

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P.No.6057 OF 2016

ORDER :

Heard both sides at length.

2. This revision is maintained against the impugned order dated 14.10.2016 of the XVII Additional Senior Civil Judge, City Civil Court, Hyderabad in I.A.No.846 of 2016 on the application of the plaintiffs/Wakf Board, including Managing Committee of Jamia Masjid & Graveyard, filed against the revision petitioner, as sole defendant proprietary entity of M/s Famous Metal Works, so called lessee of the premises of the plaintiff's pending suit in O.S.No.1605 of 2014 for eviction including arrears of rent. In the said application, invoking Order 15(A) of the Code of Civil Procedure (for short 'CPC') seeks a direction to the respondent/defendant/tenant to pay the so called agreed rent of Rs.8,925/- per month from 31.07.2013 till disposal of the suit for the plaint schedule consisting of 3500 sq. feet. In the suit from the written statement vis-a-vis the counter opposing the application filed, as respondent by the defendant/revision petitioner, it is the contest that subsequent to the unregistered lease deed dated 28.02.2012 expires after one year, there is reduction of the area under lease and original 3500 sq. ft. is not available as the plaintiffs/petitioners resumed out of it by left open to the

defendant/respondent/tenant 1800 sq. feet, thereby the rent is required to be reduced in proportion to that extent.

3. After hearing both sides, pursuant to the contention, the lower Court by the impugned order dated 14.10.2016 leave about the contest left open, if any in the written statement against the maintainability of the suit, but for remedy is to approach the Wakf Tribunal having exclusive jurisdiction under Amendment Act, 2013 to the Wakf Act, 1995 from the wording of deciding of any dispute in question or other matter including eviction of tenant, Wakf Board alone got jurisdiction, for that remedy open to the defendant to file application from the issues settled or not to decide as a preliminary issue, if necessary on that aspect invoking Order 14 Rule 2(b) of C.P.C. read with Order 20 Rule 5 C.P.C.

4. In so far as the impugned order pertaining to the area in dispute which is the subject matter of revision concerned, there is no request made, including by the defendant/respondent/revision petitioner before the lower Court invoking Clause (2) of Order 15-A C.P.C to conduct any enquiry as to the factual dispute in relation to the actual extent what is in his occupation as a lessee or ex-lessee-cum-tenant holding over or a tenant at sufferance, as the case may be. It is, in fact, by virtue of this provision even not only the admitted undisputed rent, but also any dispute in relation to the rent, the Court can determine by enquiry. That enquiry may extend including recording of any evidence or by virtue of

appointment of advocate-commissioner to ascertain the extent in occupation of the tenant or the like.

5. Having regard to the above, the impugned order, since not covered such a decision, contemplated by Rule 2 of Order 15 C.P.C., it requires remand with a direction to afford opportunity, if necessary to lead any evidence in relation to the extent in dispute for fresh determination within three months from the date of receipt of a copy of this order.

6. It is needless to say that in the meantime pursuant to the order, the tenant shall deposit the rent of Rs.8,925/- per month from 01.08.2013 within a period of two months from today and the plaintiffs are however, not entitled to withdraw the same pending such determination of what is payable but for to invest in F.D by Court on adjustment to Civil Court deposit to the credit of the suit. If the tenant failed to comply with the above directions, the Court below can pass appropriate orders in accordance with law.

7. With the above observations, the Civil Revision Petition is disposed of. There shall be no order as to costs.

As a sequel, miscellaneous petitions pending, if any, in the revision shall stand closed.

Dr. B. SIVA SANKARA RAO, J

02.01.2017
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