

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTY

C.R.P.No.4213 of 2016

ORDER

This revision under Article 227 of the Constitution of India is filed challenging the order dated 10.06.2016 passed in I.A.No.14 of 2016 in O.S.No.1462 of 2015 by the learned VII Junior Civil Judge, City Civil Court, Hyderabad, wherein the learned Judge granted permission to the petitioner/plaintiff to deposit rent at the rate of Rs.3,000/-per month from June, 2015 till disposal of the suit filed by him for perpetual injunction.

2. The respondent herein filed a petition under Section 151 CPC, in the suit filed by him for grant of perpetual injunction claiming to be a tenant of petition schedule premises under oral lease agreement, seeking permission to deposit an amount of Rs.3,000/-per month from June, 2015 onwards, alleging that he entered into a lease agreement orally with the petitioners/defendants in respect of petition schedule premises in the year 2004 on payment of monthly rent of Rs.1,500/- initially, exclusive of electricity and other charges and he was running business in the said property from 2004 onwards and later, the rent was enhanced to Rs.3,000/-per month and accordingly, he was paying the same. The respondent herein states that he renovated the premises by incurring an amount of Rs.7 lakhs, which shall be refunded at the time of vacating the premises as per the agreement. Since the first petitioner allegedly made an attempt to interfere with the possession, the respondent filed the suit for permanent injunction and sought for interim order to deposit the rent to the credit of the suit.

3. The first respondent in the impugned application filed counter admitting the jural relationship of landlord and tenant and denied the alleged interference with the possession and enjoyment of the petitioner therein over the petition schedule property while contending that the rent payable for the premises was at Rs.6,650/- per month, but the petitioner wanted to deposit meagre amount to the credit of the suit and that the petitioner is not entitled to deposit the amount to the credit of the suit filed for permanent injunction as the petition schedule property is covered by the provisions of Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short 'the Act').

4. This Court ordered notice before admission and notice was served, but none put up appearance on behalf of respondent.

5. During hearing, learned counsel for the revision petitioners/defendants contended that under Section 8 of the Act, a remedy is available to the respondent/plaintiff for deposit of rent and he cannot invoke the jurisdiction of civil Court under Section 151 CPC in a suit filed for perpetual injunction and when the statutory alternative remedy is available, the Court cannot permit him to deposit the rent by exercising the power under Section 151 CPC. He placed reliance on the decision of a Division Bench of this Court in **NEW INDIA ASSURANCE COMPANY LIMITED v. MOROR ALEX¹**. On the strength of the principle laid down in the said decision, learned counsel for the petitioners sought to set aside the order under challenge.

¹ 2003(6) ALD 338 (DB)

6. According to the respondent herein, the rent payable for the premises was only at Rs.3,000/- per month, whereas the quantum of rent is disputed by the revision petitioners contending that rent agreed to be paid was at Rs.6,650/-, but the case of petitioners is that the dispute regarding quantum cannot be decided, at best, the propriety of the order can be decided on the basis of the law declared by this Court.

7. Admittedly, the respondent herein filed suit for perpetual injunction complaining threat of interference by the revision petitioners, i.e., respondents before the trial Court, and sought interim relief to deposit rent at the rate of Rs.3,000/-per month to the credit of the suit. When the premises is covered by the provisions of the Act, if the tenant wanted to deposit rent to the credit of the suit, it is open to the respondent to approach the Rent Controller after taking all the necessary steps as contemplated under Section 8 of the Act, but instead of resorting to approach the Rent Controller under Section 8 of the Act, he approached the civil Court and sought permission to deposit rent. Such procedure cannot be permitted and the trial Court cannot exercise inherent power under Section 151 CPC when a specific remedy under statute is available to the respondent. In **NEW INDIA ASSURANCE COMPANY LIMITED** (1 supra), the Division Bench of this Court categorically held as under:

“.... when a statute contains a particular mode for invoking the right and remedies, the same cannot be given a go by and invoke Section 151 in the guise of seeking substantive justice and the Courts have no such power to statutory provision and grant relief under Section 151 of Civil Procedure Code. In effect,

Section 151 is only a supplementary and complementary to the powers expressly conferred upon it by other provisions of the Civil Procedure Code. But, it cannot be treated as substitute powers. Therefore, the powers under Section 151 are not intended to enable the Court to create fresh rights in the parties, but they are only meant to enable the Court to pass such other orders to meet the ends of justice as may be necessary keeping in view the rights which are conferred on parties by substantive law”.

In view of the law declared by the Division Bench of this Court and when the statute prescribed certain effective remedy for deposit of rent under Section 8 of the Act, granting permission by exercising inherent power under Section 151 CPC in a suit filed for perpetual injunction is bad in law and such order cannot be sustained. Since the trial Court exceeded jurisdiction conferred on it, this Court in exercise of powers under Article 227 of the Constitution of India can interfere with such orders and therefore, by applying the principles laid down in the aforesaid judgment, this Court is of the view that the impugned order is liable to be set aside.

8. In the result, the Civil Revision Petition is allowed setting aside the order dated 10.06.2016 in I.A.No.14 of 2016 in O.S.No.1462 of 2015 on the file of VII Junior Civil Judge, City Civil Court, Hyderabad. However, liberty is given to the respondent herein to resort to the procedure prescribed under the Act subject to permissibility under law. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SATYANARAYANA MURTY, J

21st September, 2016
sj