

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.2935 of 2015

ORDER:

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This Civil Revision Petition under Section 115 of the Code of Civil Procedure, 1908 ('the Code', for brevity) by the unsuccessful defendant is directed against the orders dated 30.01.2015 of the learned V Senior Civil Judge, City Civil Court, Hyderabad passed in IA.no.105 of 2014 in OS.no.149 of 2011 filed by the plaintiff under Order XV-A read with Section 151 of the Code of Civil Procedure, 1908 ('the Code', for brevity) requesting to direct the defendant/tenant to deposit the admitted arrears of rent in a total sum of Rs.48,150/- for the period from August 2013 to December 2013 at the rate of Rs.9,630/- per month and to continue to remit the said monthly rent at the said rate every month till the disposal of the suit.

2. I have heard the submissions of the learned counsel 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 preliminary facts, in brief, are as follows:

The plaintiff is a landlady. The defendant is the tenant in the suit schedule premises belonging to the landlady. The defendant had taken the suit schedule premises for running his hotel business. As on the date of the institution of the suit, the monthly rent is Rs.9,630/- as per the terms of the lease agreed to between the parties. While so, the plaintiff brought the suit for eviction of the defendant/tenant and for recovery of vacant peaceful possession of the plaint schedule property from him and for future mesne profits at the rate of Rs.20,000/- per month from 01.12.2010 till the date of delivery of possession of the property and for costs. The defendant filed a written statement-cum-counter claim and is thus not only resisting the suit but is also seeking a relief of damages in a sum of Rs.5.00 lakhs for the damages

caused to his belongings in the suit schedule premises by the plaintiff and her men and also Rs.3,20,000/- towards damages for the period from 10.05.2013 to 07.08.2014 along with interest at 18% per annum and costs. The plaintiff filed a rejoinder statement in reply to the counter claim and is resisting the counter claim of the defendant. The suit was instituted in December 2010 and the amended counter claim with the additional relief in regard to the claim of damages at Rs.3,20,000/- stated supra was filed in February 2015. While so, the plaintiff filed the aforementioned IA before the trial Court seeking the aforementioned relief *inter alia* contending as follows: -

‘The defendant failed to pay the admitted amount of rents in a total sum of Rs.48,150/- @ Rs.9,630/ per month from August 2013 to December 2013, that is, for five months exclusive of electricity charges and property taxes and that the defendant without paying the said rents involved the plaintiff in unnecessary litigations before various fora and that in the circumstances, the defendant shall be directed to deposit the said arrears of rent and that on his failure to so deposit his defence shall be struck off.’ The defendant filed a counter affidavit *inter alia* contending as follows: ‘The termination notice dated 20.10.2010 was issued by the plaintiff only to harass the defendant. The plaintiff leased out the property of an area of 424 Square feet. Having taken the said property on lease, the defendant, with the permission of the plaintiff, had constructed a building approximately over 1000 square feet of property and had invested Rs.5.00 lakhs on the said construction for running his hotel business for a period of five years. The allegation in the affidavit of the plaintiff that the arrears are admitted is untrue. The plaintiff and her henchmen had forcefully trespassed into the suit schedule property on 10.05.2013 and damaged the hotel equipment and threatened the defendant and his members of staff with dire consequences. Therefore, the defendant had made a counter claim of Rs.5.00 lakhs besides the claim of damages for Rs.3,20,000/- with interest as stated in the written statement-cum-counter claim. The defendant had also lodged a complaint with the Station House Officer of the police station concerned. On his complaint a case in Crime no.228 of 2013 was registered for the offences punishable under Sections 323, 506, 509, 448, 427 and 420 of the IPC. Out of fear on account of the

actions of the plaintiff and her henchmen the defendant had stopped his hotel business and has permanently closed the business from 10.05.2013; and, he had kept the premises under his lock and key. On account of the conduct of the plaintiff, the defendant is unable to carry on his business. The suit is intended with a mala fide intention to evict him.' At the time of enquiry before the trial Court, no documents were exhibited. No oral evidence was adduced by either of the parties. On merits, the trial Court had allowed the petition and directed the defendant to deposit the arrears of rent as claimed in the petition of the plaintiff and further directed that the defendant shall pay Rs.9,630/- per month every month till the date of the disposal of the main suit and granted time till 19.02.2015 for deposit of the said arrears. The aggrieved defendant-counter claimant is, therefore, before this Court.

4. The learned counsel for the defendant while reiterating the stand in the written statement-cum-counter claim and also in the counter filed in the IA had stated that the construction in the subject property, which was leased out, was made by the defendant by spending Rs.5.00 lakhs and that the plaintiff and her henchmen have trespassed into the property and had damaged the hotel equipment on 10.05.2013 and that for fear of the actions of the plaintiff and her henchmen, the hotel business was closed and that in view of the conduct of the plaintiff, the defendant cannot be compelled to pay any arrears of rent because, despite the fact that he is in possession of the property he is not carrying on any business since 10.05.2013 and that the plaintiff is not entitled to the amount claimed and that on the other hand he is entitled to claim damages as claimed in the counter claim.

5. On the other hand, the learned counsel for the plaintiff while supporting the orders of the Court below had contended that as rightly observed by the Court below when the defendant who is continuing in possession of the property had not paid the rents admittedly for the period mentioned in the application, the defendant is not entitled to contest the suit by raising any defence unless he deposits the arrears of rent as envisaged under the provision of Order 15-A and that as long as the defendant is in possession of the property he is bound to pay the arrears of rent and shall also continue to

pay the rent at the rate of Rs.9,630/- per month and that the issue of damages has to be decided in the suit on merits and that, therefore, the order impugned does not warrant interference.

6. I have bestowed my attention to the facts and the submissions. There is no need to dilate on the pleadings and the contentions, which are already stated supra, in detail. The jural relationship is admitted. The defendant is continuing in possession of the suit schedule property is also admitted. Whether or not the defendant would be entitled to damages is an issue to be decided after full-fledged trial and there is no need to go into the said aspect in this IA filed under Order 15-A of the Code. There is no dispute that the monthly rent is Rs.9,630/-. As long as the defendant continues in possession of the property by disputing the validity of the termination notice, he is bound to pay the monthly rent under facts and in law. Admittedly, he did not pay the rents from August 2013 to December 2013 for five months. The contentions that on account of the earlier illegal conduct of the plaintiff and her henchmen and for fear of similar actions of the plaintiff and her men, the defendant had closed his business and is not running his hotel business is no ground to deny the payment of rents by the defendant to the landlady as he is under a legal obligation to pay the admitted rents as long as he continues in possession of the property. In view of the aforesaid admitted facts and reasons, this Court finds that the order of the Court below does not warrant any interference.

7. In the result, the Civil Revision Petition is dismissed confirming the orders of the Court below. However, the revision petitioner/tenant is granted a time of five (05) months from the date of the receipt of a copy of this order for depositing the entire arrears up to date as directed in the orders of the Court below. It is needless to state that he shall continue to pay or deposit the rents, which may successively fall due in respect of the schedule property, until the termination of the suit before the trial Court. However, it is necessary to mention that since the defendant had made a counter claim, as rightly contended by the learned counsel for the defendant, for non payment/deposit of the arrears of rents, the counter claim cannot be struck off.

There shall be no order as to costs.

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

M.SEETHARAMA MURTI, J

22nd March, 2016
Vjl