

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.770 OF 2017

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dated 13.12.2016 in I.A.No.629 of 2016 in O.S.No.206 of 2016 on the file of the XXV Additional Chief Judge, City Civil Court at Hyderabad.

2. The contention of Sri D.Krishna Murthy, learned counsel for the petitioner, is three fold: (1) Ex.P1 is a fabricated document; therefore, no reliance can be placed on it; (2) the trial Court failed to consider under which circumstances the petitioner was forced to give an Undertaking dated 31.01.2016 Ex.P.8; and (3) the findings recorded by the trial Court are not sustainable either on facts or in law; therefore, it is a fit case to allow the revision.

3. *Per contra*, Sri B.Vijaysen Reddy, the learned counsel for the respondent, submitted that the petitioner having admitted execution of Exs.P.1 and P.8, has no right whatsoever to challenge the validity of those two documents. He further submitted that the cheque issued by the petitioner for an amount of Rs.3,00,000/- in favour of respondent was dishonoured for want of sufficient funds; this itself indicates the conduct of the petitioner. He also submitted that there is no illegality or irregularity in the order of the trial Court, which warrants interference of this Court.

4. The facts leading to filing of the present revision are briefly as follows: The respondent herein filed O.S.No.206 of 2016 on the file of the XXV Additional Chief Judge, City Civil Court at

Hyderabad, against the petitioner herein for eviction from the suit schedule property, on the ground that the petitioner committed default in payment of monthly rent. Pending suit, the respondent filed I.A.No.629 of 2016 under Order XV-A of C.P.C. to direct the petitioner to deposit monthly rent of Rs.1,00,000/- with effect from December, 2015. In the trial Court, on behalf of the respondent, Exs.P.1 to P.9 were marked. On behalf of the petitioner, no documents were marked. Basing on the documentary evidence and other material available on record, the trial Court arrived at a conclusion that the petitioner committed default in payment of monthly rent and directed him to pay arrears of rent at the rate of Rs.1,00,000/- per month from December, 2015. It is an admitted fact that the petitioner herein filed O.S.No.300 of 2016 on the file of the V Junior Civil Judge, City Civil Court, Hyderabad, against the respondent seeking perpetual injunction.

5. It is the case of the petitioner that the monthly rent of the suit schedule property is Rs.50,000/-. It is the case of the respondent that the monthly rent of the suit schedule property is Rs.1,00,000/-. To substantiate the case, the respondent mainly relied on Ex.P.1 – unregistered lease deed dated 02.11.2015. The petitioner in unequivocal terms admitted the execution of the lease deed, but however denied the recitals of the document. It is not in dispute that the petitioner issued a cheque bearing No.197242, on 08.12.2015, in favour of the respondent, for an amount of Rs.1,00,000/-. Whether the petitioner issued the said cheque towards one month rent or not has to be decided at the time of trial. It is also not in dispute that the cheque bearing No.197241 issued by the petitioner for an amount of Rs.3,00,000/- in favour

of the respondent was not honoured. Whether the amount shown in the cheque is towards the interest free advance or not has to be decided at the time of full-fledged trial only. The petitioner did not file even a single scrap of paper to show that he has been paying rent to the respondent. If a tenant is allowed to squat on the schedule premises without paying the rent, certainly it would cause untold hardship and financial loss to the landlord.

6. The contention of the learned counsel for the petitioner is that the trial Court ought to have decided the quantum of rent before deciding the present application.

7. It is a settled principle of law that when there is a conflict between the oral evidence and documentary evidence, documentary evidence will prevail. As observed earlier, the petitioner is not denying the execution of Ex.P.1 – unregistered lease deed and Ex.P.8 – undertaking memo. A perusal of these two documents *prima facie* reveals the monthly rent of the suit schedule property is Rs.1,00,000/-. If the petitioner is allowed to squat on the suit schedule property till disposal of the suit without paying the rent, on the pretext of dispute with regard to quantum of rent, it may cause financial loss to the respondent. On 03.03.2016, the respondent got issued a legal notice directing the petitioner to vacate the suit schedule property alleging that the petitioner committed default in payment of rent. In the legal notice, it is mentioned that the monthly rent of the suit schedule property is Rs.1,00,000/-. It is needless to say that mere non-issuance of reply notice by itself is not a sufficient ground to believe the version of the respondent or to disbelieve the version

put forth by the petitioner. The dispute started between the parties in the month of January, 2016 itself. When the respondent issued a legal notice dated 03.03.2016 by mentioning the monthly rent as Rs.1,00,000/-, duty is cast on the petitioner to issue a befitting reply by mentioning the monthly rent of the suit schedule property is Rs.50,000/- only. For one reason or other, the petitioner did not choose to issue a reply notice. The Court shall not lose sight of this aspect in view of the recitals of Exs.P.1 and P.8. Unless and until the contrary is proved, the Court can place *prima facie* reliance on Exs.P.1 and P.8. If this Court expresses any opinion, with regard to the validity or otherwise of Exs.P.1 and P.8, at this stage, the same may cause prejudice to one of the parties to the proceedings at the time of trial. The fact remains that the petitioner has not being paid the rents to the respondent. The very object of Order XV-A of C.P.C. is to enable the landlord to get the rent during pendency of the suit. If the contention of the learned counsel for the petitioner is accepted, the very purpose of Order XV-A of C.P.C. would be frustrated.

8. While deciding the interlocutory applications, the Court has to take into consideration the conduct of the parties as well as the documentary evidence available on record. The trial Court has considered all these aspects in right perspective and allowed the petition. The findings recorded by the trial Court are *prima facie* supported by documentary evidence. I am fully endorsing with the findings recorded by the trial Court. There is no illegality, irregularity or impropriety in the order of the trial Court, which warrants interference of this Court while exercising the jurisdiction

under Article 227 of the Constitution of India. Hence, the revision lacks merits and *bona fides*.

9. Accordingly, the Civil Revision Petition is dismissed at the admission stage. However, the observations made by this Court are confined to this revision petition only. There shall be no order as to costs.

10. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

Date: 16.03.2017
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T.SUNIL CHOWDARY, J

