

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.5762 of 2017

ORDER :

Proof of service on respondents filed. No representation for the respondents and taken as heard. Heard learned counsel for the revision petitioner.

2. The revision petitioner is the plaintiff in O.S.No.916 of 2006 on the file of the III Additional Junior Civil Judge, City Civil Court, Hyderabad. There are seven defendants in the suit, who are respondent Nos.1 to 7 in the revision. In the deemed pending suit, I.A.No.346 of 2015 was filed to direct the defendants to pay mesne profits pending the suit at Rs.50,000/- per month from 01.10.2005 to 31.05.2010 and thereafter at Rs.2,00,000/- per month till the date of delivery of the suit property. It is filed in the final decree application under Order XX Rule 12 read with 151 C.P.C. referring to the trial Court's decree, dated 01.06.2010. Against the trial Court's decree giving liberty to file a separate application for ascertainment of profits pursuant to the eviction order passed, the defendants preferred A.S.No.229 of 2010 before the II Additional Chief Judge, City Civil Court, Hyderabad. It was ended in dismissal on merits confirming the trial Court's eviction decree for profits. The defendants filed S.A.No.716 of 2013 before this Court. In fact, the plaintiff's pursuant to the trial Court's decree and judgment, dated 01.06.2010, filed application under Order XXVI Rules 13 and 14 C.P.C. in I.A.No.67

of 2011 for appointment of an Advocate Commissioner to determine the mesne profits pursuant to the preliminary decree supra. The Commissioner recorded evidence and also personally inspected the property and submitted report, fixing the amount towards profits. In the Second Appeal supra, there is a stay order of the passing of final decree pursuant to the preliminary decree, obtained by the defendants/appellants in S.A.M.P.No.1838 of 2013 though profits enquiry shall go on. It is pursuant to which in the present petition in I.A.No.346 of 2015 for ascertainment of profits referring to earlier Commissioner report in I.A.No.67 of 2011 sought by the plaintiff-preliminary decree-holder that was opposed by the respondents/defendants, the trial Court covered by the impugned order in dismissing the petition on 07.11.2016 observed that the Commissioner in his enquiry ultimately concluded that the rent for the suit property would fixed Rs.50,000/- per month. However, in the Second Appeal, there is a stay order in S.A.M.P.No.1838 of 2013 against passing of final decree and without vacating the stay order, the Court cannot proceed with to pass final decree and thereby the petition was dismissed.

3. The contentions in the present revision are that the lower Court went wrong in dismissing the petition with observation as if stay order is in force in S.A.M.P.No.1838 of 2013 in the pending S.A.No.716 of 2013, though the stay order is vacated subsequently for non-compliance with certain directions by the second appellate Court,

which is pursuant to the orders on the application of the plaintiff as respondent to the second appeal in S.A.M.P.No.413 of 2015 to vacate the stay order in S.A.M.P.No.1838 of 2013 where on 13.10.2015 a conditional order was passed directing the appellants/defendants to deposit entire arrears of rent and if not already deposited or paid, under proper receipt on or before 20.11.2015 and produce before the second appellate Court evidence of such payment of the arrears, if any, failing which the stay orders granted shall stand vacated by disposal of the petition accordingly. The conditional order was stated not complied with and stay stood vacated automatically for said non-compliance and thereby the dismissal order of the lower Court is unsustainable.

4. Heard and perused the material on record.

5. The order passed by this Court (another Bench) in the stay vacate petition in S.A.M.P.No.413 of 2015 against stay order granted in S.A.M.P.No.1838 of 2013, in the pending S.A.No.716 of 2013, on 13.10.2015, speaks that “having regard to the facts and submissions and the admitted relationship between the parties, there shall be a direction to the defendants/appellants to deposit entire arrears of rent, if not already deposited or paid, under proper receipt on or before 20.11.2015 and produce before this Court evidence of such payment of arrears, if any. Failing which, the stay orders shall stand vacated. Accordingly, the petition is disposed”. It is later endorsed as “list on

20.11.2015 for reporting compliance”. Even from the very order, if not paid or deposited, the entire arrears as fixed on or before 20.11.2015 the stay granted in S.A.M.P.No.1838 of 2013 automatically stands vacated, even it is posted for compliance if not complied, the order gives its effect from the very wording. No doubt, subsequently in the second appeal by another Bench of this Court, by order, dated 22.02.2016, observed that “as per the directions of this Court, no calculation Memo has been filed by the appellants and there is no proof that they have paid the amount and obtained the receipt on or before 20.11.2015, as per the orders of this Court, dated 13.10.2015. Learned counsel for the respondent reported that the appellants have not paid single amount towards arrears of rent. Call on 29.02.2016. No further adjournment will be granted”. Even from the above order, there is nothing specifically saying extension of the time by modifying the earlier order, dated 13.10.2015, fixing the consequence for non-payment by 20.11.2015. Even taken for arguments sake, it is an extension of the time from 20.11.2015 to 29.02.2016 by saying no further adjournment can be granted. Once it is not shown complied with, the stay automatically vacates and the dismissal order of the lower Court on 07.12.2016 with observation of as if stay in force is thereby unsustainable. The dismissal order is thus set aside and the matter is restored to the lower Court with a direction to dispose of the matter for not stay in force by clarifying the same.

6. Accordingly and in the result, the civil revision petition is disposed of.

Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

Dr. B. SIVA SANKARA RAO, J

6th December 2017.

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