

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CIVIL REVISION PETITION Nos.5464 & 5465 of 2015

COMMON ORDER:

In both the revisions, the parties are same and they arose on the same subject matter and hence they are disposed of by this common order.

2. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent.

3. The petitioners are the plaintiffs and the respondent is the defendant. The plaintiffs filed O.S.No.58/2013 on the file of the Junior Civil Judge, Parvathipuram for eviction of the defendant from the suit schedule property which comprises of a shop situated on the main road in Parvathipuram of Vizianagaram District. The defendant failed to vacate the premises as well as failed to pay the rents from September, 2012. The plaintiffs filed I.A.No.172/2014 for recovery of arrears of rent of Rs.60,000/- being monthly rent for the months of September, 2012 to April, 2014 @Rs.3,000/- per month. Vide orders dated, 02.07.2015 the Court below allowed the said I.A.No.172/2014 and directed the defendant to pay arrears of rent. Further, the plaintiffs filed I.A.No.339/2015 for recovery of arrears of rent of Rs.45,000/- from May, 2014. The defendant filed counter contending that he fell in arrears of Rs.39,000/- only, but not Rs.45,000/-. Having heard both sides, the Court below vide orders dated 23.09.2015 directed the defendant to pay arrears of rent of Rs.39,000/-.

4. It is the contention of the respondent/defendant that he complied with the orders of the Court below passed in I.A.No.172/2004 and I.A.No.339/2015 and deposited the amounts as directed and there is no default on his part.

5. While so, the plaintiffs filed I.A.No.406/2015 seeking to strike

off the defence of the defendant for non-compliance of the orders passed in I.A.No.172/2014.

6. The Court below has observed that the suit is ripe for cross examination of PWs 1 and 2, the defendant deposited the arrears of rent, and whether the defendant committed wilful default or not in payment of monthly rents can be determined in the suit, both parties may adduce evidence in the suit in respect of their rival contention, and without going into the merits of the suit, the defence of defendant shall not be strike off and accordingly, dismissed the said petition.

7. Questioning the said order, the plaintiffs filed the present revisions, contending that the defendant committed wilful default in payment of rents and he violated the orders passed in I.A.No.172/2014.

8. The learned counsel for the petitioners/plaintiffs submits that when there was a clear violation of the directions of the Court with regard to deposit of arrears of rent, the Court had no option except to strike off the defence, but in spite of a petition being filed, the learned trial Court has dismissed the same on the ground that the suit is ripe for disposal and that the respondent/defendant has complied with the directions. The learned counsel further submits that in the subsequent application bearing I.A.No.339/2015, even though there was a direction to deposit a sum of Rs.45,000/- towards arrears of rent, admittedly the respondent/defendant deposited only a sum of Rs.39,000/- and hence the revisions.

9. The learned counsel for the respondent/defendant on the other hand submits that there was no violation of the orders of the Court below and the defendant has complied with the directions within the stipulated time. In the subsequent application filed claiming a sum of Rs.45,000/-, the amount actually due was only Rs.39,000/- and accordingly he paid the same within the time granted. It is further submitted that even thereafter every month the respondent/defendant

is depositing the rents in the Court and there is no default. Further more, it is submitted that the evidence of the petitioners/plaintiffs is concluded and the suit is coming up for the evidence of the respondent/defendant and hence, directing the defence to be struck off was rightly rejected by the Court below.

10. Existence of jural relationship between the petitioners/plaintiffs and the respondent/defendant is not in dispute, so also, the quantum of rent. The suit is filed for eviction of the respondent/defendant and the requirement of law is that no tenant should contest an eviction petition filed against him without depositing the arrears of rent, if any, and also future rents. There is statutory and legal duty cast upon the tenant to fulfil, firstly, his obligation of paying monthly rents to the landlords so as to contest the suit for eviction filed against him. In order to make this requirement legally enforceable, Order 15A has been incorporated in the Code of Civil Procedure which makes it obligatory on the part of a tenant to deposit the arrears of rent and also continue to deposit the future rents, failing which, power is given to the Court to strike off the defence.

11. Before, however doing that, the Court is required to look into all the aspects and shall see as to whether there was non-compliance of the requirement for any justifiable reason and on being satisfied that the said requirement is not being complied with by a tenant, without any justification, the Court can strike off the defence.

12. In the instant case, during the pendency of the suit, the petitioners/landlords filed I.A.No.172/2014 seeking for a direction to the respondent/tenant to deposit the arrears of rent which by that date were quantified at Rs.60,000/-. By order dated 02.07.2015 the learned trial Court directed the respondent/tenant to deposit the said amount within 15 days i.e. on or before 17.07.2015. On 15.07.2015 the respondent/tenant obtained a lodgement schedule and deposited the

said amount of Rs.60,000/- into the Court on 16.07.2015. Proof thereof has been placed on record. Therefore, it cannot be said that there was any non-compliance with the order thereof.

13. However, subsequent to that it is alleged that the respondent/tenant has failed to deposit the monthly rent. Consequently, the petitioners/plaintiffs had to file I.A.No.339/2015 calling upon the respondent/tenant to pay the arrears of rent which was determined by that time at Rs.45,000/-. By order dated 23.09.2015, the trial Court had directed the respondent/tenant to deposit the said amount on or before 23.10.2015. However, since the arrears by then was only Rs.39,000/-, the respondent/tenant has deposited the said amount into the Court on 04.10.2015. Therefore, the subsequent direction of the Court below is also complied with.

14. It is no doubt true that after having deposited Rs.60,000/- on 16.07.2015 it was obligatory on the part of the tenant to deposit the future rents regularly, but he has accumulated the arrears which even according to the tenant was Rs.39,000/-. This conduct of the respondent/tenant itself shows that he has shown utter disregard to the directions of the Court in not only depositing the arrears of rent but also future rents regularly, and therefore, the learned counsel for the petitioners/plaintiffs submits that the Court below ought to have struck off the defence.

15. The contention of the learned counsel for the respondent/tenant is that when efforts were made by him to pay the subsequent rents, the same were thwarted by the petitioners/landlords with ulterior motives. This was a contentious issue and in view of the fact that the suit was ripe for disposal and the respondent/defendant had complied with the directions of the Court and deposited the arrears of rents, the Court below has not gone into that aspect. The order of the Court below cannot therefore be said to suffer from any illegality or irregularity warranting interference at this stage.

16. It is admitted fact that the evidence of the petitioners/plaintiff was concluded and the suit is coming up for the evidence of the respondent/defendant.

17. In view of the above, these two Civil Revision Petitions are disposed of, directing the Court below to dispose of the suit, in accordance with law, as expeditiously as possible, preferably, within a period of 3 (three) months from the date of receipt of a copy of this order. Further, the respondent/defendant is directed to continue to deposit the rents regularly under intimation to the petitioners/plaintiffs and shall cooperate for the disposal of the suit. In the circumstances, there shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: 04.02.2016

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