

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3185 of 2016

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India is filed challenging the Order dt.09.06.2016 in I.A.No.199 of 2016 in O.S.No.386 of 2016 on the file of XI Junior Civil Judge, Secunderabad, whereby the trial Court directed the revision petitioner/ defendant to pay arrears of rent of Rs.2,09,000/- to the respondent herein on or before 7.07.2016, in the event of failure to comply the above direction, the defence of the revision petitioner to contest the suit will be struck off.

2. The respondent herein filed a Petition under Order XV-A of Code of Civil Procedure (for short 'CPC'), as amended in the State of Andhra Pradesh, as per G.O.Ms.No.1559, dt. 23.08.2005, which enable the Court to issue a direction to deposit, admitted deposit of arrears of rent and also direct the respondent to deposit the amount along with written statement and in case, the tenant pleaded no arrears in the Written Statement, the Court, after affording an opportunity to both parties, determine the arrears by necessary enquiry under Order XV-A Rule 2 of CPC.

3. According to respondent herein, the petitioner obtained the schedule premises on lease initially on monthly rent of

Rs.8000/- with effect from 1.01.2011 under agreement of lease and the rent is exclusive of maintenance charges. Later, the rent was enhanced from Rs.8,000/- to Rs.11,000/- and the lease was expired on 01.01.2012 since the lease was only for a period of 11 months.

4. The respondent herein filed a suit for ejectment of the defendant from the schedule premises after determining the tenancy for non-payment of rent regularly, by issuing notice under Section 106 of Transfer of Property Act. Therefore, the respondent herein sought for a direction against the revision petitioner to deposit Rs.2,09,000/- at the rate of Rs.11,000/- for 19 months.

5. The revision petitioner filed Counter denying the material allegations made in the affidavit annexed to the petition, while admitting, obtaining the premises on lease i.e, Shop No.4, and that the shop was purchased by the plaintiff/respondent herein in the name of her husband i.e., V. Srinivasa Rao and the said Srinivasa Rao used to deal with the same and sold the shop to the defendant under agreement of sale of Rs. 14,00,000/-; received Rs.8,40,000/-, as advance, agreeing to execute registered sale deed on payment of balance of sale consideration. The revision petitioner also contended that he never obtained the premises on lease from the plaintiff nor executed the lease agreement in favour of plaintiff. He also denied irregular payment of rent and stoppage of payment of

rent from 1.01.2004 and requested to adjust the rent from the advance amount and finally prayed to dismiss the petition.

6. During enquiry, Exs. P.1 to P.3 were marked on behalf of petitioner before trial Court) respondent herein and Ex. R.1 to R.9 are marked on behalf of ( Respondent before trial Court) revision petitioner herein.

7. Upon hearing argument of both counsel and considering oral and documentary evidence available on record, the trial Court issued the aforesaid direction directing the revision petitioner to deposit Rs. 2,09,000/- towards rent for 19 months @ Rs.11,000/- per month.

8. Challenging the Order passed by the trial Court, the present revision is filed by the revision petitioner raising several contentions and mainly contended that the admission made in C.C.No.640 of 2015 pending on the file of XI Additional Chief Metropolitan Magistrate, Secunderabad and C.C.No.69 of 2015 pending on the file of XX Additional Chief Metropolitan Magistrate, Erramanzil, are suffice to conclude that the revision petitioner paid Rs.8,40,000/- towards rent, but the trial Court did not consider the admission made in Ex.R.7 and R.9 and committed an error in ordering payment of Rs.2,09,000/- towards arrears of rent @ Rs.11,000/- for 19 months and prayed to set aside the order under challenge.

9. During hearing, Sri T. Ravi Kumar, learned counsel for revision petitioner would contend that when the petitioner purchased the property under agreement of sale, the relationship between the plaintiff and the revision petitioner as landlord and tenant is ceased to exist and thereby the question of payment of rent does not arise. Apart from that the admission in Exs. R.7 and R.9 would suffice to conclude that the petitioner paid Rs.8,40,000/- towards rent, but the trial Court did not consider this admission in proper perspective and committed an error in passing the order under challenge and prayed to set aside the order.

10. Sri Seshadri Goalla, learned counsel for respondent herein argued totally in support of the Order in all respects and drawn the attention of this Court to the alleged admission in Exs. R.7 and R.9, where the respondent did not admit about receipt of Rs.8,40,000/- towards rent and therefore, there is no error in the order under challenge and prayed to dismiss the Revision Petition.

11. The petition was filed by the respondent herein under Section XV-A of CPC. As per Rule (1) of XV-A CPC, the tenant has to deposit the arrears of rent along with Written Statement itself. The Rule (2) of XV-A of CPC enable the Court to make necessary enquiry when the tenant pleads no arrear and issue a direction after affording reasonable opportunity to both the parties. Here, the contention of the learned counsel for plaintiff

is that the premises was obtained initially on lease on agreed rent of Rs.8000/- and later it was enhanced to Rs.11,000/-, which expired on 01.01.2012, but the revision petitioner failed to pay the rent as agreed for a period of 11 months and therefore, he issued a Notice under Section 106 of the Transfer of Property Act determining the tenancy on the ground of non payment at Rs.11,000/- per month, filed suit. But, the only grievance of the respondent herein is that unless the tenant deposits the admitted arrears of rent, he is not entitled to contest the suit and his defence shall be struck off; whereas the revision petitioner's counsel while admitting filing of suit O.S.No.670 of 2015 for specific performance to enforce the terms of agreement of sale for Rs.14,00,000/- while pleading payment of Rs.8,40,000/- towards advance raised a strange contention before this Court that advance amount shall be adjusted towards arrears of rent in view of the admission of respondent herein in Exs. R.7 and R.9. In view of the specific contention in para No.5 of Exs.R.7, the point that arise for determination by this Court is whether the respondent admitted receipt of Rs.8,40,000/- towards arrears of rent. For better appreciation, it is apposite to extract para No.5 of Ex.R.7, accordingly extracted hereunder:

“ The tenancy started on 01.01.2013 on which the accused has written with his own hand writing that he is on rent in the said shop. The accused was paying the rent as per the agreed amount, thus the amount paid by the accused towards rent is approximately Rs.8,40,000/-. The accused stopped paying rent from August, 2014 to till date, thus the due rent amount is Rs.99,000/-. In several occasions the complainant approached the accused for payment of rent where the accused refused to pay the rent for which Mrs.

Jyothi Vishwanath Shanbhag, W/o Vishwanath Shanbhag, aged 46 yrs, occupation: house wife, R/o Flat No. 153, Picket Castle, Picket, Secunderabad-26, neighbor of the complainant is the witness”.

12. Taking advantage of the allegation that the amount paid by the accused towards rent is approximately Rs.8,40,000/-, it is contended that the respondent herself admitted about receipt of rent of Rs.8,40,000/-. It is common knowledge of any ordinary prudent man that the tenant would not pay Rs.8,40,000/- towards rent payable for the premises when the rent due was Rs.2,09,000/- for the period of 19 months at Rs.11,000/-. On the other hand, it is the consistent case of the Revision Petitioner from the beginning that Rs.8,40,000/- was paid towards advance under agreement of sale while agreeing to pay balance of sale consideration out of Rs.14,00,000/- under the agreement of sale. Therefore, the alleged admission in para No.5 of Ex.R.7 is not unequivocal and on the strength of such admission, it is difficult to hold that the Revision Petitioner paid entire arrears of rent.

13. In para No.3 of Ex.A.9, the complainant therein, the respondent herein, reiterated the same allegation as in para No.5 of Ex.R.7. These two admissions are not consistent with the case of the Revision Petitioner and respondent from the beginning. But, it is only an admission of payment of Rs.8,40,000/- which represents the advance of sale consideration paid out of

Rs.14,00,000/- as agreed under the agreement of sale and it would not be construed as payment of Rs.8,40,000/- towards arrears of rent. Therefore, those two admissions in para No.5 of Ex.R.7 and para No.3 of Ex.R.9 would not come to the aid of the Revision Petitioner to avoid payment of arrears of rent.

14. The second contention put forth by the learned counsel for revision petitioner is that when the petitioner purchased the property under agreement of sale, the relationship between the Revision Petitioner and the respondent herein as tenant and landlord is ceased to subsist and thereby, the Revision Petitioner is not under the obligation to pay any amount towards arrears of rent. In fact, at one stage, the Revision Petitioner denied the relationship of tenant and landlord between the revision petitioner and the respondent, but at another stage, he requested the Court to adjust the amount paid as arrears of rent, which is totally inconsistent with the allegations made in one para to the other. The subsistence of lease would depend upon the terms and conditions of the agreement of sale, if any executed, but the agreement of sale is not placed before this Court to decide whether the relationship of revision petitioner and respondent herein as landlord and tenant is ceased to exist or not. Even in the notice preceded to the litigation, there was no averment that the relationship of landlord and tenant between the Revision Petitioner and the respondent is ceased to

exist. As long as the Revision Petitioner is continuing as tenant in occupation of the premises, he is bound to pay rent and merely because the Revision Petitioner denied arrears of rent in the Written Statement that would not exonerate his liability to pay rent while continuing in occupation of the premises. When the Revision Petitioner denied any arrears, as per Rule 2 of Order 15-A of CPC, the Court has to make a summary enquiry and decide the arrears of rent payable to the respondent herein and Rule-2 of Order 15-A is analogous to Section 11 (3) of Andhra Pradesh Buildings ( Lease, Rent and Eviction) Control Act, 1960, where a summary enquiry is required to be held and decide arrears of rent and therefore by applying the principle of *ejusdem generis*, the Court is under the obligation to make summary enquiry and decide arrears of rent due as on the date of filing Writing Statement and direct the tenant in occupation to deposit the arrears of rent and continue to deposit the agreed rent every month, but the trial Court only issued a direction to deposit arrears without issuing any direction to continue to deposit rent every month. However, failure of the trial Court in issuing such direction is not in challenge before this Court since the challenge before this Court is limited to the direction to deposit Rs.2,09,000/- towards arrears of rent for 19 months @ Rs.11,000/- per month is in dispute. On the other hand, the trial Court did commit no error in issuing such direction and therefore, this Court under Article 227 of the Constitution of India is unable to exercise jurisdiction to interfere with the

finding of the trial Court since the trial Court did not exceed its jurisdiction or passed the Order based on any extraneous material or any violation of principles of natural justice as this Court's power is supervisory in nature. Therefore, I find no ground to interfere with the finding in the Order under challenge. Accordingly, the point is held in favour of the respondent herein and against the revision petitioner.

15. In the result, this Civil Revision Petition is dismissed, but without costs in the circumstances of the case.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.



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M. SATYANARAYANA MURTHY, J

Date: 29-08-2016.

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



CRP No.3185 of 2016

Dt. 29-08-2016

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