

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.1348 OF 2018

ORDER:

This civil revision petition is filed under Article 227 of Constitution of India, questioning the order in I.A.No.919 of 2017 in O.S.No.42 of 2016 dated 13.12.2017 passed by the I Additional Chief Judge, City Civil Court, Secunderabad, directing the petitioner to deposit rent @ Rs.1,95,000/- and arrears of rent due by him for the period 23.04.2016 to 22.04.2017 to the tune of Rs.23,40,000/- and continue to pay Rs.1,95,000/- every month subsequent to 22.04.2017 till disposal of the suit by 10th of every month.

The petitioner is the tenant in occupation of the premises bearing H.Nos.8-2-172, 8-2-172/2, 8-2-172/3, 8-2-173/1, 8-2-174, 8-2-174/1 consisting of 6 portions in the ground, first and second floors, totally admeasuring 197.62 to sq.yds situated at Turner Street Kummariguda, Secunderabad.

Admittedly, the petitioner obtained the premises on lease and as per the agreement, the rent was fixed at Rs.1,95,000/- per month with 7% annual enhancement on the subsisting rate of rent. The petitioner raised the contention before the Court that, the petitioner invested more than Rs.1 crore for interior decoration to carry on his business in the premises. In the process of acquiring land for the Metro Rail Project by the Government of Telangana, part of building, where the petitioner is carrying on business was demolished and later it was not reconstructed. The contention of the petitioner is that, he has invested more than Rs.1

crore towards interior decoration of the building and he is put to loss as he could not continue his business in the partly demolished building. Further, the respondents/owners of the building have not reconstructed the building so as to enable the petitioner to continue his business in the premises and claiming rent at the agreed rate, though lease period was for 15 years which commenced in the year 2012. Therefore, the respondents are not entitled to claim rent and prayed to dismiss the petition filed by the respondent herein.

Upon hearing augment of both the counsel, the Trial Court passed the order directing the petitioner to pay the rent along with arrears with subsequent interest. Aggrieved by the order passed by the Trial Court, the present civil revision petition is filed mainly on the ground that the Trial Court did not consider the specific plea raised by the petitioner in the counter and that the petitioner incurred huge amount towards goodwill to the earlier tenant in occupation, but, part of the premises was demolished due to a acquiring the property by the Government of Telangana for Metro Rail Project and in absence of reconstruction of the building the respondent is not entitled to claim the said amount. It is contended that the Trial Court committed an error in ordering the petition as stated supra and prayed to set aside the order. During hearing, learned counsel for the petitioner reiterated the grounds raised in the petition, contended that the petitioner having incurred more than one crore for beautification and towards payment of goodwill deposit to earlier tenant in occupation, he cannot be compelled to vacate the premises or to pay agreed rent without reconstructing the demolished part of the building and that, the petitioner is liable to pay rent in proportion to the part of the building available and in occupation of this

petitioner. But the landlord cannot insist him to pay the entire rent agreed and prayed to set aside the order in I.A.No.919 of 2017 in O.S.No.42 of 2016 dated 13.12.2017 passed by the I Additional Chief Judge, City Civil Court, Secunderabad.

Learned counsel for the respondents supported the order of the Court below in all respects.

Considering rival contentions, perusing the material available on record, the point that arose for consideration is,

“whether the petitioner is liable to pay rent at agreed rate even after demolition of part of the building? If not, whether the direction issued by the I Additional Chief Judge, City Civil Court, Secunderabad, is justified?”

P O I N T:

Undisputedly, the relationship between the petitioner and respondents is tenant and landlord. The petitioner obtained the premises on monthly tenancy in the year 2012 and part of the property was acquired by the Government of Telangana for Metro Rail Project and part of the building was demolished in the acquisition for Metro Rail Project. Thereby, the entire premises was not in utilisation for the beneficial enjoyment of the petitioner, in the counter, he did not disclose the actual extent of the property that was demolished. But, it is contended that 32.55% of the property was demolished by the Government of Telangana and he is liable to pay the proportionate amount to the part of the building in his occupation and not liable to pay the rent for the entire building. In addition to that, when he incurred huge expenditure of more than Rs.1 crore for interiors, he cannot be compelled to vacate the

premises, terminating the tenancy by issuing a notice, as such, the order passed by the Court below is erroneous and requested to set aside the order passed by the Court below.

No doubt, the lease of the building was for the entire building agreed rent is for entire building and the lease amount was not fixed on square foot basis and demolition of part of the building is also not in dispute. But, the dispute is only with regard to the extent of the demolished part of the building. If, really, the petitioner is not in occupation of the entire building, the petitioner may opt to continue or vacate the premises. Though, the petitioner incurred huge amount for interiors and furnishings of more than Rs.1 crore he is continuing in property as a lessee in the premises. But no proof is filed before the Court to establish that 32.55% of the property was demolished. Therefore, in the absence of any proof regarding demolition of part of the building, it is difficult to accept that 32.55% of the building was demolished at that stage. Even otherwise, enquiry under Order XV-A is summary in nature and the Court can make summary enquiry as to the quantum of rent payable for the premises in a suit filed for recovery of possession on termination of lease or licence.

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 & 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, as provided under Rule 1.”

If the defendant commits default in making the deposits, as aforesaid, the Court shall strike off the defence.

On such deposit it shall be competent for the plaintiff to withdraw the same.

Explanation:- The expression “the amount representing the undisputed areas” shall mean the sum of rent, or licence fee calculated for the period for which it remained unpaid, after deducting it any amount.

- (a) paid as tax, to a local authority, in respect of the property,
- (b) paid to the plaintiff under written acknowledgment; and
- (c) deposited into the Court, in any proceedings, in relation to the said property.”

Here, in the present case the petitioner did not dispute the rent payable for the premises or arrears of rent, but disputed his liability to pay entire rent for the building, though part of it was demolished. The petitioner failed to establish the extent of demolished portion. In the absence of any material, the Court has no option except to direct the tenant to pay rent exercising power under Order XV-A C.P.C. Therefore,

the Trial Court rightly ordered the petitioner to pay rent and arrears as referred above.

Learned counsel for the petitioner contended that the respondents did not come forward to reconstruct the building. It is true that part of the building was demolished, but in the absence of extent of damage and whether it is in a good condition for use and occupation is a question to be determined at appropriate stage after full-fledged trial but not at this stage under Order XV-A C.P.C, the Court cannot conduct enquiry as to the extent of damaged portion of the building to find out the rent payable for the remaining part, since it is limited to the extent of conducting summary enquiry as to the arrears and the rent payable under Clause (2) of Order XV-A C.P.C.

Hence, the request made by the learned counsel for the petitioner to find out the premises is in use and occupation is beyond the scope of Order XV-A C.P.C. Therefore, failure to conduct necessary enquiry to find out the actual extent available for use and occupation is not an error in the order passed by the Trial Court. Hence, I find no ground to set-aside the order passed by the Trial Court, leaving it open to the petitioner to raise all his contentions during trial of the suit and work out his remedies in an appropriate forum.

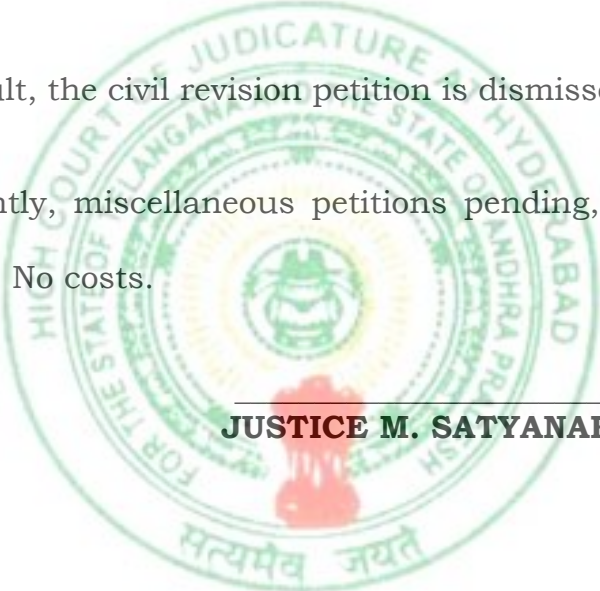
In “**Raj Kumar Bhatia v. Subhash Chander Bhatia**”¹ the Full Bench of Apex Court held that in the exercise of its jurisdiction under Article 227, the High Court does not act as an appellate court or tribunal and it is not open to it to review or reassess the evidence upon which the inferior court or tribunal has passed an order.

¹ (2018) 2 SCC 87

In view of the law declared by the Apex Court in the judgment referred above, unless the Court comes to conclusion that the Court below transgressed jurisdictional limits and passed the impugned order, the Court cannot interfere with the order passed by the trial Court. Keeping in view the law declared by the Full Bench of Apex Court in the judgment referred supra, it is difficult for me to exercise power under Article 227 of Constitution of India. Hence, I find no illegality in the order passed by the Court below, warranting interference of this Court exercising power under Section 227 of Constitution of India. Consequently, the revision petition is liable to be dismissed.

In the result, the civil revision petition is dismissed.

Consequently, miscellaneous petitions pending, if any, shall also stand dismissed. No costs.



JUSTICE M. SATYANARAYANA MURTHY

Date:28.02.2018

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