

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3055 OF 2016

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dated 01.04.2016 in I.A.No.81 of 2015 in O.S.No.481 of 2009 passed by VI Senior Civil Judge, City Small Causes Court, Hyderabad, dismissing the application filed under Order VII Rule 11 read with Section 151 C.P.C., to reject the plaint as the suit is barred by any other law.

2. It is the case of the petitioners/defendants 3 to 5 that the rent payable for the premises is Rs.3,200/- per month besides paying advance-cum-security deposit of Rs.6,00,000/- refundable amount with free of interest and in such case, the Rent Controller alone is entitled to order eviction in view of Section 32 (b) of Andhra Pradesh Buildings (Lease, Rent & Eviction) Control Act, 1960 (for short, 'the Act') and the civil Court has no jurisdiction in view of Order VII Rule 11 (d) of C.P.C.

3. The respondents contention is that the premises was constructed after obtaining permission from the Municipal Corporation in 1996 and construction was completed in the year 1997 and therefore it falls within Section 32 (b) of the Act and Section 32 (c) of the Act has no application to the buildings. Section 32 of the Act reads as under:

“32. Act not apply to certain buildings:- The provisions of this Act shall not apply,-

(a) to any building belonging to the State Government or the Central Government, or Cantonment Board or any local authority.

(b) to any building constructed or substantially renovated, either before or after the commencement of this Act for a period of fifteen years from the date of completion of such construction or substantial renovation.

Explanation I:- A building may be said to be substantially renovated if not less than seventy five per cent of the premises is built new in accordance with the criteria prescribed for determining the extent of renovation;

Explanation II:- Date of completion of construction shall be the date of completion as intimated to the concerned authority or of assessment of property tax, whichever is earlier, and where the premises have been constructed in stages the date on which the initial building was completed and an intimation thereof was sent to the concerned authority or was assessed to property tax, whichever is earlier.

(c) to any building the rent of which as on the date of commencement of the Andhra Pradesh Buildings (Lease, Rent and eviction) Control (Amendment) Act, 2005, exceeds rupees three thousand five hundred per month in the areas covered by the Municipal Corporation in the State and rupees two thousand per month in other cases.”

4. Therefore, taking advantage of Section 32 (b) of the Act, it is contended by the respondents that the civil Court alone is competent to decide such issue.

5. The suit was filed in the year 2009 and 15 years relates back to 1994. Whether the renovation or construction of the building was made after obtaining permission is a question to be decided after full-fledged trial and at this stage, the plaint cannot be rejected, as the building was constructed, as per the allegations made at paragraph No.16, within 15 years prior to filing of the present suit. To reject the plaint under Order VII Rule 11

C.P.C., the allegation made in the plaint alone has to be taken into consideration, but not the defence set up by the defendant.

6. The trial Court dismissed the petition only on the ground that the allegation made in paragraph No.16 of the plaint is to be established by adducing evidence and if the Court finds that the building was constructed about 15 years prior to the date of filing the suit, then the Court may reject the plaint instead of deciding the matter on merits. Therefore, the trial Court is required to decide the issue on the basis of the evidence. Hence, I find that the order of the trial Court is free from any illegality which does not warrant any interference by this Court in exercise of power of superintendence under Article 227 of the Constitution of India.

7. The Civil Revision Petition is accordingly dismissed. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in the Civil Revision Petition shall stand closed.

M.SATYANARAYANA MURTHY, J

Date:12.09.2016

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