

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION Nos.4267 and 4569 of 2017

C O M M O N O R D E R

These civil revision petitions under Article 227 of the Constitution arise out of the order dated 24.07.2017 passed by the learned XVI Additional District and Sessions Judge, Ranga Reddy District at Malkajgiri, in I.A.No.694 of 2016 in O.S.No.866 of 2016. The said I.A. was filed by the plaintiff in the suit under Order 15-A CPC seeking a direction to the defendants to pay Rs.28,69,840/- towards arrears of rent upto 23.06.2016; a sum of Rs.6,66,666/- which is equivalent to the rent paid by the defendants prior to termination of the lease i.e. the rental due from 24.06.2016 to 31.07.2016, aggregating to Rs.35,36,506/-; and to continue to pay a sum of Rs.3,18,000/- per month from August, 2016 till the disposal of the suit. By the order under revision, the trial Court allowed the I.A. in part directing the defendants to deposit arrears of rent of Rs.19,90,000/- within a time frame. Aggrieved thereby, the first and second defendants in the suit filed C.R.P.No.4267 of 2017 while the plaintiff preferred C.R.P.No.4569 of 2017 aggrieved by denial of the other reliefs claimed by her.

Before the trial Court, Exs.P1 to P7 were marked by the plaintiff during the hearing of the I.A. while Exs.R1 and R2 were marked by the defendants.

Heard Sri D.Srinivas Prasad, learned counsel for the plaintiff, and Sri B.Shashidhar, learned counsel for the first and second defendants. The third and fourth defendants in the suit, who are arrayed as respondents, did not choose to enter appearance before this Court despite service of notice.

It is not in dispute that the plaintiff is the owner of the suit schedule property. According to the plaintiff, this property was let out to the first defendant firm for a period of ten years commencing from 14.01.2013 to 13.01.2023 under Ex.P1 registered lease deed bearing document No.295 of 2013 dated 14.01.2013. The second, third and fourth defendants are partners of the first defendant firm. The plaintiff is the daughter-in-law of the fourth defendant. The lease deed provided for enhancement of the rental every year at the rate of 5% and also for levy of interest at the rate of 2% per month on delayed payment of rentals. The rent at the commencement of the lease, as per this deed, was Rs.2,76,800/-, exclusive of taxes and electricity and water charges.

On the other hand, the first and second defendants claimed that the lease of the suit schedule property was under unregistered lease deed dated 18.06.2005 executed by the plaintiff in favour of the first defendant firm for a period of twenty years with a monthly rental of Rs.95,000/-, subject to enhancement at the rate of 10% every two years. This document was not marked. They however admitted execution of Ex.P1 registered lease deed bearing document No.295 of 2013 dated 06.06.2005 but claimed that it was only for the purpose of enabling the plaintiff to avail a bank loan. They disputed the entitlement of the plaintiff to claim rentals in terms of this lease deed. According to them, Ex.R1 rent statement showed that a sum of Rs.66,16,234/- was paid in excess by them, towards the rentals from 01.09.2005 to 31.03.2016.

The plaintiff claimed that she never executed the lease deed dated 18.06.2005. Therefore, as matters stand, a registered lease deed is subsisting and the execution of this document is admitted. The claim of the first and second defendants is that this document

was a sham and nominal one created only for the purpose of availing a bank loan and that the lease of the suit schedule property is attributable to the earlier unregistered lease deed dated 18.06.2005. However, this aspect of the matter would have to be gone into by the trial Court at the appropriate stage. Suffice it to state that, for the purposes of an application under Order 15-A CPC, Ex.P1 registered lease deed would constitute *prima facie* evidence of existence of a lease and the lease rental reserved therein would be the basis for deciding such an application. Further, Ex.P2 statement of rent demonstrates that the tenants were, in fact, paying rentals in terms of this registered lease deed upto September, 2015. That is perhaps the reason why they claim that excess rentals were paid by them. However, no evidence was produced by them that they paid any rent thereafter, except for Ex.R1 rent statement which is a self-serving document.

It appears that the plaintiff got issued Ex.P3 legal notice dated 28.03.2016, stating to the effect that the rental arrears due from September, 2015 along with interest thereon at 2% per month amounted to Rs.19,90,040/- and called upon the defendants to remit the same. Again, under Ex.P5 notice dated 06.06.2016, the plaintiff reiterated this claim. The subject I.A. was however filed only on 11.08.2017. The figure mentioned in the first notice, reiterated in the second notice, therefore lost relevance. However, the trial Court froze the dues only upto the date of the said notice. This was an obvious oversight on the part of the trial Court.

Even before this Court, no proof is produced of any rentals having been paid after September, 2015. Sri B.Shashidhar, learned counsel, would only place reliance upon Ex.R1 rent statement. But, as already pointed out, this is a self-serving document which

seems to have been prepared only for the purposes of the suit. Further, examination of this rent statement indicates that the first defendant firm claimed that it paid Rs.20,12,725/- towards rentals from 01.04.2015 to 31.03.2016. However, neither the bank account statement of the first defendant firm nor any other documentary evidence is produced in proof of actual remittal of this amount. It is not possible that such a large amount would have been paid without a trace and the claim of the first and second defendants based on this document, with nothing further, cannot be accepted at this stage.

Perusal of Ex.P1 registered lease deed dated 14.01.2013 puts it beyond doubt that the rental reserved thereunder was Rs.2,76,800/-, which was to be enhanced every year. Therefore, for the lease period from January, 2013 to January, 2014, the monthly lease rental was Rs.2,76,800/-; for the lease period from January, 2014 to January, 2015, it was Rs.2,90,640/- and from January, 2015 to January, 2016, it was Rs.3,05,172/-. As the lease deed provided for interest on delayed payment of rentals, the same was also added by the plaintiff while putting forth her claim for arrears. Significantly, Sri B.Shashidhar, learned counsel, does not dispute the quantum of arrears claimed in the I.A. basing on this rental along with the interest payable thereon.

As the plaintiff claimed that she terminated the lease under Ex.P5 notice dated 06.06.2016, she would not be entitled to claim mesne profits or damages at this stage without determination thereof by the trial Court. However, in terms of Order 15-A CPC, she would be entitled to seek payment of the rental as on the date of such termination pending the eviction proceedings. As the claim of the plaintiff that the arrears of rent up to June, 2016 aggregated

to Rs.28,69,840/- remained unrebutted, the trial Court ought to have accepted the same instead of going by the figure of Rs.19,90,040/- mentioned in Ex.P3 notice dated 28.03.2016. It is stated before this Court that even this amount has not been deposited by the tenants within the time fixed by the trial Court.

The civil revision petitions are accordingly disposed of modifying the order under revision to the extent of directing the first defendant firm to deposit the sum of Rs.28,69,840/- in total, as against the sum of Rs.19,90,000/- directed to be paid by the trial Court, towards arrears of rent upto June, 2016 within eight weeks from the date of receipt of a copy of this order. The first defendant firm shall continue to deposit the monthly rental quantified at Rs.3,20,430/- per month, giving due effect to the 5% annual increase which would have come into effect from January, 2016. This monthly rental amount shall be deposited to the credit of the suit on or before the 10th of each calendar month. The plaintiff is permitted to withdraw the arrears and thereafter, the monthly rentals as and when they are deposited, without furnishing security. In the event, the first defendant firm fails to make the deposits as aforesaid, the trial Court shall take necessary consequential steps in terms of Order 15-A CPC.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

15th DECEMBER, 2017.

PGS