

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 6170 OF 2016

ORDER :

The petitioner herein is the plaintiff, who filed O.S. No. 18 of 2016 on the file of the Junior Civil Judge's Court at Kota seeking injunction restraining the respondent-defendant and his men from interfering with her peaceful possession and enjoyment over the suit schedule property. It is stated that the respondent-defendant had orally leased out the schedule property to the petitioner in 2009, on a monthly rent of Rs.3,500/- wherein the latter has been running the business in the name and style of M/s Siva Sai Automobiles. While so, suddenly, the respondent demanded the rent at Rs.25,000/- per month from April 2016. When the petitioner expressed her inability, it is alleged, on 23.08.2016, the respondent and his men came to the shop and destroyed the material therein. The petitioner therefore, filed I.A. No. 107 of 2016 seeking appointment of an Advocate-Commissioner to inspect the suit schedule property. The said Application was ordered on 26.08.2016, pursuant to which, the Advocate-Commissioner, after issuing notice to both the parties and respective banks, on 17.09.2016, visited the suit schedule premises and finding the same to have been locked, noted the physical features thereof peripherally and submitted a report. Since the Advocate-Commissioner could not inspect the premises, the petitioner filed the present I.A.No. 127 of 2016 to re-appoint the same Advocate-Commissioner to inspect the premises and submit a detailed report.

Subsequent thereto, it is the further case of the petitioner that on 31.10.2016, she lodged a police complaint alleging that after the inspection of the Advocate-Commissioner on 17.09.2016, again, the respondent came to the shop and thrown out all the material in the premises. Hence, she filed an Application to advance the hearing of I.A. No. 127 of 2016.

The stand of the respondent – defendant, all through, is that the petitioner – plaintiff, after completion of rental agreement period, had voluntarily vacated the subject premises on 05.07.2015 itself and it is only to harass him, these Applications, one after the other, are being filed.

The learned Judge, after considering the rival claims, observed that the petitioner, instead of bringing to the notice of the civil Court about the incidents that occurred on 22.08.2016 and 31.10.2016, has put the criminal law in motion by lodging a complaint with the police. It has been further observed that it is un-understandable as to why the petitioner has taken out the present Application seeking re-appointment of the Advocate-Commissioner, when it is her specific case that the respondent had thrown away all the material and cleared the premises. Hence, he dismissed the Application holding that the petitioner has not approached the Court with clean hands.

Learned counsel for the petitioner *Sri P. Gangarami Reddy* submits that the high-handed action of the respondent can be established only when the Advocate-Commissioner re-visits the premises and notes down its physical features.

On the other hand, *Sri T.G. Prasad Reddy*, learned counsel for the respondent submits that the petitioner has voluntarily taken away all her belongings from the schedule premises and his client is, in no way, concerned with the incidents alleged.

Having considered the respective submissions, it is to be noted that the respondent had already filed objections to the inspection report dated 30.09.2016. It is also to be noted that in the affidavit filed in support of I.A.No.127 of 2016 on 30.09.2016, in paragraph 5, it has been stated as under:

“ I further submit that yesterday i.e. 23.08.2016 the respondent again came to the plaint schedule property (Hero show room) and thrown away some of the materials and articles outside of the show room. Till now they are outside the show room. I being a lady and unable to resist the highhanded acts of the respondent without the aid of the Honourable Court.”

In other words, what has been stated in the affidavit is that the incident took place on 23.08.2016. However, it could be, as the petitioner has also used the word “I further submit that yesterday” the date might have been wrongly mentioned. It is a matter of fact that the FIR came to be registered on 31.10.2016. It is the specific case of the petitioner that after 17.09.2016, the respondent has cleared up all the spares, vehicles, etcetera belonging to her and threw them away, whereas it is the case of the respondent that all through the premises have been kept empty and the same has been voluntarily handed over to them. In other words, both from the point of view of the petitioner as well as the respondent, as on the date of I.A. being filed, or immediately thereafter, the premises are empty. Hence, there is nothing for the Advocate-Commissioner to really visit and report back. In those

circumstances, though the learned Junior Civil Judge, while considering the I.A. had stated that the petitioner ought to have approached the civil Court instead of putting the criminal procedure in motion, that itself cannot be a ground for appointment of an Advocate-Commissioner.

In those circumstances, I see no reason to interfere with the order under Revision and it is accordingly, dismissed.

Consequently, the miscellaneous Applications, if any shall also stand dismissed.

19th December 2016

ksld

CHALLA KODANDA RAM, J

