

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NOS.347 AND 743 OF 2016

COMMON ORDER

These revisions under Section 115 CPC arise out of the same suit and are therefore amenable to disposal through a common order.

The petitioner in both the cases is the defendant in O.S.No.458 of 2008 on the file of the learned Principal Junior Civil Judge, Bhimavaram. The said suit was filed for eviction of the petitioner/ defendant from the suit schedule property and for arrears of rent of Rs.23,000/-, being the dues from March, 2007, to October, 2008, and for future damages. The suit was decreed by the trial Court on 04.01.2014 directing the petitioner/defendant to deliver vacant possession of the suit property within two months from the date of the decree and giving liberty to the respondent/plaintiff to file execution proceedings to secure relief through the process of law otherwise. The petitioner/defendant was directed to pay Rs.23,000/- towards arrears but the claim for future damages was dismissed.

As the petitioner/defendant failed to vacate the suit property as directed, the respondent/plaintiff filed E.P.No.105 of 2014. While so, the petitioner/defendant filed a first appeal, with some delay, against the judgment and decree in O.S.No.458 of 2008 before the learned III Additional District Judge, Bhimavaram. He also filed I.A.No.54 of 2015 therein seeking stay of the proceedings in E.P.No.105 of 2014. While so, the respondent/plaintiff filed I.A.No.643 of 2015 in I.A.No.54 of 2015 in the unnumbered appeal under Order 15A CPC seeking a direction to the petitioner/defendant to deposit the arrears of rent from March, 2007, and in default thereof, praying that the Court strike off his defence. By order dated 06.11.2015, the appellate Court allowed the said I.A. and directed the petitioner/defendant to deposit the entire arrears of rent into the Court by 20.11.2015. Aggrieved thereby, the petitioner/defendant filed C.R.P.No.347 of 2016.

Separately, by order dated 04.01.2016, the executing Court of the learned I Additional Junior Civil Judge, Bhimavaram, allowed E.P.No.105 of 2014 and directed issuance of a delivery warrant on payment of process. Aggrieved by this order, the petitioner/ defendant filed C.R.P.No.743 of 2016. By order dated 19.02.2016, this Court granted stay of further proceedings pursuant to the order dated 04.01.2016 in E.P.No.105 of 2014 subject to the petitioner/ defendant depositing Rs.1,00,000/- to the credit of the execution petition. The respondent/plaintiff was granted liberty to withdraw the said amount unconditionally.

Heard Sri P.Durga Prasad, learned counsel for the petitioner/defendant, and Sri S.Subba Reddy, learned counsel for the respondent/plaintiff.

Sri P.Durga Prasad, learned counsel, contended that Order 15A CPC is only available to the landlord during the proceedings before the trial Court, as the question of striking off the defence would arise only during the suit, and that it is not open to the landlord, the respondent/plaintiff, to take recourse to this legal provision at the appellate stage.

Sri S.Subba Reddy, learned counsel, would however counter this argument and contend that as the subject legal provision is intended to come to the rescue of the landlord, who is not only deprived of the possession of the leased premises but also the rentals therefrom, it would be open to an aggrieved landlord to take recourse to the said provision even at the stage of appeal.

It is however admitted by both the learned counsel that pursuant to the interim order granted by this Court in C.R.P.No.743 of 2016, the petitioner/defendant deposited Rs.1,00,000/- before the executing Court and it has also been withdrawn by the respondent/ plaintiff. Sri S.Subba Reddy, learned counsel, would further concede that upon such deposit and withdrawal, the balance amount due would be about Rs.30,000/- or so.

Given the aforesaid facts, as the petitioner/defendant's appeal is still pending consideration on the issue of delay and as a substantial part of the rentals due has already been paid, this Court does not deem it necessary to adjudicate these revisions on merits. As the appellate Court is yet to consider the condone delay application in the appeal filed by the petitioner/defendant and as giving effect to the judgment and decree in O.S.No.458 of 2008 at this stage would automatically render the said appeal infructuous, the order dated 04.01.2016 passed by the executing Court in E.P.No.105 of 2014 in O.S.No.458 of 2008 is set aside. As the appeal was filed with delay in October, 2014, the learned III Additional District Judge, Bhimavaram, is requested to consider and dispose of the same as expeditiously as possible.

The question as to whether Order 15A CPC would have application at the appellate stage of the suit proceedings is left open for consideration in an appropriate case. The order under revision in C.R.P.No.347 of 2016 is set aside as a substantial part of the rental arrears has been paid.

Both the revisions are allowed to the extent indicated above.

Pending miscellaneous petitions in both the C.R.Ps. shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

22nd MARCH, 2016

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