

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.5419 of 2016

ORDER:

The plaintiff in O.S.No.1000 of 2015 on the file of II Senior Civil Judge, City Civil Court, Hyderabad, which is a suit maintained by her against the defendant for eviction of the lease premises which is the ground floor of building bearing municipal No.8-2-682/7 of Road No.2, Banjara Hills, Hyderabad, with averments that the monthly rent payable is Rs.60,000/- and the defendant is not paying the rents due and payable and liable to be evicted on that ground among other grounds.

2. The suit is while under contest, the plaintiff filed I.A.No.425 of 2015 with supporting affidavit to the petition under Order 15-A and Section 151 of the Code of Civil Procedure (for short 'C.P.C.'), to direct the defendant to pay the rents with electricity, water and maintenance charges due from 15.06.2015 up-to-date and also with a direction to continue to pay, pending disposal of the suit.

3. The supporting affidavit averments to that are that rent is Rs.60,000/- p.m. and also Rs.1,00,000/- interest free deposit by the defendant/tenant and almost from the

beginning of the commencement of tenancy on 15.05.2015 to say rents payable from 15.06.2015 committed default and liable to be directed to pay.

4. The counter filed by the defendant to the eviction suit is with contest that he invested more than Rs.6,00,000/- for renovation of the premises, suitable to the purpose of his business and the land lady collected rents through her Manager, Smt.Vijaya Reddy and was not passing receipts and in order to harass and to have wrongful gain makes the false claim stating that not paying rents and as if due and he already maintained suit for injunction in O.S.No.574 of 2015 against the threatened forcible dispossession by the land lady showing her as defendant, which is pending on the file of the IV Senior Civil Judge, City Civil Court, Hyderabad, and those facts are suppressed and the claim of Rs.80,000/- p.m. as mesne profits for alleged use and occupation during subsistence of tenancy is illegal and there is no notice served on him and the service of alleged notice under Section 106 of the Transfer of Property Act, is untrue and the suit is not sustainable and the allegation of defendant is doing Hukka business without valid license etc., are false and engineered for the claim and the petition is liable to be dismissed.

5. From said contest, the lower Court passed the impugned order on 21.10.2016, which reads as follows:

“This is a petition filed under Sec-15A CPC directing the respondent/defendant to deposit the arrears of rent, electricity, water and maintenance charges from 15-6-2016 to till this day which comes to Rs.2.76 lakhs.

This is a second relief claimed by the plaintiff in the main suit which cannot be sought under the interlocutory application as it is a triable issue. Hence, this petition is dismissed.”

6. Impugning the same, the present revision is maintained. Notice served on the respondent and the respondent/tenant failed to attend, despite proof of service.

7. Heard the learned counsel for the revision petitioner and taken as heard the respondent since served. Perused the material on record.

8. Order XV-A C.P.C reads as follows:

“(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.

(2) Whether the defendant pleads in the written statement that no arrears of rent or licence fee exists, it shall be competent for the Court to pass an order in this regard, after affording opportunity to both the parties, and

in case any amount is found due, the defendant shall be under 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 Rule1 :

Provided that the time stipulated for payment of amount, as aforesaid, may be extended by the Court for reasons to be (recorded) for a period not exceeding 15 days.

If the defendant commits default in making the deposits, as aforesaid, the Court shall strike off the defence.

On such deposit it shall be competent for the plaintiff to withdraw the same.”

9. As per the said provision, it is the duty while filing the written statement for the tenant/licensee in a suit for eviction, which filed by the landlord terminating lease or licence to deposit the amount of undisputed arrears and shall continue to deposit in Court within one week after intermittent amounts of rent due till disposal of the suit and even defendant pleads in the written statement of no arrears of rent or licence fee, Court is competent after affording opportunity to parties, for anything found due, directing to pay or deposit within time stipulated and in case of default in payment or deposit, pursuant to the direction, the defence is liable to be strike down.

10. The counter of the respondent speaks rent of Rs.60,000/- p.m. and filing of suit for bare injunction against

the land lady in O.S.No.574 of 2015 on the file of the IV Senior Civil Judge, City Civil Court, Hyderabad. A perusal of the Xerox copy of the said plaint copy shows from para-1 of the plaintiff herein (defendant therein) is land lady of the premises in question and the ground floor portion of the premises taken on lease it is the subject matter of the suit in O.S.No.1000 of 2015 there also it is admitted from the very pleading of the monthly rent payable of Rs.60,000/- inclusive of electricity charges etc.,. The only difference there from is as per the plaint and the petition to deposit in I.A.No.425 of 2015, which is the subject matter of revision against the impugned order, the land lady claimed Rs.60,000/- + electricity, water and maintenance charges per month. Whereas, the plaint copy in the injunction suit maintained by the tenant he speaks Rs.60,000/- including electricity, water and maintenance charges per month. The further averment therein is lease is for 2 years commenced from May, 2015 and there is security deposit of Rs.2,00,000/- apart from Rs.7,00,000/- invested in renovation of the premises for the business purpose. The other contention is rental agreement described as Rs.1,00,000/- is non-refundable deposit and Rs.1,00,000/- only refundable deposit that is in dispute.

11. From the above, the version of the tenant is that rent is at Rs.60,000/- p.m. including electricity, water and maintenance charges. Once such is the case, the amount is payable every month even according to the tenant. The other contention is, to the Manager of the plaintiff by name Smt.Vijaya Reddy, the alleged amounts of rents paid. There are no particulars mentioned as to when paid and with what proof even to say no receipts passed, at least the details of the respective payments, date of payment and place of payment even required so to contend that are also not mentioned. Thus, though Order 15A clause (2) from any such dispute as to payment made or not, trial Court is competent to decide by conducting enquiry in the interlocutory application seeking to deposit, here, for this revision Court there is no material. As learned counsel for the revision petitioner/plaintiff sought disposal of the revision on other merits, this Court without prejudice to the deciding of said disputed payments, by the trial Court, allowing the revision in part by consideration the application and counter to the petition in I.A.No.425 of 2015 filed by the respondent/defendant on 07.09.2016, from what the respondent/defendant is saying rent payable at Rs.60,000/- p.m., the respondent/defendant is directed to pay at

Rs.60,000/- p.m. from the month of September, 2016 onwards and to deposit said arrears within one month from the date of receipt of a copy of this order, failing which the trial Court by virtue of this revision order strike off the defence of the defendant.

12. Accordingly, the Civil Revision Petition is allowed to that extent. No order as to costs.

13. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Date:01.12.2016
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Dr. B. SIVA SANKARA RAO, J

