

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition No. 703 of 2015

Order:

The petitioners herein are plaintiffs in OS No.1144 of 1998 on the file of IV Senior Civil Judge, City Civil Court, Hyderabad. They filed the suit for eviction of the first respondent herein from the suit premises bearing Municipal Nos.16-11-19 and 16-11-19/A, situated in Sy.Nos.10/1, 10/2 and 10/3 of Teegalaguda, Malakpet, Hyderabad, besides seeking to recover an amount of Rs.1,51,200/- towards arrears of rent for the period from 01.03.1998 to 30.09.1998 together with interest thereon at 18% p.a., from 01.10.1998 till realization and for future damages and compensation for wrongful use and occupation @ Rs.35,000/- per month from 01.10.1998 till the date of delivery of possession with interest at 18% p.a. The said suit was decreed after contest and the decree of the lower Court, dated 25.06.2014, reads as follows.

“1. That the plaintiffs are entitled for eviction of defendant No.1/tenant from the suit schedule property and defendant No.1/tenant shall vacate from the suit schedule property and hand over vacant possession thereof to the plaintiff.

2. That the time granted is three months

3. That in view of the pendency of Civil Appeal No.25495/2005 before the Hon'ble Supreme Court of India the arrears of rent of Rs.1,51,000/- with interest from the date of suit till the date of decree at 12% per annum and at 6% from the date of decree till realization, shall be deposited to the credit of suit account.

4. That the plaintiffs shall move the Court under Order 20 Rule 12 CPC for ascertaining the mesne profits/damages.

5. That the either parties shall bear their own costs.”

2. Challenging the said judgment and decree, dated 25.06.2014, the first defendant filed AS No.266 of 2014 before the learned II Additional Chief Judge, City Civil Court, Hyderabad, and sought stay of execution of the decree in IA No.1941 of 2014 in AS No.266 of 2014. The said application was disposed of on 23.09.2014 as follows.

“No counter reported. Heard the counsel for the petitioner who has argued that the suit filed by the respondent for eviction and recovery of rents against the petitioner was decreed directing the petitioner to vacate the property within three months and to pay the arrears of rents with interest and aggrieved by the same, the petitioner filed the appeal. The learned counsel argued that the petitioner has got strong grounds to succeed in the appeal and hence, prayed to grant stay of operation of the judgment and decree.

Perused the record and the documents filed by the petitioner and under the circumstances, since as per the appellant/petitioner he has got good grounds to succeed in the appeal, he is entitled for grant of stay of operation of the judgment and decree and hence, stay is granted subject to the petitioner depositing a sum of Rs.4,35,030/- towards arrears of rents with interest as ordered in the decree and judgment within ten days from this day to the credit of the suit OS No.1144/1998 on the file of the IV Senior Civil Judge, City Civil Court, Hyderabad. Call on 27.10.2014.”

3. Challenging the said order, dated 23.09.2014, the present Civil Revision Petition is filed.

4. Learned counsel for the petitioners/plaintiffs submits that the plaintiffs could not file an application for enquiry into mesne profits as the lower appellate Court granted stay of operation of the judgment and decree subject to condition of depositing the said sum of Rs.4,35,030/- towards arrears of rent. Learned counsel further submits that the petitioners are entitled for some amount during the mesne profits enquiry which may take some time.

5. Learned counsel for the first defendant/appellant in AS No.266 of 2014 submits that, in the absence of an application for mesne profits enquiry, no amount can be ordered to be paid towards use and occupation during the pendency of OS No.1144 of 1998. He further submits that any order for payment of rent during pendency of the said appeal would be beyond the relief granted in the decree.

6. It is an admitted fact that the judgment and decree was passed in OS No.1144 of 1998 and it deals with the eviction, payment of arrears of rent and for enquiry into the rents during the pendency of the suit and for future mesne profits. Learned counsel for the petitioners drew the attention of this Court to issue No.4 framed by the trial Court with regard to their entitlement for arrears of rent of Rs.1,51,000/- with interest

at 18% p.a., and submits that no rent was paid from 01.03.1998 onwards. The lower Court, while holding that the first defendant has not exhibited any scrap of paper to show that the rent from 01.01.1998 is not Rs.18,000/- per month with 20% increase for every two years, held that the plaintiffs proved the arrears of rent of Rs.1,51,200/- with effect from 01.03.1998 to 30.09.1998. With regard to damages and mesne profits it was held that the plaintiffs have not lead any tangible piece of evidence and, as such, gave liberty to move the Court under Order 20 Rule 12 CPC with regard to the claim of the plaintiffs at Rs.35,000/- per month.

7. Thus, at one point of time, prior to 30.09.1998, the accepted rent by the Court appears to be Rs.18,000/- per month. In view of pendency of appeal, this Court is inclined to direct the first defendant to pay the said amount of Rs.18,000/- per month on or before 5th of every succeeding month during the pendency of the appeal before the learned II Additional Chief Judge, City Civil Court, Hyderabad. The plaintiffs are also entitled to file an application under Order 20 Rule 12 CPC for ascertaining the mesne profits/damages, but no final decree shall be passed during the pendency of the appeal. It has also come on record that the first defendant paid the rent up to 31.12.2008. In view of the same, the first defendant, who is the appellant in AS No.266 of 2014, shall pay the tentative rent of Rs.18,000/- per month from 01.01.2009 to 22.09.2014 which came to around Rs.12,37,200/- within a period of twelve (12) weeks from today.

8. Learned counsel for the first defendant objects to the payment of this amount on the ground that this amount cannot form part of the damages claimed, as separate enquiry has to be conducted in mesne profits enquiry. But, this Court came to the *prima facie* conclusion that there was evidence with regard to payment of Rs.18,000/- per month as rent accepted by the trial Court, while disposing of OS No.1144 of 1998 and, in those circumstances, the enquiry into damages could normally be over and above Rs.18,000/- per month and, hence, the direction to pay Rs.18,000/- pr month would only form part of the said damages, for which mesne profits enquiry would take place.

9. The plaintiffs shall not withdraw Rs.4,35,030/- deposited by the first

defendant/appellant in AS No.266 of 2014 and the above amount of Rs.18,000/- per month which was directed to be deposited also shall not be withdrawn by the plaintiffs as the said amount is subject to the decision in Civil Appeal No.25495 of 2005 pending before the Hon'ble Supreme Court.

10. Accordingly, the Civil Revision Petition is allowed modifying the impugned order as indicated above. There shall be no order as to costs.

11. As a sequel thereto, the miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

A.

RAMALINGESWARA RAO, J.

Date: 01.02.2016

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