

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL REVISION PETITION No. 2516 of 2018

ORDER:

This civil revision petition is arising out of the order dated 21.04.2017 in I.A.No.738 of 2015 in O.S.No.49 of 2015 on the file of the Principal Senior Civil Judge, at Kothagudem. The petitioner is landlord, and the respondent is the tenant.

2. The revision-petitioner is the plaintiff, and the respondent is the defendant in O.S.No.49 of 2015. The plaintiff filed the above suit for eviction of the defendant from the suit schedule premises, and also for arrears of rent and damages. The case of the plaintiff is that he purchased the demised premises consisting of ground and first floors along with appurtenant site, from Guniseti Pratap and Guniseti Vikram, through a registered sale deed bearing No.1450/2014 dated 02.07.2014 of SRO, Kothagudem. There are three shops in the ground floor and the defendant is in occupation of two shops as a tenant of the vendors of the plaintiff. The defendant is running a books and stationery shop in the suit schedule premises. The vendors of the plaintiff have delivered defacto possession of the property to the plaintiff. The tenancy between the defendant and the vendors of the plaintiff is deemed to have been transferred to the plaintiff. The other tenants of the vendors of the plaintiff approached the plaintiff for continuation of the tenancy agreeing to pay monthly rent of Rs.15,000/- per

shop, and accordingly they have executed a license deed in favour of the plaintiff for the property under their occupation. The defendant also approached the plaintiff and requested for execution of tenancy agreeing to pay Rs.15,000/- for each shop for a total amount of Rs.30,000/- per month for two shops under his occupation. But the defendant has sent a cheque for Rs.6,000/- at the rate of Rs.3,000/- for each shop. The plaintiff returned the same and demanded the defendant to vacate the plaintiff schedule premises stating that the other tenants are paying a rent of Rs.15,000/- per month for each shop. The defendant got issued a legal notice to the plaintiff on 07.10.2014, and the plaintiff got issued a reply notice to the defendant on 15.10.2014 denying the allegations made by the defendant. Therefore, the plaintiff filed the above suit for eviction and arrears of rent and damages. In the said suit, the plaintiff filed I.A.No.738 of 2015 under Order 15A Rule 1 of Civil Procedure Code with almost similar allegations made in the plaint, and sought for striking off the defence of the respondent as he failed to pay the arrears of rent and damages at the rate of Rs.15,000/- per month.

The respondent has filed written statement before the trial Court, and also filed counter in I.A.No.738 of 2015, stating that the petitioner is not the owner of the demised premises. He denied the allegation that the tenancy of the respondent has expired and the petitioner demanded him to vacate the premises, on that the respondent entered into an agreement with the plaintiff to

pay rent of Rs.15,000/- per month for each shop, and executed license deeds in his favour. It is admitted by the respondent that he sent a cheque for Rs.6,000/- which was returned by the plaintiff. He also admitted exchange of notices between the petitioner and respondent. In the written statement, the respondent has stated that he was paying rent of Rs.3,000/- per month for each mulgi, i.e., a total of Rs.6,000/- for both mulgies; but the plaintiff has returned the cheque of Rs.6,000/- and therefore there is no default.

3. The trial Court, on consideration of the material, has come to the conclusion that an amount of Rs.6,000/- was the admitted rent. The defendant has sent a cheque for Rs.6,000/- to the plaintiff towards rent and it was returned by the plaintiff. Therefore, it came to the conclusion that the plaintiff is not entitled for striking off the defence of the respondent for not paying the arrears of rent, as per provision Order 15A Rule 5 CPC.

4. Learned counsel for the petitioner submitted that the defendant, after receipt of summons from the trial Court did not pay any rent. The petitioner has filed petition I.A.No.738 of 2015 before the trial Court praying to strike off the defence of the respondent for failure to deposit the rent but the trial Court has dismissed the application. It is further submitted that the respondent filed a petition I.A.No.794/2015 requesting to permit him to deposit the rent, and the said petition was allowed on 21.04.2017 directing the respondent to deposit an amount

of Rs. 6,000/- into the Court along with arrears. But the respondent failed to deposit them before the Court as such the defence of the respondent is liable to be struck off as per the provision under Order 15A Rule 5 CPC. It is further argued that the trial Court, without considering the aspect of payment of arrears of rent by the respondent, has dismissed the petition filed by the plaintiff seeking striking off the defence of the respondent, on the premise that the cheque for Rs. 6,000/- sent by the respondent was returned by the plaintiff..

5. Learned counsel for the respondent submitted that the respondent has been paying rents regularly and he has sent a cheque for Rs. 6,000/- to the plaintiff but the plaintiff has returned the cheque. The respondent's counsel further submitted that the respondent has got all the receipts in proof of payment of arrears of rent and he is ready to file the same before the Court and on consideration of those documents, the Court may decide whether there was any arrears of payment of rent, and whether the petitioner is entitled to strike off defence of respondent under Order 15A Rule 5 CPC.

6. On consideration of the arguments of the learned counsel for the petitioner and respondent, it is obvious that there is a dispute with regard to the payment of arrears of rent by the respondent. The trial Court has not given any finding on the aspect of arrears of rent.

7. Order 15A Rule 1 CPC reads as follows:

5. Striking off defence for failure to deposit admitted rent.— (1) In any suit by a lessor for the eviction of a lessee after the determination of his lease and for the recovery from him of rent or compensation for use and occupation, the defendant shall, at or before the first hearing of the suit, deposit the entire amount admitted by him to be due together with interest thereon at the rate of nine per cent per annum and whether or not he admits any amount to be due, he shall throughout the continuation of the suit regularly deposit the monthly amount due within a week from the date of its accrual and in the event of any default in making the deposit of the entire amount admitted by him to be due or the monthly amount due as aforesaid, the Court may, subject to the provisions of sub-rule (2) strike off his defence.

8. As per the provision under Order 15A Rule 5 CPC, after termination of lease and the recovery of rent or compensation for use and occupation, the defendant shall, at or before the first hearing of the suit, deposit the entire amount admitted by him to be due together with interest at the rate of 9% per annum. Whether the defendant admits any amount to be due or not he shall throughout the continuation of suit regularly deposit the monthly rent within a week from the date of its accrual. In the event of any default in making any deposit, the entire amount admitted by him to be due, the Court may, subject to provisions of sub-rule (2) strike off his defence.

9. Learned counsel for the petitioner placed reliance on the judgment in **Bal Gopal Maheswari v. Sanjeev Kumar**

Gupta¹ for the said provision. He also relied on **Bimal Chand Jain v. Sri Gopal Garwal**² for the same proposition of law which reads as follows:

"It seems to us on a comprehensive understanding of Rule 5 of Order XV that the true construction of the Rule should be thus. Sub-rule (1) obliges the defendant to deposit, at or before the first hearing of the suit, the entire amount admitted by him to be due together with interest thereon at the rate of nine per cent per annum and further, whether or not he admits any amount to be due, to deposit regularly throughout the continuation of the suit the monthly amount due within a week from the date of its accrual. In the event of any default in making any deposit, "the court may subject to the provisions of Sub-rule (2) strike off his defence".

10. Learned counsel for the petitioner has sought for striking off the defence of the respondent, placing reliance on the above decisions, and as the arrears of rent has not been paid by the respondent.

11. The trial Court, on considering the fact of sending of cheque for Rs. 6,000/- by the respondent towards rent to the plaintiff, and the plaintiff returning the said cheque, has come to a conclusion that the plaintiff is not entitled for striking off the defence of respondent and, therefore, dismissed the petition filed by the plaintiff. The trial Court has not given a clear and categorical finding with regard to the aspect of arrears of rent. The respondent's counsel though submitted that there are no arrears of rent payable by the respondent to the

¹ (2013) 8 SCC 719

² (1981) 3SCC 486

petitioner, has not produced any documentary evidence in this petition, but however submitted that the respondent intends to file the documents to prove that the respondent has paid arrears of rent.

12. The aspect of payment of arrears of rent by the respondent is a question of fact which has to be decided by the trial Court, only after considering the evidence that may be produced by the parties.

13. **IN THE RESULT,** the civil revision petition is disposed of, setting aside the order dated 21.04.2017 passed by the trial Court in I.A.No.738 of 2015 in O.S.No.49 of 2015. The trial Court is directed to receive the evidence from both the parties with regard to the dispute of payment of arrears of rent, if any, and pass appropriate orders in accordance with law, as per the provision under Order XV Rule 5 CPC. No costs. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

24th August, 2018
EHA / Ksm

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



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