

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

CRP No.2782 OF 2016

ORDER:

1. This Civil Revision Petition is directed against the order dated 17.03.2016 passed in I.A.No.8 of 2016 in O.S.No.129 of 2014 by the Judge, Family Court-cum-III Additional District Judge, Vizianagaram.

2. The revision petitioner herein is the 1st defendant and the 1st respondent herein is the plaintiff in the suit O.S.No.129 of 2014. The Original Suit No.129 of 2014 was filed by the 1st respondent for eviction and recovery of rents basing on Ex.A.1 - rent deed and Ex.A.2 - lease deed, Ex.A.3 - legal notice, Ex.A.4 - postal receipt, Ex.A.5 - returned cover and Ex.A.6 - original savings bank pass book.

3. The brief facts of the case of the revision petition are that the 1st respondent –plaintiff filed suit O.S.No. 129 of 2014 before the trial Court for eviction of the defendants and for recovery of arrears of rent from the 1st defendant – revision petitioner. It is the case of the 1st respondent/plaintiff that one Sarjubai Oja is the original owner of plaint schedule property and the 1st respondent is the principal tenant of the said property under registered rent deed dated 03-11-2011. As per the terms of the rent deed, the 1st respondent is entitled to induct any person as sub-tenant into the said building under him. The 1st respondent/plaintiff has been paying the stipulated rent every month as per the terms of the rental deed dated 03-11-2011. The 2nd respondent – the 2nd defendant approached the 1st respondent and his father and requested to sub-lease the aforesaid plaint schedule building on condition of paying a sum of Rs.75,000/- as rent per month and also agreed to enhance the rent by 10% after completion of every two years and a registered lease deed

Ex.A.2 dated 24.02.2014 was agreed to be entered into between defendant Nos. 2 and 3 along with the 1st defendant with the plaintiff. Accordingly, the lease deed was registered in the name of the 1st defendant and physical possession of the schedule property was delivered to the defendants. The defendants have to pay rent commencing from February, 2014 @ Rs.75,000/- per month. Since the defendants committed willful default of payment of rent for 17 months, which comes to Rs.12,75,000/-, they are not entitled to contest and defend the suit, unless they deposit the arrears of rent and future rent, as they violated the mandatory terms of the lease deed dated 24-02-2014. Therefore, the 1st respondent/plaintiff filed the suit against the revision petitioner and respondent Nos. 2 and 3. Along with the suit, the 1st respondent filed I.A.No. 8 of 2016 to direct the defendants to pay a sum of Rs.17,25,000/- towards arrears of rent from February, 2014 till the end of December, 2015 and for payment of future rent of Rs.75,000/- per month from January, 2016.

4. The defendants filed counter affidavit denying the entering into agreement under Ex.A.2 with the 1st respondent/plaintiff. The trial Court, considering the documents on record, passed orders impugned in this revision petition directing the defendants to pay a sum of Rs.17,25,000/- towards arrears of rent commencing from February, 2014 till December, 2015, within three months from the date of order and the defendants are also directed to pay monthly rent of Rs.75,000/- regularly to the plaintiff without fail.

5. In the said suit, I.A.No.8 of 2016 was filed by the 1st respondent-plaintiff under Order XV-A, Rule 1 CPC seeking direction to the revision petitioner herein to pay a sum of Rs.17,25,000/- towards arrears of rent and also to pay the future rents @ Rs.75,000/- per month

from January, 2016 onwards. The trial Court having considered the material on record had allowed the I.A. directing the defendants to pay the admitted rent and arrears of rent to the 1st respondent, as mentioned in the impugned order.

6. Being aggrieved by the order of the trial Court, this Civil Revision Petition by the 1st defendant-revision petitioner.

The point that falls for consideration is whether the petitioner is entitled to the relief sought for in the revision petition?

7. Learned counsel for the revision petitioner/defendant no.1 submits that the schedule premises was taken on lease from the original landlady namely Sarjubai Oja on monthly rent of Rs.7,500/- and that defendants never committed any default. The said landlady never used to issue any receipts for the payments of rents, as such there were no receipts; and that the 1st respondent had obtained signatures of the petitioner on a false representation that those papers are required by the original landlady for the purpose of income tax and subsequently using those papers created the lease deed and that the respondents are not liable to pay any amount to the 1st respondent and on these grounds, he sought for dismissal of the I.A.

8. The learned counsel for respondent no.1 contended that the trial Court having considered the documents Ex.A.1 rental deed dated 03.11.2011 and Ex.A.2 lease deed dated 24.02.2014 between the petitioner and the respondents, came to the conclusion that admitted rent as per Ex.A.2 was Rs.75,000/-, and that when once the defendants have admitted their signatures on Ex.A.2, they are estopped from contending that said document is obtained by misrepresentation as such they cannot

disown their liability on that plea until they establish that the lease deeds are created falsely.

9. It is appropriate to refer to Order XV-A of C.P.C. which reads as follows :

“Order XV-A - striking off defence in a suit by a lessor:

{(1) In any suit by a lessor or a licensor against a lessee or a licensee, as the case may be, for his eviction with or without the arrears of rent or license fee and future *mesne profits* from him, the defendant shall deposit such amount as the Court may direct on account of arrears up to the date of the order (within such time as the Court may fix) and thereafter continue to deposit in each succeeding month the rent or license fee claimed in the suit as the Court may direct. The defendant shall, unless otherwise directed, continue to deposit such amount till the decision of the suit.

In the event of any default in making the deposits, as aforesaid, the Court may subject to the provisions of sub-rule (2) strike off the defence.}

(2) Before passing an order for striking off the defence, the Court shall serve notice on the defendant or his Advocate to show cause as to why the defence should not be struck off, and the Court shall consider any such cause, if shown in order to decide as to whether the defendant should be relieved from an order striking off the defence.

*(3) The amount deposited under this rule shall be paid to the plaintiff lessor or licensor or his Advocate and the receipt of such amount shall not have the effect of prejudicing the claim of the plaintiff and it shall not also be treated as a waiver of notice of termination.

Explanation:- The suit for eviction shall include suit for mandatory injunction seeking removal of licensee from the premises for the purpose of this rule.} – (01.10.1983) and (11-01-1990).”

10. In the instant case, the trial Court placing reliance on Ex.A-2 lease deed, dated 24.02.2014, directed the revision petitioner to deposit the rents mentioned therein. The lease deed is a registered one and,

therefore, the trial Court has placed reliance on it. Order XV-A(1) C.P.C. clearly reveals that in a suit by a lesser for eviction with or without the arrears of rent, the Court may direct to deposit the arrears of rent up to the date of the order and thereafter continue to deposit the rent in each succeeding month till the decision of the suit. In the event of any default in making the deposits, the Court may subject to the provisions of Sub-Rule (2) strike off the defence. The trial Court placing reliance on the amended provision under Order XV-A(1) of C.P.C. directed the revision petitioner to deposit the rents in the Court. The defence of the revision petitioner before the trial Court is that his signatures were obtained on blank papers and the lease deed was created. Admittedly, the lease deed was a registered one. Therefore, the order passed by the trial Court placing reliance on the lease deed, Ex.A-2 does not suffer with any illegality or perversity.

11. In the circumstances, I see no illegality, irregularity or error of jurisdiction in the impugned order warranting interference of this Court. The Civil Revision Petition is meritless and is dismissed. However, it is made clear that both the parties are at liberty to agitate their claims, and the trial Court may proceed with the matter uninfluenced by any of the observations made by this Court.

12. Accordingly, the Civil Revision Petition is dismissed. No costs. Pending miscellaneous applications, if any, shall stand closed in consequence.

G. SHYAM PRASAD, J

Date: 29-07-2016
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THE HON'BLE SRI JUSTICE G. SHYAM PRASAD



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