

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

CIVIL REVISION PETITION No.374 of 2015

ORDER :

This Revision is filed challenging the order dated 28-08-2014 in I.A.No.166 of 2014 in O.S.No.1211 of 2013 of the Principal Senior Civil Judge, Visakhapatnam.

The petitioners herein are tenants in the above suit. The respondent is admittedly their landlord.

The said suit was filed by the respondent against the petitioners for (a) eviction of the petitioners, (b) seeking arrears of rent Rs.40,000/- from 09-08-2012 to 09-07-2013; and (c) for damages for use and occupation and (d) for costs.

According to the respondent, the petitioners had taken the plaint schedule property on lease agreeing to pay Rs.40,000/- per month as rent and that lease commenced on 09-08-2012, but they did not pay the said amount till July, 2013. The said suit was filed on 10-07-2013.

Along with the suit, the respondent filed I.A.No.166 of 2014 under Order XV-A C.P.C. to direct the petitioners to pay Rs.4,40,000/- up to 09-07-2013 being the arrears of rent at the rate of Rs.40,000/- for the period from 09-08-2012 to 09-07-2013 and to continue to pay the rent at the same rate on or before 5th of every succeeding month, failing which necessary orders be passed under Order XV-A C.P.C.

Written statement was filed by the petitioners admitting that the monthly rent is Rs.40,000/- per month and claiming that a sum of Rs.4,50,000/- had been given as deposit. They alleged that during the course of bargaining with the respondent, the respondent had promised to provide electricity supply to the premises before starting the business in the said premises, but the respondent did not provide any electrical supply to the demised premises either on the commencement of lease or before commencement of business. They also pointed out that the respondent made construction of the demised premises in deviation of sanctioned plan and Greater Visakhapatnam Municipal Corporation (GVMC) had failed to give occupancy certificate to the respondent because of which electricity connection could not be obtained. The petitioners, therefore, contended that since without electricity supply, they cannot carry on business, and since the respondent had failed to provide the electrical supply having promised to do so, they were forced to engage a Generator and are incurring expenditure of Rs.33,000/- every month for maintenance of Generator. They also claimed that the petitioners had filed O.S.No.85 of 2014 against the respondent for injunction restraining the respondent from dispossessing the petitioners from suit schedule property and also filed Interlocutory application for mandatory injunction to provide amenities and these applications are all pending before the same Court, where O.S.No.1211 of 2013 is pending.

Counter affidavit of similar lines was filed by petitioners in I.A.No.166 of 2014 also.

By an order dated 28-08-2014, the Court below allowed I.A.No.166 of 2014 and directed the petitioners to deposit rent at the rate of Rs.40,000/-from 09-08-2012 to 09-07-2013 on or before 06-10-2014 and continue to deposit said rent till July, 2014 pointing out that in default consequences would follow.

In the said order, the Court below stated that admitted rent is Rs.40,000/- per month, but now a dispute is raised by the petitioners that the amenity of electricity is not provided by the respondent and therefore, the petitioners would pay only proportionate rent to the respondent. It held that the rental agreement between them has not been produced by the petitioners alleging that same was with their banker and except their own pleading, there is no documentary evidence to prove that respondent had agreed to provide electricity and did not do so. It held that the petitioners are only paying Rs.7,000/- per month, even though they have agreed that monthly rent is Rs.40,000/- and the petitioners cannot withhold balance amount of Rs.33,000/- every month. It held that there was no agreement between the parties for deduction of Rs.33,000/- from the admitted rent of Rs.40,000/-. Therefore, the application was liable to be allowed.

Challenging the same, this Revision is filed.

Counsel for the petitioners contended that the Court below erred in allowing the application under Order XV-A C.P.C. filed by the respondent; it should have taken into account the failure of the respondent to provide amenity of electricity to the leased premises; since the petitioners are forced to make such facility available themselves in order to enjoy the suit schedule property and do business therein, they are entitled to deduct Rs.33,000/- towards expenditure incurred by them for the maintenance of Generator hired by them; and are liable to pay only rent of Rs.7,000/- per month from August, 2012 onwards. He also contended that the petitioners had filed a suit O.S.No.85 of 2014 on the file of same Court for perpetual Injunction restraining the respondent from dispossessing them and filed separate applications therein to provide amenities such as electricity to the suit schedule property; and the respondent cannot be allowed to take advantage of his own wrong and seek orders in the application under Order XV-A C.P.C.

Counsel for the respondent refuted the above contentions and supported the orders passed by Court below.

There is no dispute that the suit schedule premises had been taken on rent by the petitioners for a monthly rent of Rs.40,000/-. It is also not in dispute that rent for the period from 09-08-2012 to 09-07-2013 (i.e. amount of Rs.4,40,000/- in arrears) was not paid by the petitioners and they have paid only at the rate of Rs.7,000/-

per month from July, 2013 to March, 2014. No evidence is adduced by the petitioners

in support of their plea that there was an obligation on respondent to provide amenity of electricity to the subject premises and even the lease agreement between the parties has not been filed to say that advance of Rs.4,50,000/- as deposit, was paid. The Court below, in the circumstances and in view of the fact that quantum of rent was admitted, was right in holding that the petitioners were not entitled to withhold Rs.33,000/- towards expenses incurred by them for using generator and doing business in schedule premises. It also rightly held that the petitioners are not entitled to deduct the said amount and only pay Rs.7,000/- per month as rent to the respondent.

Counsel for the respondent also contended that there was an order specifically passed by this Court on 28-04-2015 with regard to maintenance of *status quo* with regard to possession of the suit schedule property subject to the petitioners complying with the impugned order of the Court below within a period of six weeks and that admittedly the said order has not been complied with. In my considered opinion under Order XV-A C.P.C., the Court can only extend the time for depositing the amount directed in the order passed under Order XV-A C.P.C. for a period not exceeding 15 days. In the present case, time was granted only up to 06-10-2014 to the petitioners by Court below in the impugned order to comply with its order to deposit arrears of

rent. The said period, therefore, cannot be extended beyond period of two weeks from the said date in view of Order XV-A C.P.C.

I, therefore, do not find merit in the Revision warranting interference of this Court in exercise of its jurisdiction under Article 226 of Constitution.

Therefore, the Civil Revision Petition is dismissed. No costs. Consequently, Miscellaneous Petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

31-08-2015
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