

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Civil Revision Petition No.2939 of 2016

Order:

The petitioner has come up with the above civil revision petition, challenging an order passed by the Rent Controller, rejecting a claim petition filed purportedly under Order XXI, Rule 58 C.P.C read with Rule 23(7) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Rules, 1961.

2. Heard Mr. Rayaprolu Srikanth, learned counsel for the petitioner.

3. The 1st respondent herein filed R.C.C.No.104 of 2007, on the file of the Rent Controller, seeking eviction of the 2nd respondent herein. The 2nd respondent is none else than the blood brother of the petitioner herein.

4. The Rent Controller ordered eviction and the said order was also confirmed by the Appellate Authority in R.C.C.M.A.No.32 of 2012. On the basis of the concurrent orders of eviction passed by the Rent Controller and the Appellate Authority, the 1st respondent/landlord filed an execution petition in E.P.No.9 of 2013. It must be pointed out that this Court also dismissed the revision petition in C.R.P.No.164 of 2013 as against the concurrent orders of eviction.

5. When the execution petition was proceeding, the petitioner herein filed a claim petition in E.A.No.119 of 2015, under Order XXI, Rules 97 and 99 of C.P.C for a declaration that he is also having an interest and right in the petition property. According to the petitioner, he and his brother took parts of the property on rent, for the purpose of running a business under the name Mandakini Restaurant and Bar. It

was also claimed by the petitioner as well as the 2nd respondent that they already had oral agreements with the original owner for the purchase of portions of the petition property and that they had also approached a Civil Court for specific performance and obtained interim orders of injunction.

6. The said claim petition E.A.No.119 of 2015 filed by the petitioner seeking a declaration that the orders of eviction are not binding on him, was returned by the Court below by an order dated 08-02-2016. The order passed by the Court below in E.A.No.119 of 2015, dated 08-02-2016, proceeded on the basis that the claim petition filed under Order XXI, Rules 97 and 99 C.P.C was nothing but an abuse of the process of the Court. The relevant portion of the order of the Court below reads as follows:

“7) So, from the discussion above and with support of relied judgment by this court, it is opined that as already eviction order was passed in RCC.104/2007 and confirmed by appellate authority in RCCMA.32/2012 and also that mere numbering of petition cannot be hurdle in implementing the eviction order effectively without any further delay as per law, this court came to just conclusion that the petition E.A.119/2015 filed under Order XXI Rules 97 and 99 of CPC by brother of Jdr/2nd respondent is liable to be returned in order to prevent abuse of process of law in circumstances of the petition and in the interest of justice.”

7. The said order of the Court below has attained finality as no revision was filed against the same.

8. However, the petitioner resorted to the filing of a fresh execution application under Order XXI, Rule 58 C.P.C., after the return of the previous claim petition. The Court exposed this and dismissed the execution application by the order impugned in the revision.

9. The above narration of facts would show that after having allowed his brother, who is the 2nd respondent, to suffer concurrent orders of eviction, at the hands of three Courts, the petitioner took up

cudgels as if it was a relay baton by filing a first execution application. After he failed in the first execution application and after allowing that order to attain finality, a second lease of life was sought by a fresh application which is dismissed by the Court below leading to the present revision. Therefore, as rightly pointed out by the Court below, the present attempt is nothing but re-agitating the same issue, which the Supreme Court has condemned in **K.K. MODI v. K.N. MODI**^[1]. Hence, the revision is completely devoid of merits, therefore, it is dismissed.

The miscellaneous petitions, if any, pending in this revision shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

05th August, 2016.
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