

HON'BLE SRI JUSTICE S.V.BHATT

C.R.P. No.1533 OF 2010

ORDER:

Heard Mr.Aravala Rama Rao for petitioner and Mr.A.S.C.Bose for respondents.

The revision is directed against the order of learned District Judge-cum- Appellate Authority under A.P. (Andhra Area) Tenancy Act, 1956 (for short 'the Act') in ATA No.5 of 2003. Counsel appearing for the parties have, at the first instance, confined their submissions to the illegality or irregularity committed by the appellate authority in disposing of I.A.No.1558 of 2009 filed by petitioner herein under Order XXIII Rule 1(3)(b) of Civil Procedure Code (CPC) to permit appellant therein/petitioner herein to withdraw the appeal and give liberty to institute comprehensive civil suit against the respondents. The appellate authority on 24.08.2009 rejected the prayer for withdrawal of appeal by recording the following findings:

"The counsel for the respondents objected for giving permission to file fresh suit contending that there are no merits in the petition as the lower court had dismissed the ATC after going through the entire evidence on record adduced by both the parties and after hearing both the sides on merits.

The learned Special Officer-cum-Junior Civil Judge, Pathapatnam by appreciating the evidence adduced by both parties and hearing on both sides has rightly dismissed the ATC. The appellate Court is of the view that there are no legal and justifiable grounds to interfere with the order of the lower court. Therefore, I find there are no sufficient grounds for allowing the

petitioner/appellant to institute a fresh suit for the subject matter of a petition and therefore the question of giving permission to the appellant to file fresh suit is not tenable under law and is also not maintainable.
Hence, petition is dismissed.”

Counsel for petitioner has repeated the request to permit the petitioner to withdraw ATC No.3 of 2000 as well as the ATA and give liberty to petitioner to work out his remedies against respondents herein in accordance with law. He further contends that the appellate authority has mixed the challenge to the order of primary authority under the Act, ATA No.5 of 2003 and the grounds available for withdrawal under Order XXVIII of CPC. It is further contended that once a party sees that the objection raised by the respondents/tenants is particularly, in the nature of a *bona fide* dispute, he need not pursue the remedy of eviction under the special enactment, but can always work out the remedies against respondents in a properly instituted suit or proceedings. Therefore, he requests the Court to permit the petitioner to withdraw the cause presented in ATC No.3 of 2000 by giving liberty to work out remedies in a properly instituted suit in accordance with law.

On the other hand, Mr. ASC Bose has tried to convince this Court with the findings recorded by the appellate authority, and when it comes to the order passed by the appellate authority in I.A. No.1558 of 2009, he fairly states that the opposition offered by the respondents before the appellate authority cannot and could not be sustained in law, for a party can always only insist upon payment

of costs for participation in a lis and not to oppose for withdrawal if the same is otherwise permitted by law.

I have considered the submissions of learned counsel appearing for the parties, perused the pleadings and evidence placed on record.

This Court is of the view that the request of petitioner to withdraw the cause instituted in ATC No.3 of 2000 and ATA No.5 of 2003 can be permitted by giving liberty to him to work out remedies in accordance with law by filing a suit before the Court of competent jurisdiction. The C.R.P. is ordered. Liberty as prayed for to withdraw ATC and ATA is granted, the findings recorded in this behalf in the judgments in ATC and ATA under challenge are also withdrawn. It is made clear that as and when a suit is filed, the respondents herein are entitled to take all pleas available at the time of institution of ATC and other pleas of law and fact available in view of the specific defence they have taken in this behalf. No order as to costs.

Miscellaneous petitions, if any pending, shall stand closed.

S. V. BHATT, J

Date:14.10.2016
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