

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.986 of 2016

ORDER:

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This Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful 1st defendant is directed against the orders dated 08.02.2016 of the learned Judge, Family Court-cum-Additional District Judge, Khammam passed in IA.no.1446 of 2014 in OS.no.103 of 2013 filed under Order XII Rule 6 of the Code of Civil Procedure, 1908.

2. I have heard the submissions of the learned counsel 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 that lead to the filing of this CRP by the 1st defendant may be stated, in brief, as follows:

The plaintiff brought the suit against defendants 1 and 2 for recovery of possession, arrears of rent and damages @ Rs.75,000/- per month for use and occupation of the suit schedule property from 01.07.2013 till delivery of vacant possession of suit schedule property and for costs. The 1st defendant is resisting the suit by filing a written statement. While so, the plaintiff had filed the aforementioned IA under Order XII Rule 6 of the Code for granting a decree against the defendants. That application was resisted by the 1st defendant by filing a counter. At the hearing, no oral evidence was adduced. However, exhibits A1 to A11 were marked on the side of the petitioner/plaintiff. On merits, the trial Court had allowed the petition as prayed for. Aggrieved of the said orders, the 1st defendant had preferred this revision petition.

4. To begin with, the case of the plaintiff in support of his request in the IA filed under Order XII Rule 6 of the Code, in brief, is as follows: "He is the

landlord. The suit schedule two shutter shop premises is on the North-Eastern part of a two floor RCC built shopping complex bearing no.9-2-137 situate opposite to APSRTC Bus-stand in-gate, Khammam. The said property is morefully described in the schedule annexed to the plaint. The plaintiff had leased out various shops in the said building to various persons/tenants. The 1st defendant was a tenant of the suit schedule two shutter shops since the year 2000. He is running a business under the name and style of M/s. Sri Sai Traders. He is paying monthly rent @ Rs.24,000/- since January 2012. The 2nd defendant had filed OS.no.590 of 2012 on the file of the Court of the learned Senior Civil Judge, Khammam for perpetual injunction initially against the 1st defendant herein and her husband namely Mallikarjuna Rao and also the plaintiff herein claiming that he is sub-tenant of the 1st defendant since April 2012 and that he had established Tea, Coffee, Cool drink and Sweetmeats business in half portion of the plaint schedule property by raising a partition and that the rent payable by him is Rs.24,000/- per month. The plaintiff herein came to know of the said sublease by the 1st defendant only after the pleadings and the suit summons in OS.no.590 of 2012 are served upon him. The 1st defendant herein had attributed collusion between the 2nd defendant and the plaintiff in the written statement filed by her in the aforementioned suit. The 1st defendant had also made incorrect, derogatory and unwarranted allegations against the plaintiff herein. The 1st defendant had also alleged that potential loss was caused to her on account of the plaintiff leasing out other portions of the building to persons carrying on cell phones and hotel businesses. The 1st defendant thus wanted to dictate terms in respect of the businesses that are to be carried on by the tenants of the plaintiff in the building. The 1st defendant had committed deliberate misconduct by subleasing part of the plaint schedule property to the 2nd defendant and got filed the collusive and frivolous suit OS.no.590 of 2012 by the 2nd defendant and also made derogatory, unwarranted and incorrect allegations against the plaintiff herein in the written statement filed by the 1st defendant in the said suit. Therefore, the plaintiff had terminated the tenancy

of the 1st defendant by 30.04.2013 through legal notice dated 25.03.2013 and demanded payment of damages @ Rs.75,000/- from May, 2013 and Rs.10,000/- towards legal expenses to be incurred in defending suit OS.no.590 of 2012 and further demanded both the defendants to vacate and deliver vacant possession of the plaint schedule property to the plaintiff herein. Since 01.05.2013, the defendants 1 and 2, that is, the 1st defendant/tenant and his sub-tenant/2nd defendant are in illegal occupation of the plaint schedule property. The 1st defendant has categorically traversed the termination of tenancy by the plaintiff at paragraph 7 of her written statement. Defendants 1 and 2 have got issued reply notices dated 22.04.2013 and 20.04.2013 to the notice dated 25.03.2013 got issued by the plaintiff. The same are part of the suit record. The receipt of legal notices terminating tenancy is not in dispute. Considering the reply legal notices, it is just and necessary to pass a decree on admission for the recovery of the vacant possession of the plaint schedule property from the defendants pending adjudication of the reliefs insofar as the quantum of damages and mesne profits. Hence, the petition is filed to grant a decree on admissions for recovery of possession.

5. The averments in the counter of the 1st defendant, in brief, are as follows:

The material allegations in the plaint are false and incorrect. The plaintiff is one of the owners out of three owners. The other two owners are Bellamkonda Usha Rani and Bellamkonda Upender Rao, who are none other than the mother and brother of the plaintiff. They are equal shareholders. This fact came to the knowledge of the 1st defendant recently. He had filed a petition under Order I Rule 10 of the Code for impleading those two persons as defendants to the suit. They had objected for paying the rents directly to the plaintiff. This defendant had filed an application under Section 151 of the Code for permission to deposit the monthly rents into Court. This defendant is running business under the name and style M/s. Sri Sai Traders is true. This defendant had sublet half portion of the plaint schedule property

to the 2nd defendant is false and incorrect. It is true that the 2nd defendant filed OS.no.590 of 2012 and the said suit is pending. The allegations that this defendant had attributed collusion between the 2nd defendant and the plaintiff herein by filing a written statement in the suit filed by the 2nd defendant and that this defendant had made derogatory and incorrect allegations and that this defendant had got filed the suit OS.no.590 of 2012 by the 2nd defendant to enable him to file a derogatory written statement in the said suit against the plaintiff herein are false. The plaintiff had issued a notice dated 25.03.2013 is correct. However, the allegations therein are false and untenable. The said notice is not maintainable in the eye of law. The legality of the notice is being contested. This defendant is in illegal possession from 01.05.2013 onwards is incorrect. This defendant has got statutory right to continue in possession of the property and the plaintiff is not entitled to vacant possession of the plaint schedule property. The allegations are imaginary. The plaintiff is not entitled to any decree on admissions insofar as the relief of recovery of vacant possession of the plaint schedule property pending adjudication of the relief of recovery of damages. The provisions of Order XII Rule 6 of the Code are not attracted to the case on hand. The interim injunction orders obtained in OS.no.590 of 2012 not to interfere with the possession of the 2nd defendant over the plaint schedule property against this defendant, her husband and the plaintiff herein are in force. On that ground alone, the petition is liable to be dismissed.

6. At the hearing, the learned counsel for both the sides advanced arguments in line with the pleadings of the parties, which are stated supra.

7. I have perused the order of the Court below. The learned counsel for the 1st defendant, while re-iterating the case of the defendant which was pleaded in the written statement and also in the counter filed in the application of the plaintiff, had contended as follows:

The suit is filed on the basis of the notice dated 25.03.2013 issued under Section 106 of the Transfer of Property Act. The 1st defendant filed a written statement denying the claims in the said notice. Therefore, the claims

in the suit require thorough adjudication. The suit cannot be disposed of summarily under Order XII Rule 6 of the Code. The learned Judge erred in allowing the IA filed under Order XII Rule 6 of the Code without adverting to the pleadings of the parties in the present suit and OS.no.590 of 2012 filed by the 2nd defendant, which is now re-numbered as OS.no.176 of 2014. The order impugned is not in accordance with the law. This defendant is contesting the suit filed by the plaintiff and also the other suit filed by the 2nd defendant. Hence, there is no basis to invoke Order XII Rule 6 of the Code. The suit filed by the plaintiff herein is a comprehensive suit which requires adjudication after adduction of evidence by both the parties. Therefore, the summary procedure cannot be adopted. The Court below ought to have seen that a transfer CMP.no.490 of 2014 seeking transfer of OS.no.590 of 2012 is filed and the same was allowed by this Court on 13.11.2014 with a direction to withdraw OS.no.590 of 2012 from the file of the learned Senior Civil Judge's Court, Khammam and transfer the same to the Family Court, Khammam. The Court below ought to have seen that IA.no.280 of 2015 is filed for impleadment of the co-owners of the building and the said IA is also pending. The court below ought to have seen that the plaintiff had admitted in paragraph 5 of the affidavit filed in support of the interlocutory application in IA.no.1446 of 2014 as follows: 'That, it is pertinent that, respondent no.1 has categorically traversed the termination of tenancy by me, at para no.7 of her written statement.' Therefore, the plaintiff is also admitting that the notice of termination is traversed. Therefore, there is a triable issue. The learned Judge erred in allowing the application without recording any reasons.

7.1 In support of the said contentions, the learned counsel for the revision petitioner relied upon the decision in **Ashis Kumar Das v. Rekha Mukherjee**^[1].

8. On the other hand, the learned counsel for the plaintiff while supporting the orders of the Court below had contended that the 1st defendant had unauthorisedly sublet a portion of the plaint schedule property to the 2nd

defendant; and that the said fact came to the notice of the plaintiff only after the 2nd defendant had filed OS.no.590 of 2012 on the file of the Court of the learned Senior Civil Judge, Khammam in collusion with the 1st defendant; and that the plaintiff had terminated the tenancy by a notice dated 25.03.2013; and that both the defendants are liable to vacate and handover possession of the property in view of the fact that the tenancy was terminated; and that from 01.05.2013 onwards the defendants' possession is illegal and unauthorized; and that they are liable to pay damages for use and occupation; and that in the reply notice dated 22.04.2013 the 1st defendant had not disputed the validity of the legal notice; and that in the reply notice issued by the 2nd defendant he had admitted that the plaintiff is the landlord; and that there is no tenable defence in the written statements of defendants 1 and 2; and that the Court below having followed the decision of the Supreme Court in **M/s.Payal Vision Limited v. Radhika Chowdhary**^[2] and without waiting for the determination of the other questions between the parties in regard to the relief of recovery of arrears of damages had decreed the suit on admission insofar as the relief of eviction is concerned, as there is no tenable contest on the said issue of eviction; and that, therefore, the order does not call for any interference.

9. I have given detailed and thoughtful consideration to the facts and the submissions. I have carefully gone through the order impugned. Both the parties had fairly conceded that no judgment was rendered by the Court below separately under Order XII Rule 6 of the Code insofar as the relief of eviction claimed in the suit though IA.no.1446 of 2014 filed under Order XII Rule 6 of the Code filed by the plaintiff is allowed by the order that is impugned in this revision. Further, no decree was also drafted obviously for the reason that no judgment was rendered. In this background of facts and submissions, it is necessary at the outset to refer to the following provisions of law.

Order 12 Rule 6:

“6. judgment on admissions:- (1) Where admissions of fact have been

made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced”.

Order 15 Rules 1 and 2:

1. Parties not at issue: Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment.

2. One of several defendants not at issue:- (1) Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or of fact, the Court may at once pronounce the judgment for or against such defendant and the suit shall proceed only against the other defendants.

(2) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and the decree shall bear the date on which the judgment was pronounced.”

The plaintiff claims that he is the owner of the property and landlord as well. Even as per the defence, the plaintiff is admittedly a co-owner of the plaint schedule property. Admittedly, the suit is filed for eviction, recovery of arrears of rent, damages for use and occupation and costs. The plaintiff *inter alia* alleges that the 1st defendant had unauthorisedly sublet a portion of the plaint schedule property to the 2nd defendant. The plaintiff issued a notice terminating the tenancy and the defendants 1 and 2 had issued separate reply notices. By the orders impugned the trial Court did not determine the issues in regard to arrears of rents and damages for use and occupation, but, had only determined on admission, the relief of eviction. Though in the order impugned it is stated that the plaintiff claims a decree on admission in regard to eviction, the admissions made in the written statements of defendants 1 and 2 are not adverted to and extracted in the order impugned. The trial Court without extracting the admissions of the defendants insofar as the relief of eviction and recovery of possession and by not even referring to the averments in the counter filed in the IA filed by the 1st defendant had ordered the petition as prayed for. In the order impugned, on the factual aspect it is stated as follows: **‘In this petition, the plaintiff claims decree to the extent**

of admission, pending suit for rest of the reliefs. On record is notice dated 25.03.2014 from plaintiff u/sec.106 of T.P Act, calling upon D1 and D2 to deliver vacant possession of suit schedule premises by 30.4.2013. The reply notice in Ex.A2 is not seen denied right full ownership of plaintiff nor even tenancy of D1 and D2.' [Reproduced verbatim].

Then the trial Court had referred to the ratio in the decision of the Supreme Court in **Payal vision** (supra) and held follows: '**Basing on above, in view of admitted facts, the petition is allowed as prayed for. No costs.**'

Obviously, no decree was drafted and signed by the learned Judge pursuant to the order. No judgment was also rendered pursuant to the orders passed in the IA. A plain perusal of the contents of the order impugned would show that the order is bereft of reasons and is not in conformity with the legal principles. Even the relief granted is not stated in the operative portion of the order. Though the learned counsel for the petitioner placed reliance on the decision of the Supreme Court, a plain perusal of the decision of the Supreme Court would show that in that cited decision, the Supreme Court had considered the question whether there is any admission by tenant-respondent regarding existence of jural relationship of landlord and tenant between the parties and made a profitable reference to the averments made by the plaintiff/appellant in paragraph 2 of the plaint and also the averments in paragraph 2 of the written statement filed by the defendant and placed those pleadings in *juxtaposition* and held that the said pleadings when placed in *juxtaposition* clearly spell out an admission that the lease agreement dated 10.10.2001 was indeed executed between the parties. The Supreme Court further went on to take note of the various pleadings and then considered the next question namely whether the tenancy stands terminated either by lapse of time or by notice served upon the defendant and then noted that the tenant did not have the benefit of a secure term under a registered lease deed and that the result was that the tenancy was only a month to month tenancy that could be terminated upon service of a notice in terms of Section 106 of the Transfer of Property Act; and then again the Supreme Court had referred to the pleadings of the parties on the aspect of the termination of tenancy and then recorded its findings having regard to the

facts of the case. A plain reading of the decision would show that the decision is more helpful to the 1st defendant herein as in the case on hand the trial Court failed to advert to the pleadings of the parties and also the questions involved for determination in the IA and further failed to record its reasons, much less valid reasons for allowing the petition. Neither a judgment was rendered pursuant to the orders in the IA nor was a decree drafted and signed by the learned Judge pursuant to the orders in the IA, as per the submissions made before this Court. Judgment on admissions can only be made where admissions of fact have been made either in the pleadings or otherwise. Sub-Rule (2) of Rule 6 of Order XII of the Code contemplates that whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced. After the IA filed by the plaintiff was allowed by the Court below by the orders impugned, no judgment for eviction was pronounced under sub-rule (1) and no decree was drawn up in accordance with the judgment as required under sub-rule (2) of Order XII Rule 6 of the Code.

10. For all the aforesaid reasons, this Court finds that the order impugned is unsustainable and warrants interference.

11. In the result, the Civil Revision Petition is allowed and the order 08.02.2016 in IA.no.1446 of 2014 in OS.no.103 of 2013 is set aside. However, since this Court found that the order impugned is not a speaking order and that the procedure contemplated under law is not followed, it is just and fair to remit the matter to the Court below. Accordingly, to meet the ends of justice, the above said IA is remitted to the Court below for *de novo* disposal in strict accordance with the procedure established by law.

There shall be no order as to costs.

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

JUSTICE M. SEETHARAMA MURTI

18th April, 2016

Vjl

[\[1\]](#) 2006(1) CHN 297

[\[2\]](#) 2012 (6) ALT 1 (SC)