

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION No.597 of 2018

O R D E R

This civil revision petition under Article 227 of the Constitution arises out of the order dated 11.12.2017 passed by the learned Senior Civil Judge, Medchal, Ranga Reddy District, in I.A.No.641 of 2017 in O.S.No.584 of 2015. The said I.A. was filed by the defendant in the suit under Order 7 Rule 11(a) and (d) CPC seeking rejection of the plaint. By the order under revision, the trial Court dismissed the I.A. Aggrieved thereby, the defendant is before this Court.

O.S.No.584 of 2015 was filed by the respondents-landlords seeking a direction to the petitioner-tenant to vacate the suit schedule property and handover physical possession of the same to them. They also sought a direction to the petitioner-tenant to pay half the property tax to them and the deducted TDS amounts to the concerned authorities. The suit schedule property comprised six shops in the ground floor of the complex bearing House No.6-115 situated at Chinthal Main Road, Quthbullapur Municipality, Ranga Reddy District.

The case of the respondents-landlords was that they were the absolute owners of the suit schedule property and let out the same to the petitioner-tenant under unregistered rental agreement dated 07.02.2007. The rental per month was Rs.10,000/- and the lease period was to be extended beyond a period of 36 months with an increase of 20% on the rental on completion of 36 months, in the event the petitioner-tenant continued in the premises thereafter. The unregistered agreement was renewed for a period of

eleven months on 01.01.2010. Differences having arisen between the parties, the respondents-landlords filed O.S.No.1641 of 2013 before the learned VII Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, seeking eviction of the petitioner-tenant. This suit was compromised between the parties and was settled on 07.08.2013 before the Lok Adalat at L.B.Nagar, Ranga Reddy District.

Alleging that the petitioner-tenant had failed to abide by the terms and conditions of this compromise, the respondents-landlords filed the present eviction suit. While so, the petitioner-tenant filed the subject I.A.No.641 of 2017 seeking rejection of the plaint under Order 7 Rule 11 CPC.

In the affidavit filed in support thereof, the petitioner-tenant stated as follows: In terms of the compromise dated 07.08.2013 in O.S.No.1641 of 2013, the lease period was extended for six years, i.e., from 01.08.2013 to 31.07.2019. Clause 2 of the compromise required payment of rentals @ Rs.35,000/- per month from 01.08.2013 to 31.07.2016 and @ Rs.40,000/- per month from 01.08.2016 to 31.07.2019. The petitioner-tenant claimed that it was regular in payment of monthly rentals through RTGS from its account to the account of the respondents-landlords. No default was committed in payment of rentals but a few days delay was caused in the crediting of the monthly rentals because of technical problems faced by the bank, like internet failure, Government holidays, bank employees strike and bandh etc. Clause 6 of the compromise stipulated that only if default was committed in payment of rentals for two months consecutively, then the petitioner-tenant was liable to vacate the leased premises

immediately without reference to the agreed period of the lease thereunder. As no such default had been committed, the petitioner-tenant asserted that the suit itself was not maintainable. Despite several requests for TAN/PAN card photocopies and other documents for making payment of the tax deducted at source, the respondents-landlords did not furnish the same. It was only after letters dated 16.06.2014 and 05.09.2014 were addressed by the petitioner-tenant that the respondents-landlords furnished the documents. Thereafter, the TDS amount was deducted from the monthly rentals and TDS certificates were furnished to the respondents-landlords. The petitioner-tenant disputed the amount payable towards 50% of the property tax and asserted that the respondents-landlords were demanding that it should pay half the municipal tax for the entire building. Stating that it was a tenant in a small portion of the building and that the respondents-landlords had already collected excess amount from 2007 to 2012 from it towards property tax, the petitioner-tenant claimed that it was entitled to refund of the excess amounts collected from it. It asserted that there was no cause of action for the filing of the suit as the tenancy was to be continued till 31.07.2019.

In their counter to the subject I.A., the respondents-landlords stated as follows: The petitioner-tenant was irregular in payment of rentals through RTGS. The bank account statement showed that payments were made after the 10th day of every succeeding calendar month in contravention of the agreement between the parties in the compromise. No proof was produced by the petitioner-tenant in evidence of the various technical problems cited for the delay in such payment of rentals. No TDS certificates

were provided to them even after receipt of documents from them. They denied the allegation that excess municipal tax amounts had been collected from the petitioner-tenant since 2007 and that they were demanding that it should pay the half the municipal tax for the entire building. They therefore asserted that no cause was made out for rejection of their plaint.

Upon considering the aforestated pleadings, the trial Court found that the petitioner-tenant was, in fact, irregular in making payments of the monthly rentals, as it made such payments within time only for a few months out of the 22 months from 11.08.2013 to 04.06.2015. No material was placed before the trial Court in proof of the petitioner-tenant having paid the TDS amounts for the period other than the financial year 2015-16. As regards the dispute over payment of 50% of the municipal tax, the trial Court observed that this required adjudication and could not be gone into at this stage. Relying on case law, the trial Court concluded that no grounds were made out for rejection of the plaint and accordingly dismissed the I.A.

Sri M.D.Mohapatra, learned counsel for the petitioner-tenant, would state that in terms of the compromise arrived at between the parties in O.S.No.1641 of 2013, the lease stood extended up to 31.07.2019 and it was only if default was committed in payment of rentals for two months consecutively, the respondents-landlords were entitled to seek eviction on that ground. He would therefore argue that the trial Court erred in not appreciating that there was no cause of action for the filing of the suit.

Per contra, Sri Gaddam Srinivas, learned counsel on caveat for the first respondent-landlord, would point out that the petitioner-tenant agreed that he would pay Rs.35,000/- per month from 01.08.2013 to 31.07.2016 towards the monthly rental on or before the 10th day of every succeeding calendar month after deducting TDS and furnishing the TDS certificate to the respondents-landlords regularly. He would further point out that Clause 6 of the compromise put it beyond doubt that the petitioner-tenant agreed that he would pay the monthly rentals regularly as agreed upon without committing default. Learned counsel would argue that the petitioner-tenant cannot therefore claim that the tenancy would continue up to 31.07.2019, as it failed to deposit the rentals before the stipulated date all through.

Order 7 Rule 11 (a) CPC states to the effect that the plaint shall be rejected where it does not disclose a cause of action. Order 7 Rule 11 (d) CPC states that the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. Though the subject I.A. was filed under both the aforestated provisions, it was not demonstrated before the trial Court as to how Order 7 Rule 11(d) CPC has application. Even before this Court, no arguments were advanced as to how the aforestated clause would apply. Be it noted that this clause would have to be invoked on the strength of the plaint averments alone and perusal of the plaint in the present case does not demonstrate as to how it could be applied.

As regards Order 7 Rule 11(a) CPC, it is the contention of Sri M.D.Mohapatra, learned counsel, that there was no cause of action for the filing of the suit as the lease, in terms of the compromise in

O.S.No.1641 of 2013, was extended up to 31.07.2019. The rival contentions advanced by the learned counsel centre around Clause 6 of this compromise. This Clause reads as under:

‘6. The Defendant hereby agreed that he shall pay monthly rents in respect of the schedule property to the Plaintiffs regularly as agreed upon as stated supra without committing default. If the Defendant failed to pay two months rent regularly/consecutively within the stipulated time as stated supra, to the Plaintiffs, then the Defendant is liable to evict the schedule property immediately without considering the above agreed period.’

It may be noted that this Clause comprises two separate sentences. The first sentence reads to the effect that the petitioner-tenant shall pay monthly rents in respect of the schedule property to the respondents-landlords regularly as agreed upon as stated earlier in the compromise without committing default. The second sentence states to the effect that if the petitioner-tenant fails to pay two months rent regularly/consecutively within the stipulated time as stated earlier to the respondents-landlords, then the petitioner-tenant is liable to vacate the schedule property immediately without reference to the agreed period.

It is therefore clear that payment of the rental by itself is not sufficient compliance as the stipulation is that such payment must be as agreed upon in the earlier clauses and within the stipulated time as recorded therein. It is not in dispute that Clauses 2 and 3 require deposit of the stipulated rentals on or before the 10th day of every succeeding calendar month. The time stipulation therefore assumes crucial significance and would be binding. It is an admitted fact that the petitioner-tenant failed to abide by the said time stipulation. The trial Court found on facts that in a span of 22 months, the rentals were paid within time only in a few months.

The respondents-landlords also alleged various other acts of omission which, if found to be true, would amount to default on the part of the petitioner-tenant in complying with the terms and conditions of the compromise in O.S.NO.1641 of 2013. As rightly pointed out by the trial Court these were issues require to be tried and adjudicated. The petitioner-tenant therefore failed to establish that there was no cause of action for the filing of the suit. The order under revision holding to this effect does not brook any interference, be it on facts or in law.

The civil revision petition is therefore devoid of merit and is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.



SANJAY KUMAR,J

16th **MARCH, 2018**

PGS