

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2106 OF 2016

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, is filed challenging the Order, dated 19.02.2016, in I.A. No.1012 of 2015 in O.S. No.1605 of 2014, passed by the XVII Additional Senior Civil Judge, City Civil Court, Hyderabad, whereby the revision petitioner was directed to pay the admitted rent @ Rs.8,925/- to the petitioners/plaintiffs from 31.07.2015 till disposal of the main suit and further directed to deposit the arrear of rent till the date, within one month from the date of Order.

02. For convenience of reference, the ranks given to the parties in the interlocutory application will hereinafter be adopted through out the Order.

03. The petitioners filed a petition under Section 151 of the Code of Civil Procedure, 1908 (for short, 'CPC') to direct the respondent to pay arrears of monthly rent @ Rs.8,925/- from 31.07.2013, during pendency of the suit, contending that there is a relationship of landlord and tenant between the petitioners and the respondent and the tenancy was terminated on 23.10.2013 by issuing a notice under Section 106 of the Transfer of Property Act, 1882 and the respondent got issued reply on 18.11.2013 admitting the jural relationship, denied the allegations in the notice regarding the arrears of rent. Even after filing the suit, the respondent did not admit the arrears of rent and therefore sought for a direction against the respondent.

04. The respondent disputed the maintainability of the suit itself, while contending that the civil court has no jurisdiction, since the property is wakf property and the Tribunal alone has got jurisdiction, but admitted the occupation of the building as a tenant, jural relationship between them and raised several other

contentions regarding the maintainability of the suit.

05. The trial court, upon hearing both the counsel, passed the aforesaid direction. Aggrieved thereby, the respondent preferred the present revision petition under Article 227 of the Constitution of India on maintainability of the suit before the civil court and occupation of 973 square yards and several other contentions.

06. The trial court passed the aforesaid Order under Section 151 of CPC, though a special procedure is contemplated under Order XV-A of CPC (AP amendment). However, the trial court in first sentence of paragraph 6 has observed that the present petition under Section 151 of CPC is in the nature of Order XV A of CPC and granted relief.

07. Learned counsel for the revision petitioner/respondent contended that he filed a petition under Order XV-A of CPC in I.A.No.956 of 2014 and the same was withdrawn. This fact was not disputed. Section 151 is applicable only when there is no specific provision in CPC. Section XV-A of CPC (AP amendment) is the special provision for the purpose of issuing direction against the tenant or licensee in occupation for payment of admitted arrears of rent after following due procedure in the event, tenant or licensee failed to pay admitted arrears of rent or licence fee along with written statement. But instead of resorting the special procedure under order XV-A of CPC (AP amendment), the respondent/petitioner has resorted to Section 151 of CPC, which conferred inherent power on the Court. But such powers can be exercised only in the absence of any other provision substantially dealing with the particular dispute.

08. Therefore, passing an order under Section 151 of CPC to direct the revision petitioner/respondent to pay arrears of rent is not in accordance with law and mere withdrawal of the petition by the respondent/petitioner is not a ground to treat the petition under Order XV-A of CPC.

09. Hence, the Order passed by the trial court is not in

accordance with law and the trial court ought not to have exercised the power under Section 151 of CPC, when there is specific provision dealing with similar situation i.e. under Order XV-A of CPC (AP amendment), and therefore, on this ground the Order under challenge is liable to be set aside. However, liberty is given to the respondent/petitioner to renew the same request under appropriate provision of law before the trial court and on such filing, the revision petitioner/respondent be afford an opportunity to contest the petition by filing counter and decide the same in accordance with law.

10. With the above observation, the civil revision petition is allowed setting aside the order dated 19.02.2016, in I.A. No.1012 of 2015 in O.S. No.1605 of 2014, passed by the XVII Additional Senior Civil Judge, City Civil Court, Hyderabad. No costs.

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

M. SATYANARAYANA MURTHY, J

Date: 19.08.2016

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