

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

SECOND APPEAL No.394 of 2016

ORDER:

The appellant is defendant in O.S.No.17 of 2011 filed by the respondent/plaintiff as landlord for eviction from the premises covered by the registered lease and after efflux of time, impugning the concurrent findings of the Courts below, this Second Appeal is sought for admission.

2. The question of law sought to raise in this Second Appeal is that there is no valid notice under Section 106 of Transfer of Property Act, 1882 and the earlier Rent Control Proceedings are barred by *res judicata* to the maintainability of the present suit proceedings under the Transfer of Property Act, 1882 and the other contention raised is not of any tenability regarding the so called advance deposit of amount before maintaining of the suit.

3. Even coming to the questions raised, the earlier Rent Control proceedings no way *res judicata* as per the findings of the Courts below more particularly from the specific and separate causes of action covered by lease agreement and once there is efflux of time covered by lease extended, no notice under Section 106 of Transfer of Property Act, 1882 is required.

4. Having regard to the above, there are no grounds to admit the Second Appeal. However, taking consideration of the difficulty to secure immediate alternative accommodation from now, six months time is granted to the appellant/defendant to vacate the premises on or before 30.11.2016, which is subject to the appellant paying the amount towards damages for use and occupation from 01.08.2010 to 18.01.2011, if not already paid and he shall also pay future damages @ Rs.400/- per day from 19.01.2011 till the date of delivery of vacant possession of the plaint schedule property. As there is difference of calculation for future damages, which is according to the respondent/plaintiff the amount due as on 31.05.2016 towards future damages is Rs.4,81,000/-, whereas the appellant/defendant says the amount due is Rs.2,70,600/-. Without prejudice to the rights of the decree holder, to recover the balance amount due if any to decide by the executing Court on

filing E.P., the appellant/defendant shall deposit the admitted amount supra of Rs.2,70,600/- within two (02) months from today i.e., on or before 26.07.2016. In case of failure to deposit the admitted amount within the time stipulated above, the six months time granted above to vacate the premises is not available to the appellant/defendant. In such event, the respondent/plaintiff as the decree holder can execute the decree, as if the present order is not there giving six months time. Further the execution proceedings pending before the trial court if any are suspended in pursuance of the order supra and subject to the appellant/defendant complying with the direction supra.

5. Accordingly, the Second Appeal is disposed of before admission.

There shall be no order as to costs.

6. Consequently, miscellaneous petitions pending if any shall stand closed.

Dr. B.SIVA SANKARA RAO, J

26th May, 2016.

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