

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.925 OF 2018

ORDER:

This revision petition is filed under Article 227 of the Constitution of India challenging the order dated 14.12.2017 in I.A.No.136 of 2017 in O.S.No.328 of 2017 passed by the VII Senior Civil Judge, City Civil Court, Hyderabad, whereby the Court below directed the petitioners to deposit arrears of rent @ Rs.7,260/- per month for the period from June, 2014 to December, 2017 i.e. for 43 months, amounting to Rs.3,12,180/- within one month from the date of order and continue to deposit future rents commencing from January, 2018 at the same rate on or before 10th of every month during pendency of the suit.

2. The respondents are plaintiffs and the petitioners are defendants before the Court below.

3. The respondents filed petition under Order XV-A C.P.C. seeking direction against the petitioners to deposit arrears of rent at Rs.10,000/- per month for the period from March, 2014 to February, 2017, amounting to Rs.3,50,000/- and also continue to deposit future rents at the same rate till disposal of the suit. The respondents filed suit for ejectment of the persons in possession of the property i.e. petitioners on the ground that they failed to pay rent for the said period and also claimed mesne profits payable for the premises after determination of tenancy by issuing notice and unless the petitioners deposit arrears of rent and future rent, they are not entitled to

contest the suit and the defence set up by the petitioners is liable to be stricken off.

4. The petitioners filed counter contending that the schedule property was obtained from the 2nd respondent on monthly rent of Rs.2,400/- and the same was enhanced from time to time, by June, 2014, the rent payable for the premises is Rs.7,260/- per month. While so, the petitioners entered into an agreement of sale and paid entire sale consideration on different dates and thereby become absolute owners of the property and consequently, the petitioners stopped payment of rent from June, 2014 onwards. On coming to know about the sale of the suit schedule property, the petitioners got issued notice on 18.04.2017 calling upon by the 2nd respondent to execute regular sale deed in their favour, but she did not respond to the said notice and respondents colluded and created a regular sale deed in favour of the 1st respondent and thereby, the petitioners were forced to file a suit for specific performance against the respondents. Hence, the petitioners have no obligation to pay rent to the respondents and their possession is based on agreement of sale and that there was no jural relationship of landlords and tenants.

5. Upon hearing arguments of both counsel, the Court below issued direction referred supra. Aggrieved by the impugned order, the petitioners/respondents preferred the present revision on various grounds mainly on the ground that when they purchased the property under agreement of sale and paid entire sale consideration, they are entitled to continue in possession of the property as

landlords and tenants. The relationship of landlords and tenants between them is ceased to subsist on payment of entire sale consideration under the agreement of sale and when there is no relationship of landlords and tenants, they are not under the obligation to deposit arrears of rent or future rent to the respondents. The Court below did not consider the specific contention in proper perspective and committed an error in ordering petition and prayed to set aside the impugned order.

6. During hearing, learned counsel for the petitioners contended that when there was no subsisting jural relationship of landlords and tenants, the petitioners cannot be compelled to deposit arrears of rents or future rents and such direction is illegal and contrary to the law and prayed to set aside the impugned order.

7. Whereas, learned counsel for the respondents supported the impugned order in all respects while contending that a notice was issued attorning the tenancy under Section 109 of the Transfer of Property Act and when tenancy was attorned, the tenant in occupation of the premises is bound to pay rent for the premises and thereby, the petitioners are bound to pay rents including arrears, otherwise, they are not entitled to contest the suit.

8. It is an undisputed fact that the petitioners are continuing in possession of the property and initially they were entered into possession as tenants @ Rs.2,400/- rent per month and later it was enhanced from time to time and by June, 2014, rent was Rs.7,260/-. The petitioners allegedly purchased the property under agreement of

sale on 26th June, 2013 executed by D.Laxmamma in favour of petitioners.

9. Learned counsel for the petitioners drawn the attention of this Court to the contents of agreement of sale to establish that their possession is not as tenants, but as owners.

10. As seen from the terms and conditions of the agreement of sale, the petitioners have to perform their part of obligation and the 2nd respondent has to deliver vacant possession of the property to the purchasers i.e. petitioners or their nominee or nominees at the time of registration of sale deed (page 3 clause 4 of the agreement of sale). If this condition is taken into consideration, the possession till date of execution of the registered sale deed is only a possession of tenant in occupation and only when the possession of the property was delivered either to the petitioners or to the nominee/s, their possession will be based on ownership. If the intention of the 2nd respondent is to allow them to occupy the premises as owners, the question of incorporating condition i.e. Condition No.4 in the agreement of sale would not arise. Thus, it is clear from the conditions of agreement of sale, the 2nd respondent agreed to deliver vacant possession of the premises to the petitioners or to their nominee/s on the date of execution of registered sale deed, but till today, no registered sale deed was executed. Therefore, the petitioners are deemed to be continuing in the premises as tenants and they are under obligation to pay rent for the premises, which is the subject matter of the suit.

11. A similar question came up before this Court in **Najamuddin Kazi v Mohd. Abdul Aziz**¹, this Court had an occasion to decide the similar dispute where the purchaser of the suit schedule property in a suit for eviction of the tenant filed by the landlord and a petition was filed under Order XV-A C.P.C seeking a direction to deposit arrears of rent and future rents. This Court held that tenancy of defendant/tenant in a suit for specific performance cannot be treated as sufficient cause or ground to dismiss the application filed under Order XV-A C.P.C by the landlord on the ground that tenancy itself is disputed seriously. Instead the better course would be to direct the parties that each of them would be liable to the other according to the result of such specific performance suit of the tenant and that each of them can work out their remedies against the other basing upon the relief granted in such suit. In view of this and for the aforesaid reasons, it follows that the defendant is liable to deposit in principle the arrears of admitted rents. Of course whether there are any grounds or not for eviction have to be decided in the suit itself.

12. If this principle is applied to the present facts of the case, the petitioners filed suit for specific performance of contract basing on the agreement of sale and considering clause 4 of the agreement of sale, *prima facie* the possession of the tenant is not as owners. Curiously before the Court below, this agreement of sale or any other documents were not brought on record and marked them as exhibits except raising a contention, even assuming for a moment that the pendency of suit for specific performance is not the ground

¹ 2013(5) ALD 397

to deny relief under Order XV-A C.P.C., in view of the law declared by this Court in **Najamuddin Khazi's** case referred supra.

13. One of the contentions urged before this Court by learned counsel for the petitioners is that there was no subsisting jural relationship of landlord and tenant while admitting that the petitioners were inducted as tenants by the 2nd respondent/D.Laxamma, initially on a monthly rent of Rs.2,400/-, later it was enhanced from time to time by June, 2014, the rent payable for the premises is Rs.7,260/- and thereafter, the 2nd respondent sold the property to the 1st respondent by executing registered sale deed and thereby he became owner of the property, the respondents also got issued a notice attorning tenancy as required under Section 109 of the Transfer of property Act on 15.02.2016 and from the date of notice, the tenants were under the obligation to pay rent to the purchaser, but they did not pay or deposit the rent.

14. In view of Order XV-A C.P.C., the petitioners are bound to pay rent as long as they continuing in possession of the premises as tenants. Here, Clause 4 of the agreement of sale is suffice to conclude that they will become owners, only from the date of deliver of property on the date of execution of registered sale deed, till then their possession is *prima facie* as tenant. Hence, the petitioners are bound to deposit arrears of enhanced rent. However, in view of pendency of the suit, the respondents shall not be permitted to withdraw the amount deposited and based on the decree and

judgment in the suit filed for specific performance, they can work out their remedies in the main suit itself.

15. With the above directions, the revision petition is dismissed. There shall be no order as to costs.

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

JUSTICE M. SATYANARAYANA MURTHY

21.02.2018
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