

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.5149 of 2015

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the respondent/defendant is directed against the order dated 07.09.2015 of the learned II Additional Senior Civil Judge, Ranga Reddy District passed in IA.no.429 of 2013 in OS.no.490 of 2012 filed by the petitioner/plaintiff under Order XV A of the Code of Civil Procedure, 1908.

2. I have heard the submissions of the learned counsel appearing for the revision petitioner/defendant ('the defendant', for brevity) and the learned counsel for the respondent/plaintiff ('the plaintiff', for brevity). I have perused the material record.

3. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows:

The sole plaintiff brought the suit against the defendant for recovery of possession of the premises bearing H.No.2-16-99, Prashanthinagar, Road no.2, Uppal Kalan, Ranga Reddy District more fully described in the schedule annexed to the plaint and also for recovery of arrears of rent in a sum of Rs.22,100/- and a sum of Rs.2,00,000/- towards past mesne profits @ Rs.25,000/- per month from 01.06.2011 to 31.01.2012 and future mesne profits @ Rs.25,000/- from the date of suit till the date of delivery of vacant possession. The defendant is resisting the suit. In the said pending suit, the plaintiff had filed the subject interlocutory application requesting the Court to direct the defendant to pay to the plaintiff a sum of Rs.70,500/- accrued towards arrears of rent from 01.04.2011 to 31.01.2012 including Rs.10,000/- and continue to pay the future rents and to strike off the defence of the defendant on failure of the defendant to make the deposits as directed by the Court. The defendant had filed a counter resisting the said application. At the time of enquiry before the Court below, no oral and documentary evidence was adduced. On merits and by the impugned order, the Court below had allowed the petition. The operative portion of the order of the Court

below, which is impugned in this revision petition filed by the defendant, reads as under:

“In the result, this petition is allowed directing the respondent to deposit the rent for the schedule premises for a period of 38 months (i.e) May 2012 to August 2015 by deducting the amount of Rs.6,000/- paid in the month of February 2014 for Rs.6,000/- total amounting to Rs.2,28,000/- to the credit of the suit and the respondent is further directed to pay the said arrears of rent on or before 07.12.2015 and shall start depositing the rent for every month to the credit of the suit by 10th of every succeeding month without fail. In default, the defence of the respondent shall be struck off. Costs follow the result of the suit.

(Reproduced verbatim)

4. Before proceeding further, it is necessary to refer to the relevant pleadings of the parties.

4.1 The case of the plaintiff, as stated in the affidavit of the GPA holder, in brief, is as follows:

The GPA holder is the son of the plaintiff. He is looking after the suit and affairs of his father. The defendant is a tenant in the suit schedule premises on a monthly rent of Rs.6,050/-. The suit is filed for recovery of possession of the suit schedule premises, arrears of rent and mesne profits. The defendant is very irregular in payment of rents. He had last paid the rent for the month of March, 2011. Thereafter he did not pay the rents and committed defaults in payments of rents. Therefore, the plaintiff had terminated the tenancy of the defendant by issuing a notice dated 02.04.2011 and demanded the defendant to vacate the premises by the end of 31.05.2011. In the said notice, the plaintiff had also claimed damages/mesne profits for use and occupation at the rate of Rs.25,000/- per month from 01.06.2011 onwards. Since the defendant had failed to comply with the demand in the notice, the suit is filed for eviction/recovery of possession and other reliefs. The defendant failed to pay rents from April, 2011 onwards amounting to Rs.60,500/- besides Rs.10,000/- towards arrears, which is due under a cheque issued and which was returned unpaid when presented for encashment. Thus, in all Rs.70,500/- is due and payable. Unless the defendant/tenant pays the admitted rent, he is not entitled to contest the suit.

Hence, the defendant may be directed to pay Rs.70,500/- being the accrued arrears of rent calculated from 01.04.2011 to 31.01.2012 and to continue to pay the future rents as and when they fall due; and strike off his defence and pass such other orders, in case of default of the defendant/tenant to comply with such directions.

4.2 The case of the defendant, in brief, is this:

The material allegations in the affidavit filed in support of the petition and the plaint are false. He is continuing as a tenant on enhanced monthly rent of Rs.6,000/-. He is paying the rents regularly. With the consent of the landlord, he has constructed one room with his own investment; and his wife, Dr. Rohini, is running Haritha Homeo Clinic in the said room. As per the understanding between the parties, the said amount is refundable or adjustable towards future rents, if any due. The suit is filed with a *mala fide* intention. As a matter of fact, no rents are due and payable. The plaintiff is put to strict proof of his claim. The allegation that the defendant last paid rent for the month of March, 2011 and that he had later committed default in payment of rents and that he is liable to pay the rents as claimed in the affidavit of the Son of the plaintiff are false. The plaintiff is not entitled to the sum of Rs.70,500/- as claimed in the affidavit filed in support of the petition.

In IA.no.1251 of 2011 in OS.no.613 of 2011, the plaintiff filed a counter affidavit saying that the defendant has to pay an amount of Rs.82,000/- towards arrears of rent, which includes the amount of the cheque for Rs.10,000/-, which was not realized. The said IA is pending on the file of the Court of the learned Junior Civil Judge, Ranga Reddy District at L.B. Nagar. It is admitted in the said counter affidavit that without prior written consent, the defendant herein had altered the residential premises to suit his requirement. It is deemed that there is consent to construct a mulgi to run the clinic. The plaintiff has taken two different versions in the two suits. No relief relating to the arrears of rent of Rs.70,500/- is claimed in the plaint. The suit is liable to be dismissed in limine.

5. The learned counsel for the defendant while reiterating the defence pleaded in the counter would contend as follows:

The order based on the calculation memo filed by the plaintiff and directing the defendant to deposit on or before 07.12.2015 to the credit of the suit the admitted rents at the rate of Rs.6,000/- per month from May 2012 to August 2015 i.e., for a period of 38 months and to deposit the future rents every month without fail is contrary to law and facts. The contents of the calculation memo filed by the plaintiff are not correct. The rider in the impugned order that the defence will be struck off on the failure of the defendant to make the deposits as directed is contrary to law and facts. The Court below ought to have seen that the arrears of rent claimed in the eviction suit is only Rs.22,100/-. The Court below ought to have seen that even as per the lease agreement, the rent works out to Rs.4,685/- as on December, 2012; but, contrary to the terms of the lease, the plaintiff had collected rent at the rate of Rs.6,000/- per month right from January 2008. The Court below ought to have seen that the defendant had deposited Rs.25,000/- as advance and invested Rs.1,20,000/- towards the construction of a mulgi for the use as a clinic by his wife and that the said construction was made with the consent of the plaintiff and that the said amount is either refundable or adjustable towards future rents, if any. The Court below ought to have seen that certain amount was deposited during the pendency of OS.no.613 of 2001. Further, when there is a dispute with regard to arrears of rent, the aspects in regard to fixation of rent as per the lease agreement, the deposit of advance and the amount spent on the construction of mulgi have to be decided only after full fledged trial. The Court below ought to have seen that a direction can certainly be issued to deposit the rents in an application filed under Order XV A, if only there is no dispute. The Court below ought to have seen that when there is a divergence of opinion between the parties as to the quantum of rent and the liability, the determination thereof has to be relegated to a subsequent stage and that an appropriate finding has to be given only after full fledged trial. The Court below ought to have seen that the defendant is ready to deposit future rents to the credit of the suit after full fledged trial and after the determination of the issues with regard to deposit, the investment on construction and the quantum of rent. Therefore, the order is liable to be set aside.

6. The learned counsel for the plaintiff while supporting the orders of the Court below and while reiterating the contentions of the plaintiff, which are urged in the petition, would further contend as follows: - 'By the order impugned, the trial Court did not direct the defendant/tenant to deposit any arrears prior to the suit. The suit is filed in February 2012. Though the plaintiff claimed that the rent is Rs.6,050/- the trial Court tentatively accepted the monthly rent at the rate of Rs.6,000/- per month as admitted by the defendant/tenant and further directed the defendant/tenant to deposit the rents for the period subsequent to the suit, that is, from May, 2012 onwards for 38 months after deducting Rs.6,000/- paid in the month of February 2014. Thus, the Court below directed the defendant to deposit Rs.2,28,000/- to the credit of the suit on or before 07.12.2015 and further directed the tenant to deposit the rent at the above rate every month on or before 10th of every succeeding month during the pendency of the suit and had also held that on failure to comply with the directions in the order, the defence will be struck off. As per the settled legal position, the trial Court is empowered to give such directions to deposit rents for the period subsequent to the suit at the rate admitted by the defendant/tenant. There is no error either under facts or in law. There is no merit in the revision. The defendant/tenant is squatting on the property without paying huge arrears of rent. Therefore, the revision may be dismissed.'

7. In view of the contention of the defendant that the plaintiff cannot invoke the provision of Order XV-A of the Code and that the Court below is not empowered to direct the tenant to pay any arrears of rent by determining the quantum of rent when there is a dispute about the quantum of rent, it is necessary to first refer to the provision of law and the ratios in the precedents. The relevant provision of Order XV-A of the Code reads as follows:

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.

Wherever 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 Rule 1:

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.

Explanation: - the expression “the amount representing the undisputed arrears” shall mean the sum of rent, or licence fee calculated for the period for which it remained unpaid, after deducting from it any amount:

- (a) paid as tax, to a local authority, in respect of the property,
- (b) paid to the plaintiff under written acknowledgment, and
- (c) deposited into the Court, in any proceedings, in relation to the said property”.

The learned counsel for the defendant had placed reliance on the decision in

K.Zakria Shaik v. K.Saleem Basha^[1]. In this cited decision, this Court while referring to the provisions of Order XV-A of the Code had held as follows:

“The purpose underlying the provision is to ensure that the owner of the premises leased to the defendant in a suit pays the rents regularly, together with arrears, if any. The word “undisputed” occurring before the word “arrears”, assumes significance. If there is a dispute as to the quantum, the Court has to decide the same, duly taking into account, the versions put forward by the parties. In this regard, slightly different approach is needed in respect of a suit in which recovery of arrears is prayed for, as one of the reliefs on the one hand and a suit for eviction simplicitor on the other hand. If the defendant opposes the claim in the suit, as to arrears, the adjudication thereof must take place after trial. An application under Order 15-A of C.P.C. is not the proper mechanism to recover the suit amount, if seriously disputed by the defendant. Under the garb of seeking relief under that provision, plaintiff in a suit cannot pray for recovery of the entire amount, which incidentally is claimed in the suit itself. In such an event, the suit comes to be virtually decreed to that extent without trial, but through an order under Order 15-A of C.P.C.

If the arrears existed from the date of filing of the suit, a direction can certainly be issued for deposit thereof in an application filed under Rule 15-A of C.P.C. Any direction for deposit of arrears prior to the date of filing of the suit can be issued, only when there is no dispute. If there is divergence of opinion between the parties as to the quantum or liability, the determination thereof has to be relegated to a subsequent stage and a finding has to be given after trial. An exercise contemplated under Order 15-A of C.P.C. is totally inadequate and unsuited for final determination of the arrears of rent for the period anterior to the date of filing of the suit.”

A plain reading of the ratio in the decision would show that when there is a dispute in regard to the quantum of rent or the arrears of rent due and payable prior to the suit or when there is a divergence of views between the parties in regard to the quantum of rent or the liability in respect of arrears of rent prior to the date of filing of the suit, the determination thereof has to be relegated to a subsequent stage and a finding has to be given after trial and that in such a situation, no directions can be given to deposit the arrears of rent for the period anterior to the date of filing of the suit. Nevertheless, in regard to arrears of rent due and payable for the period from the date of the filing of the suit, a direction for deposit of arrears thereof can certainly be given in an application filed under Order XV-A of the Code. In such a situation, even if there is a dispute as to the quantum of rent, the Court is empowered to decide the same duly taking into consideration the versions put forward by the parties and the facts and circumstances of the case.

8. It is also apt to refer to the decision in **M.Vijaya Lakshmi and others v. Kalanikethan Textiles and Jewelles Pvt. Ltd., Hyderabad**^[2]. In this cited case, this Court had referred to the decision in **Sri Vasavi Boys Hostel and Mess. K.Satya Prasad rep. by his GPA Holder** [2012 (4) ALD 140] as well as the provision of law under Order XV-A (A.P. Amendment) of the Code. The facts of the cited case disclose that a suit is filed for eviction and recovery of certain sum and also future mesne profits from the date of filing of the suit and that during the pendency of the suit, an application under Order XV-A was filed for a direction to the 1st respondent to deposit the arrears of rent of Rs.90 lakhs and monthly rents @ Rs.15 lakhs to the credit of the suit in the lower Court. The trial Court had dismissed the petition of the plaintiff.

The plaintiff had filed the revision before this Court. Having regard to the above facts of the case, this Court while allowing the CRP had *inter alia* held as follows: "...even where there is a dispute with regard to the quantum of rent and other charges payable by the 1st respondent, the Court can still hold a summary enquiry and adjudicate such a dispute while deciding an application under Order XV-A of CPC." Thus in this decision, this Court held that even when there is a dispute in regard to quantum of rent, a summary enquiry can still be held by the trial Court while disposing of an application under Order XV-A of the Code.

9. Thus, on a reading of the provision of law and the ratios in the cited decisions, this Court is satisfied that it is competent for the Court to hold a summary enquiry after affording an opportunity to both the parties (landlord and tenant) to put forward their versions and to pass an order giving directions to the tenant, in case, any amount is found due and payable, to deposit the same within the time stipulated by the Court and to continue to deposit, at the rate thus determined, the monthly rents which become payable thereafter, as provided under Order XV-A of the Code. Insofar as the undisputed arrears, if any, prior to the suit, the provision itself makes it clear that the defendant, while filing his written statement, shall deposit the amount, representing the undisputed arrears, calculated upto that date into the Court and shall continue to deposit such amounts, which becomes payable thereafter, within one week from the date on which the same become due and till the judgment is rendered in the suit. In the case on hand, though the plaintiff sought for a direction to the defendant to pay a sum of Rs.70,500/- accrued towards arrears of rent from 01.04.2011 to 31.01.2012, the trial Court rightly, by the order impugned, did not give any directions in regard to arrears of rent anterior to the suit, which are claimed in the suit and had therefore, left the said issue in regard to arrears anterior to the suit to be determined after full-fledged trial. The trial Court in the impugned orders had only recorded findings and gave directions in regard to arrears from the date subsequent to the suit only. The provision of law makes it plain that when 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 an opportunity to both the parties. The provision further makes it plain that while passing such order, the Court can give directions to the defendant/tenant to deposit the amount, if any, found due within the time stipulated by the Court and to continue to deposit the amount, which becomes payable thereafter. Therefore, in the well considered view of this Court, there are no impediments in law for entertaining an interlocutory application filed under Order XV-A of the Code and determining the issue of arrears of rents due and payable subsequent to the institution of the suit and for giving suitable directions to the defendant/tenant to deposit within the time stipulated by the Court, the amounts, if any, found due. However, such determination shall be made after holding a summary enquiry by affording an opportunity to both the parties to put forward their versions. Hence, the contention of the learned counsel for the defendant that when there is a dispute about the quantum of rent, no direction can be given to the defendant to deposit the arrears of rents, found due and payable, for the period subsequent to the institution of the suit is untenable and is devoid of merit. The said contention is accordingly rejected.

10. The next short question is – ‘Whether in the facts and circumstances of the case, the Court below was correct in determining tentatively the rent @ Rs.6,000/- per month and in giving directions to deposit the arrears and to continue to pay the future rents at the said rate till the disposal of the suit?’

11. The plaintiff contends that the rent is Rs.6,050/- per month. The defendant contends that the rent is Rs.6,000/- per month. He further contends that he had constructed a room by investing Rs.1,20,000/- with the consent of the plaintiff on the understanding that the said amount is refundable or adjustable for future rents, if any due, but, the plaintiff with a *mala fide* intention got filed the present suit and the instant application for recovery of rents and that the defendant is not in arrears and is not liable to pay any amount much less Rs.70,500/-. Neither of the parties had filed any documentary evidence to show the quantum of rent. The suit is instituted

after terminating the tenancy in the year 2011. The arrears upto the date of the institution of the suit, that is, from 01.06.2011 to 31.01.2012 in a sum of Rs.25,000/- are claimed in the suit. In the enquiry in this interlocutory application, which is the subject matter of revision, this Court need not go into the issue of arrears of rent anterior to the institution of the suit as the Court below did not direct the defendant to deposit any arrears anterior to the suit and which are allegedly due for the period prior to the institution of the suit. The suit was instituted on 13.02.2012. The Court tentatively accepted the monthly rent as Rs.6,000/- as admitted by the defendant/tenant and directed the defendant to deposit on or before 07.12.2015 to the credit of the suit the monthly rents for a period of 38 months i.e., from May 2012 to August 2015 by deducting the amount of Rs.6,000/- paid in the month of February 2014 and to continue to deposit the future monthly rents that may successively fall due by 10th of every succeeding month without fail. The determination of the tentative rent made by the Court below is based on facts and pleadings and on an inferential process, which is just and fair. Further, from the order impugned it is evident that the trial Court has taken into consideration the interests of both the parties while passing the impugned orders. In the facts and circumstances of the case, this Court on a careful examination of the matter finds that the court below is justified in passing the orders which are impugned in this revision and that therefore, the said orders do not call for any interference.

12. Before concluding, it is apt to note that the plaintiff having terminated the tenancy by a quit notice had brought the suit, apart from for other reliefs, for the relief of eviction and recovery of vacant possession of the plaint schedule property from the defendant. Once, the tenancy comes to an end either by efflux of time or its termination by a quit notice, the possession of the tenant at best is juridical possession. And, such tenant cannot be termed as a tenant at will unless the continuance in possession is with the consent of the landlord. [*vide R.V. Bhupal Prasad v. State of Andhra Pradesh and others (AIR 1996 SC 140)*]. The tenant whose possession is juridical or a tenant holding over possession cannot be heard to say that he is liable to pay

the rent only and not damages for use and occupation or mesne profits. Therefore, it is trite to observe that when once the tenancy is terminated, the tenant holding over is liable to pay something more than the rent towards damages for use and occupation or mesne profits from the date of termination of tenancy till date of delivery of possession of the property. The determination of mesne profits would generally be made having regard to the rental value of the property at the relevant time and the reasonable rent the building would have actually fetched had it been leased out at the relevant time in the normal course. Viewed thus, this Court finds that the determination of the tentative rent made by the Court below cannot be held to be unjust, unfair or unreasonable, in the facts and circumstances of the case.

13. The defendant is granted one month time from the date of the receipt of a copy of this order for depositing the entire arrears, as per the directions in the orders of the trial Court, which are confirmed in this revision. Failing such deposit, the plaintiff is entitled to take appropriate legal proceedings and the trial Court is at liberty to pass appropriate orders in accordance with the procedure established by law.

14. In the result, the Civil Revision Petition is dismissed confirming the orders of the court below.

There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

27th June, 2016
Vjl

[\[1\]](#) 2011 (4) ALD 757

[\[2\]](#) 2015 (1) ALD 38