent payable. This I.A.No.315 of 2014 is moved in terms of and in accordance with Order-XV-A read with Section 151 of the Code of Civil Procedure (for short 'the Code'). That application is, now, ordered on 16-04-2015. In para 6, the learned Judge had recorded his findings as under:

“ It is an admitted fact that the petitioner is the absolute owner of the suit schedule property and the respondent is the tenant. The respondent entered into the schedule property, basing on the Lease Agreement agreeing to pay an amount of Rs.20,000/- per month. Disputes arose in between parties. Exchange of notices were taken place. Later both the parties approached the Hon'ble High court and an arbitrator Sri Justice Vaman Rao, a retired High Court Judge was appointed as arbitrator to settle the dispute in between the parties. The petitioner claims that the said arbitration petition which was filed by the respondent was dismissed by the sole arbitrator Sri Justice Vaman Rao, a retired High Court Judge. Then the plaintiff was constrained to file the present suit. The respondent did not choose to come forward to pay any rents to the petitioner, even after filing the suit and he was ex parte. If the respondent is having any bonafides he would have appeared before the Court and he would have paid the rents which are in dispute, but he did not choose to do so since the dispute was pending before the arbitrator and no rents were paid during the pendency of arbitration and no rents were paid, subsequent to filing of the suit establishes the case of the petitioners. Therefore, the respondent has to pay the arrears of rents amounting to Rs.54,41,874/-.”

Further, in para 7 of the same order, the learned Judge went on to direct the respondent to deposit the admitted arrears of rent at the rate of Rs.29,549/- per month from the date of the suit within fifteen days from the date of the order passed by the Court. The learned Judge

further directed the respondent to pay rents at Rs.29,549/- per month before 15th day of the calendar month till the Judgment is rendered in the suit.

Heard Sri K.B.Ramanna Dora, learned counsel for the petitioner and Sri Chetluru Srinivas, learned counsel, who entered a caveat in the matter.

Sri K.B. Ramanna Dora has raised mainly two contentions; firstly, that the Court does not have the jurisdiction to entertain or pass orders in an interlocutory application moved under Order XV-A of the Code till such time the written statement in the suit is filed either admitting or denying the arrears of rent payable and in the instant case, time has been granted to the defendant / petitioner herein for filing a written statement and even before that time has expired, I.A.No.315 of 2014 has been ordered by the Court and hence, the order passed in I.A.No.315 of 2014 is without the necessary jurisdiction; and secondly, that if the defendant / petitioner herein can demonstrate that he is not in arrears of rent at all or he can point out as to how he has been making payment of rents regularly to the person with whom he has entered into the necessary agreement, I.A.No.315 of 2014 is liable to be dismissed.

Per contra, Sri Srinivas would submit that Order XV-A has been introduced to the Code by way of State Amendment. Order XV-A is intended for the purpose of preventing the tenants from deriving undue advantage by not tendering arrears of rent as well as the monthly rents payable to the premises taken on lease / licence. This is a salutary provision, which enables the Court to strike off the defence of the defaulting party itself and hence, it must be given full effect to. Rule (1) of the Amendment brought about by the Andhra Pradesh High Court reads as under:

“(1) In a suit for recovery of possession, on termination of lease, or licence, with or without a prayer for recovery of arrears of rent, or licence fee, known with whatever description, the defendant, while filing his written statement, shall deposit the amount,

representing the undisputed arrears, calculated upto that due into the Court and shall continue to deposit such amount, which becomes payable thereafter within one week from the date on which it becomes due, till the judgment is rendered in the suit.”

The learned counsel for the petitioner Sri Ramanna Dora would submit that Rule (1) clearly spelt out that the defendant, while filing his written statement, shall deposit the amount representing the undisputed arrears calculated up to that date into the Court and shall continue to deposit such amount, which becomes payable thereafter, within one week from the date on which it becomes due. Therefore, it is contended that till such time the written statement is filed by the defendant, the question of either depositing the arrears of rents or the Court directing him to deposit any such arrears of rent would not arise.

It is true that Rule (1) of Order XV-A of the Code, in its content and terms, speaks of the written statement of the defendant and also refers to the assertions made therein with regard to the payment / obligation to pay the agreed rents up to that date, but however, Rule (2) makes it clear that where the defendant pleads in the written statement that no arrear of rent or licence fee exists, it shall be competent for the Court to pass an order in that regard after affording an opportunity to both sides. Therefore, Rule (2) will have applicability even in a given case earlier to the date of filing of the written statement. Take a case where the plaintiff himself admits that no rents are due and payable by the defendant, but however, he is seeking recovery of possession as the period of lease has expired, he is entitled to recover the possession of the leased out premises. In such an event, the Court need not wait for the written statement to be filed by the defendant formally disclosing that he is not in arrears of rent due at all. In view of the very claim of the plaintiff that no arrears are payable, the Court, at the very outset, can direct the defendant to continue to deposit the agreed rent payable during the pendency of the suit. In such cases, as contended by Sri Ramanna Dora, is it really required to wait for the defendant to file his written statement? Therefore, I am of

the opinion that Rule (2) of Order XV-A of the Code can have independent applicability from that of the situation contemplated by Rule (1).

However, in the instant case, one glaring feature, which stares at us, is this; in support of I.A.No.315 of 2014, the plaintiff has filed an affidavit and in that affidavit, nowhere one will find as to how the arrears have been calculated. Further, in para 21 of the affidavit, it is set out that the respondent in that interlocutory application is liable to pay to the petitioner an amount of Rs.54,41,874/-, whereas in the petition filed, the amount payable by the respondent was shown as Rs.52,79,713/-. Thus, there was a variance in the amount mentioned in the prayer portion of the affidavit filed in support of the interlocutory application and the interlocutory application itself. The learned Judge has straightaway proceeded and towards the end of para 6 of his order, he recorded that the respondent has to pay the arrears of rent amounting to Rs.54,41,874/- without making any effort to ascertain as to how this amount has been worked out by the plaintiff in the interlocutory application.

When I confronted Sri Srinivas, as to how he has worked out, the learned counsel would fairly submit that arrears of rent have been calculated for the period commencing from 01-08-2005 onwards and for the period from 01-09-2006, 5% of enhancement has been calculated. Firstly, in the absence of any term stipulating such annual hike in rentals by 5%, any such claim becomes contentious. This apart, in the calculation memo filed today by the learned counsel Sri Srinivas, it is shown that a sum of Rs.7,36,479/- is received as rent, though the date(s) on which it was received or for the period for which it was received is not mentioned. If this amount of Rs.7,36,479/- was, in fact, received by the plaintiff / petitioner in the interlocutory application without any demur, the question of calculating 5% hike for the period commencing from 01-09-2006 onwards, perhaps, would become further more contentious. This apart, for the post 01-09-2013

period, a sum of Rs.29,549/- is calculated as monthly rent payable. How and on what basis this figure is worked out is not spelt out anywhere. These are the questions, which ought to have been adjudicated and without even advertent to the same, the Court could not have mechanically passed the order dated 16-04-2015.

Hence, I have no hesitation to set aside the order passed on 16-04-2015 in I.A.No. 315 of 2014 in O.S.No.704 of 2014 pending on the file of the XVI Additional District & Sessions Judge, Ranga Reddy District at Malkajgiri. I.A.No.315 of 2014 stands restored. I hope the same will be decided within a period of three months, after hearing both sides.

The Civil Revision Petition is accordingly allowed. No costs.

Consequently, the miscellaneous applications, if any shall stand disposed of.

**NOOTY RAMAMOHANA
RAO, J.**

Note:

LR copy to be marked.

Issue CC in two days.

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mrk

23.06.2015.