

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.1222 of 2017

ORDER :

This Revision is filed by the petitioner challenging the order dt.18-10-2016 in I.A.No.990 of 2016 in A.S.No.348 of 2010 of the VIII Additional District Judge, West Godavari at Eluru.

2. The petitioner was the respondent in the said appeal and defendant in the suit O.S.No.401 of 2005 on the file of the Principal Junior Civil Judge, Eluru, out of which the said appeal arose.

3. The respondent filed the suit for eviction of the petitioner from a non-residential premises alleging that lease was granted in 1984, that the last renewal was only upto 31-12-2004 and the monthly rent was Rs.4940/-. He contended that petitioner committed wilful default in payment of rent from 01-01-2005 and though he promised to vacate the shop by 31-12-2004, he did not vacate it. He contended that he issued a notice on 31-01-2005 terminating the tenancy w.e.f. 15-02-2005 and also claiming damages @ Rs.10,000/- p.m. for use and occupation of the premises.

4. Written statement was filed by petitioner stating that the tenancy commenced in 1983, that he gave advance amount of Rs.20,000/-, that monthly rent was Rs.1550/- for a portion of the subject premises and a further amount of Rs.555/- p.m. was being paid to respondent's younger brother. He denied that he committed default in payment of rent and stated that there were no grounds to evict him.

He also stated that he filed a suit O.S.No.30 of 2005 against the respondent and his younger brother seeking injunction and the said suit is pending for trial.

5. By judgment and decree dt.25-04-2010, the trial Court decreed the suit. It held that lease deed dt.01-01-2002 (Ex.A-1) is inadmissible in evidence because it was unstamped and unregistered; therefore Section 106 of the Transfer of Property Act, 1882 would apply and since respondent had given notice terminating the lease w.e.f. 15-02-2005, whether the petitioner had committed default or not is irrelevant, and he is liable to be evicted. It also held that there is no evidence of the rent prevalent as on 31-12-2004 and so the rent has to be treated as Rs.1550/- p.m. to the portion of the respondent and Rs.555/- p.m. to the portion of the respondent's brother and not Rs.4990/- as pleaded by respondent.

6. Assailing the said judgment, the petitioner filed A.S.No.348 of 2010.

7. Six years after the said appeal is filed, the petitioner, by changing the Advocate, filed I.A.No.990 of 2016 raising a plea that since the trial Court held that monthly rent was only Rs.1550/- for the portion of the petitioner, the Civil Court had no jurisdiction.

8. This application was opposed by respondent stating that he had filed a Cross Appeal relating to quantum of rent and damages and with an intention to squat on the premises without paying rent, this application had been filed. He also contended that he was aged 75

years and that the contents of Ex.A-1 lease deed were admitted by petitioner in his cross-examination except quantum of rent. Therefore the application filed 11 years after filing of the suit deserves to be dismissed.

9. By order dt.18-10-2016, the Court below dismissed the application stating that the proviso to Order VI Rule 17 C.P.C. does not permit any application to be allowed after trial commenced, unless the Court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial. It held that there is no material to show that in spite of due diligence he could not have raised this plea before the commencement of trial, that the suit filed in 2005 was decreed in 2010 and therefore the application for amendment deserves dismissal.

10. Assailing the same, this Revision is filed.

11. Learned counsel for petitioner contended that though the petitioner had not taken the plea about lack of jurisdiction of the Civil Court in the written statement filed by him in the trial Court, having regard to the finding of the trial Court about the quantum of rent, he ought to be permitted to raise this plea.

12. It is not in dispute that a Cross Appeal was preferred by respondent challenging the finding of the trial Court about the quantum of rent and damages. Therefore the said issue had not attained finality and the lower appellate Court would undoubtedly go into the said aspect also when it decides the appeal and the Cross

Appeal. When the suit has been filed in 2005 and was decided in 2010 and the appeal was filed by petitioner in 2010, why the petitioner waited till 2016 to raise the plea of lack of jurisdiction of the Civil Court, is un-understandable.

13. Therefore, I am of the opinion that the Court below did not commit any error of jurisdiction in refusing to permit amendment of the written statement raising the plea of lack of jurisdiction of the Civil Court and I agree with it's finding that the petitioner has not been able to show that in spite of due diligence, he could not have raised this issue before the trial commenced.

14. Therefore, the Civil Revision Petition is without any merit and it is accordingly dismissed at the stage of admission. No costs.

15. Miscellaneous applications pending if any in this Revision shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 10-03-2017

Vsv