

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.6018 of 2017

ORDER :

The revision petitioner is no other than the plaintiff in O.S.No.1307 of 2016, pending on the file of the VIII Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar and the revision respondent is the defendant therein. The suit is filed with a claim by the plaintiff as absolute owner of Plot No.118, ground floor, admeasuring 228 sq.yards, Vasudeva Nagar, Attapur, Rajendra Nagar Mandal.

2. The averments show that originally one Anil Kumari was inducted as a tenant in February 2014 on rent of Rs.16,000/- per month for eleven months and she paid Rs.50,000/- as security deposit and she sub-let the premises to the defendant-respondent herein, vide agreement, dated 01.02.2014, and pursuant to which, on 01.10.2014, a rental agreement was entered between the defendant and plaintiff for six months to continue at rent of Rs.9,000/- per month and thereafter from 01.04.2015 at a rent of Rs.16,000/- per month and the total period is for 22 months. The defendant paid rent of Rs.9,000/- in cash till March 2015, later was irregular and committed default in payment of the said rent besides used water and electricity charges and borne due more than Rs.2,40,000/- towards arrears and despite notice to vacate terminating the tenancy and hand over the premises by end of June 2016 besides payment of Rs.2,08,000/- with interest, failed to

comply by cause returned the notice unclaimed twice and thereby to direct him to pay the arrears. This was the application mentioned Order XV-A read with 151 C.P.C.

3. The contest of the defendant/respondent is that he paid monthly rent up to May, 2015 and continuing and there is an advance of Rs.50,000/- paid to the plaintiff, the rent is Rs.3,000/- per month originally fixed and later enhanced to Rs.5,000/- per month and the defendant even offered on 02.06.2015 the rent of June, 2015 the plaintiff refused to receive and on 04.06.2015 and later tried to interfere with possession to evict him illegally which he was maintained suit for injunction O.S.No.64 of 2015 and there was interim order in I.A.No.269 of 2015 not to interfere. It is further averred that the defendant paid cash for the month of October, 2014, from which month tenancy commenced, and allegation that he deposited Rs.9,000/- for the month of November, 2014 or at a later stage is not correct as the rent is only Rs.3,000/- per month.

4. It is from above pleadings with reference to Exs.P.1 to P.10 on behalf of the plaintiff and no documents on behalf of the defendant in the enquiry of the application, the lower Court directed to pay arrears at Rs.3,000/- per month from April 2015 till the date of suit and continue thereafter with the observations that even from the so-called agreement-Ex.P.2 at Rs.9,000/- per month for six months from 01.10.2014 and later from 01.04.2015 at Rs.16,000/- per month

equally Ex.P.1 between plaintiff and Aruna Kumari of so-called Rs.16,000/- per month earlier and the defendant is disputing the very document and the signature therein at the last page, leave about no signatures of each page, to rely in the application thereupon. Ex.P.3 xerox copy of identity card shows rent of Rs.9,000/- per month for six months with 5% enhancement later that is also in dispute by defendant and there are corrections at the amount with no initial and say of the defendant is Rs.3,000/- made as Rs.9,000/-. Coming to Exs.P.4 to P.6-rental receipts, those do not contain signatures of the defendant of which Ex.P.4, dated 21.10.2014 for Rs.9,000/- as rent of October 2014 and Ex.P.6, dated 04.05.2015, shows Rs.5,000/- received. Ex.P.7-bank account extract of the plaintiff shows deposit of Rs.9,000/- for a particular month and Exs.P.8 and P.9-office copy of letter and postal receipt respectively, and Ex.P.10-cover proves correspondence between parties and that establishes rent as Rs.16,000/- per month and the agreed rent according to the respondent is only Rs.3,000/- per month and it is matter to be decided of the dispute otherwise from the initial burden on plaintiff. No doubt, as held by a single Judge of this Court in **M.B.Chander v. M/s.Balakrishna Rao Charitable Trust**¹, a similar enquiry is contemplated under Order XV-A Rule 2 C.P.C. when the tenant raises pleas on the quantum of rent, for the trial Court to decide without postponing till final decision by the Court and with these observations

¹ 2017 (3) ALD 68

without further discussion, but for by saying Exs.P.1 to P.10 in dispute, as discussed above Rs.3,000/- per month admitted rent is ordered to be paid.

5. The contentions in the revision impugning the said order of granting only Rs.3,000/- per month is that the trial Court did not discuss with reference to the documents in a right perspective nor conducted any summary enquiry contemplated by the expression apart from Ex.P.2 reflects Rs.9,000/- per month up to six months and with enhancement later even to fix not less than Rs.9,000/- per month, that Ex.P.1 not relied and Ex.P.4, dated 21.10.2014 shows payment of Rs.9,000/- as rent of October, 2014, whereas Ex.P.6 shows on 04.05.2015 paid another Rs.5,000/-, if those taken into consideration, it substantiates to say to meet with balance for Rs.16,000/- per month rent in the two payments with no gap and the conclusion of directing to pay at Rs.3,000/- as defendant/respondent only admitted to that is unsustainable.

6. The learned counsel for the revision petitioner reiterated the same in the course of hearing.

7. Whereas, it is the submission of learned counsel for the respondent/defendant that the impugned order no way requires interference.

8. The unregistered lease deeds cannot be looked into for quantum subject to any payment of deficit stamp duty, if it is original, after

original is duly impounding so far as Exs.P.1 and P.2 concerned. Thereby, lower Court rightly did not place reliance. So far as Exs.P.3 to P.10 concerned, Ex.P.4, dated 21.10.2014, shows Rs.9,000/- in words and letters of as a rental receipt received from the defendant/respondent by the plaintiff only of the pleading that both they are alleged signatures for the building ground floor which is towards rent for the month of October 2014. Ex.P.5 receipt, dated 27.04.2015, is about six months later, it refers only payment of Rs.3,000/- by the defendant and not even referred as any monthly rent, much less towards part payment on monthly rent. Ex.P.6, which is within a gap of eight days to Ex.P.5 supra, is for receipt of another amount of Rs.5,000/- with so-called signatures of the tenant-landlord, the defendant and plaintiff respectively, on receipt from the defendant on 04.05.2015. If at all Rs.3,000/- is the rent, leave about earlier shows Rs.9,000/- per month, there is no meaning for the defendant to contend to pay within a gap of eight days another Rs.5,000/- between 26.04.2015 and 04.05.2015. Suffice to say, the trial Court had it drawn the attention, the rent can never be Rs.3,000/- but Rs.9,000/-. It is therefrom of what was the said two payments are part payments. With reference to the earlier receipt shows Rs.9,000/- and that is substantiating Ex.P.7 bank statement of the plaintiff reflects the amounts paid towards rent drawn through the account at Rs.9,000/- per month. In the office copy of legal notice-Ex.P.8, dated 17.05.2016, Ex.P.10-return cover, it is the claim of Rs.16,000/- in

saying, initially from 01.10.2014 original rent was Rs.9,000/- per month later agreed to enhance at Rs.16,000/- per month after six months, for that there is no other record, however, with reference to it the rent is atleast Rs.9,000/- per month. Once such is the case, the direction by the lower Court of payment or deposit at Rs.3,000/- per month is unsustainable, that too, when an enquiry is contemplating from the expression that was also sufficient without referring pursuant to it more particularly of the facts.

9. Having regard to the above, without prejudice to both sides in the suit, instead of Rs.3,000/- per month from the date of filing of the suit, the respondent/defendant is directed to pay at Rs.9,000/- per month and the said payment is subject to final adjudication and whatever the amounts paid by the defendants at such rate, the plaintiff shall acknowledge and if deposited in Court, can withdraw without furnishing security.

10. Accordingly and in the result, the civil revision petition is allowed in part.

Miscellaneous petitions pending, if any, shall stand dismissed.

No order as to costs.

Dr. B. SIVA SANKARA RAO, J

15th November 2017.

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