

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Civil Revision Petition No.3547 of 2016

Order:

Aggrieved by an order passed by the Trial Court in an application under Order XV-A of the CPC, directing the deposit of the arrears of rent, the tenants have come up with the above revision.

2. Heard the learned counsel on both sides.

3. The grievance with which the landlord filed a suit for ejectment as well as the recovery of arrears of rent was that the monthly rents from October, 2013 had not been paid.

4. The petitioners/tenants have filed a written statement and issues have been framed on 22-6-2016.

5. In the meantime, the landlord took out an application in I.A.No.52 of 2016 under Order XV-A, CPC which reads as follows:

"ORDER XV-A

(1) 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 up to 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.

(2) Whether 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 areas” 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.”

6. There is no dispute between the parties that the monthly rent payable as on the date of expiry of the lease was Rs.37,174/-. Therefore, the two areas of disputes are:

(a) whether there were arrears and (b) whether under Order XV-A, the enhancements as provided in the lease deed should also be taken into account for the purpose of passing an order under the said provision.

7. Insofar as the 1st issue is concerned, the petitioners appear to have filed only 4 receipts along with their written statement to show that there were no arrears at least up to October, 2015. That there were arrears after October, 2015 is admitted by the petitioners. Therefore, in the absence of proof to show that there were no arrears at all, the order of the Trial Court recording a *prima facie* finding cannot be interfered with.

8. However, it will be open to the petitioners to lead evidence at the time of trial, to show whether there were arrears and if so to what extent.

9. Insofar as the 2nd aspect is concerned, any amount payable after the expiry or termination of the lease could only

be termed as damages for occupation. The amounts payable after the expiry or termination of the lease, cannot be termed as arrears. Therefore, the Trial Court could have directed only such amount as representing the arrears at the rate of Rs.37,174/- for the period during which default was committed. Hence, to this extent the order of the Trial Court requires modification.

10. In view of the above, the revision is allowed and the order of the Trial Court is modified to the following extent:

(1) The petitioners shall deposit to the credit of the suit before the Court below, a sum calculated at the rate of Rs.37,174/- for the period from October, 2013 till October, 2016, within a period of 8 (eight) weeks.

(2) The petitioners shall continue to pay the future rents, from the months of November, 2016 till the disposal of the suit at the above rate without fail, on or before 10th day of every succeeding English Calendar month.

(3) Upon the deposit being made, the landlord is permitted to withdraw the same.

(4) It will be open to the petitioners to establish by evidence, that they had actually paid some part of the arrears, which this Court has now directed them to pay. If they are able to establish the same during trial, the Trial Court shall take note of it at the time of disposing of the suit, for appropriate relief.

11. It is needless to point out that under Order XV-A, CPC the consequence of default would automatically come into play if the petitioners fail to comply with this order.

12. The miscellaneous petitions, if any, pending in this revision shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

25th November, 2016.
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