

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

SAMP No.2231 of 2016 in SAMP No.1665 of 2016

IN/AND

SECOND APPEAL No.684 of 2016

JUDGMENT:

The appellant herein is the tenant of the premises under the respondents and the concurrent finding of eviction is challenged in this appeal.

2. Only the so called substantial question of law formulated in admitting the Second Appeal on 12.09.2016 is whether P.W.1 is competent to depose on behalf of the plaintiff being a power of attorney holder and if not, whether the decree passed based on the testimony of the G.P.A.Holder is unsustainable. There was also stay granted after admitting the Second Appeal vide orders in SAMP No.1665 of 2016 on 12.09.2016.

3. In fact, the respondents-landlords already filed a caveat. There is a mistake in not entering the factum of caveat pending, which resulted in considering the application in SAMP No.2231 of 2016 granting the order of stay on 12.09.2016. Orders passed ignoring the caveat are in fact unsustainable. It is also the submission that had the caveat properly entered and opportunity given, it could be argued of no worth grounds of appeal to admit the second appeal for no substantial questions of law involved for the law is well settled of a G.P.A.Holder is a competent

witness but for not entitled to attribute personal knowledge of facts without personal knowledge, but for to the principal and lost the opportunity there from and the stay is to be vacated and the second appeal for admission be afresh heard.

4. Having regard to the above, the stay granted while pendency of the caveat is since unsustainable, though irregular orders otherwise survive till same is set aside. It is the duty of the Court not to perpetrate such illegally but for to revert the clock back by vacating the stay granted on application in SAMP No.1665 of 2016 and to decide afresh to grant stay or not subject to admission of the second appeal. Needless to say, the question of law to be formulated in admitting the Second Appeal is within the prerogative of the Court. However, right of hearing once contemplated to one party, it is equally required to the other party, who is on caveat. Thereby, it also requires further hearing for admission afresh.

5. It is in the course of hearing the second appeal afresh for admission, a consensus is arrived between the parties for the eviction order against the tenant while confirming, grant time to vacate till April end of 2018 and in the mean time, towards use and occupation charges from 01.01.2016 to 30.04.2018, the tenant has to pay at Rs.5,500/- p.m. and the amounts to be paid every month regularly. In default of payment of amounts for three continuous months, it entitles the landlords to execute the

decree. In view of the undertaking given by the tenant in the open Court to bound by it, the same is recorded.

6. Accordingly and in the result, SAMP No.2231 of 2016 and Second Appeal are disposed of by confirming the eviction order against the tenant-2nd appellant, granting time for eviction by permitting the tenant to continue till end of April, 2018 and to vacate by end of April, 2018 by recording said undertaking of tenant to comply and failing which the landlords are entitled to execute the decree passed by the trial Court confirmed by the lower appellate Court and also confirmed in this second appeal, which continuation is subject to payment of use and occupation charges from the understanding at Rs.5,500/- p.m. and in case of continuous default for three months at any time to cause vacate mean time.

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

Dr. B. SIVA SANKARA RAO, J

Date:15.12.2016
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