

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

S.A.No.409 OF 2010

AND

C.C.No.920 OF 2011

COMMON JUDGMENT:

The appellant of the second appeal is no other than the landlord and unsuccessful plaintiff/ appellant before III Additional Senior Civil Judge, (FAC), Guntur in O.S.No.392 of 2002 and A.S.No.2 of 2009 of the District Judge, Guntur maintained against the respondent/ defendant/ tenant for eviction.

2. The concurrent findings of the Courts below were particularly on the scope of Section 106 of the Transfer of Property Act (for short 'T.P.Act') of no valid quit notice during the subsistence of the lease to quit within statutory period prescribed. Impugning said concurrent findings, the landlord maintained the second appeal. The law is very clear that the Court is entitled to take even subsequent events and the happenings after commencement of the lease to mould the relief and equally by the appellate Court within the scope of Order 41 Rule 33 CPC. Once such is the case from own saying of the defendant also apart from of the admitted case of the plaintiff of the lease prescribed for the statutory period expired by end of April, 2015. Once there is afflux of time of the lease period, no quit notice is statutorily required, even under the T.P. Act. When once the landlord is not willing to continue, after afflux of time, apart from no quit notice is required, the tenant cannot even be treated as tenant holding over, but for a tenant by sufferance, almost at par with a trespass though not a mere trespass.

3. Having regard to the above, from the very lease period already expired and the tenant has no right, the appellate Court got the power

to mould the relief, as the record shows that the tenant is continuing in the premises by doing cloth business for the past two decades and he required to search for a suitable accommodation apart from the good will earned with the esteemed customers of the premises to shift and to divert them to a new premises, which may take time, the Court feels that it is just while allowing the second appeal from molding the relief in passing order of eviction from the afflux of time, however by granting one year time i.e. till end of October, 2017 to search for an alternative accommodation and vacate the premises meanwhile. Failing which, by virtue of the second appeal judgment and decree, the appellant/landlord is entitled to execute the same after 01.11.2017 by filing execution petition for recovery of possession, evicting the respondent/defendant. It is needless to say whatever amount ordered to be deposited for continuation is to be continued. It is made clear that above findings no way prejudice the talks stated in progress for renewal of the lease by written, duly stamped and registered agreement, including for any outside settlement of all claims recording full satisfaction subject to such conditions to arrive and compliance if any.

4. With the above observation, the second appeal is allowed.

5. It is also made clear that the contempt case is closed for no further action in need.

Miscellaneous petitions, if any pending in this appeal, shall stand closed. There shall be no order as to costs.

Dr. B. SIVA SANKARA RAO, J

Date: 24.10.2016
kvrm

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO



S.A.No.409 OF 2010
AND
C.C.No.920 OF 2011

DATED: 24.10.2016

kvrn