

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.702 OF 2018

ORDER:

This revision petition is filed under Article 227 of the Constitution of India challenging the order dated 18.01.208 in I.A.No.1018 of 2017 in O.S.No.1026 of 2014 passed by the I Senior Civil Judge, City Civil Court, Hyderabad striking of the defence of the petitioner for non compliance of direction issued under Order XV-A Rule 1 read with Section 151 C.P.C., whereby the petitioner was directed to pay arrears of monthly rent and continue to deposit rent @ Rs.9,000/- per month during pendency of the suit.

2. The present revision petition is filed on the ground that the respondent disconnected the water supply to the premises of the petitioner, which is subject matter of O.S.No.1026 of 2014, for which the rent is directed to be paid and the petitioner is incurring Rs.6,000/- per month @ Rs.200/- per tank per day, thereby, the petitioner deducted Rs.6,000/-, out of the rent payable and that the respondent is accepting the same without any demur and thereby, the respondent is not entitled to claim rent @ Rs.9,000/- per month and arrears at the same rate. Moreover, the petitioner filed O.S.No.1248 of 2013 for perpetual injunction and filed I.A.No.871 of 2013 in I.A.No.830 of 2013 under Order XIII Rules 1 and 2 C.P.C. for restoration of water supply to the schedule premises. The respondent was directed to restore water supply to the petitioner premises through regular process of supply system until further directions by order dated 10.10.2013. Since the respondent did not comply with the said direction, the petitioner filed execution petition under Order XXI Rule 32 C.P.C., which is

pending for registration before the executing Court. But the Court below did not consider the defence and directed the petitioner to deposit arrears of rent @ Rs.9,000/- per month and continue to deposit during pendency of the suit within the specified time. But the petitioner did not comply with the direction in view of the pendency of the revision before this Court against the order. Therefore, striking of defence of this petitioner by exercising power under Order XV –A read with Section 151 C.P.C. is erroneous and prayed to set aside the same.

3. During hearing, learned counsel for the petitioner reiterated the said contention and insisting to pay rent @ Rs.9,000/- per month without obeying the direction issued by the Court below in I.A.No.871 of 2013 in I.A.No.830 of 2013 in O.S.No.1248 of 2013 is a serious illegality and that would cause serious prejudice to the rights of the petitioner to enjoy facility of drinking water and thereby striking of defence by exercising power under Order XV-A C.P.C. is liable to be set aside and prayed to set aside the impugned by exercising power under Article 227 of the Constitution of India.

4. None appeared for the respondent though notice was served.

5. Admittedly, the relationship between the petitioner and the respondent is tenant and landlord and the rent payable for the premises is Rs.9,000/- per month. But the dispute is with regard to the restoration of water supply to the premises on various grounds, which is subject matter of suit. But the petitioner being a tenant was deprived of enjoyment of amenity of drinking water through regular process of supply system, thereby he is incurring Rs.200/- per day per tanker and total Rs.6,000/- per month on

average and he is entitled to deduct Rs.6,000/- from the rent payable for the premises. Despite, the order passed by the Court below in I.A.No.871 of 2013 by the V Senior Civil Judge, City Civil Court, Hyderabad, the respondent did not comply with the direction. Therefore, sought for reversal of the order under challenge.

6. When the petitioner is admitting that the rent for the premises is Rs.9,000/- per month, it is the duty of the petitioner to pay rent at the same rate to the landlord and unless the water connection is part of the amenity provided for the better enjoyment of the premises by the tenant setting part any amount towards water consumption charges as per the agreement of lease either oral or written, the petitioner is entitled to deduct Rs.6,000/- per month as water charges and to pay Rs.3,000/- per month out of Rs.9,000/- per month as agreed rent to the landlord. Therefore, deduction of Rs.6,000/- towards water consumption charges @ Rs.200/- per tanker per day, was not accepted by the Court below while deciding I.A.No.64 of 2017 on 12.07.2017 and passed the following direction:

“In the result, the petition is allowed directing the respondent/defendant to pay monthly rent of Rs.9,000/- to the petitioner/plaintiff from December, 2012 to December, 2016 within a period of two months from today, if not already paid and the respondent/defendant is entitled to seek credit of the part payments already made towards rent for the period, failing which the petitioner/plaintiff is entitled to take appropriate steps according to law.”

7. Since the order is subject matter of another revision, no stay was granted by this Court. Therefore, the petitioner did not

comply with the direction issued by the Court below in I.A.No.64 of 2017.

8. Order XV-A was incorporated in the Code of Civil Procedure, 1908 (in short, C.P.C) by way of amendment in the State of Andhra Pradesh. Rules 1 and 2 of Order XV-A read as follows:

"(1) In a suit for recovery of possession, on termination of lease, or licence, with or without a prayer for recovery of arrears of rent, or licence fee, known with whatever description, the defendant, while filing his written statement, shall deposit the amount, representing the undisputed arrears, calculated upto that due into the Court and shall continue to deposit such amount, which becomes payable thereafter within one week from the date on which it becomes due, till the judgment is rendered in the suit.

(2) Whether the defendant pleads in the written statement that no arrears of rent or licence fee exists, it shall be competent for the Court to pass an order in this regard, after affording opportunity to both the parties, and in case any amount is found due, the defendant shall be under obligation to deposit the same, within the time stipulated by the Court and continue to deposit the amount which becomes payable thereafter.

9. In case of failure to comply with the direction issued under Sub-rule (2), the Court is competent to strike of the defence. In view of non compliance of the direction in I.A.No.64 of 2017, dated 12.07.2017, the Court below passed the order striking defence set up by the petitioner under Section XV-A C.P.C.

10. Admittedly, the revision petition against the order in I.A.No.64 of 2017 is pending before this Court, but no stay was granted. When no stay was granted against the order passed by this Court, nothing prevents the Court to pass appropriate consequential order in pursuance of the order in I.A.No.64 of 2017. Even according to Section 115(3) C.P.C., which is identical to the

revisional jurisdiction under Article 227 of the Constitution of India.

11. Thus, in the absence of any stay granted by this Court in the revision filed against the order dated 12.07.2017 in I.A.No.64 of 2017, passed by the Court below striking of the evidence set up by the petitioner cannot be disturbed. Therefore, I find no error in the order passed by the Court below warranting interference of this Court exercising power under Article 227 of the Constitution of India. Hence, the revision petition is deserves to be dismissed as it lacks merits.

12. Accordingly, the civil revision petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this petition shall stand closed.

08.02.2018
kvrn

JUSTICE M. SATYANARAYANA MURTHY

