

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3564 OF 2016

ORDER:

This revision petition, under Article 227 of the Constitution of India, is filed challenging the Order dated 20.06.2016 in I.A. No.879 of 2016 in A.S. No.126 of 2016, passed by the X Additional Chief Judge, City Civil Court, Hyderabad, whereby interim stay of execution of Decree dated 20.04.2016 in O.S. No.1774 of 2013 is granted subject to the following conditions:

- I) The appellant/ defendant is directed to pay Rs.1,30,000/- towards monthly rentals as fixed by the High Court till the date 11.06.2016.
- II) The appellant is also directed to pay Rs.41,000/- arrears of rent anterior to as ordered by the trial court and shall also pay costs of the suit.
- III) In all, the petitioner shall pay Rs.1,82,000/- (Rs.1,30,000/- + Rs.41,000/- + Rs.11,100/-).
- IV) In addition to that the appellant/ defendant is also directed to pay monthly rent @ Rs.15,000/- on or before 15th of succeeding month. The appellant is also directed to pay every month rentals by 15th of succeeding month without fail. The monthly rentals payable hereinafter shall be credited to the bank account of the respondent/ plaintiff before stipulated period.
- V) The trial court is entitled to proceed with determination of mesne profits.
- VI) Non-compliance of above direction stay automatically stands vacated, the respondent/ plaintiff is entitled to proceed with eviction proceedings.

The respondent herein filed suit for ejectment of the revision petitioners herein and for recovery of arrears of rent @ Rs.40,000/- as on the date of filing suit and filed a petition under Order XV-A seeking direction against the revision petitioners to deposit

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admitted arrears of rent, but he did not comply the direction and the matter was carried to the revision and in the said revision petition, interim direction was issued, directing the revision petitioners herein to deposit Rs.10,000/- per month together with arrears within six months from the date of order, later the revision petition was ended in dismissal, directing the trial court to decide the suit in accordance with law. However, the suit was decreed granting relief of ejectment and recovery of arrears of rent @ Rs.20,000/-.

Aggrieved by the Decree and Judgment, the revision petitioners herein filed an appeal disputing the quantum of rent and arrears of rent payable for the premises to the respondent herein, but the appellate court did not accept the contention and issued the aforesaid direction while granting interim stay of execution of Decree.

Now the revision petitioners contending that they paid Rs.1,70,000/- under various receipts and the balance to be paid is only meager amount, since he paid Rs.80,000/- towards monthly rent deposit covered by challans, filed along with the petition. But the respondent herein disputed both quantum of rent and the amount covered by the receipts to a tune of Rs.1,10,000/-. He also drawn the attention of this Court to various admissions in the affidavit filed by the revision petitioner herein under Rule 4(2) of Order XVIII of CPC in lieu of examination-in-chief and in paragraph 3 of the affidavit, there is a categorical admission regarding agreement to pay Rs.20,000/- towards rent and similarly at paragraph 6 of the affidavit, the petitioner admitted the

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rent payable for the premises was Rs.20,000/- per month and he issued four cheques for Rs.80,000/- towards four months advance rent, but similarly at paragraph 7, he admitted that only one cheque was honoured. However at paragraph 8 of the affidavit, he denied the rent payable for the premises @ Rs.20,000/-, while contending that it is an invention of the respondent herein.

In view of several inconsistencies regarding quantum of rent as per the contents of affidavit, it is difficult to accept the contention of the revision petitioners that the rent payable for the premises was not Rs.20,000/- as contended by the respondent herein. However, the appellate court only directed to deposit the arrears of amount Rs.1,30,000/- as directed by this Court, Rs.41,000/- towards arrears of rent for the subsequent period. If the admissions in the affidavit filed under Rule 4(2) of Order XVIII of CPC are accepted as it is, the rent payable for the premises is Rs.20,000/-, but the appellate court directed to pay only Rs.15,000/- per month, it is less than the amount agreed at paragraphs 3, 6 and 7 of the affidavit of D.W.1 in the suit.

Even otherwise, in **MARSHALL SONS & CO. (I) LTD. VS. SAHI ORETRANS (P) LTD.**,¹ the Apex Court held that once a decree for possession has been passed and execution is delayed depriving the judgment creditor of the fruits of decree, it is necessary for the Court to pass appropriate orders so that reasonable mesne profits which may be equivalent to the market rent is paid by a person who is holding over the property. Relying upon the Judgment referred above, in **ATMA RAM PROPERTIES**

¹ (1999) 2 SCC 325

(P) LTD., v. FEDERAL MOTORS (P) LTD.² the Apex Court held as follows:

“(1) while passing an order of stay under Rule 5 of Order 41 of the Code of Civil Procedure, 1908, the appellate Court does have jurisdiction to put the applicant on such reasonable terms as would in its opinion reasonably compensate the decree-holder for loss occasioned by delay in execution of decree by the grant of stay order, in the event of the appeal being dismissed and in so far as those proceedings are concerned. Such terms, needless to say, shall be reasonable;

(2) in case of premises governed by the provisions of the Delhi Rent Control Act, 1958, in view of the definition of tenant contained in clause (l) of Section 2 of the Act, the tenancy does not stand terminated merely by its termination under the general law; it terminates with the passing of the decree for eviction. With effect from that date, the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have vacated the premises. The landlord is not bound by the contractual rate of rent effective for the period preceding the date of the decree;

(3) the doctrine of merger does not have the effect of postponing the date of termination of tenancy merely because the decree of eviction stands merged in the decree passed by the superior forum at a latter date.”

If the above principle is applied to the present facts, the Order passed by the appellate court is unjust, but the order was not questioned by the respondent herein by way of revision. So this Court need not disturb such direction given by the appellate court, while granting stay, in the absence of separate revision.

The only contention of the revision petitioners is that they paid Rs.1,10,000/-, which was earlier to passing of a Decree and he filed those challans along with application under Rule 1A of order VIII of CPC. But the trial court refused to receive those documents and the order became final. Therefore, those receipts were not taken into consideration and this Court at this stage

² (2005) 1 SCC 705

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cannot go beyond the Decree while considering the application for grant of stay filed under Rule 5 of Order XLI of CPC.

Rule 5(3) of Order XLI of CPC made clear that when the petitioner is able to establish that he would sustain substantial injury, if no interim stay is granted, the Court can consider and pass appropriate order, but that does not mean the Court can pass any order despite non compliance of the direction issued by this Court and the trial court. When the person who approached the Court with unclean hands is disentitled to such relief, and therefore, the Order passed by the appellate court in interlocutory application does not suffer from any illegality, warranting interference of this Court in the Order passed in revision exercising jurisdiction under Article 227 of the Constitution of India. Accordingly, the revision petition is dismissed. No costs.

Miscellaneous petitions, if any, pending in the revision petition, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 23.09.2016
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