

HON'BLE SRI JUSTICE R. SUBHASH REDDY

Civil Revision Petition No.4196 of 2015

ORDER:

This Civil Revision Petition, under Section 22 of the A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960 (for short "the Act") is filed by the appellants in R.A.No.33 of 2012 on the file of the Additional Chief Judge, City Small Causes court, Hyderabad, aggrieved by order dated 20.08.2015 passed in I.A.No.252 of 2014 in the said R.A.

The respondents herein filed R.C.No.278 of 2007 on the file of the IV Additional Rent Controller, City Small Causes Court, Hyderabad, against the petitioners herein, wherein eviction was ordered by order and decree dated 29.12.2011. As against the same, petitioners filed R.A.No.33 of 2012 on the file of the Additional Chief Judge, City Small Causes Court, Hyderabad. In the said R.A., petitioners filed I.A.No.252 of 2014 under Order 26 Rule 9 read with Section 151 CPC seeking appointment of Advocate-Commissioner to note down physical features, constructed floors and to measure the area of the premises bearing municipal No.21-7-218 to 22 and 21-2-217/6, Charkaman, Hyderabad and also to take photographs and submit a report before the said Court. The I.A., is dismissed by the impugned order.

It is submitted by the learned counsel for petitioners that, in view of the grounds pleaded by respondents-landlords, appointment of Advocate-Commissioner is necessary to note down physical features, floors constructed and to record the measurements of the premises bearing municipal No.21-7-218 to 22 and 21-2-217/6, Charkaman, Hyderabad; in spite of such requirement for inspection by

Advocate-Commissioner, the I.A., filed by petitioners is dismissed by the impugned order without assigning valid reasons.

On the other hand, it is submitted by the learned counsel for respondents-caveators that I.A.No.252 of 2014 is filed only to protract the litigation and in the absence of any requirement to appoint

Advocate-Commissioner and it is fairly well settled that Advocate-Commissioner cannot be appointed to gather evidence.

It is to be noted that respondents-landlords filed eviction petition, not only on the ground of bona fide requirement but also on the grounds of willful default and sub-letting, which is numbered as R.C.No.278 of 2007. Eviction is ordered by the trial court, i.e., IV Additional Rent Controller, City Small Causes Court, Hyderabad, by order and decree dated 29.12.2011, against which petitioners filed R.A.No.33 of 2012. Further, they filed I.A.No.252 of 2014 in the said R.A., in November, 2014. In the affidavit filed in support of the said I.A., it is stated that by petitioners about admission made by P.W.1 about the existence of renovated building and the number of floors.

A portion of the cross-examination is also extracted wherein it is alleged that P.W.1 has admitted in cross-examination that he has made alterations, repairs and renovation to the building in the premises in question. In view of the same, there appears no reason at all to seek appointment of Advocate-Commissioner for the purpose of examining number of floors etc. In spite of such evidence on record, eviction is ordered by the trial court and appeal is filed against eviction before the first appellate court. In that view of the matter, there are no reasons at all for seeking appointment of Advocate-Commissioner at this stage. As rightly submitted by the learned counsel for respondents, it appears, I.A.No.252 of 2014 is filed only to protract the litigation. It is fairly well settled that Advocate-Commissioner cannot be appointed to gather evidence. Having regard to the reasons recorded in the impugned order, no interference is warranted in exercise of jurisdiction under Section 22 of the Act.

Civil Revision Petition is accordingly dismissed. No order as to costs.

As a sequel, miscellaneous petitions if any pending in the CRP stand closed.

R. SUBHASH REDDY, J

October 6, 2015

MRR