

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.5724 of 2016

ORDER:

The petitioners in I.A.No.378 of 2016 in the pending Rent Control Appeal in R.A.No.6 of 2014 impugning the dismissal order of the lower Court dated 30.08.2016, maintained the revision against respondent Nos.1 & 2.

2. Heard both sides at length and perused the entire material on record.

3. The factual matrix shows that on the application of the respondents herein as landlords in R.C.No.273 of 2010 for eviction of the tenants/revision petitioners herein, that was allowed, the said tenants maintained the appeal R.A.No.6 of 2014 it is in addition to R.A.No.5 of 2014 against fair rent fixation order.

4. In the course of hearing R.A.No.6 of 2014 arguments, I.A.No.378 of 2016 filed by said appellants/tenants with the supporting affidavit of 1st appellant saying that while submitting the arguments on their side in the appeal it is noticed that due to oversight the documents which ought to have been filed in the present appeal R.A.No.6 of 2014 were filed in R.A.No.5 of 2014. On 01.06.2016, the matter was coming for reply arguments of respondents/landlords and when passed over the counsel for the appellants tried to serve notice in the amended petition and receive document petition supra has mistakenly filed in another case instead of present case, now filed the document petition to receive, the counsel as well as the father of the respondents refused to receive notice and the matter on that day reserved for judgment

and could not represent by the appellants as their counsel engaged in another rent control matter on the file of IV Additional Rent Controller. Hence, it is just to reopen the matter to adjudicate the application thereby to reopen the matter and receive the document and amendment petition.

5. The counter filed by the landlords in opposing the petition are with contest that in the appeal filed by the tenants against eviction order and also in appeal against fair rent fixation, the counsel for the appellants submitted the final arguments thereby it is untrue to say contra. The document petition filed in I.A.No.938 of 2015 on 02.12.2015 with amended petition in I.A.No.1010 of 2015 and the amended petition in I.A.No.1010 of 2015 was dismissed on 31.12.2015 and the CRP maintained against the same in the High Court was later withdrawn and so far as I.A.No.938 of 2015 concerned, it was kept pending to consider in the main appeal and thereby once I.A.No.938 of 2015 is pending, the present petition again to receive the documents is no way sustainable that too when the matter reserved for judgment in both appeals, hence to dismiss the same is the arguments of the landlords/revision respondents.

6. In fact I.A.No.938 of 2015 is not pending and the same was disposed of with observation that additional evidence can be taken up not independently, but while hearing the appeal to decide the necessity as per the settled proposition. That I.A.No.938 of 2015 was filed in R.A.No.5 of 2014 and not in R.A.No.6 of 2014 as can be seen from the order passed therein dated 31.12.2015.

7. Had it been true of what the landlord contested of I.A.No.938 of 2015 filed in R.A.No.6 of 2014 eviction appeal is still pending for consideration to decide with main appeal and the same was also heard, there could be nothing to survive in the application covered by the impugned order in I.A.No.378 of 2016 for receiving document and amendment of the pleadings. In fact so far as amendment of pleadings in I.A.No.1010 of 2015 in R.A.No.5 of 2014 that was attained finality and even now there are no any grounds to permit the amendment of the pleadings of the appellants/tenants, but for to say as subsequent event can be taken into consideration even by the Court from bringing of the same to the notice even before the appellate Court to mould the relief. The additional evidence application if documents received and to be considered with the appeal to decide with the appeal that serves the purpose, however it is as stated mistakenly filed instead in R.A.No.6 of 2014 as in R.A.No.5 of 2014 and what the landlords say of filed in R.A.No.6 of 2014 is not correct from the order referred supra in I.A.No.938 of 2015 in R.A.No.5 of 2014. Once it is mistaken outcome in the impugned order it is not even the observation by the lower Court to consider the additional documents application in I.A.No.938 of 2015 as filed in R.A.No.6 of 2014 eviction appeal. Thus, it requires to re-open to consider the additional documents as additional evidence if at all in deciding the appeal.

8. In the result, the revision is allowed only to the limited extent to permit reopening of R.A.No.6 of 2014 and by reopening I.A.No.378 of 2016 setting aside the dismissal order dated 30.08.2016, to consider by the trial Court I.A.No.378 of 2016 in

the R.A.No.6 of 2014 at par with the order in I.A.No.938 of 2015 in R.A.No.5 of 2014 of the 5 additional documents filed whether requires to consider as additional evidence, if any, in deciding the appeal after giving further hearing in the appeal on the date to be fixed to complete the process within one month from date of receipt of this order.

9. Accordingly and in the result, the revision petition is disposed of.

Consequently, miscellaneous petitions, if any shall stand dismissed. No costs.

Date: 16.12.2016
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JUSTICE Dr. B.SIVA SANKARA RAO

