

The Hon'ble Sri Justice V.Ramasubramanian

Civil Revision Petition No.4127 of 2016

Date: 09.12.2016

Order:

This Civil Revision Petition arises out of an Order passed by the First Appellate Court granting interim stay of execution of decree for eviction, upon certain terms and conditions.

Heard Mr.Sai Gangadhar Chamorthy, learned Counsel for the petitioners, and Mr.Koteswara Prasad, learned Counsel for the respondents.

Petitioner Nos.1 to 8 and respondent Nos.2 to 7 filed a suit in OS.No.256 of 2006 on the file of the trial Court seeking recovery of possession and arrears of rent against respondent Nos.1 and 8 to 11. The trial Court passed a decree to the following effect:

“1.That the defendants be and on hereby directed to vacate and handed over the possession of the plaint schedule property in favour of plaintiffs within three months from the date of Judgment failing which plaintiffs are at liberty to take steps as per law.

2. That the defendants do pay to plaintiffs a sum of Rs.1,84,260/- towards arrears of rent.

3. That the defendants do pay to plaintiffs a sum of Rs.30,776/- towards costs of the suit and do bear their own costs of Rs.NIL.”

As against the said decree, respondent No.1 alone filed a regular Appeal in AS.No.60 of 2016 along with an application for stay in IA.No.293 of 2016. The First Appellate Court granted stay of eviction upon certain conditions. The order of the First Appellate Court reads as follows:

“1. That the petition be and the same is hereby allowed by granting stay of the execution of the decree dated 26-04-2016 in OS.No.256/2006 passed by the Add.Senior Civil Judge Court, Machilipatnam, with a condition that the petitioner shall deposit the suit costs of Rs.30,776/- on or before 05.08.2016, and 2. that the petitioner is further directed to deposit an amount of Rs.5000/- per month on 5th of every succeeding month, to the credit in O.S.No.256/2006 on the file of Addl.Senior Civil Judge Court, Machilipatnam for a period of six months, and 3. that in case of deposit of suit costs and amount as directed by the Court, it shall be kept in F.D.R. in any nationalized bank till the disposal of the appeal and in case, if the petitioner fails to deposit the amount as directed, the stay order shall stand vacated without the recourse for extension of time, and 4. that there be no order as to costs. (No bill of costs filed by either side).”

Aggrieved by the fact that no portion of the arrears of rent, as quantified by the trial Court, has been directed to be

deposited, the petitioners- landlords have come up with the present revision.

There are two mistakes committed by the First Appellate Court. The first one is that it has not directed respondent No.1- tenant to deposit any portion of the arrears of rent, which the trial Court had quantified at Rs.1,84,260/-, and the second one is that even the future rent has been directed to be kept in a fixed deposit, without directing the same to be paid to the petitioners- landlords. Therefore, the order of the First Appellate Court requires modification.

Hence, the Civil Revision Petition is allowed modifying the order of the First Appellate Court to the following effect:

“1. There shall be an interim stay of execution of the decree of the trial Court subject to the conditions that (i) Respondent No.1- tenant shall pay a sum of Rs.90,000/- to the petitioners- landlords, within a period of 12 weeks from the date of receipt of a copy of this order; and (ii) He shall continue to pay the admitted rent of Rs.5,000/- per month on the 5th of every succeeding month as directed by the First Appellate Court, directly to the petitioners- landlords instead of depositing the same into the Court.

2. Both the aforesaid payments shall be made by way of demand drafts or cheques only so that no further dispute is raised with regard to the same.”

As a sequel, Miscellaneous Petitions, pending if any, stand disposed of as infructuous.

(V.Ramasubramanian, J)

Dt: 9th December, 2016
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