

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.1512 of 2017

ORDER:

In this Civil Revision Petition, under Article 227 of the Constitution of India, by the 1st respondent/ unsuccessful petitioner, the challenge is to the order, dated 27.02.2017, of the learned I Additional Rent Controller, Hyderabad, passed in I.A.No.51 of 2017 in R.C.No.30 of 2014.

2. I have heard the submissions of *Sri B.Nalin Kumar*, learned counsel appearing for the petitioner, and of *Sri D.Vijaya Kumar*, learned counsel appearing for the respondents. I have perused the material record. The parties shall hereinafter be referred to as the petitioner and respondents for convenience and clarity.

3. The facts, which are necessary to be stated as a preface to this order, in brief, are as follows:

The 1st respondent is the absolute owner of the shop bearing No.16-C, bearing Municipal No.8-3-229/ D/ 16-C consisting of RCC room admeasuring 133 square feet or 14.7 square yards situated at Venkatagiri, Yousufguda, Hyderabad, having purchased the same from one Shaheda Begum W/o Mohammed Hafeezuddin through registered sale deed, dated 24.06.2013, bearing Document No.3148/ 2013. The petitioner is running chicken centre in the schedule premises for the past several years. Due to family disputes, he is not on talking terms with the 2nd respondent in the RC, who is no other than his younger brother. He came to know that the 1st respondent filed above the RC against the petitioner and the 2nd respondent herein seeking eviction. The 2nd respondent, who is his brother, seems to have colluded with the

petitioner in the RC to dispossess him from the shop. The 2nd respondent is not the tenant in the mulgi and the petitioner, i.e., the 1st respondent herein, and the 2nd respondent hatched a plan to dispossess him from the mulgi. Thereafter, he came to know about the filing of the RC and the order setting him *ex parte*. He immediately filed the subject petition. This petitioner has not received any summons/ notices. No summons or notices were served upon him. The petition is within limitation from the date of knowledge. If the *ex parte* order, dated 09.07.2014, is not set aside, he suffers heavy and irreparable loss. The 1st respondent is not the owner of the suit mulgi. Hence, it is prayed that the Court may be pleased to set aside the *ex parte* order, dated 09.07.2014, passed in R.C.No.30 of 2014 in the interests of justice.

4. The averments in the counter affidavit filed on behalf of the 1st respondent, in brief, are as follows:

The petition is not maintainable either in law or on facts. The subject application is filed only with a view to drag on the matter. The petitioner has not shown or explained any valid grounds/ reasons to set aside the *ex parte* order, dated 09.07.2014. He did not explain the long delay of two and half years in filing the subject application. The present application is filed at the fag end of trial and when the matter is posted for arguments. Originally, the petitioner was the tenant of Shaheda Begum, vendor of the 1st respondent and he has been very irregular in payment of rents. That apart, he has sublet the petition schedule property to his brother, the 2nd respondent, without the consent of the original owner. Since then, the 2nd respondent is in possession of the schedule property without paying the rents. Hence, this respondent filed the eviction petition. The petitioner, in order to help the 2nd respondent, filed the subject petition at this belated stage. The

petitioner received the summons and failed to appear before the Court below. Hence, the Court below set him *ex parte*, on 09.07.2014. This 1st respondent is the absolute owner of the suit mulgi. The petitioner has not filed any documents to show his ownership and possession of the suit mulgi. The petition may be dismissed.

5. The 2nd respondent filed a counter alleging that it is false to state that the petition schedule mulgi is in possession of the petitioner. The petition is not maintainable and is liable to be dismissed.

6. Learned counsel for the revision petitioner would submit as follows: 'The Court below failed to see that the petitioner herein (1st respondent in the RC) was set *ex parte*, on 09.07.2014, on account of the conspiracy between the 1st respondent and the 2nd respondent. The petitioner has not been served with any notice or summons. The Court below erred in observing that the petitioner has not specifically mentioned the name and particulars of the persons from whom he came to know about the filing of the Rent control case. It also erred in observing that the petition is filed after more than two and half years from 09.07.2014, the date of the *ex parte* order. The petitioner was not aware of the *ex parte* order and hence, he could not file the application within the time to set aside the same.'

7. Per contra, the learned counsel for the 1st respondent while supporting the orders of the learned Rent Controller would submit as follows: 'The petitioner herein was the original tenant under the vendor of this 1st respondent. The petitioner sub-let the shop to the 2nd respondent, his own brother. The 1st respondent herein filed the main RC for eviction against the petitioner herein and the 2nd respondent. The petitioner herein remained *ex parte* on 09.07.2014. When the case

is at the stage of arguments, to help the 2nd respondent, the petitioner herein, that is, the 1st respondent in the RC filed the subject petition in February, 2017 for setting aside the said *ex parte* order only to drag on the matter. The said petition is filed by the petitioner herein in collusion with the 2nd respondent. The affidavit filed in support of the petition is bereft of necessary details. No material documents related to the business, if any, are filed to substantiate the contentions of the petitioner. The petition is filed in a casual manner. The relief claimed belatedly cannot be granted for mere asking.'

8. In this backdrop of contentions and submissions, it is to be noted that the petitioner herein contends that he came to know, on 31.01.2017, on enquiries through locality people, about the pendency of the RC and the order, dated 09.07.2014, setting him *ex parte*. As rightly pointed out and observed in the orders of the Court below, the names of such persons from whom the petitioner came to know of the afore-stated facts are not mentioned in the affidavit. He and the 2nd respondent herein are brothers. Therefore, the contention that the 2nd respondent herein, who is the brother of the petitioner and who is contesting the RC, colluded with the 1st respondent herein, cannot be believed *prima facie* in the facts and circumstances of the present case. A suit for injunction simpliciter in O.S.no.768 of 2013 is filed on the file of VII Junior Civil Court, City Civil Court, Hyderabad, by the revision petitioner and the 2nd respondent against the 1st respondent's vendor *inter alia* stating that attempts are being made to forcefully evict them from the property. While contesting the said suit, the said original owner executed registered sale deed in favour of the 1st respondent herein and then the 1st respondent herein filed the eviction petition, that is, the instant main RC, for eviction of the petitioner herein and the

2nd respondent *inter alia* alleging wilful defaults in payment of rents and unauthorized sub-lease of the premises by the petitioner herein to the 2nd respondent as grounds for eviction. In that view of the matter, the contention that the petitioner herein is not aware of the eviction proceedings which his brother is contesting cannot be believed for a moment. On the above analysis, this Court finds that the present request of the petitioner is not *bona fide* and needs no countenance.

9. Viewed thus, this Court finds that the learned Rent Controller is justified in dismissing the subject petition, which is belatedly filed by the petitioner herein for setting aside the *ex parte* order, and that therefore, the revision petition, which is devoid of merit, is liable to be dismissed.

10. In the result, the Civil Revision Petition is dismissed.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

08th December, 2017

M. SEETHARAMA MURTI, J

Note: - The record, if any, of the trial Court, which is received for consideration in the CRP, may be forthwith returned to the trial Court to proceed with the matter.

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