

**THE HON'BLE DR.JUSTICE SHAMEEM AKTHER**

**SECOND APPEAL No.555 OF 2018**

**JUDGMENT:**

This Second Appeal, under Section 100 of the Code of Civil Procedure, 1908, (for short, "C.P.C.") is filed by the appellant/defendant challenging the judgment and decree, dated 19.12.2017, in A.S.No.109 of 2016 on the file of the III Additional Chief Judge, City Civil Court, Hyderabad, in partly allowing the appeal preferred against the judgment and decree, dated 15.03.2016, in O.S.No.1800 of 2012 on the file of the I Senior Civil Judge, City Civil Court, Hyderabad, wherein the suit filed by the respondent/plaintiff for ejection of the defendant from the suit schedule property and to put the plaintiff in vacant possession of the same, recovery of arrears of rent together with interest and damages was decreed.

2. Heard both sides and perused the record.
3. The brief averments of the plaint are that the suit is filed by the plaintiff for eviction of defendant and directing to pay sum of Rs.75,000/- towards arrears of rent with interest @ 24% per annum from the date of filing the suit till realization and recovery of damages of Rs.10,000/- per month from the date of suit till delivery of possession for unauthorised use and occupation of the suit schedule property. The defendant is tenant of the suit schedule premises bearing No.4-2-572/G3B situated at Badichowdi, Hyderabad. They entered into oral agreement of tenancy for a period of 11 months on a monthly rent of Rs.5,000/- per month in the presence of two witnesses V. Vara Prasad Raju

and D.Jagan Mohan Reddy. The defendant paid the monthly rent till end of June, 2011 by obtaining his signatures beneath entry in a pocket note book. The defendant stopped paying the rents from July, 2011 inspite of repeated demands, but promised to pay the arrears within two months. He failed to keep up his promise. When he demanded the rents due, the defendant filed O.S.No.1379 of 2012 on false grounds for relief of injunction. Hence, the plaintiff got issued legal notice to defendant by terminating the tenancy on 07.09.2012 calling upon the defendant to deliver vacant and peaceful possession of the schedule mulgi within 15 days from the date of receipt of legal notice and to pay arrears of rent. The defendant got issued reply notice on 22.9.2012 with false allegations stating that the monthly rent is Rs.3,000/- but not Rs.5,000/-. The defendant is liable to pay a sum of Rs.70,000/- as on 30.09.2012 from July, 2011 to September, 2012. The defendant issued a cheque of Rs.18,000/- towards rent due which he received under protest and on presentation of cheque, the same was returned by the bank stating that the name printed on the cheque is not complete. He issued a letter on 18.10.2012 intimating the same to the defendant but did not take any steps to pay Rs.10,000/- per month towards damages for unauthorised use of schedule property from the date of filing the suit. Hence, the suit.

4. The defendant filed the written statement submitting that originally, he was tenant of T. Ramchander Rao on a monthly rent of Rs.2,500/-, in the year 2006 and paying monthly rents without default. He further submitted that there is an amount of Rs.80,000/- deposited as advance amount. Earlier owner sold the

property to plaintiff and tenancy was attorned in his favour but the monthly rent is Rs.3,000/- but not Rs.5,000/-. The plaintiff avoided to receive the rents from May, 2012 to March, 2013 and subsequently, accepted without any objection for Rs.3,000/-. When the plaintiff interfered into possession, he filed O.S.No.1379 of 2012 on the file of XX Junior Civil Judge, City Civil Court, Hyderabad and obtained interim orders from interfering into possession and enjoyment of the suit schedule property. He is a protected tenant under A.P. Buildings (Lease, Rent and Eviction) Control Act, as such, the suit is bad in law without jurisdiction. Hence, prayed to dismiss the suit with costs as the rent is Rs.3,000/- per month as on 09.09.2012.

5. Basing on the pleadings of both sides, the trial Court has framed the following issues:

- “i) Whether the plaintiff is entitled to evict the defendant from suit schedule property?***
- ii) Whether the plaintiff is entitled to recovery of arrears of rent?***
- iii) To what relief?”***

6. On behalf of the plaintiff, P.Ws.1 to 3 were examined and got marked Exs.A-1 to A-5. On behalf of the defendant, no oral or documentary evidence was filed.

7. The trial Court, after considering the evidence on record, decreed the suit with costs, a) directing the defendant to vacate the schedule property and to put plaintiff in vacant possession of the same within two months from the date of judgment, (b) directing the defendant to pay Rs.75,000/- towards arrears of rent together with interest @ 24% p.a. till the date of realization, and

(c) directing the defendant to pay damages @ Rs.10,000/- p.m. from the date of suit till the date of delivery of possession to plaintiff. On appeal, the appeal is partly allowed without costs confirming the order of eviction passed by the trial Court confirming the direction to pay Rs.75,000/- without interest and disallowing the interest on Rs.75,000/- at 12% p.a. and setting aside the grant of damages of Rs.10,000/- p.m.

8. Learned counsel for the appellant/defendant would contend that the defendant is the tenant of the respondent/plaintiff; that the trial Court erroneously decreed the suit for eviction and the lower appellate Court partly allowed the appeal erroneously and ultimately, prayed to set aside the impugned judgment and allow the appeal as prayed for.

9. Having argued for sometime, learned counsel for the appellant/defendant submitted that one year time may be granted to the appellant/defendant to vacate the suit schedule premises and hand over the vacant possession of the same to the respondent/plaintiff.

10. On the other hand, learned counsel for the respondent/plaintiff submitted that three months time may be granted to the appellant/defendant to vacate the premises and to hand over the possession of the same to the respondent/plaintiff and further, the appellant/defendant may be directed to pay the arrears of rent within a stipulated period.

11. Originally, the suit was filed for eviction of the defendant in respect of the suit schedule premises bearing Door

No.4-2-572/G3B, situated at Badichowdi, Hyderabad and the trial Court was pleased to decree the suit in favour of the plaintiff with costs, as follows:

- “(a) directing the defendant to vacate the schedule property and to put plaintiff in vacant possession of the same within two months from the date of judgment,***
- (b) directing the defendant to pay Rs.75,000/- towards arrears of rent together with interest @ 24% p.a. till the date of realization, and***
- (c) directing the defendant to pay damages @ Rs.10,000/- p.m. from the date of suit till the date of delivery of possession to plaintiff.”***

When the matter is carried on appeal, the lower appellate Court was pleased to partly allow the appeal as mentioned herein:

***“In the result, the appeal is partly allowed confirming the Order of Eviction of the trial court confirming the payment of Rs.75,000/- without interest and disallowing the interest on Rs.75,000/- at 12% p.a. and dismissed granting of damages of Rs.10,000/- p.m. of trial court and modifying the same to file under Order 20 Rule 12 CPC. In the circumstances of the case, there is no order as to costs.”***

12. As seen from the grounds of appeal, the appellant/defendant raised the following substantial questions of law:

- “a. Whether the first appellant court as well as the trial court were right in deciding the jurisdiction of the civil court in entertaining the suit for eviction filed by the plaintiff in view of the section 32(c) of the rent control Act as a subject premises rent is Rs.3,000/- per month only?***
- b. Whether the first appellate court as well the trial courts were right in decreeing the suit in the absence of documentary evidence?***
- c. Whether the first appellate courts as well as the trial court were right in deciding the quantum of rent of***

***Rs.5,000/- per months towards the suit schedule of property without their being any evidence?***

***d. Whether the trial court has jurisdiction to entertain the suit filed by the respondents for eviction against the appellant because admittedly the trial court as per the orders dated 05-01-2016 passed in I.A.No.1596 of 2012 categorically held that the rent for the subject matter of the property is Rs.3,000/- per month.***

***e. Whether the lower court as well as the first appellate court have justified in decreeing the suit for eviction and directing the appellant to pay the arrears of rents of Rs.75,000/- as against the appellant without any documentary evidence.***

***f. Whether the finding given by the first appellate court with regarding to the trial court jurisdiction in entertaining the suit filed by the respondent is correct.”***

13. The entire dispute between the parties is on factual aspects. Those aspects are elaborately dealt with by both the Courts below. In view of that, no substantial question of law arises for determination in this Second Appeal and the appeal is liable to be dismissed.

14. Accordingly, this Second Appeal is dismissed at the stage of admission confirming the judgment and decree, dated 19.12.2017, in A.S.No.109 of 2016 on the file of the III Additional Chief Judge, City Civil Court, Hyderabad. However, in view of the circumstances of the case, the appellant/defendant is given eight (8) months time from today to vacate the suit schedule premises and deliver the vacant possession of the same to the respondent/plaintiff. It is made clear that no petition for extension of time would be entertained. Further, during the aforementioned period i.e., 8 months, the appellant/defendant shall pay 1/8<sup>th</sup> of

the rent due to the plaintiff by the end of every month, besides the monthly rent. In the event of default of payment of 1/8<sup>th</sup> of the amount due and monthly rent consecutively for a period of two (2) months, the respondent/plaintiff is entitled to execute the decree passed by the appellate Court in his favour. There shall be no order as to costs.

15. Miscellaneous petitions pending, if any, in this Second Appeal shall stand closed.

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**DR.JUSTICE SHAMEEM AKTHER**

Date : 13.07.2018  
AMD



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