

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION Nos.4884, 4891 and 4892 of 2017

COMMON ORDER:

These three civil revision petitions under Article 227 of the Constitution are amenable to disposal by way of this common order as they all relate to the same respondent/plaintiff.

The respondent/plaintiff is the landlady and each of the petitioners is her tenant but they all belong to the same family. The respondent/landlady instituted suits seeking eviction of the petitioners/tenants and for payment of monies under various counts. All the three suits were decreed *ex parte*. The petitioners/tenants thereupon filed I.As. in the three suits under Order 9 Rule 13 CPC to set aside the *ex parte* decrees passed therein. By separate orders dated 02.08.2017 passed in the said I.As., the Court below allowed them subject to deposit of approximately 25% of the decretal amount along with costs. The Court below also imposed a condition in each of the cases that the petitioners/tenants should deposit the monthly rentals as claimed by the respondent/landlady from 01.08.2016 on or before the 10th day of every month in Court pending disposal of the suits. Aggrieved by the conditions imposed, the petitioners/tenants are before this Court.

Heard Sri Vedula Srinivas, learned counsel for the petitioners/tenants, and Sri B.Venkat Rama Rao, learned counsel on caveat for the respondent/landlady.

Sri Vedula Srinivas, learned counsel, placed reliance on a judgment of this Court in Polasani Sucharitha v. Margadarsi Chit Fund

Limited¹, wherein a Division Bench answered the reference as to issues arising out of Order 9 Rule 13 CPC as under:

“14. Therefore, the reference is answered in the following terms:

(a) The employment of words "upon such terms as to costs, payment into Court or otherwise as it (the Court) thinks fit" confers a power and imposes a legal obligation upon the Court to impose conditions for setting aside an *ex parte* decree as to costs, as to payment of the decretal amount whole or in part or as to such other conditions as the Court thinks fit, provided onerous conditions shall not be imposed except under special circumstances and for exceptional reasons which have to be stated in the order.

(b) However, imposition of conditions for depositing the costs or part or whole of the suit amount as a condition precedent for entertaining the application even before going into its merits is not permissible.

(c) The imposition of terms or conditions for setting aside an *ex parte* decree is in the exercise of judicial discretion of the Court and whether the terms or conditions imposed are reasonable or onerous is a question of fact on the circumstances of each case.

(d) No hard and fast rules can be laid down with mathematical precision to govern the exercise of judicial discretion of the Court in arriving at reasonable, equitable and just terms or conditions for setting aside an *ex parte* decree.”

Applying the aforestated principles to the case on hand, it cannot be said that the condition imposed by the Court below to deposit approximately 25% of the decretal amount is onerous or unduly harsh. It is an admitted fact that the petitioners/tenants are presently not paying any rentals to the respondent/landlady. Their claim that subsequent lease deeds were entered into, whereunder the requirement of paying the monthly rentals was obviated, needs to be examined by the Court below during the course of the trial of the suits. Therefore, deposit of part of the

¹ 2007 (5) ALT 722 (D.B.)

decretal amounts as a condition precedent to set aside the *ex parte* decrees in the three suits is a valid and judicious exercise of discretion by the Court below. Further, imposition of costs also does not appear to be unduly harsh or exorbitant.

However, Sri Vedula Srinivas, learned counsel, would inform this Court that the respondent/landlady filed applications under Order XV-A CPC for payment of monthly rentals during the pendency of the suits and those applications were pending consideration as on the date of *ex parte* decretal of the said suits. Therefore, once the said suits stood restored to the file upon the Court below setting aside the *ex parte* decrees, those applications would revive and require consideration.

That being so, the condition imposed by the Court below that the petitioners/tenants should deposit the monthly rentals claimed by the respondent/landlady commencing from 01.08.2016 on or before the 10th day of every month pending disposal of the suits practically renders the pending applications of the respondent/ landlady under Order XV-A CPC redundant and infructuous.

The issue as to whether the respondent/landlady would be entitled to relief under Order XV-A CPC and if so, the quantum of rentals to be paid by the petitioners/tenants would have to be decided by the Court below after due adjudication of the said applications. The condition imposed by the Court below in this regard as a condition precedent for setting aside the *ex parte* decrees therefore cannot be sustained. The orders under revision to the extent that they require the petitioners/tenants to deposit such monthly rentals before the Court pending the disposal of the suits are accordingly set aside.

The civil revision petitions are allowed in part to the extent indicated above. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

JUSTICE SANJAY KUMAR

Date:18.09.2017

GJ

