

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.5779 of 2015

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the 1st defendant/1st respondent is directed against the order dated 07.10.2015 of the learned X Additional Chief Judge, City Civil Court, Hyderabad passed in I.A.no.715 of 2014 in O.S.no.529 of 2013 filed under Order XVA read with Section 151 of the Code of Civil Procedure, 1908.

2. I have heard the submissions of the learned Senior Counsel appearing for the revision petitioner/1st defendant ('the 1st defendant', for brevity) and the learned counsel for the 1st respondent/plaintiff ('the plaintiff', for brevity). I have perused the material record.

3. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows:

The sole plaintiff brought the suit against the defendants 1 and 2 (including revision petitioner herein) for a decree of eviction, recovery of vacant physical possession of the property admeasuring 17000 square feet consisting of stilt, ground + two floors, situated opposite to Road no.5, Krishna Nagar, Jubilee Hills of Hyderabad more fully described in the schedule annexed to the plaint and also for recovery of arrears of rent in a sum of Rs.72 lakhs @ Rs.2 lakhs per month for the period commencing from 01.06.2010 and ending with 15.06.2013 and future mesne profits @ Rs.4 lakhs per month and costs. The 1st defendant having filed the written statement is resisting the suit. In the said pending suit, the plaintiff had filed the subject interlocutory application requesting the Court to direct the 1st defendant to deposit within the time fixed by the Court, the entire arrears of rent and compensation/ damages in a sum of Rs.1,56,000/- and continue to deposit Rs.2,00,000/- every month towards future monthly rents/compensation and to strike off the defence of the 1st defendant on

failure of the 1st defendant to make the deposits as directed by the Court. The 1st defendant had filed a counter resisting the said application. At the time of enquiry before the Court below, no oral and documentary evidence was adduced. On merits, the Court below had partly allowed the petition with costs.

3.1 The operative portion of the order of the Court below, which is impugned in this revision petition filed by the 1st defendant, reads as under:

“In the result, the petition is partly allowed with costs in the following terms:

i) The rate of rent/compensation is tentatively fixed @ 1.50 lakhs per month

ii) The 1st respondent is directed to pay arrears of rent from the date of suit till date of this order @ Rs.1.50 lakhs per month and continue to pay such rate of rent per month on or before 10th of every month till the disposal of suit. The arrears of rent from the date of suit till this order shall be paid within a month from the date of this order.

iii) Other relief sought in this petition is hereby dismissed.”

(Reproduced verbatim)

4. Therefore, the aggrieved 1st defendant had filed this revision petition. Before proceeding further, it is necessary to refer to the relevant pleadings of the parties.

4.1 The case of the plaintiff, in brief, is as follows:

The plaintiff is the owner of the suit schedule property. It originally belonged to the plaintiff's grandmother-Thimmamma w/o D.Sayappa. She died on 31.03.2008. She had executed a registered Will dated 09.01.2006 bequeathing the suit schedule property to the plaintiff. Under an oral agreement of lease, the suit schedule property was leased out to the 1st defendant on 01.05.2008. A lease agreement on her behalf was entered into with D. Vittal Rao, the father of the plaintiff. The cellar portion, ground floor, first, second and third floors admeasure 3980, 3240, 3980, 3600 and 1700 square feet respectively. The total constructed area admeasures 16,500 square feet. The 1st defendant had agreed to pay to the plaintiff Rs.2 lakhs per month as rent. The 1st defendant has to bear the electricity and water

consumption charges. The 1st defendant had not paid rents @ Rs.2 lakhs per month from 01.06.2008. The total arrear of rent due and payable is Rs.1,30,00,000/- as on 15.06.2013. Further, the 1st defendant had unauthorisedly and illegally sublet to the 2nd defendant, a portion consisting of six mulgies in the ground floor. The said subleased portion is shown in pink colour in the sketch annexed to the plaint. Plans for cellar, ground to 3rd floor are separately filed with the plaint. The tenancy is monthly tenancy and is terminable by a notice. The 1st defendant is carrying on business in tailoring and is continuing in the occupation of the suit schedule property under an oral agreement of lease. Since fifteen days notice is sufficient, a notice dated 07.05.2013 terminating the tenancy was issued and the tenancy of the 1st defendant was finally terminated with the end of May, 2013. The 1st defendant having received the notice did not issue any reply. The schedule premises would have fetched a rent of Rs.4 lakhs per month had it been leased out as on the date of the institution of the suit. The 1st defendant had filed O.S.no.675 of 2013 on the file of the Court of the learned II Senior Civil Judge, City Civil Court, Hyderabad against the plaintiff and her father for an injunction. The said suit is being contested by the plaintiff herein. The 1st defendant had admitted that the property is leased out to her on 01.03.2009. According to her submissions, the lease is for 21 years and the monthly rent is Rs.15,000/-. The said allegations are false. The 1st defendant and the sub-lessee, i.e., the 2nd defendant are liable to be evicted from the suit premises. Hence, the suit is filed. The 1st defendant is liable to pay a sum of Rs.1,32,00,000/- + 24,00,000/-, that is, a total arrears in a sum of Rs.1,56,00,000/- to the plaintiff towards arrears of rent as on the date of filing of the subject interlocutory application. The 1st defendant had deliberately withheld the payment of the said rents. Hence, the interlocutory application is filed for the aforesaid reliefs.

4.2 The case of the 1st defendant, in brief, is this:

The material allegations in the plaint and the affidavit filed in support of

the petition of the plaintiff are false. The allegations that the suit schedule property, which is located at Jubilee Hills, is in much demand and that the rental value is not less than Rs.15/- per square foot in the said locality and that under the oral agreement of lease dated 01.05.2008, the property is leased out to this defendant and that the 1st defendant had agreed with the father of the plaintiff to pay a monthly rent of Rs.2,00,000/- excluding electricity and water consumption charges and that the 1st defendant had not paid the rents alleged in the plaint and that a sum of Rs.1,32,00,000/- + Rs.24,00,000/-, i.e., Rs.1,56,00,000/- in all is due and payable by the 1st defendant towards arrears of rent and that the 1st defendant had unauthorizedly and illegally sub-let a portion of the ground floor consisting of six mulgies (shown in pink colour in the plaint plan) to the 2nd defendant are all false and baseless. The claim for alleged arrears of rent from 01.06.2008 is barred by law of limitation. The claim for compensation/damages is unsustainable under facts and in law. The plaintiff did not produce even a single document to show that the monthly rent is Rs.2 lakhs. It is an admitted fact that the 1st defendant was inducted into the property as a tenant by the father of the plaintiff under an unregistered lease deed dated 26.02.2009 entered into between the 1st defendant and the father of the plaintiff on her behalf. The initially agreed lease period is 21 years commencing from 01.03.2009. The rent is fixed at Rs.15,000/- per month. This defendant had deposited Rs.50,000/- towards advance. As per the clauses of the unregistered lease deed, the 1st defendant is authorized and entitled to sublease the property. All the contra allegations in the case pleaded by the plaintiff are false. The 1st defendant, the father of the plaintiff and the sister of the plaintiff by name D.K.Aruna were Directors of M/s D.V.R.Exports Pvt Limited, which is engaged in readymade garments business. In view of the cordial relationship existing between the 1st defendant and the family of the plaintiff, the suit schedule property was leased out to the 1st defendant for a period of (21) years on a monthly rent of Rs.15,000/-. The plaintiff has given General Power of Attorney dated 26.02.2009 to her father to look after her

property affairs during her absence at Hyderabad. In pursuance of the said GPA, the lease deed was executed by the father of the plaintiff and the property was leased out to the 1st defendant. The said M/s D.V.R Exports Private Limited had incurred losses and disputes had arisen among the Directors. The 1st defendant is shouldering the responsibility of running the Company without the aid and help of the other Directors, who had abruptly left the Company. With her hard work, the 1st defendant is able to manage the business; and, the business has picked up; the same has become an eye sore to the plaintiff and her father; and, hence, the present suit is filed. Rents @ Rs.15,000/- per month were paid to the plaintiff in cash and the same were accepted by her till May, 2014. Thereafter, she did not collect the rents. The suit was filed in June, 2013. The present petition is filed in June, 2014, i.e., almost one year after the filing of the suit. No prudent landlady would keep quiet for six years without demanding the rents. No objection was raised in regard to non-payment of rents since 2008. The said fact itself shows that rents are paid up to May, 2014. The 1st defendant is having documentary proof in the form of lease deed dated 26.02.2009 evidencing the fact that the monthly rent is Rs.15,000/-. Except the bald allegation that the monthly rent is Rs.2,00,000/-, no material documents are produced by the plaintiff. The petition is liable to be dismissed.

4.3 As already noted, on merits, the trial Court had partly allowed the petition of the plaintiff.

5. The learned counsel for the revision petitioner/the 1st defendant would contend as follows:

“The Court below erred in fixing tentatively the monthly rent/ compensation @ Rs.1.5 lakh per month in respect of the suit schedule property. The court below ought to have seen that the plaintiff having contended that the monthly rent is Rs.2 lakhs had failed to establish the said contention. The Court below ought to have seen that the 1st defendant had categorically pleaded in her defence that the 1st defendant, the father of the

plaintiff and the sister of the plaintiff by name D.K.Aruna were the Directors of a concern by name D.V.R. Exports Pvt. Limited, which is engaged in readymade garment business and that in view of the cordial relationship existing between the parties, the property was leased out by the father of the plaintiff who is her GPA Holder and that as per the unregistered lease agreement entered into between the father of the plaintiff and the 1st defendant, the period of lease is 21 years and the monthly rent payable is Rs.15,000/- and that subsequently, the business had suffered losses and that therefore, disputes have arisen and that when the other Directors had abruptly left the company, the 1st defendant had alone shouldered the responsibility and that the business has picked up on account of the exclusive efforts and efficient management of the company by the 1st defendant and that the same has become an eye sore to the plaintiff and her father and that therefore, the instant false suit was filed. The Court below ought to have seen that the 1st defendant had also contended that rents upto May, 2014 were paid in cash @ Rs.15,000/- and that subsequently, the plaintiff had failed to collect the rents and that the conduct of the 1st plaintiff in not claiming the alleged rents since 2008 would only show that the claim is false and that the rents are paid up to May, 2014 as stated by the 1st defendant. The Court below ought to have seen that merely because the subtenant is paying Rs.60,000/- to the 1st defendant for a portion of the suit schedule property, that would not mean that the rent of the premises would be much more. The property was leased out on a monthly rent of Rs.15,000/- in view of the initial good relationship as mentioned in the defence of the 1st defendant. Therefore, the question of arrears of rent and the further question of the necessity for fixing the monthly rent at a higher rate do not arise for consideration. The silence on the part of the plaintiff for a considerable length of time and her conduct in not demanding rents at the rate of Rs.2 lakhs and her further conduct in allowing the alleged arrears of rents to be time barred would only show that the claim is false. No prudent landlady would allow the rents to be time barred, if really, the rent is Rs.2 lakhs per month and was not paid for several years. When there is a dispute about the

quantum of rent, the Court below was in error in determining the rent without the parties entering trial and in giving a direction to the 1st defendant to make deposits towards arrears of rent etcetera. As per the settled legal position, when there is a dispute about the quantum of rent, the provision of law does not empower the Court to pre-judge the issue in that regard and that the said issue being a complex factual issue has to be decided after full-fledged trial and not in an interlocutory application filed under Order XV-A of the Code. The order is unsustainable and is liable to be set aside.”

6. On the other hand, the learned counsel for the plaintiff while supporting the orders of the Court below would contend as follows:

The property is a huge property situated at Jubilee Hills, which is a prominent posh locality of Hyderabad. The contention of the 1st defendant that for such a huge property, the monthly rent was fixed @ Rs.15,000/- is *ex facie* ridiculous. The 1st defendant did not produce any documentary evidence to show that the rent is Rs.15,000/- per month and that the rents were paid up to May, 2014 in cash. The jural relationship is admitted. When there is a dispute about the quantum of rent, this Court is empowered to determine the rent or a tentative rent to meet the ends of justice and to give directions in accordance with the facts of the case. The court below had followed the decision of the Supreme Court while holding that the Court is having power to give necessary directions. The decisions relied upon by the learned senior counsel for the 1st defendant are not applicable to the facts of the case. The Court below did not give any direction to deposit arrears of rents, which are claimed in the suit as the said issue has to be resolved finally while adjudicating all the issues involved in the suit. The court below, having regard to the nature, the size and the location of the property and also the fact that the sub-tenant is paying Rs.60,000/- for six mulgies in the ground floor of a huge building, had rightly determined the monthly rent/compensation tentatively at Rs.1,50,000/- per month and had rightly directed the 1st defendant to pay the arrears of rent at that rate per month from the date of the suit only and till the date of the order passed by the Court

below. The Court below had further directed the 1st defendant to continue to pay the rents/compensation at that rate every month on or before 10th of every month till the disposal of the suit. Further, the Court below had granted a time of one month to the 1st defendant to deposit the arrears of rent as directed in the order. Thus, the order passed is a well reasoned and well-considered order. The 1st defendant is admittedly carrying on business. She must have been maintaining accounts. When she is getting a monthly rental income of Rs.60,000/- she cannot be heard to say that she is not an income tax assessee. She ought to have filed her income tax returns which would contain the relevant statements in regard to the monthly rents being paid and being received. The already accrued arrears are in a huge sum of 1.50 lakhs; however, no relief is granted by the Court below in regard to arrears prior to the institution of the suit. Thus, the relief granted is only restricted to the period from the date of the suit. Therefore, no prejudice would be caused to the parties if such impartial and balanced order, which is passed by the Court below, is sustained. On the other hand, if the order is set aside it would tantamount to permitting the 1st defendant to enjoy a huge property in a prominent locality of the city by offering to pay a meager rent of Rs.15,000/- per month. Further, if the 1st defendant ultimately leaves the property suddenly on one day, the plaintiff would not be in a position to realize the huge arrears of rents from the 1st defendant. Hence, the order of the Court below, which is a well-considered order and which is passed keeping in view the interests of both the parties needs no interference by this court in this revision. The 1st defendant had failed to comply with the directions in the order of the Court below, which is impugned in this revision. Therefore, the plaintiff had filed I.A.no.41 of 2016 to strike off the defence of the 1st defendant. The application in I.A.no.41 of 2016 and I.A.no.40 of 2016 filed for extension of time to file counter in I.A. 41 of 2016 were dismissed by the trial Court. The trial Court had allowed I.A.no.41 of 2016 and had already struck off the defence of the 1st defendant. Therefore, the present revision has become infructuous. The revision petition is devoid of merit and is liable to

be dismissed.

7. *In reply*, the learned senior counsel for the 1st defendant would submit that even according to the plaintiff, she is the owner of a huge building. She must also be an income tax assessee. She also did not file any documents like her income tax returns, which contain the statement showing the rents received by her. The decision of the Supreme Court relied upon by the Court below is rendered having regard to the Rent Control law of the State of Tripura and the special provisions contained therein. The provisions of the Rent Control Act of that State are not in *pari materia* with the provisions of the law, which are applicable to the subject tenancy. The tenancy in the present *lis* is governed by the provisions of the Transfer of Property Act. The ratio in the decision of the Supreme Court is not applicable.

8. In view of the contention of the 1st defendant that the plaintiff cannot invoke the provision of Order XV-A of the Code, and that the Court below is not entitled to direct the tenant to pay any arrears of rent by determining the quantum of rent when there is a dispute about the quantum of rent, it is necessary to first refer to the provision of law and the ratios in the precedents. The relevant provision of Order XV-A of the Code reads as follows:

In a suit for recovery of possession, on termination of lease, or licence, with or without a prayer for recovery of arrears of rent, or licence fee, known with whatever description, the defendant, while filing his written statement, shall deposit the amount, representing the undisputed arrears, calculated upto that due into the Court and shall continue to deposit such amount, which becomes payable thereafter within one week from the date on which it becomes due till the judgment is rendered in the suit.

Wherever the defendant pleads in the written statement that no arrears of rent or licence fee exists, it shall be competent for the Court to pass an order in this regard, after affording opportunity to both the parties, and in case any amount is found due, the defendant shall be under obligation to deposit the same, within the time stipulated by the Court and continue to deposit the amount which becomes payable thereafter as provided under Rule 1:

Provided that the time stipulated for payment of amount, as aforesaid, may be extended by the Court for reasons to be recorded for a period not exceeding 15 days.

If the defendant commits default in making the deposits, as aforesaid,

the Court shall strike off the defence.

On such deposit it shall be competent for the plaintiff to withdraw the same.

Explanation: - the expression “the amount representing the undisputed arrears” shall mean the sum of rent, or licence fee calculated for the period for which it remained unpaid, after deducting from it any amount:

- (a) paid as tax, to a local authority, in respect of the property,
- (b) paid to the plaintiff under written acknowledgment, and
- (c) deposited into the Court, in any proceedings, in relation to the said property”.

9. The learned senior counsel for the 1st defendant had placed reliance on the following decisions:

- i) **Manik Lal Majumdar v. Gouranga Chandra Dey** ^[1]
- ii) **Ahmedabad Pvt. Primary Teachers Association v. Administrative Officer** ^[2]
- iii) **Shahabad Coop. Sugar Mills Ltd. V. Spl. Secretary to Government of Haryana Corporation** ^[3]
- iv) **Bangalore Turf Club Ltd v. ESI Corporation** ^[4]
- v) **K.Zakria Shaik v. K.Saleem Basha** ^[5]
- vi) **Najamuddin Kazi v. Mohd Abdul Aziz** ^[6]
- vii) **Chaitanya Lanka v. Suresh Kumar Gupta** ^[7]

Manik Lal Majumdar (1st supra) is a decision rendered in a matter to which the Rent Control Law of Tripura is applicable. The trial Court in the order impugned had made a reference to this decision in support of its reasoning which runs as follows:

“Though, in the above referred decision, the Apex Court was dealing with a case under Tripura Buildings (Lease and Rent Control) Act, 1975, the phrase “all arrears of rent admitted by the tenant to be due” was considered by Apex Court which is similarly couched and coined with phrase ‘the amount representing the undisputed arrears’ under Order 15A of CPC. The phrase “all arrears of rent admitted by the tenant to be due” was considered by the Apex Court and held that if interpreted literally, would mean ‘that unless the tenant specifically admits any arrears of rent to be due to the landlord’. And held that such interpretation frustrate the very object of the provision. It was further held that reasonable meaning of the words ‘admitted by the tenant to be due’ is the inference of admission from the material record. If the material record prima facie discloses the admission of relationship of landlord and tenant and rate of monthly rent payable, the tenant would be required to pay or deposit arrears of rent and continue to pay current rent during the pendency of litigation. Such an interpretation was felt necessary by anticipating various kinds of situations in different cases, such as, where the tenant denies his relationship with the landlord or disputes the quantum of arrears and/or rate of rent. The unscrupulous

tenant may continue to enjoy the premises without payment of any rent by driving the litigation for a long period. The landlord has to wait for his legitimate amount till the final decision and thereafter recover by execution proceedings. To arrest such kind of misuse, the Apex Court had disinclined to give literal meaning to such words.” (Reproduced verbatim)

Thus, the Court below by placing reliance on the decision of the Supreme Court had held that the phrase “the amount representing the undisputed arrears” employed in order XV-A of the Code is couched and coined in a similar language and is therefore, equivalent to the phrase “all arrears of rent admitted by the tenant to be due”, which is employed in the Rent Control law of Tripura and had hence held in favour of the plaintiff while interpreting the provision of law under Order XV-A of the Code. On the other hand, the contention of the learned senior counsel for the 1st defendant is that the provisions of the two enactments are not *pari materia* and the decision of the Supreme Court is inapplicable to the facts of the case on hand. He would also contend that the Court below without having regard to the factual matrix of the reported case and the case on hand and without considering the provision of the law applicable in our State had erroneously fixed the tentative rent payable by the 1st defendant. As already noted, the learned Senior Counsel for the 1st defendant while stating that a decision rendered with reference to the State law of Tripura is not applicable to the case on hand, had placed reliance on the decisions in **Ahmedabad Pvt. Primary Teachers Association case** (2nd supra), **Shahabad Coop. Sugar Mills Ltd.** (3rd supra) and **Bangalore Turf Club Ltd** (4th supra) in support of his contention that when the provisions of an Act of another State and the provision of an Act of the parent State on the same subject matter are not in *pari materia*, it is impermissible to take aid of the provision of the Act of another State. In the decision in **Zakria Shaik** (5th supra), this Court while referring to the provisions of Order XV-A of the Code had held as follows:

“The purpose underlying the provision is to ensure that the owner of the premises leased to the defendant in a suit pays the rents regularly, together with arrears, if any. The word “undisputed” occurring before the word “arrears”, assumes significance. If there is a dispute as to the quantum, the Court has to decide the same, duly taking into account, the versions put forward by the parties. In this regard, slightly different

approach is needed in respect of a suit in which recovery of arrears is prayed for, as one of the reliefs on the one hand and a suit for eviction simplicitor on the other hand. If the defendant opposes the claim in the suit, as to arrears, the adjudication thereof must take place after trial. An application under Order 15-A of C.P.C. is not the proper mechanism to recover the suit amount, if seriously disputed by the defendant. Under the garb of seeking relief under that provision, plaintiff in a suit cannot pray for recovery of the entire amount, which incidentally is claimed in the suit itself. In such an event, the suit comes to be virtually decreed to that extent without trial, but through an order under Order 15-A of C.P.C.

If the arrears existed from the date of filing of the suit, a direction can certainly be issued for deposit thereof in an application filed under Rule 15-A of C.P.C. Any direction for deposit of arrears prior to the date of filing of the suit can be issued, only when there is no dispute. If there is divergence of opinion between the parties as to the quantum or liability, the determination thereof has to be relegated to a subsequent stage and a finding has to be given after trial. An exercise contemplated under Order 15-A of C.P.C. is totally inadequate and unsuited for final determination of the arrears of rent for the period anterior to the date of filing of the suit.”

A plain reading of the ratio in the decision would show that when there is a dispute in regard to the quantum of rent or the arrears of rent due and payable prior to the suit or when there is a divergence of views between the parties in regard to the quantum of rent or the liability in respect of arrears of rent prior to the date of filing of the suit, the determination thereof has to be relegated to a subsequent stage and a finding has to be given after trial. In such a situation, no directions can be given to deposit the arrears of rent for the period anterior to the date of filing of the suit. Nevertheless, in regard to arrears of rent due and payable for the period from the date of the filing of the suit, a direction for deposit of arrears thereof can certainly be given in an application filed under Order XV-A of the Code. In such a situation, even if there is a dispute as to the quantum of rent, the Court is empowered to decide the same duly taking into consideration the versions put forward by the parties and the facts and circumstances of the case. In *Najamuddin Kazi* (6th supra), this Court followed the above decision in **Bangalore Turf Club** (4th supra) and gave certain directions to the parties having regard to the facts of that case. In the decision in *Chaitanya Lanka* (7th supra), this Court while interpreting Order XV-A of the Code, held as follows:

“In an application filed under Order XV-A C.P.C, three aspects become

relevant, namely, (a) existence of the lease between the parties vis-à-vis the suit schedule property; (b) quantum of rent; and, (c) the period for which the rent was not paid. If there is no dispute on these aspects, an order for payment of arrears must follow, as a matter of course, with a threat of forfeiture of the right to defend the suit. If there is a dispute on those aspects, the semblance of enquiry is to be undertaken. If the controversy as to the very existence of arrears is serious enough, it must be dealt with, only at the trial of the suit.”

In this decision also, this Court referred to the earlier decision in **K.Zakria Shaik** (5th supra). On facts of the cited case, this Court found that there is no dispute on any of the three aspects referred to above and, therefore, disposed of the revision petition on the facts peculiar to that case.

10. The decisions in **Madala Jyothi v. Karanam Tirupalaiah**^[8] and **M.Vijaya Lakshmi and others v. Kalanikethan Textiles and Jewelles Pvt. Ltd., Hyderabad**^[9] are relied upon by the learned counsel for the plaintiff in support of the contention that unregistered lease deed is inadmissible in evidence. The said document is not exhibited at the time of enquiry before the Court below and no request for exhibiting the said lease deed is made before this Court also. In fact, the learned senior counsel for the 1st defendant had fairly conceded that for want of registration and deficiency in stamp duty, the said document is inadmissible in evidence. Since the said document is not marked at the time of enquiry before the Court below, the same was not looked into and was not considered by the Court below. Hence, there is no need to dilate on the cited decisions. In **Kalanikethan's** case (9th supra), this Court had referred to the decisions in **Sri Vasavi Boys Hostel and Mess. K.Satya Prasad rep. by his GPA Holder** [2012 (4) ALD 140] as well as the provision of law under Order XV-A (A.P. Amendment) of the Code. The facts of the cited case disclose that a suit is filed for eviction and recovery of certain sum and also future mesne profits from the date of filing of the suit and that during the pendency of the suit, an application under Order XV-A was filed for a direction to the 1st respondent to deposit the arrears of rent of Rs.90 lakhs and monthly rents @ Rs.15 lakhs to the credit of the suit in the lower Court. The trial Court had dismissed the petition of the

plaintiff. The plaintiff had filed the revision before this Court. Having regard to the above facts of the case, this Court while allowing the CRP had *inter alia* held as follows: "...even where there is a dispute with regard to the quantum of rent and other charges payable by the 1st respondent, the Court can still hold a summary enquiry and adjudicate such a dispute while deciding an application under Order XV-A of CPC." Thus in this decision, this Court held that even when there is a dispute in regard to quantum of rent, a summary enquiry can still be held by the trial Court while disposing of an application under Order XV-A of the Code.

11. Thus, on a reading of the provision of law and the ratios in the cited decisions, this Court is satisfied that it is competent for the Court to hold a summary enquiry after affording an opportunity to both the parties (landlord and tenant) to put forward their versions and to pass an order giving directions to the tenant, in case, any amount is found due and payable, to deposit the same within the time stipulated by the Court and to continue to deposit the monthly rent thus determined and which becomes payable thereafter, as provided under Order XV-A of the Code. Insofar as the undisputed arrears, if any, prior to the suit, the provision itself makes clear that the defendant, while filing his written statement, shall deposit the amount, representing the undisputed arrears, calculated upto that date into the Court and shall continue to deposit such amount, which becomes payable thereafter within one week from the date on which it becomes due and till the judgment is rendered in the suit. In the case on hand, the trial Court by the order impugned did not give any directions in regard to arrears of rent anterior to the suit, which are claimed in the suit and had therefore, left the said issue in regard to arrears anterior to the suit to be determined after full-fledged trial. The trial Court in the impugned orders had only recorded findings and gave directions in regard to arrears from the date of the suit only. The provision of law makes it plain that when the defendant pleads in the written statement that no arrears of rent or licence fee exists, it shall be competent for the Court to pass an order in this regard, after affording an opportunity to both the parties. The provision further makes it plain that while passing such order,

the Court can give directions to the defendant/tenant to deposit the amount, if any, found due within the time stipulated by the Court and to continue to deposit the amount, which becomes payable thereafter. Therefore, in the well considered view of this Court, there are no impediments in law for entertaining an interlocutory application filed under Order XV-A of the Code and determining the issue of arrears of rents due and payable subsequent to the institution of the suit and for giving suitable directions to the defendant/tenant to deposit within the time stipulated by the Court, the amounts, if any, found due. However, such determination shall be made after holding a summary enquiry by affording an opportunity to both the parties to put forward their versions. Hence, the first contention of the learned senior counsel for the revision petitioner/1st defendant that when there is a dispute about the quantum of rent, no direction can be given to the 1st defendant to deposit the arrears of rents, found due and payable, for the period subsequent to the institution of the suit is untenable and is devoid of merit. The said contention is accordingly rejected.

12. The next short question is – ‘Whether in the facts and circumstances of the case, the Court below was correct in determining tentatively the rent/compensation @ Rs.1,50,000/- per month and in giving directions to deposit the arrears from the date of the suit till the date of the order and to continue to pay the said rent or compensation at the said rate till the disposal of the suit?’

13. The plaintiff contends that the rent is Rs.2 lakhs per month. The 1st defendant contends that the rent is Rs.15,000/- per month. Considering the huge extent/area of the subject property consisting of cellar and three upper floors, the nature of the property, its prominent location at Jubilee Hills of Hyderabad and the fact that the 1st defendant had admittedly sub-let a portion in the ground floor consisting of the six mulgies and is getting a rental income of Rs.60,000/- per month, the trial Court had determined the tentative rent/compensation to be deposited by the 1st defendant from the date of the suit @ Rs.1,50,000/- per month. The 1st defendant’s contention is that in the

circumstances stated in her defence and in the special circumstances in which the parties were placed at the relevant time and in view of the cordial relationship between the parties, which existed at the inception, the property was leased out on a monthly rent of Rs.15,000/- though the property is of a huge extent and is situate in a prominent locality of the city. Neither of the parties had filed any documentary evidence to show the quantum of rent. The 1st defendant contends that the rents were paid in cash till they were received without being refused to be received. Thus, there is no practice of paying rents after obtaining receipts. Rents that were said to have been paid were paid in cash. According to the 1st defendant, rents were paid in cash upto May, 2014. However, according to the plaintiff, the rents are not being paid since June 2008 @ Rs.2 lakhs per month. The suit is instituted after terminating the tenancy in the year 2013. The arrears upto the date of the institution of the suit, that is, from 01.06.2008 to 15.06.2013 in a sum of Rs.1,30,00,000/- are claimed in the suit. In the enquiry in this interlocutory application, which is the subject matter of revision, this Court need not go into the issue of arrears of rent anterior to the institution of the suit as the Court below did not direct the 1st defendant to deposit any arrears anterior to the suit and which are allegedly due for the period prior to the institution of the suit. The suit was instituted on 15.06.2013. Whether the claim in respect of arrears of rents anterior to the suit is barred by time either in full or in part is a question which has to be gone into by the Court below at an appropriate later stage, i.e., after full-fledged trial. The learned counsel for the plaintiff would submit that the claim of arrears of rent is restricted to a period of three years prior to the institution of the suit. Be that as it may, the written lease deed, which is inadmissible in evidence, is not before this Court. As there is no practice of issuing of receipts for the rents paid and as the claim of the plaintiff is that the rents are not being paid since 2008, her contention that she is not in a position to produce any documentary evidence in regard to quantum of rent appears to be probable. According to the version of the 1st defendant, the business of the Company was running in losses at the time the other Directors had abruptly left the company and that she had exclusively

shouldered the business responsibility and that she had singularly managed and improved the business and that the business has picked up by now, on account of her efforts. Thus, the fact that the 1st defendant is still carrying on the business is undisputed. Therefore, she must have been maintaining some accounts for income tax and sales tax/service tax purposes cannot be disputed. She is admittedly receiving a rent of Rs.60,000/- per month from her sub-tenant/the 2nd defendant to whom she had sub-let the six mulgies in the ground floor of the subject building. Therefore, she is having substantial income is also not in dispute. Therefore, she cannot be heard to say that she is not an income tax assessee. Therefore, she ought to have filed the copies of her income tax returns with statements, if any, to show as to what was the rent that is being accounted for in the books of accounts in respect of the plaint schedule property. In the first legal notice, according to the 1st defendant, the plaintiff had claimed a rent of Rs.1 lakh towards mesne profits for use and occupation of the ground floor and that in the second notice, the plaintiff had claimed Rs.1 lakh from the 1st respondent and Rs.1,50,000/- per month from the 2nd respondent towards mesne profits and that the variation in the said claims in the notices would show that the rent could not be Rs.2 lakhs per month. Even those notices were not exhibited at the time of enquiry before the court below. Therefore, in the facts and circumstances of the case, the trial Court having been left with no option but to deal with the versions put forward by the parties in their pleadings had proceeded to determine the rent tentatively based on the material available on record. In the circumstances, the trial Court had taken into consideration the entire material on record; and basing on the demand of rent of Rs.1 lakh per month from the 1st respondent and the admission of the 2nd respondent regarding rent for the ground floor @ Rs.69,000/- per month, the trial Court had held that the claim of the plaintiff in regard to rents in any view of the matter is not less than Rs.69,000/- per month. The trial Court had noted that the 2nd defendant in his written statement filed on 04.03.2014 had clearly admitted that his possession is on the strength of sub-lease given by the 1st defendant in February 2010 and

that the initial rent was Rs.60,000/- per month with provision for increase @ 15% every three years. On the basis of such admissions, the trial Court had come to a conclusion that as on the date of the suit in June 2013, the 2nd defendant was paying Rs.69,000/- per month to the 1st defendant in respect of just an area of 2600 feet, which is only 15% of the total area of 17000 square feet leased out by the plaintiff to the 1st defendant. Thus, after duly considering the above facts and also the twin facts that the property is a huge property consisting of cellar and three upper floors and that the property is located in a prominent and posh area of the city, the trial Court had recorded a *prima facie* finding in regard to the quantum of rent and had accordingly determined the tentative rent or compensation payable by the 1st defendant to the plaintiff @ Rs.1,50,000/- per month for the period from the date of the suit while *inter alia* holding that the issue in regard to pre-litigation arrears will have to be decided after full-fledged trial. Such determination of the tentative rent made by the Court below is thus based on facts and pleadings and on an inferential process, which is just and fair. Further, the trial Court had cautiously observed in its order that the determination of rent made in the interlocutory orders is tentative and that it is subject to final adjudication in the main suit. The trial Court also did not give any permission to the plaintiff to withdraw the amounts that may be deposited by the 1st defendant pursuant to its orders. Therefore, the trial Court has taken into consideration the interests of both the parties while passing the impugned orders. In the facts and circumstances of the case, this Court on a careful examination of the matter finds that the court below is justified in passing the orders which are impugned in this revision and that therefore, the said orders do not call for any interference.

14. Before concluding, it is apt to note that the plaintiff having terminated the tenancy by a quit notice had brought the suit apart from other reliefs for the relief of eviction and recovery of vacant possession of the plaint schedule property from the defendants 1 and 2. Once, the tenancy comes to an end either by efflux of time or its termination by a quit notice, the possession of the

tenant at best is juridical possession. And, such tenant cannot be termed as a tenant at will unless the continuance in possession is with the consent of the landlord. [*vide* **R.V. Bhupal Prasad v. State of Andhra Pradesh and others (AIR 1996 SC 140)**]. The tenant whose possession is juridical or a tenant holding over possession cannot be heard to say that he is liable to pay the rent only and not damages for use and occupation or mesne profits. Therefore, it is trite to observe that when once the tenancy is terminated, the tenant holding over is liable to pay something more than the rent towards damages for use and occupation or mesne profits from the date of termination of tenancy till date of delivery of possession of the property. The determination of mesne profits would generally be made having regard to the rental value of the property at the relevant time and the reasonable rent the building would have actually fetched had it been leased out at the relevant time in the normal course. Viewed thus, this Court finds that the determination of the tentative rent made by the Court below cannot be held to be unjust, unfair or unreasonable, in the facts and circumstances of the case.

15. In the result, the Civil Revision Petition is dismissed confirming the orders of the court below.

Before parting with the matter, it is to be noted that though the defence of the 1st defendant was struck off on her failure to comply with the orders of the Court below and pursuant to an application made by the plaintiff in that regard, the learned senior counsel for the 1st defendant would submit that an application is already filed to set aside the said consequential orders. However, in view of the dismissal of this revision petition, the 1st defendant is given liberty to make a fresh request to the Court below by filing an appropriate and necessary application to permit her to contest the suit after setting aside the order striking off the defence, subject, however to the condition of filing an affidavit undertaking to deposit, within eight weeks from the date of receipt of a copy of this order, the entire arrears of rent @ Rs.1,50,000/- per month from the date of the suit till the date of such request and on further undertaking to continue to pay the rent @ Rs.1,50,000/- every month for future period on or before 10th of every succeeding month till the

disposal of the suit without prejudice to the rights and contentions of both the parties. On the 1st defendant complying with the condition in regard to giving an undertaking as directed in these orders, the trial Court shall consider the request of the 1st defendant and give an opportunity to the 1st defendant to contest the suit by setting aside the orders striking off the defence of the 1st defendant. However, the 1st defendant shall not be allowed to contest the suit unless the undertaking given in the affidavit is complied with within the aforementioned time.

There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

11th April, 2016
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- [\[1\]](#) (2005) 2 Supreme Court Cases 400
 - [\[2\]](#) (2004) 1 Supreme Court Cases 755
 - [\[3\]](#) (2006) 12 Supreme Court Cases 404
 - [\[4\]](#) (2014) 9 Supreme Court Cases 657
 - [\[5\]](#) 2011 (4) ALD 757
 - [\[6\]](#) 2013 (5) ALD 397
 - [\[7\]](#) 2014 (5) ALD 744
 - [\[8\]](#) 2015 (5) ALT 472
 - [\[9\]](#) 2015 (1) ALD 38