

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No. 4703 OF 2016

ORDER:

This civil revision petition is filed assailing order dated 23-06-2016 in I.A.No. 11 of 2016 in A.S.No. 3 of 2016 on the file of the learned Special Sessions Judge for trial of cases under SC & ST cases (POA) Act – cum – Additional District and Sessions Judge, Visakhapatnam (for short, 'the Court below').

The main contention before this Court is that the respondent herein filed suit for injunction simplicitor for which the petitioners herein set up counter claim of eviction and damages. The Court below while dismissing the suit for injunction simplicitor decreed the counter claim of the petitioners.

Feeling aggrieved, the respondent preferred A.S.No. 3 of 2016. By the impugned order, the Court below granted stay of execution of decree pending disposal of the appeal having found that the respondent will be put to substantial loss in case he is evicted by exercising power under Order XLI Rule 5 of the Code of Civil Procedure.

Learned counsel for the petitioners would contend that the Court below granted blanket stay without insisting on the respondent to deposit even admitted rent which is contrary to the principle laid down in ***Atma Ram Properties (P) Limited Vs. Federal Motors (P) Limited***¹ and therefore requested this Court to modify the order.

Undisputedly, the counter claim of the petitioners was ordered granting eviction and damages to be determined by separate application. The petitioners claimed damages @ Rs.75,000/- for use and occupation after termination of

¹ (2005) 1 SCC 705

tenancy. The rent payable for the premises was Rs.26,000/- per month. If the principle laid down in ***Atma Ram Properties (P) Limited*** (*supra*) is applied to the present facts of the case, the respondent shall deposit the agreed rent besides suit costs if any awarded.

Taking into consideration all the facts and circumstances of the case, I find that it is a fit case to direct the respondent to deposit Rs.36,000/- which is inclusive of admitted rent of Rs.26,000/- and Rs.10,000/- in addition to it to meet the damages if any determined on separate application in future. The respondent is further directed to deposit arrears within six weeks from today and continue to deposit the admitted rent to the credit of O.S.No. 443 of 2012 on the file of the Court of VI Additional Senior Civil Judge, Visakhapatnam, on or before 10th of every month. In case of any default successively for three months, the stay stands vacated automatically and the petitioners are entitled to execute the decree in accordance with law. Accordingly, the order under challenge is modified.

The civil revision petition is accordingly disposed of. Pending miscellaneous petitions, if any, shall stand closed in consequence. No costs.

M.SATYANARAYANA MURTHY, J.

Date: 13-07-2017.

JSK