

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Civil Revision Petition No.5534 of 2016

ORDER :

Heard both sides and perused the grounds in the revision and impugned docket order dt.16.09.2016 in I.A.No.1496 of 2015 in O.S.No.1057 of 2015 on the file of the Principal Junior Civil Judge, Visakhapatnam, and also other material.

2. This is an application seeking to direct the defendant to pay arrears of rent of Rs. 1,68,000/- and also to continue to pay damages for use and occupation besides liable for eviction and the agreed rent is Rs.21,000/- per month payable by 5th of every succeeding month having entered as lessee on 25.02.2015 and at the time of induction issued two cheques for Rs. 60,000/- and Rs. 66,000/- respectively after vacating the premises and committed default in payment of rent and plaintiff terminated the lease by issuing notice through advocate in September, 2015 asking to vacate and hand over by the end of October, 2015 and the defendant issued reply notice stating there was contract for sale for Rs. 25 lakhs as if paid Rs. 20 lakhs advance which are untrue and thereby the petition is liable to be allowed and direct to deposit the agreed rents as was payable earlier pending disposal of the suit.

3. The defendant as respondent to the petition opposing petition by his counter submitted that there is contract for sale and delivery of possession pursuant to the oral contract having received a substantial amount and even the defendant is ready to pay the 5 lakhs balance from which the plaintiff is not cooperating and he already maintained a suit for specific performance pursuant to the oral contract for sale and

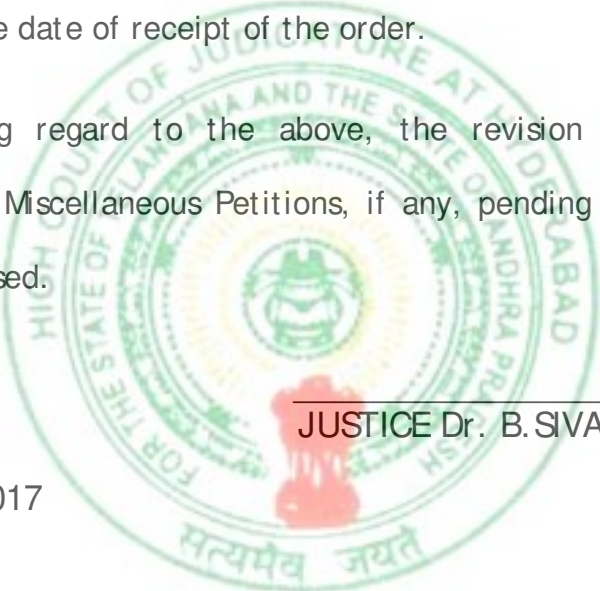
delivery of possession on 01.03.2015 and thereby the petition is liable to be dismissed.

4. The impugned order of the lower Court from said pleadings is with observation that the defendant claims that there is a contract for sale for 25lakhs having paid Rs.20lakhs advance and ready to pay 5lakhs balance having taken possession and is in possession pursuant to the contract for sale not liable to pay any rent or use and occupation charges after 01.03.2015. It is observed thereafter by re-producing Order XV-A CPC that what is averred in the prayer of use and occupation charges from date of suit claim at Rs.50,000/- per month, whereas, in the plaint as if Rs.21,000/- per month rent and in the petition what the actual rent payable not even disclosed and in view of the inconsistent pleas and in view of the defence of the defendant/ respondent, there are no grounds to consider the application to deposit any rent or arrears.

5. Said order is impugned herein as referred supra. The defendant in his counter to the petition did not say what is the actual rent he has to pay. Even from the perusal of his written statement running in 23paras he did not mention what was the actual rent during subsistence of the lease. It is not even his case that he is never a lessee under the plaintiff but what he claims is there was a contract for sale and delivery of possession and he is continuing pursuant to it and there is no landlord and tenant relationship in subsistence thereafter. Once such is the case, there once provisions of Order 15-A CPC contemplates affording an opportunity and enquiry in ascertaining what is the actual and agreed rent payable, leave about the said oral contract for sale during or otherwise for which suit is already stated pending, this Court need not go into that merits, if at all the contract for sale, ultimately proved once the plaintiff suit is liable to be dismissed that too it is only an oral

contract for sale in claiming substantially what allegedly paid and in not explaining what prevented to pay if at all balance and obtain sale deed way back after taken possession allegedly on 01.03.2015, it is a fit case to direct the defendant to deposit instead of paying to the plaintiff towards use and occupation charges of Rs.21,000/- per month from date of suit till disposal of the suit for the trial Court to invest said amount in Fixed Deposits for the payment to those who entitles ultimately succeeding or otherwise of the suit claim. Any non-deposit of the said amount entitles the plaintiff to seek for striking out the defence of the defendant. The defendant to deposit the amount stated supra within six weeks from the date of receipt of the order.

6. Having regard to the above, the revision is disposed of. Consequently, Miscellaneous Petitions, if any, pending in this Revision, shall stand closed.



JUSTICE Dr. B. SIVA SANKARA RAO

Date:21.12.2017
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