

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No.2195 of 2016

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, by the unsuccessful petitioner/plaintiff is directed against the order, dated 16.02.2016, of the learned III Additional Junior Civil Judge, Kadapa, passed in I.A.No.999 of 2015 in O.S.No.354 of 2013 filed under Section 151 of the Code of Civil Procedure, 1908, requesting to direct the respondent/ defendant to reinstate the petitioner/ plaintiff in Room No.7 of Rajiv Gandhi Institute of Medical Sciences, Kadapa, more fully described in the schedule annexed to the plaint.

2. I have heard the submissions of *Smt.A.Padma*, learned counsel for the petitioner/ plaintiff (hereinafter referred to as 'the plaintiff') and *Sri M.Ravindranath Reddy*, learned counsel for the respondent/ defendant, (hereinafter referred to as 'the defendant'). I have perused to the material record.

3. The facts which are necessary to be stated as a preface to this order, in brief, are as follows:

The plaintiff brought the suit against the defendant Society to direct the defendant not to evict the plaintiff from the plaint schedule property and grant a decree for perpetual

injunction restraining the defendant authority and its associates from interfering, in any manner, with the plaintiff's peaceful possession and enjoyment of the plaint schedule property and for costs. The defendant is resisting the said suit.

4. In the said suit, the plaintiff filed the aforestated application *inter alia* pleading as under:

The plaintiff is a tenant in the plaint schedule shop/room by virtue of an agreement of lease deed dated 21.08.2008. The said schedule shop room was leased out for carrying on business of the plaintiff as per the terms and conditions stated in the lease agreement. At the inception, the plaintiff deposited Rs.4,20,000/- towards goodwill. The term of lease was five years. The lease amount is Rs.1,500/- per month exclusive of electricity consumption charges, etcetera, which are to be borne by the plaintiff. After completion of the initial period of five years, the plaintiff is entitled to continue in the said shop room as a tenant for further period of three years and so on, on the enhancement of the existing rent @33.1/3 % on the expiry of every three years period. Contrary to the terms of lease, the defendant issued a notice stating that the period of lease would come to an end on 22.08.2013 and that the plaintiff has to hand over possession of the schedule shop room to the defendant to

enable it to call for fresh lease tenders. On 17.05.2013, the plaintiff approached the defendant and requested orally for extension of lease period by another three years as per the terms of lease. However, the said oral request was not considered. The plaintiff is doing petty Tea business in the schedule shop room. The plaintiff is entitled to continue as a tenant in the suit schedule shop room as per the terms and conditions of lease. The allegation of the defendant authority that the rents were not paid and that the plaintiff is a defaulter from January, 2009 to May, 2009, that is, for a period of five months is false. Had the said allegation been true, the defendant ought to have issued a notice to the plaintiff. No such notice demanding arrears of rent was ever issued by the defendant to the plaintiff. The defendant is going to issue a fresh tender for auction of the suit schedule shop room for giving lease hold rights to third parties. The defendant is having political support. Therefore, the plaintiff has no option but to file the subject suit. Along with the suit, plaintiff filed I.A.No.910 of 2015 for a temporary injunction not to evict him forcibly from the plaint schedule shop room until final disposal of the suit. In the said interlocutory application for injunction, notice was ordered. However, on the intervening night of 6/ 7.12.2015, the defendant forcefully evicted the plaintiff from the plaint schedule shop room and

sent him and his family members to prison by foisting a false criminal case and forcibly took possession of the plaintiff schedule room, while the plaintiff and his family members were locked up in jail. When the suit is pending, the defendant is not entitled to take law into its hands and evict the plaintiff forcibly; such act would amount to disobedience and offends the dignity of the Court as the Court is seized of the matter. News items were published in Telugu Daily Newspapers about the high handed action of the defendant. The defendant has no legal right to evict this plaintiff forcibly. Subsequently, the plaintiff was enlarged on bail. In the meanwhile, the process of forceful eviction from the plaintiff schedule room was carried out by the defendant. The plaintiff is very much in possession of the plaintiff schedule shop room as on the date of the institution of the suit. Since the plaintiff is forcibly evicted under the guise of a false complaint and by confining him and his family members in jail and as such forceful eviction was got done during the pendency of the suit, the defendant's actions are not excusable and cannot be condoned. Hence, the plaintiff is entitled to be reinstated and possession of the schedule property is to be restored to him.

5. Per contra, the case of the defendant, in brief, is as follows:

The averments in the plaint and affidavit of the plaintiff are false. The allegation that the plaintiff is a tenant is false. His possession is permissive possession. The period of lease had already expired. The plaintiff participated in the auction conducted by the defendant and took possession of the premises for a period of five years only. The rights to occupy the shop rooms in the shopping complex were already auctioned. The new licencees have deposited the amounts in respect of the properties, for which the occupancy rights were auctioned by the defendant. The suit filed is infructuous. After every five years, rights to occupy the rooms in the complex will be auctioned. This Court made certain observations in orders in W.P.No.19771 of 2013, but the plaintiff failed to submit, within the time prescribed, any of his documents showing that he paid rents. A notice was issued on 19.08.2013 calling upon him to pay the rental arrears in a sum of Rs.18,750/-; but he failed to pay the same. He falsely alleged that he has deposited the amount in a bank. He vacated the plaint schedule room along with others, who are in occupation of the other rooms in the complex, a week ago, (i.e., a week prior to suit). In the auction, the occupancy rights of the rooms in the complex were allotted to third parties. Therefore, the plaintiff bore grudge against this defendant institution. Some of the earlier occupants of the

other rooms in the complex filed suits for perpetual injunctions against this defendant. Temporary injunction applications filed by such occupants were dismissed. CMAs preferred by them were also dismissed by the Court of the learned Senior Civil Judge, Kadapa. The plaintiff cannot claim any injunction. The plaintiff is a defaulter in payment of amounts due for the months of January 2009 to May 2009 i.e., for five months in respect of the plaintiff schedule room No.7. He also committed default in payment of amounts due for the months of September, October and November, 2015 i.e., for another three months. Though the defendant stated that he had obtained a banker's cheque, he neither deposited the same with the defendant society nor was it filed into Court. Though he stated that there are no arrears, no rejoinder is filed denying the allegation that he is a defaulter. Under the guise of the reliefs that are sought for in the suit, the plaintiff intends to seek specific performance of the terms of the lease agreement, which is impermissible under law. The lease agreement is a compulsorily registerable document. It is inadmissible in evidence as it is not sufficiently stamped and registered. The balance of convenience is in favour of the defendant. No irreparable injury would ensue to the plaintiff, if no injunction is granted. The auction of the schedule rooms in the complex held in August 2014 fetched Rs.23,000/- for

the plaint schedule room. However, the earlier auction held in the year 2008 fetched Rs.13,500/- for the entire complex. In the auction held in August 2014, the total amount fetched for the complex was Rs.4,16,000/-. Thus, by squatting on the property the occupants of the rooms in the complex caused a loss to a tune of Rs.4,02,500/- to the defendant institution. The total loss was to a tune of Rs.60,00,000/-. The petition is liable for dismissal.”

6. At the hearing before the trial Court, no oral and documentary evidence was adduced. On merits and by the orders impugned in this revision, the trial Court dismissed the petition of the plaintiff.

7. In this backdrop of introductory facts and pleadings of the parties, the learned counsel for the plaintiff contends that the plaintiff is a tenant of the plaint schedule room by virtue of a lease deed and that the original lease period is five years and that in the lease agreement, there is a term for extending lease period on enhancement of the existing rent @33.1/3 % every three years and therefore, the plaintiff is entitled to continue in possession of the plaint schedule shop room as a lessee and till he is evicted in accordance with the procedure established by law. It is also the case of the plaintiff, when a notice was issued that the lease period has come to an end by

23.08.2013, he made an oral request for extension of lease and that the said request was not accepted by the defendant and that when a notice for auction of the occupancy rights in respect of the plaint schedule room and the other rooms in the complex was issued, the plaintiff is constrained to file the instant suit and also an interlocutory application for temporary injunction and that on his said application notice was ordered and that thereafter by giving false police complaint and by getting the plaintiff and his family members lodged in jail, the defendant took forceful possession of the plaint schedule room and that after the enlargement of the plaintiff on bail, he is constrained to file the present application for restitution of possession as he was forcibly evicted from the property when the Court is seized of the matter and that he is entitled under law and facts for restitution of possession of the plaint schedule room.

8. However, the case of the defendant is this: 'The licence period has come to an end. The plaintiff is a defaulter in payment of rents initially for five months and later for three months. Therefore, the defendant institution intended to auction the occupancy rights of all the rooms including the plaint schedule room and issued a notice in that regard. At that time, some of the occupants approached this Court by filing writ petitions. However, their writ petitions were

dismissed by giving liberty to them to participate in the auction of the occupancy rights of the rooms in the complex being held by the defendant. Accordingly, auction was held in respect of all the rooms in the complex. In the said auction, the room that was earlier in the occupation of the plaintiff was allotted to a third party, who presented the highest bid. Hence, the plaintiff bore grudge and filed this false suit despite the fact that the plaintiff and other occupants had vacated the respective rooms in the complex in their respective occupations to facilitate the auction of the occupancy rights of the rooms in the complex and delivery of the respective rooms to the successful bidders in the auction.'

9. I have given detailed and thoughtful consideration to the facts and submissions. Though in the pleadings of the parties, the words 'lease' and 'rent' were employed, the learned counsel for the defendant contends that the transaction is a licence and not a lease; what was auctioned at the inception was right of occupancy and that the plaintiff became a successful bidder and was granted licence for a term of five years; the said transaction is not a lease; the lease agreement, which is insufficiently stamped and unregistered, is admittedly inadmissible in evidence and, therefore, it is not exhibited. *Per contra*, the learned counsel for the plaintiff contends that the lease was granted at the inception to the

plaintiff for a period of five years and that as per the agreed terms of lease, which are reduced into writing in the form of a lease agreement, the plaintiff is entitled to renewal of lease for further terms of three years at a time, on the enhancement of rent @ 33 1/3 % on the existing rent and, hence, when the defendant intended to auction the occupancy rights, the plaintiff objected for the same and filed the suit and that during the pendency of the suit, the plaintiff was forcefully evicted in the circumstances pleaded in his case.

10. Be it noted that when once there is no regular registered lease deed and when the lease agreement being relied upon by the plaintiff is inadmissible in evidence, the plaintiff is not entitled to claim rights to continue in the property as per the terms of such lease deed. Even otherwise, it is not in dispute that the initial term of five years has come to an end due to efflux of time. It is also not in dispute that when the defendant institution issued an auction notice for auctioning the occupancy rights of all the rooms in the complex, all the occupants of the rooms in the complex, except the plaintiff herein, filed writ petition in W.P.No.19771 of 2013 and the said writ petition was disposed of by an order dated 10.07.2013 directing the defendant society to consider the representations of the licencees who have claimed the

extension of licence period by another three years and not to evict them till the disposal of their representation. It is also an admitted fact that the plaintiff is also a signatory to the said representation. According to the defendant, none of the licencees produced any evidence including receipts showing payment of rents to substantiate their claims for extension of the occupancy rights and hence, the defendant thought of auctioning of the shops in the complex. Further, the licensee of Shop No.2 filed W.P.No.23248 of 2013; in the said writ petition, this Court, by interim order dated 08.08.2013, directed that the auctions proposed may go on, but the result of the auctions shall not be finalized and that it is open for the said writ petitioner to participate in the said auction. Thereafter, on 10.08.2013, notices were issued by the defendant to all the occupants to vacate the shops and to produce evidence as to payment of arrears of rents and penalties. But there was no response from the licencees including the petitioner and all of them failed to produce any record. Notices dated 04.11.2013 were again issued to all of them. Later, a notification inviting bids was issued in respect of ten shops/ shop rooms fixing 28.08.2014 as the last date for receiving the bids. Bids were also received. While so, on 28.08.2014 some of the licencees of Shop Room Nos.1, 3 to 6 and 8 to 10 filed W.P.No.24949 of 2013 and again this Court

directed not to finalize the bids till the next date of hearing of the writ petition and the said licencees of the shop rooms filed W.P.No.33041 of 2013 on 18.11.2013 questioning the notice dated 04.11.2013. This Court by orders dated 19.11.2013 stayed the said notice dated 04.11.2013 subject to the directions that the petitioners therein should clear the arrears due and payable within one week from the date of notifying the amounts and also subject to the earlier orders in W.P.No.23248 of 2013. However, none of the licencees including the plaintiff cleared the arrears, according to the submissions of the defendant. No documents are produced by the plaintiff to show that the amounts due were paid every month in respect of the petition schedule room and that there are no arrears. Plaintiff has also not produced any record either to show that he cleared the arrears or to show that he regularly paid the monthly rents to the defendant. Ultimately this Court dismissed all the four writ petitions by a common judgment dated 08.10.2014 holding that the decision taken by the Society in not extending the lease for a further period is valid in law and consequently, directed all the licencees to vacate the shops and hand over vacant possession of the shops within a period of three weeks. Since auctions of the occupancy rights of all the shop rooms were held on 30.08.2014, the results of the auctions were announced, in

view of the common orders of this Court in the four writ petitions and the successful bidders in the auction were put in possession of the respective shop rooms. The auction fetched a licence fee of Rs.4,16,000/- for all the ten shops as against the licence fee of Rs.13,500/- in the year 2008. In view of the said vast difference, the defendant contends that it was being put to loss @ Rs.4,02,500/- per month and that the total loss per annum was Rs.48.30 lakhs and that the society would have earned that income and utilized it for medical services of general public had the occupants vacated the property on time and allowed it to re-auction the occupancy rights of the shop rooms in the complex at the appropriate time. Insofar as the subject shop room No.7, one G.Madhavi became the successful bidder in the said auction. She has bid for two shops i.e., Room Nos.7 and 8, for an amount of Rs.23,000/- per shop. Whereas, the petitioner was earlier paying @ Rs.1,500/- per month for the said shop till he vacated the shop room. There was an increase in the amount for the schedule shop by fifteen times. However, questioning the common judgment of the learned Single Judge, W.A.Nos.1290 and 1291 of 2014 were preferred by some of the licencees of shop Nos.1, 3 to 6, 8, 9 and 10. Since factual issues were involved in the matters, a Division Bench of this Court had set aside the orders passed in the writ petitions by the learned

Single Judge and dismissed the writ petitions *in limine* and held that it is open for the licencees to approach the Civil Court for redressal. Licencees of Shop Nos.1, 3, 5, 6 and 10 and the present plaintiff filed five suits in all. Licencees of Shop Nos.2, 4, 8 and 9 have not filed any suits. No orders of injunction were granted in the said suits and in four suits out of five suits, injunction applications were dismissed by the learned Senior Civil Judge, Kadapa. The CMAs preferred before the Principal District Judge, Kadapa were also dismissed. Three civil revision petitions in C.R.P.Nos.3502, 3518 and 3519 of 2005 respectively filed in respect of shop Nos.3, 5 and 10 were closed observing that the society cannot dispossess the writ petitioners except through due process of law and that the licencees of the said shop are not entitled to the equitable reliefs. On 05.12.2015, possessions of the shop rooms were delivered to the respective successful bidders, who participated in the auction held in August 2014. However, insofar as Shop Room No.7, since the highest bidder did not come forward to take possession, her deposits were forfeited and the shop was licensed to the second highest bidder, N.Nageswara Reddy, and he is in possession of the said shop room on condition of payment of rent @ Rs.23,000/- per month. In fact, all previous licencees, who also participated in the auctions and became successful bidders in the auction

held in the year 2014 were granted licences for their respective shops after collecting 50% of licence fee fetched in 2014 auction and they were granted permission to continue from the dates of expiry of previous licences and till 05.12.2015. Licencees of shop nos. 1 and 2 filed W.P.No.8326 of 2016 questioning the action of the defendant; and, this Court granted interim direction not to enter into any agreement with any third parties and not to hand over possession of shop nos.1, 2, 9 and 10. The said order which was granted for duration of two weeks was not further extended. The plaintiff filed the present suit on 14.08.2013 and I.A.631 of 2013. No injunction was granted to the plaintiff. The plaintiff has voluntarily vacated the plaintiff's shop along with other licencees of other shops on 05.12.2015. Thereafter, on 07.12.2015, the plaintiff filed I.A.No.910 of 2015 seeking a direction not to evict him till the disposal of the suit. Thereafter, the subject application is filed for restitution on 28.12.2015.

11. From the facts narrated and from various events that had taken place, this Court is of the considered view that this plaintiff/petitioner is not entitled to restitution, more particularly when the auctions were held way back in August 2014 in respect of all the shops in the complex and new successful bidders who participated at the said auction were

put in possession of the respective rooms including the plaintiff's shop room long time back and that subsequently their licence periods were also extended on further terms for further periods. Since third parties acquired rights and interest in the shops in the complex along with some of the previous occupants by becoming successful bidders in the auction held in the year 2014, and as they are continuing in possession by making payments to the defendant society, it is not just and proper to order restitution of possession of shop no.7 to the plaintiff at this distance of time, more particularly, in the absence of the present occupant of the said shop room no.7 as a party defendant to the present suit. In the facts and circumstances of the case granting any order would affect not only the rights of the defendant society, but also that of the present occupant of the plaintiff's shop. In his affidavit filed in support of the petition, though the plaintiff made many allegations and also specifically alleged that on a false complaint, he and his family members were locked up in jail and that in their absence, the property was forcibly taken possession by the defendant society and also made other allegations in his affidavit filed in support of the petition, none of the said allegations were substantiated by producing any evidence much less the required standard of evidence. No documents were filed and exhibited and not

even third party affidavits of competent persons concerned were filed in support of the averments made in the pleadings of the plaintiff. Mere making allegations in the affidavit without substantiating the same by some evidence worth the name is of no avail to the plaintiff.

12. Viewed thus, this Court finds that the plaintiff has no *prima facie* case and that the trial Court is justified in dismissing the application and hence, the order impugned in this revision does not brook interference, more particularly, at this distance of time.

13. Accordingly, the Civil Revision Petition is dismissed.

Miscellaneous Petitions pending, if any, shall stand closed. No costs.

06th January, 2017
RAR

M. SEETHARAMA MURTI, J