

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No.4394 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner/defendant, assailing the order, dated 24.07.2017, of the learned II Senior Civil Judge, City Civil Court, Hyderabad, passed in I.A.No.218 of 2017 in O.S.No.537 of 2017.

2. I have heard the submissions of Sri *E.Poornachander Rao*, learned counsel appearing for the Revision Petitioner/defendant, (hereinafter, 'defendant'), and of Sri *V.R.N.Prashanth*, learned counsel representing M/s. Indus Law Firm, learned counsel on caveat for the respondent/plaintiff, (hereinafter, 'plaintiff'). 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 plaintiff brought the suit against the defendant for eviction, recovery of arrears of rent, award of damages @ Rs.1,00,000/- per month towards unauthorized occupation of the suit schedule property from 01.05.2017 till the date of eviction and for costs. In the said suit, the plaintiff filed the subject interlocutory application under Order XV-A read with Section 151 of the Code of Civil Procedure, 1908, seeking a direction to the defendant to pay arrears of rent in a sum of Rs.2,95,740/- and to deposit the future rents @ Rs.1,00,000/- per month. The defendant resisted the said application by filing a counter. On merits and by the order impugned, the Court below allowed the petition in part and, directed the defendant to pay arrears of rent in a sum of Rs.2,28,380/- to the plaintiff within one month from the date of the said order; and, further imposed a condition that on his failure to do so, his defence in the suit shall be struck off. The Court below further directed the defendant to continue to pay future rents, i.e., the rents, which may become due in the

course of the proceedings, at the same rate at which the rents for the months of April to June, 2017 were paid; and, also directed the plaintiff to furnish the details of her bank account to enable the defendant to deposit the future monthly rents. Aggrieved thereof, the defendant is before this Court.

4. To begin with, it is necessary to refer to the pleadings of the parties.

4.1 The case of the plaintiff, as stated in the affidavit filed in the subject interlocutory application, in brief, is as follows:-

The plaintiff is the owner of the premises in Plot No.143 located in the ground floor, with two adjoining shutters, admeasuring 1100 square feet, situated at H.No.6-3-788/ 43, Durganagar, Ameerpet, Hyderabad. The defendant approached her for letting out the said suit property to set up a Samsung authorized service centre. Accordingly, the plaintiff executed a lease deed, dated 19.04.2013, in favour of the defendant letting out the suit premises for a period of one year, commencing from 01.05.2013, on a monthly rent of Rs.15,000/- per month with a term for increase of rent @5%annually, subject to renewal/extension of rental period and on further deposit of Rs.3,00,000/- as interest free security deposit repayable on the termination of the lease and adjustable against the outstanding rent, if any, as on the date of termination of the lease. After expiry of the term of lease, the defendant did not vacate the suit premises and continued in possession unauthorizedly and without paying any rent. The defendant stopped payment of rents from 01.05.2014 onwards. Even if the lease deed is to be taken as the basis for payment of rents, the defendant is liable to pay the following amounts to the plaintiff:

From 01.05.2014 to 30.04.2015 (@Rs.15,750/- X 12 months)	: Rs.1,89,000/-
From 01.05.2015 to 30.04.2016 (@Rs.16,535/- X 12 months)	: Rs.1,98,420/-
From 01.05.2016 to 30.04.2017 (@Rs.17,360/- X 12 months)	: Rs.2,08,320/-

When the plaintiff insisted the defendant to pay the rents, the defendant asked the plaintiff to set off the security deposit of Rs.3,00,000/- towards the rents due and further stated that he would vacate the suit premises, once the said amount gets exhausted on adjustment towards rents. The plaintiff accordingly adjusted the security deposit amount towards monthly rents. The plaintiff learnt that due to some disputes between the defendant and the Samsung Company, the defendant is no more an authorized Samsung dealer. Thus, the very purpose for which the subject premises was taken on lease has become redundant. The rental value of the suit premises is now around Rs.50,000/- per month. The defendant is continuing in possession of the suit premises unauthorisedly. The defendant had filed O.S.No.677 of 2017 on the file of the Court of the learned V Junior Civil Judge, City Civil Court, Hyderabad, with a *mala fide* intention to continue in the suit premises without payment of rent, and obtained *status quo* orders in I.A.No.83 of 2017 filed in the said suit. As the defendant was squatting over the suit property, the plaintiff got issued a legal notice, dated 09.04.2017, under Section 106 of the Transfer of Property Act, 1882, asking the defendant to vacate the suit property within 15 days from the date of the said notice. However, the defendant got issued a reply notice, dated 22.04.2017, with baseless and vexatious allegations and alleging that he was regular in payment of rents; but, the plaintiff is not ready to receive the same. From the tone and tenor of the content of the reply notice, it is evident that the defendant is not intending to vacate the suit premises, though he is not having any semblance of right to continue in the suit property. The plaintiff is entitled to get an amount of Rs.5,95,740/- towards rent for the period from 01.05.2014 to 30.04.2017. Even after setting off the amount deposited as security deposit, the plaintiff is still entitled to get Rs.2,95,740/- towards rents from the defendant. Since the continued possession of the defendant over the suit premises is unauthorized and illegal, the plaintiff is

entitled to recover Rs.1,00,000/- per month from the defendants towards damages for unauthorized use and occupation of the suit premises.

4.2 The case of the defendant, as stated in the counter affidavit filed in the subject interlocutory application, in brief, is this:-

The Interlocutory application is not maintainable. Since the prayer in the suit and the prayer in the IA are one and the same, the same issue cannot be adjudicated at the interlocutory stage, and the said issue cannot be decided until a full fledged trial is conducted. The averments in the plaintiff's affidavit are false and incorrect. The plaintiff approached the Court with unclean hands. The plaintiff alleges that the defendant had paid Rs.3,00,000/- towards security deposit; but in fact, the defendant had deposited Rs.3,50,000/- towards interest free refundable security deposit, out of which Rs.3,00,000/- was paid while entering into the lease deed, and, another sum of Rs.50,000/- was paid in the month of May, 2016, when the plaintiff insisted for enhancement of security deposit. However, no receipt was issued for the said security deposit. Further, when the defendant insisted for a receipt, the plaintiff said that there is no such practice of issuing any receipts. Taking undue advantage of the said fact, the plaintiff is avoiding to disclose the additional security deposit of Rs.50,000/- made by the defendant. The defendant never stopped payment of rents to the plaintiff. Escalating the rent from time to time, the defendant had paid Rs.17,400/- per month towards rent to the plaintiff till March, 2017. The rents were paid in cash; and no receipts were issued by the plaintiff stating that there is no such practice of issuing receipts for rents. Receipts were not issued to avoid problems with the income tax department, since she is owning several properties. For the smooth running of the business and to safeguard the relationship with the plaintiff, the defendant never insisted for issuance of receipts for the rents paid from the date of entering into the lease deed and till date. The defendant never fell into arrears of rent. The plaintiff received his rents regularly, till March, 2017.

No explanation is offered as to why the plaintiff remained silent for 17 months and till the filing the suit in O.S.No.677 of 2017 for permanent injunction and obtaining *status quo* orders. Though there is no renewal of the lease agreement after expiry of the original lease period, the defendant is not in unauthorized possession of the suit premises. The jural relationship between him and the plaintiff is still continuing, on the same terms and conditions stipulated in the original lease deed. The plaintiff assured that she will not create any impediments or cause any obstructions for the defendant enjoying the property. On such assurance, the defendant had invested twenty five lakhs of rupees on his business and is carrying on his business in the suit premises. The contentions of the plaintiff that the tenancy has become redundant since disputes arose between the defendant and the Samsung Company are false. The contention that the defendant fell in arrears of rent from 01.05.2014 to 30.04.2017 is incorrect and is denied. Since the defendant filed the suit in O.S.No.677 of 2017 on the file of the V Junior Civil Court, City Civil Court, Hyderabad, she did not come forward to receive the monthly rents from April, 2017 onwards; therefore, the defendant was left with no other option but to send two Demand Drafts towards the monthly rents for the months of April, 2017 and May, 2017. The plaintiff acknowledged the same through a letter, dated 19.06.2017. The monthly rent for the month of June, 2017 was also sent to the plaintiff by Demand Draft and the acknowledgement for the same is awaited. The defendant had no intention to stop payment of rents. The rent for the month of July, 2017, after escalation of rent by 5% annually as agreed upon, comes to Rs.18,200/- . The defendant is ready and willing to pay the rents continuously, without default, either at the said rate or as directed by the Court. The petition is liable to be dismissed.

5. At the hearing, learned counsel for the petitioner/defendant while reiterating the pleaded case of the petitioner/defendant, which is already stated supra, and while contending that the impugned order is unsustainable

under facts and in law, further contended as follows: 'The jural relationship is accepted; however, in the suit a claim of Rs.2,95,740/- was made and a decree was sought for the said amount by *inter alia* stating that this defendant stopped paying rents from 01.05.2014 onwards. In the petition filed by the plaintiff under Order XVA of the Code, it is alleged that the rents were paid until expiry of lease period, i.e., till April, 2014 and that the arrears of rents accumulated to Rs.5,95,740/- by 30.04.2017 and that the security deposit of Rs.3,00,000/- available with the plaintiff was adjusted towards arrears of rent. All the allegations are disputed in the counter of this defendant/revision petitioner. When there is a threat of dispossession from the property, this defendant had already filed O.S.No.677 of 2017 on the file of V Junior Civil Court, City Civil Court, Hyderabad, seeking perpetual injunction against the plaintiff and another. The said suit was instituted on 15.03.2017. The allegation that rents were not paid from 01.05.2014 to 30.04.2017 is not supported by any evidence. This defendant never made a request to adjust the advance deposit of Rs.3,00,000/- towards the alleged arrears of rent. As per the terms of lease, the said amount has to be refunded at the time of the defendant vacating the property after adjusting the amount or part of the amount, towards arrears of rent, if any, as on that date. There is no practice of issuing receipts for the rents as and when paid. The calculation mentioned by the plaintiff after the alleged adjustment of security deposit is false. In the suit filed for perpetual injunction by this defendant, *status quo* orders were granted and in that suit, this plaintiff never raised any of the contentions, which are raised in the present suit. No prudent landlord would keep quiet if rents are not paid for several months. The Court below failed to discuss all these aspects in the order impugned. The Court below simply believed the contentions of the plaintiff, including the contention with regard to adjustment of security deposit/ advance amount which is with the plaintiff, and passed an order giving direction to this defendant to deposit the alleged arrears. The

Court below was in error in throwing the onus of proof on the defendant for not producing the account details showing payment of rents, as the onus of proof is on the plaintiff to prove that the defendant failed to pay the arrears of rent. The lease deed is an unregistered lease deed. Till disputes arose, the parties were maintaining cordial relationship. Merely because the accounts are not produced and on the ground that accounts, if any, produced would show the real state of affairs, the Court below ought not to have drawn any inferences as such inferences are not possible in the facts and circumstances of the case. It is for the plaintiff to first discharge the initial onus of proof, which is upon the plaintiff. In the case on hand, the plaintiff failed to discharge the initial onus; therefore, when the onus never shifted to the defendant, the defendant is not required to produce any evidence to show that the rents were paid and that there are no arrears. Rents were paid regularly till the disputes arose and subsequently, the admitted rents are also paid vide two Demand Drafts towards the monthly rents for the months of April, 2017 and May, 2017. The rent for June was also sent similarly. The rent for the month of July, 2017, after escalation of rent by 5% annually as agreed upon, comes to Rs.18,200/-; and, the defendant is ready and willing to pay the same. When there is a dispute about the arrears of rent, no direction under Order XV-A of the Code shall be given as the alleged arrears, if any, are to be determined after full-fledged trial. When a claim of arrears of rent was made in the plaint and a decree was sought for the said amount, giving a direction in the interlocutory application filed under Order XVA of the Code to deposit of the arrears would amount to decreeing the suit for the said amount even without conducting trial. Therefore, the order, which was passed by the trial Court, on assumptions & presumptions and without following the settled legal position, is liable to be set aside.'

6. Per contra, the learned counsel for the plaintiff, while supporting the orders of the Court below, has submitted as follows: 'The jural relationship is

admitted. There is no dispute about the rent payable by the defendant to the plaintiff from time to time as per the terms of the lease. The defendant made an interest free security deposit of Rs.3,00,000/-, which is repayable on termination of the lease, after adjustment against the outstanding rents, if any, on the date of termination of lease. After the expiry of the period of lease fixed under the deed of lease, the defendant did not vacate the premises and continued in the premises without paying the rents. The defendant stopped paying rents from 01.05.2014. The rents for the period from 01.05.2014 to 30.04.2015 was Rs.15,750/- per month. From 01.03.2015 to 30.04.2016, the rent payable was Rs.16,535/- per month; and, from 01.05.2016 to 30.04.2017, the rent payable was Rs.17,360/- per month. As per the terms of the lease, there shall be 5% escalation of the existing rent annually subject to renewal or extension of period of lease. In fact, the defendant asked the plaintiff to adjust the advance amount towards rents due and future rents and stated that he would vacate after the advance security deposit is exhausted on such adjustment towards rents. The rental value of the said property is Rs.50,000/-. The defendant is continuing in unauthorized occupation of the property. Therefore, after issuing a statutory notice, the suit is filed for eviction as well as recovery of arrears of rent & damages; and, as per the settled legal position, the defendant cannot continue in possession of the property without paying the rents and also damages for use and occupation/ mesne profits. As per the provisions of law under Order XV-A of the Code, he is required to pay or deposit the arrears of rent and also future rents every month. The defendant is duly maintaining the accounts and must have accounted for the rents paid in his accounts. The counsel for the defendant, during the course of arguments before the trial Court, had undertaken to produce the accounts, which show that the rents were paid from time to time, and sought an adjournment for that purpose; and, later, the defendant failed to produce the said accounts as the accounts, if any,

produced would reflect that the defence that the defendant paid rents and that there are no arrears would be found to be false. The trial Court, therefore, has drawn an adverse inference for not producing the best evidence, which is in possession of the defendant and as the defendant's case is that there is no practice of issuing receipts. When the best evidence rule is applied and when the evidence, which winches the truth to the fore, is suppressed, the Court is entitled to draw an inference against the party, who fails to produce the best evidence, which would assist the Court in arriving at a just decision. Hence, the order impugned is sustainable under facts and in law. The revision petition is liable for dismissal.'

7. In view of the contention of the defendant that all rents are paid without obtaining receipts as per practice and that there are no arrears and that the plaintiff cannot invoke the provision of Order XV-A of the Code, and that the Court below is not entitled to direct the tenant to pay any arrears of rent which are disputed and which are subject matter of the suit claim, 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”.

8. Before proceeding further, it is necessary to refer to the legal position laid down in the following decisions:

- a) K. Zakria Shaik v. K. Saleem Basha¹
- b) Chaitanya Lanka v. Suresh Kumar Gupta²
- c) Manik Lal Majumdar v. Gouranga Chandra Dey³

(i) In the decision in Zakria Shaik (1st supra), 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

¹ 2011 (4) ALD 757

² 2014 (5) ALD 744

³ (2005) 2 Supreme Court Cases 400

to recover the suit amount, if seriously disputed by the defendant. Under the garb of seeking 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.”

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. 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 applicable to the case on hand. 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.

(ii) In the decision in *Chaitanya Lanka* (2nd supra), this Court while interpreting Order XV-A of the Code, held as follows:

“In an application filed under Order XV-A C.P.C, three aspects become relevant, namely, (a) existence of the lease between the parties vis-à-vis the suit schedule property; (b) quantum of rent; and, (c) the period for which the rent was not paid. If there is no dispute on these aspects, an order for payment of arrears must follow, as a matter of course, with a threat of forfeiture of the right to defend the suit. If there is a dispute on those aspects, the semblance of enquiry is to be undertaken. If the controversy as to the very existence of arrears is serious enough, it must be dealt with, only at the trial of the suit.”

In this decision also, this Court referred to the earlier decision in K.Zakria Shaik (1st supra). On facts of the cited case, this Court found that there is no dispute on any of the three aspects referred to above and, therefore, disposed of the revision petition on the facts peculiar to that case.

(iii) In the decisions in Madala Jyothi v. Karanam Tirupalaiah⁴ and M.Vijaya Lakshmi and others v. Kalanikethan Textiles and Jewelles Pvt. Ltd., Hyderabad⁵ it was held that an unregistered lease deed is inadmissible in evidence. In the instant suit, the lease deed is not exhibited at the time of enquiry before the Court below and no request for exhibiting the said lease deed is made before this Court also. Hence, there is no need to dilate on the cited decision.

(iv) In Kalanikethan's case (5th supra), this Court had referred to the decisions in Sri Vasavi Boys Hostel and Mess. K.Satya Prasad rep. by his GPA Holder⁶ as well as the provision of law under Order XV-A (A.P. Amendment) of the Code. The facts of the cited case are as under: ‘A suit was filed for eviction and recovery of certain specified sum and also future mesne profits from the date of filing of the suit and that in the pending 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. The trial Court had dismissed the petition of the plaintiff. The

⁴ 2015 (5) ALT 472

⁵ 2015 (1) ALD 38

⁶ [2012 (4) ALD 140]

plaintiff had filed the revision before this Court.’ Having regard to the above facts of the cited 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 and other charges payable, a summary enquiry can still be held by the trial Court while disposing of an application under Order XV-A of the Code.

(v) Manik Lal Majumdar (3rd supra) is a decision rendered in a matter to which the Rent Control Law of Tripura is applicable. The relevant ratio in this decision of the Supreme Court is as follows:

Sub-section (1) of Section 13 lays down that any tenant against whom an application for eviction has been made by a landlord shall not be entitled to contest the application before the Rent Control Court or to prefer an appeal under Section 20 against any order made by the said Court unless he has paid or pays to the landlord or deposits with the Rent Control Court or the appellate authority, as the case may be, all arrears of rent, admitted by the tenant to be due and continues to pay or deposit any rent which may subsequently become due in respect of the building in question until the termination of the proceedings before the Rent Control Court or the appellate authority, as the case may be. The expression "all arrears of rent admitted by the tenant to be due", if interpreted literally, would mean that unless the tenant specifically admits any arrears of rent to be due to the landlord, the condition to make the payment of arrears of rent in order to contest the original proceedings before the Rent Control Court or to prefer an appeal as provided under Section 13 of the Act would not arise. The High Court in Binapani Roy's case (supra) has held that giving literal meaning to the words "admitted by the tenant to be due" would frustrate the provisions of Section 13 of the Act and make the same nugatory or otiose. The object of sub-section

(1) of Section 13 of the Act is to avoid litigation for realization of arrears of rent which is likely to accumulate during the course of litigation, which may be a long period and also to deter the tenant from resorting to an unfair practice to use and occupy the tenanted premises without payment of any rent so long as the litigation continues. The High Court was of the opinion that the reasonable meaning of the words "admitted by the tenant to be due" is the inference of admission from the material on record if the material on record *prima facie* discloses the admission of relationship of landlord and tenant and rate of monthly rent payable, the tenant would be required to pay or deposit arrears of rent and continue payment of current rent during the pendency of the litigation, as enjoined under Section 13 of the Act. Dharmadhikari J. has expressed his concurrence with the aforesaid view taken by the Division Bench of the Gauhati High Court in the case of Binapani Roy (*supra*). We are also of the opinion that the view taken by the Division Bench of the High Court on this point is perfectly sound as giving a literal meaning to the expression "all arrears of rent admitted by the tenant to be due" may defeat the very object of enacting Section 13 of the Act and an unscrupulous tenant may continue to enjoy the premises without payment of any rent to the landlord by protracting the litigation and the landlord may have to wait till the final decision of the case to recover his dues by taking execution proceedings.

From the ratio it is clear that the reasonable meaning of the words "admitted by the tenant to be due" is the inference of admission from the material on record if the material on record *prima facie* discloses the admission of relationship of landlord and tenant and rate of monthly rent payable, the tenant would be required to pay or deposit arrears of rent and continue payment of current rent during the pendency of the litigation. Therefore, the words 'undisputed arrears' must be given the same meaning as the words "admitted by the tenant to be due" and cannot be given literal meaning as held by the Supreme Court.

9. Insofar as the undisputed arrears, if any, prior to the suit, the provision itself makes 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 amount, which becomes payable thereafter within one week from the date on which it becomes due and till the judgment is rendered in the suit. Thus, on a reading of the provision of law and the ratios in the cited decisions, this Court is satisfied that it is competent for the trial 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 the monthly rent thus determined and which becomes payable thereafter, as provided under Order XV-A of the Code.

10. 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 prior to or 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 facts of the case it is to be noted that there is no dispute with regard to quantum of rents covered by the subject period. The plaintiff says that the rents were not paid during the entire period from 01.05.2014 to 30.04.2017. The defendant contends that the rents were regularly paid and there are no arrears and that there is no practice of issuing receipts. The plaintiff submits that the advance security deposit was adjusted

towards rent on the instructions of the defendant and on the defendant stating that the defendant would vacate the property on the advance security deposit getting exhausted on adjustment towards rents. The plaintiff further submits that even after such adjustment and setting off of the amount deposited as security deposit, the plaintiff is still entitled to get Rs.2,95,740/- towards rents from the defendant. The premises was let out for business and is being put to commercial use is not in dispute. The defendant is admittedly maintaining accounts. The order of the Court below reflects that during the course of hearing, the learned counsel for the defendant stated that the rents being paid are being accounted for in the books of accounts of the defendant and that the learned counsel for the defendant also took time for producing the books of accounts of the defendant. However, later, the defendant, for reasons best known to the defendant, failed to produce the account books, which if produced would have laid bare as to whether rents were paid and were accounted for or not. Neither the defendant's books of account nor were the tax returns, if any, produced. No explanation was also offered for the failure on the part of the defendant to produce the account books of the defendant's business. Therefore, the trial Court has drawn an adverse inference and accordingly held against the defendant and partly allowed the petition of the plaintiff as already indicated supra. In Gopal Krishnaji Ketkar's Gopal Krishnaji Ketkar v. Mohamed Haji Latif and Ors.⁷, the observation in Murugesam Pillai v. Gnana Sambandha Pandara Sannadhi⁸ was reiterated by the Supreme Court and it was observed: "Even if the burden of proof does not lie on a party, the Court may draw an adverse inference if he withholds important documents in his possession, which can throw light on the facts at issue. It is not, in our opinion, a sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the best evidence which is in their possession which could throw light upon the issues in controversy and

⁷ [(1968)3 SCR 862]

⁸ [AIR 1917 PC 6]

to rely upon the abstract doctrine of onus of proof." In the facts and circumstances of the instant case, the defendant should have produced the account books, which is the best evidence. In the circumstances, since relevant and best evidence in the possession of the defendant is withheld from the Court by the defendant, Section 114 enables the court to draw a presumption to the effect that, if produced, the said books of accounts would be unfavourable to the defendant.

12. Before concluding, it is apt to note that the plaintiff having terminated the tenancy by a quit notice had brought the suit, apart from for other reliefs, for the relief of eviction and recovery of vacant possession of the plaint schedule property from the defendant. Once, the tenancy comes to an end either by efflux of time or its termination by a quit notice, the possession of the tenant at best is juridical possession. And, such tenant cannot be termed as a tenant at will unless the continuance in possession is with the consent of the landlord. [*vide* R.V. Bhupal Prasad v. State of Andhra Pradesh and others (AIR 1996 SC 140)]. The tenant, whose possession is juridical or a tenant holding over, cannot be heard to say that he is liable to pay the rent only and not damages for use and occupation or mesne profits. Therefore, it is trite to observe that when once the tenancy is terminated, the tenant holding over is liable to pay something more than the rent towards damages for use and occupation or mesne profits from the date of termination of tenancy till date of delivery of possession of the property. The determination of mesne profits would generally be made having regard to the rental value of the property at the relevant time and the reasonable rent the building would have actually fetched had it been leased out at the relevant time in the normal course.

13. Viewed thus, this Court finds that the Court below is justified, in the facts and circumstances of the case, in passing the impugned order and

that the contentions of the defendant are devoid of merit and that the revision petition is liable to be dismissed.

14. In the result, the Civil Revision Petition is dismissed confirming the orders of the court below. The revision petitioner/ defendant shall deposit the entire arrears as per the orders of the Court below, which are confirmed, within one month from the date of receipt of a copy of this order. However, the amounts that may be deposited towards arrears of rent by the defendant shall be invested in a fixed deposit by the Trial Court till the disposal of the suit for the eventual benefit of the successful party.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

15th September, 2017

Note:- Issue CC today
(B/ o)
BVV/ RAR

M. SEETHARAMA MURTI, J

