

HON'BLE SRI JUSTICE R. SUBHASH REDDY

CIVIL REVISION PETITION No.56 of 2016

ORDER :

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioners/defendants aggrieved by the docket order dated 30.09.2015 in I.A.No.5372 of 2013 in O.S.No.695 of 2009 passed by the Chief Judge, City Civil Court, Hyderabad, allowing the application filed by the respondent/plaintiff under Order XX Rule 12 r/w. Section 151 of C.P.C., seeking appointment of an Advocate Commissioner to determine the mesne profits/damages from the date of suit i.e., 03.12.2009 till the date of delivery of vacant peaceful possession of the petition schedule property.

2. The respondent/plaintiff filed suit in O.S.No.695 of 2009 on the file of the Chief Judge, City Civil Court, Hyderabad, for eviction of the petitioners/defendants and for mesne profits. The said suit was decreed by judgment and decree dated 23.09.2013, the operative portion of which reads as under:

“In the result, the suit is decreed in part in favour of the plaintiff with proportionate costs holding that the plaintiff is entitled to a decree for eviction of the defendants and recovery of vacant peaceful possession of the plaint schedule property from the defendants, and accordingly the defendants are directed to vacate the plaint schedule property and put the

plaintiff in vacant and peaceful possession of the same within four months from the date of this judgment; and it is further decreed that on an application that may be made by the plaintiff under Order XX of the Code of Civil Procedure an enquiry be made in accordance with the procedure established by law as to the amount of the damages/mesne profits payable by the defendants to the plaintiff from the date of the suit (03.12.2009) till the date of delivery of vacant peaceful possession of the schedule property by the defendants to the plaintiff. The rest of the suit claim of the plaintiff is dismissed without costs. The counter claim of the defendants is also dismissed without costs.”

3. To ascertain the mesne profits for the period from the date of the suit i.e., 03.12.2009 till the date of delivery of vacant peaceful possession of the suit schedule property i.e., 31.12.2013, the respondent/plaintiff, who is the decree holder, has filed the aforesaid application being I.A.No.5372 of 2013 in O.S.No.695 of 2009 under Order XX Rule 12 r/w. Section 151 of C.P.C., seeking appointment of an Advocate Commissioner and the same has been allowed through the impugned order dated 30.09.2015.

4. In this revision, it is contended by the learned counsel for petitioners/defendants that as against the judgment and decree dated 23.09.2013 in O.S.No.695 of 2009, the petitioners/defendant have carried the matter by way of appeal in C.C.C.A.No.3 of 2014 and vide interim order dated 21.01.2014 in C.C.C.A.M.P.No.10 of 2014 in C.C.C.A.No.3 of 2014, this Court granted stay of eviction

subject to the condition of payment of arrears of rent upto 31.12.2013 and further directed the petitioners/defendants to deposit a sum of Rs.60,000/- towards damages for use and occupation of the subject premises from January, 2014 onwards. It is submitted that in view of such orders passed by this Court, it is open for the trial Court to appoint an Advocate Commissioner in order to ascertain the mesne profits.

5. It is to be noticed that the judgment and decree dated 23.09.2013 in O.S.No.695 of 2009 is not suspended and further the impugned order dated 30.09.2015 is to conduct an enquiry with regard to mesne profits from the date of the suit i.e., 03.12.2009 till 31.12.2013 only. Further, as mesne profits was not fixed and in the absence of suspension of the judgment and decree dated 23.09.2013 in O.S.No.695 of 2009 by this Court, it is always open for the trial Court to proceed with the enquiry with regard to mesne profits. Therefore, it cannot be said that the impugned order runs contrary to the interim order dated 21.01.2014 passed by this Court in C.C.C.A.M.P.No.10 of 2014 in C.C.C.A.No.3 of 2014.

6. For the aforesaid reasons, I do not find any merit in this civil revision petition warranting interference by this Court.

7. Accordingly, this Civil Revision Petition is

dismissed, at the admission stage. As a sequel,
miscellaneous petitions pending, if any, shall stand
closed. No order as to costs.

JUSTICE R. SUBHASH

REDDY
07.01.2016.
Msr

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