

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

APPEAL SUIT No. 681 of 2017

JUDGMENT:

This appeal is arising out of the Judgment and Decree dated 22.04.2017 passed in O.S.No.175 of 2012 by the V Additional District Judge, Rajamahendravaram.

2. Brief facts of the case are that the plaintiffs filed a suit O.S. No.175 of 2012 for delivery of vacant possession of the plaint schedule property after ejecting the defendants, and for future profits and for recovery of an amount of Rs.7,79,250/- with interest at 24% per annum. In the suit, they filed I.A.No.1715 of 2016, under Order XV-A Rule 1 and 2 CPC, to strike off defence of the defendants, and direct the defendants to vacate and deliver the possession of the plaint schedule property to the plaintiffs. The trial Court has allowed the suit. Aggrieved by that, the defendants have preferred this appeal.

3. Heard the learned counsel for the appellants-defendants, and the respondents-plaintiffs.

4. The short question arising for consideration in this appeal is whether the judgment of the trial Court is in accordance with the provisions under Order XV-A Rule 1 and 2 of CPC.

5. Learned counsel for defendants submits that the plaintiffs have filed I.A.No.1715 of 2016 and it was allowed on 06.02.2017 due to non-compliance of the orders of the trial Court directing to deposit Rs.12 lakhs (which are admitted arrears of rents) by the defendants in the suit and, therefore, the defence of the defendants was struck off. He further contended that the defendants were not given an opportunity to contest the matter, and they were set *ex-parte*. It is further contended that the calculation of arrears of rent by the trial Court is incorrect and,

therefore, sought for permission to file Calculation Memo dated 18.09.2017.

6. Learned counsel for the respondents-plaintiffs has filed objections to the Calculation memo filed by the defendants before this Court.

7. It is pertinent to note that the trial Court has examined PW1 and marked Ex.A1 to A4, and decreed the suit in favour of the plaintiffs, directing the defendants to vacate the schedule property within three months from the date of judgment and handover the vacant possession of the same to the plaintiffs failing which the plaintiffs were given liberty to get it vacated under due process of law. The defendants were further directed to pay an amount of Rs.7,79,250/- with interest at 12% per annum from the date of suit till the date of decree. The dispute in this matter is only in respect of calculation of arrears of rent for the defendants to deposit in the suit.

8. It would be appropriate to refer to Order XV-A, which reads as under:

(1) 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.

(2) Whether 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 areas" 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 acknowledgement, and
- (c) deposited into the Court, in any proceedings, in relation to the said property." – "

9. Learned counsel for appellants as well as the learned counsel for respondents have fairly submitted that they would get the dispute resolved with regard to calculation of arrears of rent before the trial Court and requested to remand the matter to the trial Court for disposal according to law as per the provision under Order XV-A of CPC.

10. In the instant case, there is a dispute with regard to the admitted rent. There is a dispute with regard to the admitted rent even as per the findings of the trial Court. The trial Court, without receiving calculation memo with regard to admitted rents, has passed an order striking off the defence basing on the admission of contesting 4th respondent in the petition. On consideration of the representation of both the counsel, since there is a dispute with regard to the admitted rent, and without resolving the same, an order under Order XV-A CPC cannot be passed, the order passed by the trial Court is liable to be set aside.

11. Accordingly, the impugned order passed by the trial Court is set aside, and the matter is remanded to the trial Court for disposal according to law, by following the procedure under Order XV-A of CPC, with the following directions:

- (i) The trial Court shall consider the calculation memo submitted by the defendants, and also the objections filed by the plaintiffs, and arrive at calculation with regard to payment of admitted rents.

(ii) On arriving such calculation with regard to payment of admitted rents, after giving an opportunity for payment of disputed rent, and if not paid within the stipulated time, the trial Court may considering invoking the provision under Order XV-A of CPC to strike off the defence.

(iii) The trial Court shall direct the defendants to continue to deposit the rents regularly until disposal of the suit.

12. The appeal is, accordingly, disposed of. The trial Court shall dispose of the matter within six months from the date of receipt of a copy of this order. No costs. Miscellaneous petitions, if any pending, shall stand closed.

17th November, 2017

KNL / KSM



GUDISEVA SHYAM PRASAD, J

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