

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.5452 of 2015

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the respondent-defendant is directed against the order dated 05.08.2015 of the learned VII Junior Civil Judge, City Civil Court, Hyderabad, passed in IA.no.10 of 2015 in OS.no.173 of 2015 filed under Order XVA read with Section 151 of the Code of Civil Procedure, 1908, ('the Code', short).

2. I have heard the submissions of Ms. Jyothi Kiran, learned counsel for the revision petitioner/ defendant ('the defendant', for short) and Sri Hameed Pasha, learned counsel for the respondent/plaintiff ('the plaintiff', for short). I have perused the material record.

3. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows:

The sole plaintiff brought the suit against the defendant for recovery of possession of the premises viz., Flat No.C-3, bearing Municipal No.8-2-677/ C/ 17 in Survey No.129/ 43, in Basement floor of Banjara Garden admeasuring 1120 Square feet together with 60 Square yards of undivided share of land, situated at Road No.12, Banjara Hills, Hyderabad, more fully described in the schedule annexed to the plaint and also for recovery of arrears of rent in a sum of Rs.99,000/- from September, 2014 to February, 2015 @Rs.16,500/- and future rents at the said rate till vacating and handing over the physical possession of the suit property to the plaintiff. The defendant is resisting the suit. In the said

pending suit, the plaintiff filed the subject interlocutory application requesting the Court to direct the defendant to pay the arrears of rent from September, 2014 onwards @ Rs.16,500/- per month in respect of suit schedule property and continue to pay the future rents at the said rate on or before 5th of every calendar month till vacating and delivering the schedule property to the plaintiff. The defendant filed a counter resisting the said application. At the time of enquiry before the Court below, no oral and documentary evidence was adduced. On merits and by the impugned order, the Court below had allowed the petition. The operative portion of the order of the Court below, which is impugned in this revision petition filed by the defendant, reads as under:

“In the result, the petition is allowed. The respondent is directed to pay the admitted rent of @ Rs.16,500/- p.m from the date of this order till disposal of the main suit. The respondent further directed to pay the arrears of rent i.e., from September, 2014 to till date of the order in the interlocutory application within a period of two months and further directed the respondent to pay the rent regularly on or before 10th of every succeeding month till disposal of the main suit. The respondent is further directed to pay the rents in the Court and petitioner is at liberty to receive the rents after depositing the same.

(Reproduced verbatim)

4. Before proceeding further, it is necessary to refer to the relevant pleadings of the parties.

4.1 The case of the plaintiff in support of the request in the said application, in brief, is this:

The plaintiff is the absolute owner of the plaint schedule flat having acquired the same from his mother under a registered gift settlement deed dated 31.08.2010 duly registered as document

no.3656/ 2010 in the Office of the Joint Sub-Registrar, Hyderabad South. The plaintiff authorized his wife to lease out the said property. The defendant approached the plaintiff's wife, who is authorized by the plaintiff, and requested her to lease out the schedule flat to him and obtained the same on lease on 01.05.2014 on a monthly rent of Rs.16,500/- for a period of three months for the purpose of running office under the name and style 'KRP Enterprises'. The said rent is exclusive of electricity consumption charges and maintenance charges. A lease deed was executed between the defendant and the wife of the plaintiff, who is the plaintiff's authorized person. Since the plaintiff is a mechanical engineer engaged in irrigation projects and as he would be out of station in connection with the said work he authorized his wife, in writing, to lease out the property. As such the plaintiff's wife executed the lease deed on behalf of the plaintiff in favour of the defendant in respect of the suit schedule flat. The defendant has specifically stated at the time of taking the property on lease that he intends to take the property on lease for three months and that after three months he would vacate the property and shift to another place. He paid Rs.48,500/- towards interest free security deposit and a sum of Rs.1,500/- each towards maintenance and electricity consumption charges in advance for three months as he intended to shift his office to some other place after three months. The advance amounts were paid to the plaintiff through his wife. Thus in all the defendant paid Rs.51,500/- on the date of lease deed out of which Rs.48,500/- is the security deposit. After the expiry of the lease period, the defendant did not come forward to execute a lease deed nor vacated the suit schedule property inspite of demands made by the defendant to either enter into a fresh lease deed or to vacate the

property. The defendant protracted the issue on one pretext or the other and by making excuses and promising to vacate. Thus the defendant is neither vacating the property nor paying the rents as per the terms of the lease deed and he is also not paying the electricity consumption and maintenance charges. The plaintiff and his wife, on several occasions, demanded the defendant to pay the arrears of rent and maintenance charges. The defendant is keeping the suit schedule flat idle and under lock and key and is not answering the cell phone when the plaintiff is calling defendant on his cell phone. On 22.12.2014 the defendant made false promises but failed to pay the rents from the month of September, 2014 onwards. The tenancy came to an end on 31.07.2014 by efflux of time. Since the defendant wilfully and wantonly committed default in payments of rents and maintenance and electricity consumption charges, the plaintiff got issued a notice dated 24.12.2014 under section 106 of the TP Act terminating the tenancy by 31.12.2014 by registered post with acknowledgment due and demanded the defendant to vacate the schedule flat and handover the possession of the same. The plaintiff is prepared to refund the security deposit to the defendant subject to payment of arrears of rent, electricity consumption charges and maintenance charges. The notice was returned with the endorsement 'door locked intimation served'. Hence the present petition is filed.

4.2 The defendant filed a detailed counter specifically denying the allegations in the affidavit of the plaintiff filed in support of the petition. In the counter it is, *inter alia*, contended as under: "The tenancy commenced on 01.05.2014 and determined on 31.07.2014 is admitted.

The lease deed was executed between the defendant and the wife of the plaintiff. The case of the plaintiff is a concocted story. It is true that at the time of execution of lease deed on 05.05.2014, this defendant paid the amounts as stated by the plaintiff; however the amounts were paid to the wife, who claimed to be the owner of the property. At the inception of the tenancy in the month of May, 2014, the wife of the plaintiff suppressed about the ownership of the property and styled herself as the owner of the suit schedule property and obtained the signatures of this defendant on blank stamp paper of a denomination of Rs.20/- and also on two blank papers. As per the terms of the agreement, the property was initially let out for a period of three months on a monthly rent of Rs.16,500/- exclusive of electricity consumption charges and maintenance charges. Security deposit was obtained. After July, 2014, that is, on 02.08.2014 the lease was renewed; and, at that time the wife of the plaintiff obtained the signatures of the defendant on blank stamp paper of a denomination of Rs.100/- and two blank papers and as per the terms of the said subsequent lease, the term of lease is five years and the monthly rent payable is Rs.16,500/- subject to enhancement at the rate of 5%per annum on the existing monthly rent. A security deposit of Rs.2.00 lakhs was obtained at that time and it is refundable. Even at that time of renewal of lease also, the plaintiff's wife induced the defendant by claiming herself as the owner of the property. This defendant learnt about the plaintiff's ownership of the plaint schedule flat only when the suit summons were received. The suit is filed tactfully in a designed manner. The plaintiff's wife suppressed material fact that she is the only authorized person of her husband. Since there is a huge advance of Rs.2.00 lakhs with them, the plaintiff

and his wife are colluding and are harassing this defendant and are trying to make an illegal gain. This defendant paid monthly rents till January, 2015. Thereafter the plaintiff's wife refused to receive the monthly rents. But this defendant is not liable to pay monthly rents from September 2014, onwards as alleged by the plaintiff. There is no practice of issuing rent receipts. The suit is intended to somehow evict the defendant. This defendant undertakes to pay the rents @ Rs.16,500/- from February, 2015 onwards. Hence the petition may be dismissed."

5. The learned counsel for the defendant while reiterating the defence pleaded in the counter would contend as follows:

The trial Court ought to have appreciated the fact that the suit filed by the plaintiff is not maintainable as there is no jural relationship between the plaintiff and the defendant. The trial Court ought to have dismissed the petition. The trial court ought not to have given liberty to the plaintiff to withdraw the arrears of rent and the monthly rents thereon as the plaintiff has not entered into the lease deed dated 05.05.2014 with the defendant. The said lease was executed between the defendant and the plaintiff's wife in the capacity as landlady. Once the present plaintiff is given liberty to withdraw the amounts pending the suit, there is every possibility and apprehension that the original landlady may come forward and claim the rents once again from the defendant. The trial Court ought to have seen that the alleged authorization alleged to have been given by the plaintiff to his wife was neither referred to in the rental agreement nor was brought to the notice of the defendant at any point of time till the suit is filed. The plaintiff

with ill motives has not chosen to join his wife as one of the plaintiffs. Therefore, the balance of convenience requires that the petition be dismissed. The trial court failed to appreciate that once the lease deed is executed by a third party, who is not the plaintiff, and the plaintiff is not a party to the lease deed, no suit for recovery of possession, on termination of lease or license is maintainable and therefore the provisions under Order XVA of the Code are not applicable to the present case. Therefore, the order is liable to be set aside.

6. On the other hand, the learned counsel for the plaintiff supported the orders of the Court below.

7. In view of the contention of the defendant that the plaintiff cannot invoke the provision of Order XV-A of the Code, it is necessary to first refer to the provision of law and the ratios in the precedents. The relevant provision of Order XV-A of the Code reads as follows:

In a suit for recovery of possession, on termination of lease, or licence, with or without a prayer for recovery of arrears of rent, or licence fee, known with whatever description, the defendant, while filing his written statement, shall deposit the amount, representing the undisputed arrears, calculated upto that due into the Court and shall continue to deposit such amount, which becomes payable thereafter within one week from the date on which it becomes due till the judgment is rendered in the suit.

Wherever the defendant pleads in the written statement that no arrears of rent or licence fee exists, it shall be competent for the Court to pass an order in this regard, after affording opportunity to both the parties, and in case any amount is found due, the defendant shall be under obligation to deposit the same, within the time stipulated by the Court and continue to deposit the amount which becomes payable thereafter as provided under Rule 1:

Provided that the time stipulated for payment of amount, as aforesaid, may be extended by the Court for reasons to be recorded for a period not exceeding 15 days.

If the defendant commits default in making the deposits, as aforesaid, the Court shall strike off the defence.

On such deposit it shall be competent for the plaintiff to withdraw the same.

Explanation: - the expression “the amount representing the undisputed arrears” shall mean the sum of rent, or licence fee calculated for the period for which it remained unpaid, after deducting from it any amount:

- (a) paid as tax, to a local authority, in respect of the property,
- (b) paid to the plaintiff under written acknowledgment, and
- (c) deposited into the Court, in any proceedings, in relation to the said property”.

In K.Zakria Shaik v. K.Saleem Basha¹, this Court while referring to the provisions of Order XV-A of the Code had held as follows:

“The purpose underlying the provision is to ensure that the owner of the premises leased to the defendant in a suit pays the rents regularly, together with arrears, if any. The word “undisputed” occurring before the word “arrears”, assumes significance. If there is a dispute as to the quantum, the Court has to decide the same, duly taking into account, the versions put forward by the parties. In this regard, slightly different approach is needed in respect of a suit in which recovery of arrears is prayed for, as one of the reliefs on the one hand and a suit for eviction simplicitor on the other hand. If the defendant opposes the claim in the suit, as to arrears, the adjudication thereof must take place after trial. An application under Order 15-A of C.P.C. is not the proper mechanism to recover the suit amount, if seriously disputed by the defendant. Under the garb of seeking

¹ 2011 (4) ALD 757

relief under that provision, plaintiff in a suit cannot pray for recovery of the entire amount, which incidentally is claimed in the suit itself. In such an event, the suit comes to be virtually decreed to that extent without trial, but through an order under Order 15-A of C.P.C.

If the arrears existed from the date of filing of the suit, a direction can certainly be issued for deposit thereof in an application filed under Rule 15-A of C.P.C. Any direction for deposit of arrears prior to the date of filing of the suit can be issued, only when there is no dispute. If there is divergence of opinion between the parties as to the quantum or liability, the determination thereof has to be relegated to a subsequent stage and a finding has to be given after trial. An exercise contemplated under Order 15-A of C.P.C. is totally inadequate and unsuited for final determination of the arrears of rent for the period anterior to the date of filing of the suit.”

8. A plain reading of the ratio in the decision would show that when there is a dispute in regard to the quantum of rent or the arrears of rent due and payable prior to the suit or when there is a divergence of views between the parties in regard to the quantum of rent or the liability in respect of arrears of rent prior to the date of filing of the suit, the determination thereof has to be relegated to a subsequent stage and a finding has to be given after trial and that in such a situation, no directions can be given to deposit the arrears of rent for the period anterior to the date of filing of the suit. Nevertheless, in regard to arrears of rent due and payable for the period from the date of the filing of the suit, a direction for deposit of arrears thereof can certainly be given in an application filed under Order XV-A of the Code. In such a situation, even if there is a dispute as to the quantum of rent, the Court

is empowered to decide the same duly taking into consideration the versions put forward by the parties and the facts and circumstances of the case.

9. It is also apt to refer to the decision in M.Vijaya Lakshmi and others v. Kalanikethan Textiles and Jewelles Pvt. Ltd., Hyderabad². In this cited case, this Court had referred to the decision in Sri Vasavi Boys Hostel and Mess. K.Satya Prasad rep. by his GPA Holder [2012 (4) ALD 140] as well as the provision of law under Order XV-A (A.P. Amendment) of the Code. The facts of the cited case disclose that a suit is filed for eviction and recovery of certain sum and also future mesne profits from the date of filing of the suit and that during the pendency of the suit, an application under Order XV-A was filed for a direction to the 1st respondent to deposit the arrears of rent of Rs.90 lakhs and monthly rents @Rs.15 lakhs to the credit of the suit in the lower Court. The trial Court had dismissed the petition of the plaintiff. The plaintiff had filed the revision before this Court. Having regard to the above facts of the case, this Court while allowing the CRP had *inter alia* held as follows: “..even where there is a dispute with regard to the quantum of rent and other charges payable by the 1st respondent, the Court can still hold a summary enquiry and adjudicate such a dispute while deciding an application under Order XV-A of CPC.” Thus in this decision, this Court held that even when there is a dispute in regard to quantum of rent, a summary enquiry can still be held by the trial Court while disposing of an application under Order XV-A of the Code.

² 2015 (1) ALD 38

10. Thus, on a reading of the provision of law and the ratios in the decisions supra, this Court is satisfied that it is competent for the Court to hold a summary enquiry after affording an opportunity to both the parties (landlord and tenant) to put forward their versions and to pass an order giving directions to the tenant, in case, any amount is found due and payable, to deposit the same within the time stipulated by the Court and to continue to deposit, at the rate thus determined, the monthly rents which become payable thereafter, as provided under Order XV-A of the Code. Insofar as the undisputed arrears, if any, prior to the suit, the provision itself makes it clear that the defendant, while filing his written statement, shall deposit the amount, representing the undisputed arrears, calculated upto that date into the Court and shall continue to deposit such amounts, which becomes payable thereafter, within one week from the date on which the same become due and till the judgment is rendered in the suit. The provision of law makes it plain that when the defendant pleads in the written statement that no arrears of rent or licence fee exists, it shall be competent for the Court to pass an order in this regard, after affording an opportunity to both the parties. The provision further makes it plain that while passing such order, the Court can give directions to the defendant/tenant to deposit the amount, if any, found due within the time stipulated by the Court and to continue to deposit the amount, which becomes payable thereafter. Therefore, in the well considered view of this Court, there are no impediments in law for entertaining an interlocutory application filed under Order XV-A of the Code and determining the issue of arrears of rents due and payable subsequent to the institution of the suit and for giving suitable directions to the defendant/tenant to deposit within the time stipulated

by the Court, the amounts, if any, found due. However, such determination shall be made after holding a summary enquiry by affording an opportunity to both the parties to put forward their versions.

11. Reverting to the instant case, though at the inception a lease deed in respect of the lease of the property was executed, for a period of three months, that is, from 01.05.2014 to 31.07.2014, between the wife of the plaintiff and the defendant-tenant, the fact remains that the plaintiff is the owner of the property. According to the plaintiff he authorized his wife to lease out the property on account of the fact that he is a mechanical engineer in irrigation projects and his absence from the station. The further case of the plaintiff is that he authorized his wife, in writing, to lease out the property to tenants and accordingly his wife leased out the property to the defendant as his authorized person. However, as per the pleadings already noted, the defendant admits that he came to know that the plaintiff is the owner of the property after receipt of the summons in the present suit. He also admits that the initial lease period is from 01.05.2014 to 31.07.2014 and that the monthly rent agreed to be paid is Rs.16,500/- exclusive of electricity consumption and maintenance charges and that he paid a total sum of Rs.48,500/- towards interest free security deposit, Rs.1,500/- each towards maintenance and electricity consumption charges for three months, that is, a total sum of Rs.51,500/-. Be that as it may. According to the plaintiff, the defendant failed to vacate the property after the period of three months as agreed to originally and also failed to come forward to renew the lease and committed defaults in payment of rents

from September, 2014 onwards. Per contra, the case of the defendant is that the lease was renewed after July, 2014, that is, on 02.08.2014, by the wife of the plaintiff and consequently she had obtained his signatures on one blank stamp paper of a denomination of Rs.100/- and two blank papers and that at that time he paid Rs.2.00 lakhs as security deposit and the agreed lease period is five years and the monthly rent payable is Rs.16,500/- per month subject to enhancement at the rate of 5% per annum on the existing monthly rents. Therefore, he further contends that he paid rents upto January, 2015 and that he is liable to pay rents from February, 2015 onwards only and that he is ready to pay the same and that he could not pay the said rents from that month as the wife of the plaintiff refused to receive the rents and that there is no practice of passing rent receipts. However the contention of the defendant about the renewal of lease is not supported by any documentary evidence though there is documentary evidence in the form of lease deed which was entered into at the inception for a lease period of three months. Further, even by December, 2014, disputes have arisen and therefore, the plaintiff has issued a legal notice dated 24.12.2014 to the defendant and the same was returned unserved. Therefore, the contention that the rents were paid even without obtaining receipts after the disputes have arisen cannot be countenanced.

12. The short question is – ‘Whether in the facts and circumstances of the case, the order of the Court below insofar as it related to directing the defendant to pay the arrears of rent from September, 2014 to till date of the order was correct?’

13. As noted, the plaintiff contends that the defendant committed default in payment of rents from September, 2014. The defendant contends that the rent is payable from February, 2015 onwards and that he is ready to pay the rent from the said month. The monthly rent @ Rs.16,500/- is not disputed. No rent receipts evidencing payment of rent till a particular month was produced by either of the parties. The suit is instituted after terminating the tenancy in the year 2014. The arrears upto the date of the institution of the suit, that is, from September, 2014 to February, 2015 in a sum of Rs.99,000/- are claimed in the suit. In the enquiry in this interlocutory application, which is the subject matter of revision, this Court need not go into the issue of arrears of rent anterior to the institution of the suit and which are allegedly due for the period prior to the institution of the suit. In the facts and circumstances of the case, this Court on a careful examination of the matter finds that the court below is not justified in passing the orders which are impugned in this revision insofar as it related to directing the defendant to pay the arrears of rent from September, 2014, that is, prior to the institution of the suit and that therefore, the said orders need modification. However, the defendant expressed preparedness to pay the rents from February, 2015 onwards.

14. Accordingly, the Civil Revision Petition is allowed in part and the order impugned is set aside in so far as it related to directing the defendant to deposit the arrears of monthly rents from September, 2014 onwards and instead the defendant is directed to deposit to the credit of the pending suit, the rents from February, 2015 onwards upto date @ Rs.16,500/- per month and to continue to deposit on or before the 10th of

every succeeding month, the rents successively falling due for the future months at the said rate till the disposal of the suit or till the order is modified by any subsequent order. The defendant is granted two months time from the date of receipt of a copy of this order for depositing the entire arrears of rents from February, 2015 upto October, 2016. Failing compliance of the said conditions, the plaintiff shall be entitled to initiate and pursue appropriate legal proceedings and the trial Court shall be at liberty to pass appropriate orders in accordance with the procedure established by law. On such deposits being made, the plaintiff is at liberty to withdraw the same by following the procedure established by law.

Miscellaneous petitions, if any, pending in this revision shall stand dismissed. No costs.

4th November, 2016
Vjl

M. SEETHARAMA MURTI, J

