

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1760 of 2015

ORDER:

This Civil Revision Petition under Section 115 of the Code of Civil Procedure is filed by the petitioner challenging the Order dated 05.11.2014 in I.A.No.1127 of 2014 in A.S.No.90 of 2014 passed by the Special Judge for Trial of Cases under SCs and STs (POA)-cum-X Additional District and Sessions Judge, East Godavari District at Rajahmundry whereby the appellate Court granted stay of execution of the decree dated 07.10.2014 in O.S.No.752 of 2007 on the file of the I Additional Senior Civil Judge, Rajahmundry, East Godavari District by exercising power under Order 41 Rule 5 read with Section 151 of CPC subject to payment of Rs.2,000/- as damages till disposal of the appeal while permitting the petitioner therein to withdraw the amount.

2. The respondent filed appeal aggrieved by the decree and judgment, dated 07.10.2014 in O.S.No.752 of 2007 on the file of the I Additional Senior Civil Judge's Court at Rajahmundry whereby the respondent was directed to vacate the schedule premises and hand over the vacant possession of the same to the plaintiff within one month from the date of the decree and judgment and to pay Rs.3,000/- per month towards future damages to the plaintiff from the date of suit till the date of vacating the schedule premises.

3. The appeal was filed on various grounds along with the application under Order 41 Rule 5 r/w section 151 of CPC mainly contending that the petitioner will put to substantial loss in case no

stay of execution was granted by the Court by exercising power under Order 41 Rule 5 of CPC.

4. The present petition is filed on the ground that the petitioner did not agree for receiving Rs.2,000/- per month as damages. But, the appellate Court in para 8 of the order wrongly recorded its finding as if the petitioner agreed for withdrawal of the amount of Rs.2,000/- if deposited.

5. The respondent herein filed application under Order 41 Rule 5 read with Section 151 of CPC for grant of stay of execution of the decree during pendency of the appeal. According to Rule 5, when an appeal is filed against the decree and judgment, when there is sufficient cause, the court may order stay of execution of the decree subject to other conditions contained under Order 41 Rule 5 of C.P.C.

6. Here, the petitioner obtained a decree against the respondent for ejectment and for damages. The trial Court awarded damages of Rs.3,000/- per month directing the respondent to vacate the schedule premises and deliver vacant possession of the property within one month from the date of the decree. The said judgment was challenged on various grounds and the appellate Court by exercising its discretion granted stay. But, according to petitioner, the intention of the petitioner was wrongly mentioned in para 8 of the order. Even otherwise, when the suit is filed for eviction or ejectment, the Court can order stay subject to certain terms. In M/ S. Atma Ram Properties (P) Ltd vs M/ S.

Federal Motors Pvt. Ltd. reported¹ the Apex Court by dealing a similar situation directed the defendant to pay certain amount in addition to the rent payment to meet damages if any granted. In the present case, the respondent was directed to pay Rs.2,000/- per month though the rent agreed was Rs.525/- and the trial Court during the pendency of the suit, also passed an order directing the respondent to pay Rs.2,000/- as damages as interim measure. Therefore, passing such an order is in consonance with the principle laid down in Apex Court in *M/S Atma Ram Properties (P) Ltd vs M/S Federal Motors Pvt. Ltd.* Hence, the order passed by the appellate Court do not call for interference by this Court as the appellate Court did not exceed its jurisdiction vested on it or failed to exercise jurisdiction vested on it or exercised the jurisdiction illegally or irregularly to interfere with the limited powers conferred on this Court under Section 115 of C.P.C. Therefore, I find no ground to set aside the order passed by the appellate Court and consequently, the petition is liable to be dismissed.

7. In the result, the civil revision petition is dismissed. There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this petition, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 25-04-2017.
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¹ (2005) 11 SCC 547

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