

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

CIVIL REVISION PETITION NO.1518 OF 2018

DATED:09-03-2018

Between:

M/s. Analak Food and Beverages
Rep. by its Partner
Smt. P. Rajani, W/o. Visveswara Rao
Hari Towers, Narasimha Nagar
Visakhapatnam ... Petitioner

And

Puvvada Radhika ... Respondent

COUNSEL FOR THE PETITIONER: Mr. M. Radhakrishna

COUNSEL FOR THE RESPONDENT: Mr. G. Vasantharayudu



THE COURT MADE THE FOLLOWING:

ORDER:

This civil revision petition arises out of order dt.05.12.2017 in I.A. No.707 of 2017 in O.S. No.625 of 2016 on the file of the II Additional District Judge, Visakhapatnam.

2. The respondent has filed the aforementioned suit for eviction of the petitioner. The petitioner has filed I.A. No.707 of 2017 under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 (CPC) for rejection of the plaint. The main plank on which the said application filed was that as per clause 2 of the registered lease agreement, the lease period was fixed as 66 months commencing from 01.07.2014 and expiring on 31.12.2019, that under clause 11 both the parties shall have the right to terminate the lease deed before the maturity of the lease period by giving three months' notice to the other party, that the lessor shall exercise this right only in the event of non-payment of rent for two months consecutively or on indulgence of illegal activities and creating of sub-lease by the lessee, that without following clause 11 of the lease deed, the respondent has filed the aforementioned suit by only issuing 15 days' notice on 18.10.2016 and that therefore the relief claimed in the suit is contrary to clause 11 of the agreement. The Court below went into the question as to whether the suit was properly filed or not,

and rendered a finding on the point whether the suit was filed in terms of the provisions of the Transfer of Property Act, 1882 (for short, “the Act”) or not in favour of the respondent and against the petitioner.

3. Order VII Rule 11 of CPC envisages rejection of plaint on any one or more of the grounds mentioned in sub-clauses (a) to (f) thereof. The learned counsel submitted that the plaint is liable to be rejected as per clause (d) of Rule 11 of Order VII CPC as three months’ notice as required under the agreement was not given by the respondent. The suit is filed for eviction *inter alia* on the plea that as the petitioner – defendant committed default in payment of arrears of rent, the respondent - plaintiff has sent notice on 11-04-2016 to the former demanding payment of the arrears of rent from January, 2016 within 7 days from the date of the notice, failing which the respondent requested the petitioner to treat the said letter as notice of termination through E-mail. It was further pleaded that the petitioner sent a reply to the notice wherein it has requested for time for payment of the arrears. That, later the respondent has issued Lawyer’s notice dt.18.10.2016 calling upon the petitioner to vacate the premises by giving additional 15 days’ time to vacate the premises and also to pay the arrears

of rent from January, 2016 till the date along with service tax.

The issue whether the two notices issued by the respondent are in conformity with the lease agreement or not, is a triable one.

4. Section 106 of the Act envisages that in the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice. Sufficiency or otherwise of notice period envisaged under Section 106 of the Act is a triable issue and the plaint cannot be rejected at the threshold on the ground of purported non-compliance of the said provision. The Court below has unnecessarily drawn itself into the merits of the contentions raised by the petitioner. In my opinion, it ought to have avoided rendering any finding on the merits as regards the compliance or otherwise of Section 106 of the Act.

5. For the aforementioned reasons, the civil revision petition is dismissed, however, with the direction that the findings rendered by the lower Court on the compliance or otherwise of

the provisions of Section 106 of the Act shall not have any effect on the final adjudication of the suit.

As a sequel to dismissal of the civil revision petition, I.A. No.1 of 2018 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

09-03-2018

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