

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

CIVIL REVISION PETITION NO. 2870 OF 2016

Between:

M.B. Chander S/o M. Bhadraiah
Aged about 65 years, Occ Business
R/o Plot No.54-C, Jubilee Hills, Film Nagar
Road No.1, Hyderabad & two others Petitioners

And

M/s Balakrishna Rao Charitable Trust
Its office at D.No.3-6-293/2/D, Hyderguda
Hyderabad-29
Rep. by its Managing Trustee
Sri M. Jayanth Tagore, Aged about 52 years
Occ: Business, R/o Jubilee Hills
Hyderabad Respondent

JUDGMENT PRONOUNCED ON: 08.09.2016

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Whether Reporters of Local newspapers may be allowed to see the Judgments?	No
Whether the copies of judgment may be marked to Law Reporters/Journals	Yes
Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?	Yes

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*** THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

+ CIVIL REVISION PETITION No.2870 OF 2016

% Dated 08.09.2016

M.B. Chander S/o M. Bhadraiah
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Vs.

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Its office at D.No.3-6-293/2/D, Hyderguda
Hyderabad-29
Rep. by its Managing Trustee
Sri M. Jayanth Tagore, Aged about 52 years
Occ: Business, R/o Jubilee Hills
Hyderabad Respondent

! Counsel for the petitioner : Sri O. Manohar Reddy

^ Counsel for the respondent : Sri B. Vijaysen Reddy

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> HEAD NOTE:

? Cases referred

1. 2012 (4) ALD 140
2. 2015 (1) ALD 38
3. (2014) 9 Supreme Court Cases 657
4. (2005) 2 Supreme Court Cases 400
5. 2014 (5) ALD 744
6. AIR 1979 All.336
7. (1994) 1 GLR 98
8. (1964) 1 SCR 371 : AIR 1963 SC 1241
9. 2005 (2) ALD 50
10. AIR 1996 SC 140
11. AIR 1954 SC 215

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THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.2870 OF 2016

ORDER:

This civil revision petition under Article 227 of Constitution of India is filed challenging the order passed by the II Additional Chief Judge, City Civil Courts, Hyderabad in I.A.No. 2590 of 2014 in O.S.No.1005 of 2014, whereby, the Trial Court directed to deposit Rs.20,98,825/- as arrears of rent by the end of April, 2015 within one month and continue to pay monthly rent of Rs.99,225/- on or before 1st day of every succeeding month commencing from 01.06.2015, until further orders, failing which the defence in the suit of the defendants shall be struck off.

For convenience sake, the ranks given to the parties before the Trial Court will be adopted throughout the judgment.

The petitioner/plaintiff filed petition under Order XV-A of Code of Civil Procedure (for short 'C.P.C') to direct the respondents/defendants to deposit arrears of rent of Rs.26,18,200/- payable for the scheduled premises to the credit of the suit and continue to deposit monthly rent from December, 2014 onwards @ Rs.1,50,000/- per month till disposal of the suit.

It is alleged that the petitioner and 1st respondent entered into a lease agreement, i.e. unregistered lease deed dated 27.03.2003 for the house property bearing No.3-6-325 situated at Hyderguda, Hyderabad. The house consists of ground, first, second floors and terrace admeasuring 11,484 Sft and the monthly rent

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agreed for each ground, first and second floors was Rs.15,500/- and Rs.7,750/- for the terrace respectively and the total rent agreed to be paid was Rs.54,250/- per month. It was agreed by both the parties under the unregistered lease deed that the rent has to be enhanced @ 5% per annum and the term of lease was for a period of three years initially with an option of the first respondent to renew the lease for another period of two years. It is stated that, while the ground and second floors of the building was handed over on 27.03.2003, the first floor was handed over in the month of December, 2003 after evicting the then tenant (Telephone Department) as stipulated in Clause 2 (b) of the lease agreement. On 02.04.2003, the terrace was handed over to the first respondent who made a non interest bearing refundable security deposit of Rs.1,93,750/- i.e a deposit sum of Rs.1,55,000/- for the ground and second floor portions and a sum of Rs.38,750/- for the terrace, but, the first respondent failed to deposit Rs.75,500/- for the first floor.

Though the lease was expired on 27.03.2006, the first respondent continued in occupation of the property and running educational society on month to month basis and the rent agreed to be paid was on the first day of each month. The rent was enhanced to Rs.90,000/- with effect from 01.04.2008 for the said property and it continued till 31.03.2011. Thereafter, the rent was enhanced @ 5%, it comes to Rs.94,500/- during financial year 2011-2012 and Rs.99,225/- during financial year 2012-2013 and thereafter, the rent was enhanced to Rs.1,50,000/- per month for the financial year 2013-2014. The first respondent failed to pay

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rent for several months and the rent arrears due as on July, 2014 was Rs.20,18,200/-, after adjusting Rs.81,800/- towards part payment made in the month of June, 2013. Despite issuing a legal notice dated 21.07.2014, demanding to vacate the schedule premises, the first respondent failed to vacate the premises and got issued a reply dated 14.10.2010 making false and untenable allegations. The arrears of rent as on the date of filing the petition was Rs.26,18,200/- after adjusting the amount paid whatever from the months of July, 2013 to November, 2014. Thus, the first respondent continued in possession and enjoyment of the property without depositing or paying the admitted arrears of rent, which is mandatory requirement under Order XV-A of C.P.C and prayed for issuing aforesaid direction against the first respondent.

The first respondent filed counter denying material allegations while admitting execution of lease deed dated 27.03.2003 and contended that on the date of lease agreement, the petitioner handed over total plinth area of 7000 sft in ground and second floor. The first floor and terrace of the building was not handed over to the first respondent and the petitioner was collecting rent of Rs.31,000/- per month since the first floor and terrace of the building were not handed over. The first floor of the building was handed over in the month of December, 2014. The terrace of the building was constructed and roofed with iron sheets and handed over to the respondents on 02.04.2003. The deposit of Rs.1,93,750/- was for the entire building. An understanding was made in the agreement that the lease was to be continued as long as the respondents run the educational institution in the schedule

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premises. It is further stated in the counter that, as the building is an old one, the petitioner did not care to attend repairs of the building. The respondents have been paying rent @ Rs.66,276/- per month and the same was being accepted by the petitioner without any protest. Further, it is stated in the counter affidavit that the respondents were never in arrears of payment of rent to a tune of Rs.26,18,200/- and denied the last enhancement of rent from time to time and therefore, no order can be passed against the respondents and prayed for dismissal of the petition.

Upon hearing argument of both the counsel, the Trial Court issued a direction referred in paragraph 9 of the order, undertaking an exercise to fix rent and directed the respondents to pay a sum of Rs.20,98,825/- as arrears of rent by the end of April, 2015 within one month and continue to pay monthly rent of Rs.99,225/- on or before 1st of every succeeding month commencing from 01.06.2015.

Aggrieved by the order and decretal order passed by the Trial Court, the present civil revision petition is filed raising several contentions, mainly contending that the issuance of such direction fixing monthly rent is beyond the scope of Order XV-A and in the absence of satisfying the requirements envisaged under Order XV-A of CPC and passing such an order under challenge is erroneous. Further, it is contended that the Trial Court ought not to have conducted a summary enquiry to decide the undisputed arrears of rent, ignoring the word '**undisputed**' used in Order XV-A

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of CPC. Therefore, it is contended that the order under challenge is erroneous on the face of record.

During hearing, Sri O. Manohar Reddy, learned counsel for the revision petitioners herein/respondents before the Trial Court would contend that the Court can direct payment or deposit of admitted arrears and the Court is not supposed to undertake such an exercise to decide the actual arrears of rent. But the Trial Court had undertaken the exercise beyond its scope and jurisdiction to decide the actual admitted rent arrears, transgressing the power conferred on it by Order XV-A of CPC as amended by High Court of Andhra Pradesh. Conducting such a summary enquiry is not contemplated under Order XV-A of CPC. Thus, the arrear of rent fixed or calculated by the Trial Court is based on summary enquiry and such enquiry is beyond the scope of Order XV-A of CPC. At the stage of passing such an order under Order XV-A, the Court has to direct the tenant who is in occupation to pay admitted arrears. The word 'admitted' does not mean alleged agreed rent but it represents the rent admitted by the first defendant and not the rent as contended by the petitioner before the Trial Court. In such a case, no such summary enquiry has to be undertaken and passing an order after fixing arrears of rent is an error apparent on the face of record. Therefore, the Trial Court exceeded its jurisdiction that conferred upon it. In those circumstances, this Court can exercise power under Article 227 of the Constitution of India, which is supervisory in nature and set-aside the same. Learned counsel for the revision petitioners, in support of his contention, placed reliance two judgments of this Court reported in

Sri Vasavi Boys Hostel and Mess, Hyderabad v. K. Satya Prasad¹ and M. Vijaya Lakshmi and others v. Kalanikethan Textiles and Jewells Pvt. Ltd, Hyderabad and others².

Per contra, Sri B. Vijayasen Reddy, learned counsel for the respondent herein/petitioner before the Trial Court would mainly contend that when there is a dispute regarding quantum of rent, the Court has to undertake such an exercise i.e., summary enquiry, in view of Order XV-A Rule 2, after affording a reasonable opportunity to the respondent/defendant, issue such direction for payment of admitted arrears and continue to pay or deposit monthly rent during pendency of the suit. Therefore, the exercise undertaken by the Trial Court is totally in accordance with law and the same cannot be disturbed by this Court while exercising power under Article 227 of the Constitution of India. Learned counsel further contended that while interpreting such penal provision to strike-off defence in a suit, the Court has to interpret such provision by applying its mind to achieve the wider objective of incorporating Order XV-A and in the absence of any procedure prescribed under Order XV-A, by applying the principle of *ejusdem generic*, this Court can interpret such provision to achieve the object of incorporation of Order XV-A of C.P.C i.e. A.P. Amendment Act and the learned counsel placed reliance on the judgment reported in by the Supreme Court in **Bangalore Turf Club Limited**

¹ 2012 (4) ALD 140

² 2015 (1) ALD 38

v. Regional Director, Employees' State Insurance Corporation³

and **Manik Lal Majumdar v. Gouranga Chandra Dey⁴**.

Sri B. Vijayasen Reddy, learned counsel further contended that a similar issue came up before this Court in CRP No.5779 of 2015 where the single judge of this Court held that a summary enquiry need be conducted to fix arrears of rent and by following the same principle the Trial Court passed the order under challenge. He also drawn attention of this Court to the judgments reported in **Chaitanya Lanka v. Suresh Kumar Gupta⁵** to contend that the Court has to undertake and exercise to decide the arrears of rent by conducting summary enquiry and cannot pass routine order to direct the respondent/defendant to pay the rent as admitted by him while requesting to dismiss the civil revision petition.

Considering rival contentions and perusing the order under challenge, the point that arises for consideration is

“whether the Court can conduct summary enquiry to arrive at the admitted arrears to pass an order under Order XV-A of C.P.C as amended by the A.P. Amendment Act. If not, whether the order passed by the Trial Court is liable to be set-aside.”

In Re Point:

There is no dispute regarding relationship of tenant and landlord between the parties to the suit and filing of a suit for

³ (2014) 9 Supreme Court Cases 657

⁴ (2005) 2 Supreme Court Cases 400

⁵ 2014 (5) ALD 744

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eviction on various grounds, including default in payment of rent by the first revision petitioner/first respondent. When suit is filed for ejectment or eviction with or without recovery of arrears of rent, the tenant, if found the rent admitted to be due, can be directed to deposit admitted arrears of rent and continue to deposit monthly rent, as per Order XV-A of C.P.C i.e., A.P. Amendment Act.

To invoke Order XV-A of C.P.C the following conditions have to be fulfilled:

- 1) a suit must be for recovery of possession of property i.e. for eviction;
- 2) There must be a prayer for recovery of rent or compensation for use and occupation;
- 3) The defendant/petitioner must plead no arrears or low arrears to be paid to landlord/plaintiff, which needs examination by Court to decide what is admitted arrears of rent.

Therefore, the above the requirements have to be satisfied to claim relief under Order XV-A of C.P.C, as amended by the Andhra Pradesh High Court.

The real test to be applied before exercising power under Order XV-A for striking off defence is to find out whether the default or deposit of amount was *bonafide* or not. If, it was *bonafide*, the Court cannot exercise power to strike off the defence. The power under Order XV-A is purely discretionary.

While interpreting the provision like Order XV-A, the Court should interpret those provisions to achieve the real object of the legislature in incorporating Order XV-A of C.P.C. Order XV-A consists of two parts. The first part casts an obligation upon a tenant to make payment of entire amount of arrears of rent admitted by him to be due and should be deposited along with a written statement. If, failed to comply such obligation, the Court may strike off, direct after affording reasonable opportunity to tenant and on setting aside that the tenant failed to deposit, admitted arrear of rent, and shall pass an order. The second part i.e. Rule 2 deals with the cases where the defendant does not admit any amount to be due, nonetheless, it casts an obligation upon him to pay throughout continuation of the suit, such monthly rent which is due as directed by the Court. The word 'may' in Order XV-A (2) is significant. It may vest power on the Court to strike off without application or compelling the Court to do so in other case of possession. The provision is an interregnum, as held in **Ishwari Prasad vs. Smt. Rajni Devi & Ors**⁶.

In the present case, the main endeavor of the learned counsel for the first respondent/plaintiff before the Trial Court is that while interpreting such provision by applying the principle of *ejusdem generis*, the rental loss has to be taken into consideration and drawn the attention of this Court to the judgment of the Supreme Court in **Bangalore Turf Club Limited** case (referred supra). While dealing with provisions of E.S.I Act, the Supreme

⁶ AIR 1979 All. 336

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Court laid down certain guidelines regarding interpretation of statutes and held that two statutes are said to be *in pari materia* with each other when they deal with the same subject matter and the rationale behind this rule is based on the interpretative assumption that words employed in legislations are used in an identical sense. However, this assumption is rebuttable by context of statutes. Therefore, words used in a different statute especially in light of the fact that the two statutes are not in pari material with each other and have a wholly different scheme from one another. Based on the principle laid down in the above judgment, the learned counsel for the appellant drawn attention of this Court to the judgment of the Supreme Court in **Manik Lal Majumdar's** case (referred supra) and held that, where it is a decision rendered in a matter to which the Tripura Buildings (Lease and Rent Control) Act, 1975 (hereinafter referred to as 'Tripura Act') is applicable, where there is a specific provision which obligated the tenant to deposit all admitted arrears of rent which is a condition precedent to prefer an appeal under Section 21(b) & Section 13(1) of the Tripura Act.

Deciding a similar question in **Binapani Roy & ors v. State of Tripura & ors**⁷, the Gauhati Court held that giving a literal meaning to the expression "**all arrears of rent admitted by the tenant to be due**" occurring in Section 13(1) may defeat the very object of enacting Section 13 of the Act and an unscrupulous tenant may continue to enjoy the premises without payment of any

⁷ (1994)1GLR98

rent to the landlord by protracting the litigation and the landlord may have to wait till the final decision of the case to recover his dues by taking execution proceedings. Therefore, if interpreted literally, the said expression would mean that unless the tenant specifically admits any arrears of rent to be due to the landlord, the condition to make payment of arrears of rent in order to contest the original proceedings before the Rent Control Court or to prefer an appeal as provided under Section 13 of the Act would arise. The reasonable meaning of the words **“admitted by the tenant to be due”** is the inference of admission from the material on record. If material on record *prima facie* discloses the admission of relationship of landlord and tenant and the rate of monthly rent payable, the tenant would be required to pay or deposit arrears of rent and continue payment of current rent during the pendency of litigation, as enjoyed under in Section 13 of Tripura Act.

A provision similar to Section 13 of the Tripura Act is available in A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960.

Applying the principle of *Ejusdem Generis* in interpreting Order XV-A, it is necessary to extract Order XV-A of C.P.C Andhra Pradesh Amendment, Section 11 of A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960, and Section 13 of the Tripura Act and they are extracted hereunder:

Order XV-A of C.P.C.	Section 13 of the Tripura Act	Section 11 of A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960
Striking Off Defence in a suit by a Lessor	Section 13 - Payment or deposit of rent during the pendency of proceedings for eviction	Section 11 – Payment or deposit of rent during the pendency of proceedings for eviction:-

(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. In the event of any default in making the deposit, as aforesaid the Court may subject to the provisions of sub-rule (2) strike off the defence. (2) Before passing an order for striking off the defence, the Court shall serve notice on the defendant or his advocate to show-cause as to why the defence should not be struck off, and the Court shall consider any such cause, if shown in order to decide as to whether the defendant should be relieved an order striking off the defence.	(1) No tenant against whom an application for eviction has been made by a landlord under section 12 shall be entitled to contest the application before the Rent Control Court under that section, or to prefer an appeal under section 20 against any order made by the Rent Control Court on the application, unless he has paid or pays to the landlord, or deposit with the Rent Control Court or the appellate authority, as the case may be, all arrears of rent admitted by the tenant to be due in respect of the building upto the date of payment or deposit, and continues to pay or to deposit any rent which may subsequently become due in respect of the building, until the termination of the proceedings before the Rent Control Court or the appellate authority, as the case may be. (2) The deposit under sub-section (1) shall be made within such time as the Rent Control Court may fix and in such manner as may be prescribed and shall be accompanied by the fee prescribed for the service of notice referred to in sub-section (4) : Provided that the time fixed by the Rent Control Court for the deposit of the arrears of rent shall not be less than fortyfive days from the date of the order and the time fixed for the deposit of rent which subsequently accrues due shall not be less than two weeks from the date on which the	(1) No tenant against whom an application for eviction has been made by a landlord under Section 10, shall be entitled to contest the application before the Controller under that section, or to prefer any appeal under Section 20 against any order made by the Controller on the application, unless he has paid to the landlord or deposits with the Controller or the appellate authority, as the case may be, all arrears of rent due in respect of the building up to the date of payment or deposit and continues to pay or deposit any rent which may subsequently become due in respect of the building, until the termination of the proceedings before the Controller or the appellate authority, as the case may be. (2) The deposit of rent under sub-section (1) shall be made within the time and in the manner prescribed.
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	rent becomes due.	
(3) The amount deposited under this rule shall be paid to the plaintiff lessor or licensor or his advocate and the receipt of such amount shall not have the effect of prejudicing the claim of the plaintiff and it would not also be treated as a waiver of notice of termination.	(3) If any tenant fails to pay or to deposit the rent as aforesaid, the Rent Control Court or the appellate authority, as the case may be, shall, unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building. (4) When any deposit is made under sub-section (1), the Rent Control Court or the appellate authority, as the case may be, shall cause notice of the deposit to be served on the landlord in the prescribed manner, and the amount deposited may, subject to such conditions as may be prescribed, be withdrawn by the landlord on application made by him to the Rent Control Court or the appellate authority in that behalf.	(3) Where there is any dispute as to the amount of rent to be paid or deposited under sub-section (1) the Controller or the appellate authority, as the case may be, shall on application made to him either by the tenant or by the landlord, and after making such inquiry as he deems necessary, determine summarily the rent to be so paid or deposited.

If, the provisions of A.P. Rent Control Act and High Court of Andhra Pradesh Amendment to Order XV-A and Tripura Act are read together and plying the principle of interpretation of *ejusdem generis*, the Court has to make summary enquiry as to rent due to landlord by tenant.

In the judgment of **Manik Lal Majumdar's** Case, the Supreme Court specifically referred two judgments i.e. **State of**

West Bengal v. Union of India⁸ and **R.S. Raghunath v. State of Karnataka**⁹ held that it is a well settled principle that the intention of the legislature must be found by reading the statute as a whole and in order to ascertain the meaning of a clause in a statute, the court must look at the whole statute, at what precedes and what succeeds and not merely the clause itself. The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed, but to the entire statute; it must compare the interpretation occurs. Therefore, it is necessary to give full meaning and effect to the provisions of subsections (2) and (3) of Section 3 of the Act.

When particular words pertaining to a class, category or genus are followed by general words, the general words are construed as limited to things of the same kind as those specified. This rule which is known as the rule of *ejusdem generic* reflects an attempt 'to reconcile incompatibility between the specific and general words in view of the other rules of interpretation that all words in a statute are given effect if possible, that a statute is to be construed as a whole and that no words in a statute are presumed to be superfluous. The rule applies when

- (1) the statute contains an enumeration of specific words;
- (2) the subjects of enumeration constitute a class or category;
- (3) that class or category is not exhausted by the enumeration;
- (4) the general terms follow the enumeration; and
- (5) there is no indication of a different legislative intent.

⁸ (1964) 1 SCR 371: AUR 1963 SC 1241

⁹ (1992) 1 SCC 335

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Thus, when the words are clear, intention of the legislature in incorporating a particular word or provision in the Act, the Court may fall back on the words used in the similar or identical procedure contemplated in the other statute, akin to the same clause. The present revision petition arising out of a direction under Order XV-A of C.P.C by the II Additional Chief Judge, City Civil Court, Hyderabad, fixing the arrears of rent payable by the tenant/petitioner herein. But a bare look at the Order XV-A (1) of Andhra Pradesh Amendment to C.P.C indicates that the defendant, while filing his written statement, is under an obligation to deposit undisputed arrears calculated upto that due into the Court and shall continue to deposit such amount, till termination of the proceedings.

Taking advantage of the word 'undisputed arrears', the learned counsel for the revision petitioners contended that when the quantum of rent is not disputed, the Trial Court is incompetent to decide arrear of admitted rent by undertaking summary enquiry to arrive at the rent due or payable on the date of filing the written statement or continue to deposit and issue direction to deposit arrear of amount due to deposit the rent.

If, Rule (1) is read in isolation, there is no ambiguity that the Court can direct the undisputed arrears to be paid, but a co-joint reading of Rules 1 & 2 of Order XV-A indicates that when the defendant pleads in the written statement that no arrear of rent is payable, the Court is competent to pass an order in this regard after affording an opportunity of hearing to both the parties and in

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case any amount is found due, the defendant shall be under an obligation to deposit the same within the time stipulated by the Court and continue to deposit the amount which becomes payable thereafter, as provided under Rule 1. Thus, it means that Rule 2 of Order XV-A of A.P. Amendment Act, enabled the Court to decide the amount due when the defendant pleaded no arrears, after affording opportunity.

If both Rule 1 & 2 are read in isolation, Rule 1 is applicable only to a situation where rent arrear is admitted, Rule 2 is applicable when defendant pleads no arrears or disputes quantum of rent, and mandates summary enquiry. In any view, summary enquiry is required to be made to determine the rent arrears to issue direction to deposit arrears of rent and continue to deposit rent.

If no summary enquiry is undertaken to decide arrears of rent payable by tenant, it would frustrate the intention of legislation, and it is boon to unscrupulous tenants to avoid payment of rent, continuing in possession of demised premises for decades together. It is not the intention of any legislation to confer such benefit on any unscrupulous tenants.

The suit is admittedly filed for eviction or ejectment of the tenant in occupation by following necessary procedure under Transfer of Property Act. The rent payable for the premises is exceeding the limit prescribed under A.P. Rent Control Act. The A.P. Rent Control Act is intended to regulate the procedure for evicting the tenants by the landlords, subject to the limitations

regarding rent and other conditions prescribed under Section 32 of the Act. The intention of the legislature in enacting the A.P. Rent Control Act or the provisions relating to lease under Transfer of Property Act are only to regulate the unlawful eviction of tenants by the landlords and avoidance to pay rent by the unscrupulous tenants in occupation of any premises. But the Transfer of Property Act which is the substantive law did not contain any provision akin to Section 11 of the A.P. Rent Control Act. Therefore, as a procedural safeguard, the State of Uttar Pradesh suitably amended Order XV by incorporating Rule 5, but the High Court of Andhra Pradesh incorporated Order XV-A to strike off the defences set up by unscrupulous tenants to avoid payment of rent to the landlord. Therefore, the intention of the legislature in incorporating Order XV-A in C.P.C, as amended by the High Court of Andhra Pradesh and Section 11 of the A.P. Rent Control Act is one and the same.

On close reading of Section 11 of A.P. Rent Control Act and Order XV-A as amended by High Court of Andhra Pradesh, they are identical in all respects. Section 11 of A.P. Rent Control Act obligates the tenant in occupation to deposit the rent payable for the premises in his occupation during pendency of the petition filed under Section 10 or an appeal filed under Section 20 of the A.P. Building Lease Eviction Control Act. In case, the landlord refuses to receive the same, the tenant has to deposit the same with the rent controller or the appellate authority and continue to deposit the same after following necessary procedure and in the event of failure to pay or deposit the rent payable to the premises

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and arrears up to the date of entering into appearance in a petition filed under Section 10 by the landlord or to prosecute the appeal filed by the tenant or landlord filed under Section 20 of the Act, the rent controller or appellate authority may direct to stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building. (vide Subsection (4) of Section 11).

Sub-section (3) of Section 11 permits the Rent Controller or Appellate Authority to decide the arrears of rent and rents payable for the premises where there is any dispute as to the amount of rent to be paid or deposited under Subsection (1), as the case may be and shall on application made by the tenant or by the landlord and after making such enquiry, summarily determine the rent payable for the premises and direct to pay or deposit such amount decided on summary enquiry. Thus, Sub-section 3 mandates a summary enquiry to be conducted by rent controller or the appellate authority, as the case may be when there is a dispute regarding quantum of rent or arrears, on the application of any of the parties to the eviction petition. The Rent Controller or Appellate Authority cannot relegate decision on any such dispute to final decision or determination. The tenant having denied the quantum of rent or even relationship of landlord and tenant without adjudicating such issues both rent controller and appellate authority cannot proceed to enquire into the main petition without complying the statutory requirement under Sub-section 3 of Section 11 of A.P. Buildings (Lease, Rent and Eviction) Control Act and any order passed without making such summary enquiry is

illegal and direction if any issued to deposit admitted rent to put the landlord in possession of leasehold premises in the event of failure to pay admitted rent is liable to be set aside, as held by this Court in **A. Yeshoda v. Digamber Rao Surve**¹⁰. Rule 2 of Order XV-A C.P.C is almost identical to Sub-section 3 of Section 11 of A.P. Building (Lease, Rent and Eviction) Control Act, but the language used in the provision, though not identical, a close reading of Order XV-A, more particularly, due to usage of words “affording opportunity to both the parties” indicates an enquiry to decide the rent due by the tenant to the landlord is to be undertaken. Therefore, the same analogy as under Section 11(3) of the A.P. Rent Control Act can be applied to Rule 2 of Order XV-A of C.P.C, by applying the principle of *ejusdem generis*, since the purpose of both the provisions are one and the same and intention of legislature in incorporating the provisions in both Acts is one and the same.

Learned counsel for the respondent Sri Vijaysen Reddy while contending that a summary enquiry is required to determine the arrear of rent when there is a dispute regarding quantum of rent payable, for the premises by the tenant and placed reliance on unreported judgment of this Court in C.R.P.No.5779 of 2015, where a single judge of this Court relying on the earlier judgments of this Court reported in **Sri Vasavi Boys Hostel's** case (referred supra) and **R.V. Bhupal Prasad v. State of Andhra Pradesh and**

¹⁰ 2005 (2) ALD 50

others¹¹, concluded that a summary enquiry is to be made to decide the arrears of rent or rent payable for the premises by the tenant to issue a direction under Sub-rule 2, when there is a dispute regarding quantum of rent and arrear, to issue a direction under Rule 1.

Even if the principle laid down in the above judgment is applied to the present facts of the case, read with Section 11(3) of the A.P. Rent Control Act, and Order XV-A Rule 2, it can safely be concluded that the Court is under an obligation to make summary enquiry as to the rent payable for the premises and arrears due by the tenant/petitioner herein.

As discussed in earlier paragraphs, while interpreting Order XV-A Rule 2, basing on the principle of *ejusdem generis*, a summary enquiry under Rule 2 of Order XV-A is mandatory and without making such an enquiry, if any order is passed, it is illegal and liable to be set-aside in view of the judgment in **Yeshoda's** case (referred supra). For instance, the unscrupulous tenants in occupation of the building may set up a frivolous or vexatious pleas, sometimes totally denying the rent payable for the premises and sometimes low rent for a palacious building, admitting liability to pay meagre amount of rent which leads to depriving the genuine landlord to enjoy the fruits of tenancy and due to continuation of litigation for decades together to avoid such undue hardship to the landlord, Order XV-A is incorporated by A.P. Amendment to C.P.C, which is similar to Section 11 of A.P. Rent Control Act.

¹¹ AIR 1996 SC 140

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The Trial Court, by exercising power conferred on it and by Rule 2 of Order XV-A by holding a summary enquiry, directed to deposit Rs.20,98,825/- as arrears of rent by the end of April, 2015 within one month and continue to pay monthly rent of Rs.99,225/- on or before 1st day of every succeeding month commencing from 01.06.2015, until further orders, failing which the defence in the suit of the defendants shall be struck off

Thus, the order under challenge before this Court does not suffer from any illegality warranting interference of this Court while exercising power under Article 227 of the Constitution of India. Since the powers of this Court under Article 227 are limited, this Court cannot exercise such power and the duty of this Court is to see that the Courts shall not exceed its power that is conferred on it or exercise power based on extraneous material to pass any order and to keep the subordinate courts within its bounds of jurisdiction.

This Court while exercising power under Article 227 can exercise its discretion to interfere in the following circumstances:

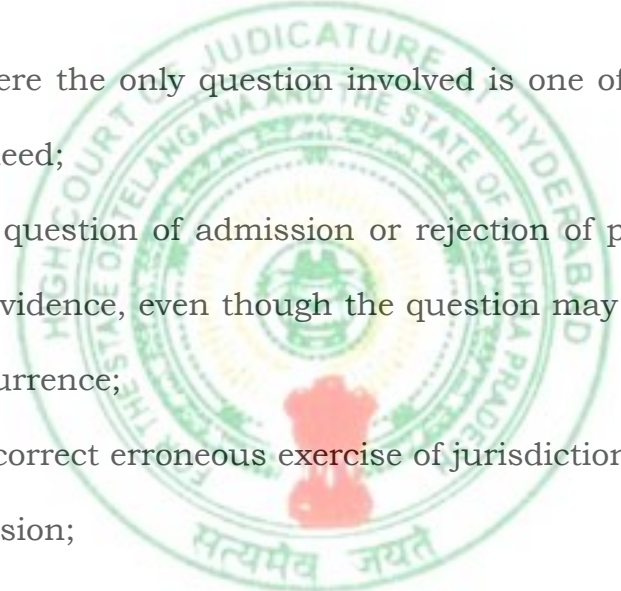
- a) When the inferior court assumes jurisdiction erroneously in excess of power.
- b) When refused to exercise jurisdiction.
- c) When found an error of law apparent on the face of record.
- d) Violated principles of natural justice.
- e) Arbitrary or capricious exercise of authority or discretion.
- f) Arriving at a finding which is perverse or based on no material.
- g) A patent or flagrant error in procedure.

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- h) Order resulting in manifest injustice.
- i) Error both on facts and law or even otherwise.

But, in the present facts of the case, there is absolutely no error warranting interference of the Court to interfere with the order by exercising power of supervision over the Subordinate Courts in the following situations:

Similarly, the Court cannot exercise its discretion under Article 227 of the Constitution of India:

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- a) Where the only question involved is one of interpretation of deed;
 - b) On question of admission or rejection of particular piece of evidence, even though the question may be of everyday recurrence;
 - c) To correct erroneous exercise of jurisdiction, as a Court of revision;
 - d) To set aside an intra vires finding of the fact, except where it is founded on no material or is perverse;
 - e) to correct an error of law, not being an error apparent on the face of the record;
 - f) to interfere with the intravires exercise of discretionary power, unless it is violative of principles of natural justice;
 - g) The Court shall not interfere on a merely technical ground which would not advance substantial justice.

In **Waryam Singh & another v. Amarnath & another**¹², the Apex Court held in para-9 as follows:

“Even if it be possible to take a view different from the one which has appealed to the labour appellate Tribunal on the interpretation of sale deed, we do not think in exercising jurisdiction under Article 227 of the Constitution we have any power to interfere with the conclusions of that Tribunal”

Thus, in view of the limited powers of this Court under Article 227 and all the more when the Trial Court rightly exercised its power, under Order XV-A Rule 2, this Court cannot interfere with the findings recorded by the Trial Court in the order under challenge. Hence, I find no error in the order passed by the II Additional Chief Judge, City Civil Courts, Hyderabad in I.A.No. 2590 of 2014 in O.S.No.1005 of 2014.

In view of my foregoing discussions, I hold that the Court is competent to make summary enquiry under Order XV-A Rule 2 when the tenant pleaded no errors or disputed quantum of rent, decided the error of rent payable and rent payable, issue directions, postponing the same to final decision by the Court and direct to decide the arrears, as required under Rule 2 and continue to deposit at the same rate during pendency of the suit or proceedings before competent Court. Otherwise, it amounts to encouraging unscrupulous tenants who intent to avoid payment of rent for the premises in their occupation for decades together which would certainly result in substantial loss to the landlord

¹² AIR 1954 SC 215

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during pendency of the eviction suit or proceedings based on account of abortive pleas raised by the unscrupulous tenants.

In the result, the civil revision petition is dismissed. No costs.

Consequently, miscellaneous applications pending if any, shall also stand dismissed.

M. SATYANARAYANA MURTHY, J

Date:08.09.2016

SP

