

HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.3009 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the petitioner/defendant is directed against the order, dated 09.06.2017, of the learned XIX Senior Civil Judge, City Civil Courts, Secunderabad, passed in I.A.No.390 of 2016 in I.A.No.4 of 2016 in O.S.No.185 of 2015.

2. To begin with, it is to be noted that the petitioner is aggrieved of the impugned order only in regard to the direction to deposit the arrears of rent from December, 2015, onwards till date @ Rs.18,281/- within fifteen days and the further rider in the said order that on failure to do so, the petition in I.A.No.390 of 2016 shall stand dismissed.

3. I have heard the submissions of *Sri P.Satyarajababu*, learned counsel for the petitioner/defendant, ('the defendant', for brevity) and of *Sri M.Pratap Singh*, learned counsel for the respondent/plaintiff ('the plaintiff' for brevity). I have perused the material record.

4. The facts, which lie in a narrow compass, in brief, are as follows:

The plaintiff brought the suit against the defendant for eviction and arrears of rent. The defendant remained *ex parte*. Later, an *ex parte* decree for eviction was passed. However, the suit was partly dismissed insofar as the claims for arrears of rent and property tax are concerned. While so, the defendant filed I.A.No.4 of 2016 for setting aside the *ex parte* decree and judgment. The said petition was dismissed for default on the part of the defendant. Therefore, the defendant filed I.A.No.390 of 2016 under Order IX Rule 9 of the Code of

Civil Procedure, 1908, seeking restoration of I.A.No.4 of 2016. The said petition was resisted by the plaintiff. However, the trial Court by the order impugned, allowed the said petition subject to certain conditions, already stated supra, with which the defendant is aggrieved.

5. The operative portion of the said order, verbatim, reads as under:

“In the result, the petition is allowed to restore the IA No.4 of 2016 by set asiding the dismissal order dated 05-08-2016 on a condition that the petitioner shall deposit the arrears of rent from December, 2015 till date at the rate of Rs.18,281/- (Rupees Eighteen Thousand Two Hundred and Eighty One only) within a period of 15 days failing which this petition stands dismiss.”

6. At the hearing, learned counsel for the defendant would submit that the condition imposed is unfair and onerous, more particularly, in the light of the fact that there is no proof that the monthly rent is Rs.18,281/- and the further fact that an *ex parte* decree was not even granted for the arrears of rent as well as the property tax and that while dismissing the suit in that regard, a decree for eviction was only granted. He further submits that according to the defendant, a sum of Rs.7,800/- is payable every month from December, 2015, as already stated in the written statement filed by the defendant, and that as per the calculation of the defendant, the arrears is Rs.1,48,200/- from December, 2015, upto the end of July, 2017, and that the said amount was already deposited to the credit of the suit, on 01.08.2017, to show the *bona fides* of the defendant. In view of the submissions made and the said deposit made by the defendant, he prays that the condition imposed may be set at naught and the trial Court may be directed to dispose of I.A.No.4 of 2016 on its merit. According to his further submissions, the eviction decree is being put to execution and that the reliefs of breaking open of the locks and police aid are being sought for by the plaintiff herein.

7. Learned counsel for the plaintiff forcefully contended that the defendant intentionally remained *ex parte* and later filed an application to set aside the *ex parte* decree and allowed it to be dismissed for default in order to delay and defeat the just claim of the plaintiff and drag on the matter and that despite the trial Court allowing the petition in I.A.No.390 of 2016 subject to conditions, the defendant, without complying with the said conditions and availing the opportunity granted to him, approached this Court and is further dragging on the matter and that the defendant is obliged under facts and in law to pay Rs.18,281/- per month from December, 2015, onwards as directed in the orders of the Court below and that the said directions do not call for interference in the facts and circumstances of the case.

8. I have bestowed my attention to the facts and submissions.

9. In view of the detailed narration of facts and submissions of both the sides, there is no need to further dilate on the said aspects. It is to be noted that in a suit for eviction, the trial Court, while granting the decree for eviction partly dismissed the suit of the plaintiff insofar as the reliefs related to arrears of rent and property tax are concerned. There is not even an *ex parte* decree in favour of the plaintiff in regard to the said claims for money. Be that as it may, the defendant's application in I.A.no.4 of 2016 seeking to set aside the *ex parte* decree was dismissed for default. Therefore, the defendant filed I.A.No.390 of 2016 seeking restoration of the said application after setting aside the order of dismissal for default, dated 01.08.2016, passed in the aforesaid IA. The trial Court having accepted the explanation given by the defendant allowed the application in I.A.No.390 of 2016 subject to conditions, which are already stated supra, while extracting the

operative portion of the order impugned. In the well considered view of this Court, when there is no *ex parte* decree in favour of the plaintiff for money viz., arrears of rent and the suit was dismissed in that regard, the trial Court is not justified in directing the defendant to deposit arrears of rent @Rs.18,281/- per month from December, 2015, onwards, within fifteen days from the date of the its order, i.e., 09.06.2017. As already noted, the defendant deposited Rs.1,48,200/- to the credit of the suit and further undertakes to pay Rs.7,800/- per month from August, 2017, onwards till the disposal of the suit. In that view of the matter, this Court finds that there is no merit in the contentions of the plaintiff and that on the other hand the submissions of the defendant merit consideration and that the order impugned insofar as the conditions imposed against the defendant is concerned brooks interference.

10. On the above analysis, this Court finds that the Civil Revision Petition can be disposed of with appropriate directions:

11. In the result, the Civil Revision Petition is allowed and the condition in the order impugned directing the defendant to deposit the arrears of rent from December, 2015, till date @ Rs.18,281/- within fifteen days from the date of the order, i.e., 09.06.2017, is hereby set aside and as a sequel the petition in I.A.No.390 of 2016 is allowed without any conditions. The plaintiff is given liberty to withdraw Rs.1,48,000/- deposited by the defendant without furnishing any security by following the procedure established by law, nevertheless, without prejudice to the rights and contentions of both the parties. Considering the fact that the suit is a sufficiently old suit, the trial Court shall now take up I.A.No.4 of 2016 for expeditious disposal and pass

appropriate orders. Till such time, the execution of the ex parte decree shall remain stayed.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

Note:-
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