

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.5282 OF 2017

ORDER:

This revision petition is filed under Article 227 of the Constitution of India challenging the order dated 18.07.2016 in I.A.No.577 of 2016 in O.S.No.3128 of 2016 passed by the XX Junior Civil Judge, City Civil Court, Hyderabad

2. The respondent filed petition under Order XV-A C.P.C. seeking a direction against the petitioner to pay arrears of rent of Rs.40,000/- till September, 2016 and continue to pay future rents @ Rs.5,000/- per month till disposal of the suit alleging that the petitioner, who is the daughter-in-law of the respondent's vendor has not paid any pie towards rent despite legal notice issued by the respondent calling upon her to pay Rs.40,000/- are arrears of rent.

3. The respondent filed suit for eviction of the petitioner contending that the petitioner is the tenant in occupation of the property on a monthly rent of Rs.5,000/-, who was in occupation of the premises by the date of purchase of the property and attorned tenancy, but failed to pay the rent as per agreed rate i.e. Rs.5,000/- per month and committed default to a tune of Rs.40,000/- by the date of filing the suit. Therefore, respondent sought a direction against the petitioner as stated above.

4. The petitioner herein is the respondent/defendant before the Court below filed counter contending that she is the owner of the property bearing door No.5-9-202/2/A, admeasuring 36 sq. yards consisting of ground + two floors having purchased the same under registered sale deed bearing document No.2963 of 2013 in the name of her father-in-law i.e. A.Eshwar Lal as he is elderly man to extend respect.. The respondent's marriage was performed with A.Satish Kumar on 11.03.2012 as per Hindu Customs and Rites at Hyderabad and she is working in electricity department as a private employee till today. From the date of purchase of the schedule property, she along with family members are in peaceful possession and enjoyment of the property as absolute owners. The ground floor is occupied by her family and the first and second floors were let out and she is receiving rent for the first and second floors and paying installments of chit. The alleged sale deed was obtained when her father-in-law was admitted in Tulsi Hospital for kidney problem on 27.01.2016 and she has been spent lot of money for his treatment till his death on 16.02.2016 while undergoing treatment. Her husband and mother-in-law are residing somewhere. On 20.06.2016 she received notice from the respondent that she purchased the suit schedule property under registered sale deed dated document No.494 of 2016, dated 11.02.2016 from father-in-law of the petitioner and claimed arrears of rent. Thus, there was no jural relationship

of tenant and landlord between the petitioner and the respondent and the petitioner is not under obligation to pay monthly rent to the respondent.

5. During enquiry no documents were marked and no witnesses were examined.

6. Upon hearing both counsel, the Court below issued direction, which is impugned in the present revision on the ground that absence of proof of jural relationship of tenant and landlord, the petitioner cannot be directed to deposit arrears of rent and continue to deposit rent @ Rs.5,000/- per month during pendency of the suit while exercising power under Order XV-A C.P.C. and that she filed a suit in O.S.No.2394 of 2016 for cancellation of the documents allegedly executed by her father-in-law in favour of the respondent and the same is pending adjudication on the file of XX Junior Civil Judge, City Civil Court, Hyderabad. Though the respondent failed to establish the jural relationship of landlord and tenant erroneously, the Court below passed the impugned order and prayed to set aside the same.

7. Learned counsel for the petitioner during hearing denied the jural relationship of landlord and tenant between them and when there was no relationship of landlord and tenant, the petitioner is not under obligation to pay arrears of rent and monthly rent @ Rs.5,000/- during pendency of the

suit. Apart from that the respondent did not purchase any piece of property to establish the jural relationship of tenant and landlord between the petitioner and respondent. In such a case, the order passed by the Court below is erroneous and prayed to set aside the same.

8. The respondent filed suit for recovery of possession after ejecting the petitioner from the schedule premises alleging that the petitioner is in occupation of the premises as tenant on a monthly rent of Rs.5,000/-. But the petitioner denied the relationship of tenant and landlord and liability to pay rent. The respondent invoked Order XV-A C.P.C. seeking a direction against the petitioner for deposit of arrears of rent and future rent during pendency of suit. To invoke Order 15-A C.P.C., the following conditions have to be fulfilled:

- 1) a suit must be for recovery of possession of property i.e. for eviction;
- 2) there must be a prayer for recovery of rent or compensation for use and occupation;
- 3) the defendant/petitioner must plead no arrears or low arrears to be paid to landlord/plaintiff, which needs examination by the Court to decide what is admitted arrears of rent.

9. To seek direction to deposit arrears of rent and rents payable, the above requirements have to be satisfied to claim relief under Order XV-A C.P.C., as amended by the Andhra Pradesh High Court.

10. The real test to be applied before exercising power under Order XV-A C.P.C. for striking off defence is to find out whether the default or deposit of amount was bonafide or not. If, it was bonafide, the Court cannot exercise power to strike off the defence. The power under Order XV-A is purely discretionary.

11. While interpreting the provision like Order XV-A C.P.C., the Court should interpret those provisions to achieve the real object of the legislature in incorporating order XV-A C.P.C. Order XV-A C.P.C. consists of two parts. The first part casts an obligation upon a tenant to make payment of entire amount of arrears of rent admitted by him to be due and should be deposited along with a written statement. If, failed to comply such obligation, the Court may strike off, direct after affording reasonable opportunity to tenant and on such direction if the tenant failed to deposit, admitted arrears of rent, and shall pass an order. The second part i.e. Rule 2 deals with the cases where the defendant does not admit any amount to be due, nonetheless, it casts an obligation upon him to pay throughout continuation of the suit, such monthly rent which is due as directed by the Court. The word 'may' in Order XV-A Rule 2 C.P.C is significant. It may vest power on the Court to strike off without application or compelling the Court to do so in the case of possession. The provision is an

interregnum, as held in **Ishwari Prasad v Smt Rajini Devi and others**¹.

12. In the present case, the main endeavour of the learned counsel for the petitioner before the Court below and this Court is that there was no jural relationship of landlord and tenant, thereby the question of payment or deposit of rent by the petitioner would not arise and that too suit is pending in O.S.No.2394 of 2016 before the XX Junior Civil Judge, City Civil Court, Hyderabad for cancellation of sale deed executed by her father-in-law in favour of the respondent herein. But this Court need not touch the merits of the suit regarding entitlement of the petitioner to claim such relief as the limited jurisdiction is conferred on the Court under Order XV-A C.P.C.

13. It is the contention of the petitioner that when there is a jural relationship of landlord and tenant, the Court has to make an endeavour to enquire into the matter summarily as to the relationship of landlord and tenant. While interpreting such provision, this Court in C.R.P.No.2870 of 2016 held that applying the principle of *ejusdem generis* in interpreting Order XV-A, Andhra Pradesh Amendment, Section 11 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 and Section 13 of the Tripura Act. If these provisions are read together and applying the principle of interpretation of

¹ AIR 1979 All 336

ejusdem generis, the Court has to make summary enquiry as to rent due to landlord by the tenant. .

14. In **Maniklal Majumdar v Gouranga Chandra Dey**² the Supreme Court specifically referred two judgments i.e. **State of West Bengal v Union of India**³ and **R.S.Raghunath v State of Karnataka**⁴ held that it is a well settled principle that the intention of the legislature must be found by reading the statute as a whole and in order to ascertain the meaning of a clause in a statute, the Court must look at the whole statute, at what precedes and what succeeds and not merely the clause itself. The Court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed, but to the entire statute; it must compare the interpretation occurs. Therefore, it is necessary to give full meaning and effect to the provisions of sub-sections (2) and (3) of Section 3 of the Act.

15. When particular words pertaining to a class, category or genus are followed by general words, the general words are construed as limited to things of the same kind as those specified. This rule which is known as the rule of *ejusdem generic* reflects an attempt 'to reconcile incompatibility between the specific and general words in view of the other rules of interpretation that all words in a statute are given effect if possible, that a statute is to be construed as a whole and that no words in a statute are presumed to be superfluous. The rule applies when

² (2005) 9 SCC 657

³ (1964) 1 SCR 371

⁴ (1992) 1 SCC 335

- (1) the statute contains an enumeration of specific words;
- (2) the subjects of enumeration constitute a class or category;
- (3) that class or category is not exhausted by the enumeration;
- (4) the general terms follow the enumeration; and
- (5) there is no indication of a different legislative intent.

16. Thus, when the words are clear, intention of the legislature in incorporating a particular word or provision in the Act, the Court may fall back on the words used in the similar or identical procedure contemplated in the other statute, akin to the same clause. The present revision petition arising out of a direction under Order XV-A of C.P.C., fixing the arrears of rent payable by the tenant/petitioner herein. But a bare look at the Order XV-A (1) of Andhra Pradesh Amendment to C.P.C indicates that the defendant, while filing his written statement, is under an obligation to deposit undisputed arrears calculated up to that due into the Court and shall continue to deposit such amount, till termination of the proceedings.

17. Taking advantage of the word 'undisputed arrears', the learned counsel for the revision petitioners contended that when the quantum of rent is disputed, the Trial Court is incompetent to decide arrears of admitted rent by undertaking summary enquiry to arrive at the rent due or payable on the date of filing the written statement or continue to deposit and issue direction to deposit arrears of amount due to deposit the rent.

18. If, Rule (1) is read in isolation, there is no ambiguity that the Court can direct the undisputed arrears to be paid, but a co-joint reading of Rules 1 & 2 of Order XV-A indicates that when the

defendant pleads in the written statement that no arrears of rent is payable, the Court is competent to pass an order in this regard after affording an opportunity of hearing to both the parties and in case any amount is found due, the defendant shall be under an 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. Thus, it means that Rule 2 of Order XV-A of A.P. Amendment Act, enables the Court to decide the amount due when the defendant pleaded no arrears, after affording opportunity, so also jural relationship of landlord and tenant.

19. In view of the law declared by this Court in judgment referred supra, it is obligatory on the part of the Court to make summary enquiry as to the rent payable and the relationship between the parties to the petition and merely because the petitioner denied the jural relationship of landlord and tenant and arrears of rent payable, the Court cannot proceed with the suit without issuing any direction and in compliance of Order XV-A C.P.C. as mere spectator, if such practice is adopted by the Court Order XV-A C.P.C. would become redundant and otiose. The Court while deciding such issue, to achieve real object in interpreting the provision by legislature, pass appropriate orders.

20. But in the present case on hand, no summary enquiry is conducted as seen from the order passed by the Court below, but based on the allegation made in the plaint, petition

and counter, the Court below issued such direction erroneously. Therefore, the impugned passed by the Court below is liable to be set aside.

21. Accordingly, the civil revision petition is allowed setting aside the order dated 18.07.2016 in I.A.No.577 of 2016 in O.S.No.3128 of 2016 passed by the XX Junior Civil Judge, City Civil Court, Hyderabad while remanding to make summary enquiry as to the relationship of landlord and tenant. So also the quantum of rent payable for the premises and determine the arrears of rent by exercising power under Order 15-A C.P.C.

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

31.01.2018
kvrn

M. SATYANARAYANA MURTHY,J

