

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.4458 of 2017

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, by the unsuccessful respondent/defendant is filed assailing the order, dated 16.08.2017, of the learned XXV Additional Chief Judge, City Civil Court, at Hyderabad, passed in I.A.No.1277 of 2016 in O.S.No.575 of 2016.

2. I have heard the submissions of *Sri Mohd. Osman Shaheed*, learned counsel appearing for the petitioner/defendant, and of *Sri M.M.Firdos*, learned counsel for the respondent/plaintiff. I have perused the material record.

3. The introductory facts, in brief, are as follows:

The plaintiff filed the suit against the defendant for ejectment of the defendant from a portion of the ground floor, entire first floor and second floor of the building bearing municipal Nos.14-1-305-307 and 305-307/ 5, situated at Seetarampet, Hyderabad, Telangana State, more fully described in the schedule annexed to the petition; and, for recovery of possession of the said property, arrears of rent in a sum of Rs.3,03,000/- being the arrears due for the months from December, 2014 to 16.7.2015; damages of Rs.8,40,000/- calculated @ Rs.80,000/- per month for the period from 17.7.2015 to 31.5.2016; future damages and mesne profits @ Rs.80,000/- per month; and, for mandatory injunction and for other reliefs. The defendant is resisting the suit. In the pending suit, the plaintiff filed the afore-said interlocutory application under Order XV-A read with Section 151 of the Code of Civil Procedure, 1908, ('the Code') with a request to the trial Court to direct the respondent/defendant to

pay the arrears of rent in a sum of Rs.3,03,000/- calculated @ Rs.40,400/- per month from November, 2014 till 16.5.2015 and also the admitted rent @ Rs.40,400/- per month therefrom on or before 5th of every month during the pendency of the suit and pass such other orders in the interests of justice. The defendant filed a counter and resisted the said application. On merits and by the orders impugned in the revision, the trial Court allowed the petition of the plaintiff. The operative portion of the order, verbatim, reads as under:

“In the result, this petition is allowed and the respondents are directed to pay the agreed rent of Rs.40,400/- per month from December 2014 till July 2017 and shall deposit the subsequent monthly rents @ Rs.40,400/- per month on 5th of every succeeding month. The respondents are directed to deposit the above said rents within 2 months from the date of this order, failing which their defence will be struck off.”

4. Aggrieved thereby, the defendant filed this revision.
5. The case of the plaintiff in support of the aforesaid request, in brief, is this:

The defendant is a tenant in the suit schedule property. The plaintiff leased out the same to the defendant in the year 2003 on monthly rent. The tenancy was renewed from time to time and the last renewal was made, on 7.6.2014, for a period of eleven months commencing from 07.06.2014 and ending with 06.04.2015, on a monthly rent of Rs.40,400/-. As per the rental agreement, the defendant has to pay electricity consumption charges, property tax payable to the GHMC and water charges as per the bills raised by the Departments concerned, during the period of tenancy. A sum of Rs.2,00,000/- was paid by the defendant as interest free security deposit to the plaintiff; and, the same is refundable at the time of the defendant vacating and handing

over vacant and peaceful possession of the property to the plaintiff, after deducting the arrears of rents, electricity & water charges, property tax due, if any, and also any amount due towards damages caused to the property, from out of the aforesaid interest free security deposit. The balance deposit, if any, is payable to the defendant. The defendant started committing defaults in payments of rents. The defendant never paid rents within the stipulated time agreed to between the parties. The defendant having fell in arrears of rent, made a promise and given an undertaking to pay the same, but, failed to clear the arrears of rent. On 12.02.2015, the defendant gave a written undertaking that the arrears of rent in a sum of Rs.1,21,000/- would be cleared in two instalments. The same is filed in Court. The defendant failed to pay monthly rent of Rs.40,400/- from December, 2014 and further failed to pay the charges payable to various departments towards electricity and water consumption charges as well as property tax. The defendant is not maintaining the plaint schedule property in a good condition. The plaintiff approached the defendant with a request to pay arrears of rent and also current rent. The defendant instituted a case for injunction by making false and frivolous allegations. The said suit was numbered as O.S.No.1146 of 2015 on the file of III Junior Civil Judge, City Civil Court, Hyderabad, and its disposal is awaited. In view of the continuous defaults in payment of rents, a notice terminating the tenancy was issued and in that notice, a demand was made to pay the arrears of rent in a sum of Rs.2,42,400/- calculated @ Rs.40,400/- per month from December, 2014 till the month of May, 2015. Having received the said notice, dated 22.06.2015, the defendant sent a reply notice, dated 14.07.2015, with false and frivolous allegations. Hence, the suit is filed for eviction and recovery of vacant possession of the suit

schedule property, arrears of rent, damages, mesne profits, mandatory injunction and for other reliefs. If the property were to be leased out now, it would fetch Rs.80,000/- per month, in view of the prevailing market values and rental valuations in the locality. Hence, damages/ mesne profits are claimed at that rate. From the date of the notice, the defendant is liable to pay Rs.3,03,000/-, @ Rs.40,400/- per month, towards total arrears of rent from November, 2014 till 16.7.2015, that is, the date of termination of tenancy. The defendant has to pay damages @ Rs.80,000/- per month as compensation and mesne profits from the date of expiry of (15) days of the receipt of notice, i.e., from 17.7.2015 till filing of the present suit, which works out to Rs.8,40,000/-; and, the defendant has also to pay dues towards water bills and electricity bills amounting to Rs.1,05,800/-. The defendant is liable to pay arrears of rent and to continue to pay the rent during the pendency of the suit.

6. The case of the defendant as stated in the affidavit is this:

The material allegations in the affidavit filed in support of the petition of the plaintiff are false. The defendant deposited Rs.2,00,000/- towards caution deposit is true. This defendant agreed to pay property tax is false. The owner of the property is bound to pay the property tax. The electricity consumption charges are paid upto date. The allegation that defaults are committed in payment of rents is false. O.S.No.1146 of 2015 is filed for perpetual injunction; and, temporary injunction was obtained restraining the plaintiff from illegally dispossessing the defendant from the property is true. The property was leased out on a monthly rent of Rs.10,000/-. The tenancy is a oral month to month tenancy. The possession of the suit schedule property was obtained by the defendant in the month of June 2006 for the

purpose of running a convent high school. At the inception, the rent was Rs.5,000/- per month. Later, it was enhanced to Rs.10,000/- per month. The caution deposit is liable to be refunded at the time of vacating the property. From the inception, rents are being paid regularly, so also electricity & water consumption charges. The rents are used to be paid in cash only. The plaintiff refused to pass receipts as he would be liable to pay income tax, if receipts are issued for the rents received. On couple of occasions, when this defendant insisted for receipts, the plaintiff threatened to take over possession of the property. The school is still functioning in the suit schedule property and summer coaching classes are being taken up under the supervision of the Principal. The plaintiff coerced this defendant to enhance monthly rent to Rs.30,000/- from May, 2015 onwards. This defendant expressed inability to do so. The plaintiff stated that if rent is not enhanced, he will take over possession of the property and will not allow the school to function in the premises. On 10.5.2015, the petitioner came with five persons and asked the principal of the defendant school to sign a document purported to be a rental deed drafted on non-judicial stamp paper, wherein the rental value was shown as Rs.30,000/- per month. The Principal of this defendant institution refused to sign the same. The plaintiff became angry and instructed the persons who accompanied him to throw away the furniture of the school. The Principal of the school made hue and cry. The plaintiff and his men then left the place after giving a threat to take over possession at any cost. The petitioner again came to the property, on 23.5.2015, and tried to put lock on the main door. At that time, few teachers who were taking up summer coaching classes were present. The said teachers strongly protested against the high handed action of the petitioner and raised hue and cry. The parents

of the students were called upon to come to the school; they had broken open the locks and took away their children. The matter was also reported to the police. Though the plaintiff was summoned by the police and was advised by the police concerned not to take law into his hands, he again started giving threats by stating that he will not allow the school to reopen after summer vacation. The defendant prepared two demand drafts for Rs.10,000/- each towards the rents for the months of May and June, 2015 and tried to handover the same. But the plaintiff refused to receive the same. Only the rents at the admitted rate can be directed to be deposited but not @Rs.40,400/- per month as claimed by the plaintiff. Hence, the petition may be dismissed.

7. Both the learned counsel made submissions in line with the pleadings of the parties, which are stated supra.

8. According to the plaintiff, the rent is Rs.40,400/- per month whereas according to the Principal of the defendant-school, the rent is Rs.10,000/- per month. As per the pleadings of the parties and facts borne out by the record, there were serious disputes between the parties even before the present suit was instituted for ejectment, recovery of vacant possession, arrears of rent and other reliefs. Even the Principal in his counter affidavit stated that there were attempts to dispossess even by May 2015. It was also alleged in the counter affidavit that, on 10.5.2015, the plaintiff came with his men and forced the Principal to sign an agreement drafted on a stamp paper wherein the rental value was shown as 30,000/- and that he refused to sign and that thereupon, the plaintiff instructed the men, who accompanied him to throw away the furniture of the school and that when the Principal raised hue and cry, the plaintiff and his men went away after giving a

threat that the defendant would be dispossessed at any cost. It is also the case of the defendant that the plaintiff again came to the school, on 23.5.2015, along with his henchmen and tried to put lock on the main door of the school and that at that time the teachers who were taking summer classes for the students raised hue and cry and that later the parents of the students were called upon to come to school and that they had broken open the locks and took away their children and that despite the advice of the police officer concerned, the plaintiff is continuing the threats of dispossession. Though it is the contention of the defendant that rents were earlier being paid without obtaining receipts, the defendant's further contention that even after serious disputes arose between the parties, the rents were paid without obtaining receipts cannot be countenanced or believed for a moment. Further, the defendant is an educational institution under the name and style M/s. Jubilee Convent High School. Therefore, the school must necessarily be maintaining its accounts showing the income and expenditure as well as payment of rents in respect of the plaint schedule property in which the school is being run. However, no such record is produced. On the other hand, the plaintiff specifically pleaded that the defendant fell in arrears of rents and that he was repeatedly making demands for payment of rents and that, on 12.02.2015, the Principal of the defendant-institution gave a written undertaking admitting that the arrears of rent as on that day was Rs.1,21,500/- and agreeing that it would be cleared in two instalments. The said averments in the pleadings of the plaintiff are not denied, much less specifically denied, in the counter affidavit filed by the Principal of the defendant-institution. The said undertaking was marked as exhibit P1 during the course of enquiry before the trial Court. The notices exchanged and the

rental agreements are marked as exhibits P2 to P4. The trial Court extracted the contents of exhibit P1 undertaking, dated 12.02.2015, in its order, which is impugned in this revision petition. The relevant portion of the undertaking contains the following details: “I promise that I will pay the *old balance Rs.30,300/-; and Nov. Rs.10,400/- plus December month Rs.40,400/-, Jan Rent Rs.40,400/-, Total: Rs.1,21,500/- one Lakh Twenty one thousand five hundred only. The amount will be paid on 25 Feb, 2015 Rs.60,000/- only. The balance amount of Rs.61,500/- will be paid in the month of March. Date 25.03.2016.*” The said undertaking lays bare *prima facie* that the monthly rent for the month of December 2014 was Rs.40,400/-. The defendant institution did not produce any record to show that the rent was only Rs.10,000/- per month as being contended by it. In that view of the matter, this Court has no hesitation to accept the finding of the Court below that the monthly rent is Rs.40,400/- and that the defendant is liable to pay the arrears of rent at the said rate from December 2014 onwards till July 2015; and shall continue to pay the rents at least at the said rate, that is, @ Rs.40,400/- per month during the pendency of the suit. On the above analysis and for the reasons assigned, this Court finds that the trial Court is justified in directing the defendant to pay the arrears of rent @ Rs.40,400/- from December, 2014 till July 2015; and future monthly rents @ Rs.40,400/- during the pendency of the suit. Be that as it may.

9. What is to be noted is that that learned counsel for the defendant contended that under Order XV-A of the Code, the Court is having power to direct deposit the admitted arrears of rent; but, not disputed arrears of rent and therefore, the defendant is liable to pay the arrears of rent at the admitted rate, i.e., @ Rs.10,000/- per month and hence, the

order is unsustainable. However, the learned counsel for the plaintiff, in reply, contended that there is no dispute in this case as regards the arrears of rent and quantum of rent as exhibit P1, undertaking given by the Principal of the defendant-school clearly shows that the rent is Rs.40,400/- per month and that the rents for the period stated by the plaintiff are admittedly not paid and hence, the legal position, if any, is of no avail to this defendant. Nevertheless, before parting 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 to recover the suit

¹ 2011 (4) ALD 757

² 2014 (5) ALD 744

³ (2005) 2 Supreme Court Cases 400

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 institution of 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.

(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, 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 decision in *M.Vijaya Lakshmi and others v. Kalanikethan Textiles and Jewelles Pvt. Ltd., Hyderabad*⁴, this Court referred to the decisions in *Sri Vasavi Boys Hostel and Mess. K.Satya Prasad rep. by his GPA Holder*⁵ 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

⁴ 2015 (1) ALD 38

⁵ [2012 (4) ALD 140]

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 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.

(iv) 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; and, that 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.

9.1 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 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.

9.2 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.

10. In view of the facts peculiar to the case and the legal position obtaining, this Court finds that the contentions of the revision petitioner/ defendant are untenable and are misconceived and that the legal position obtaining does not advance the case of the defendant/ revision petitioner any further and that the order impugned does not warrant interference in the facts and circumstances of the case.

11. Having carefully examined the pleadings and the documentary evidence, this Court does not find any illegality or irregularity or impropriety either in appreciation of the facts or the evidence by the trial Court and hence, finds no reason calling for interference. Hence, this Court holds that there is no merit in the revision and that the revision petition is liable to be dismissed.

12. In the result, the Civil Revision Petition is dismissed confirming the orders of the Court below. The respondent/ defendant is granted a time of (2) two months from the date of receipt of a copy of this order to pay to the petitioner/ plaintiff or deposit to the credit of suit all the arrears of rent upto date.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

03.10.2017
RAR