

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.3636 OF 2018

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 05.03.2018 passed in C.M.A.No.12 of 2017 on the file of the I Additional Chief Judge, City Civil Court at Secunderabad.

2. Heard the learned counsel for both parties.

3. A perusal of the record reveals that the petitioner filed O.S.No.461 of 2015 on the file of the I Junior Civil Judge, City Civil Court at Secunderabad, against the respondent for eviction from the suit schedule property on various grounds. During pendency of the suit, he filed I.A.No.455 of 2015, under Section 151 C.P.C., seeking a direction to the respondent to deposit the admitted rent at Rs.11,000/- per month. The trial Court basing on the material available on record, arrived at a conclusion that the admitted rent of the suit schedule property is Rs.11,000/- per month and directed the respondent to deposit the said rent. Feeling aggrieved by the orders in I.A.No.455 of 2015, the respondent preferred C.M.A.No.12 of 2017 on the file of the I Additional Chief Judge, City Civil Court at Secunderabad. The learned I Additional Chief Judge basing on the material available on record, allowed the C.M.A. in part directing the respondent to deposit admitted rent at Rs.3,500/- per month. Feeling aggrieved by the order in C.M.A.No.12 of 2017, the petitioner preferred the present revision petition.

4. The point that arises for consideration is:

Whether there is any illegality, irregularity or impropriety in the order dated 05.03.2018 passed in C.M.A.No.12 of 2017?

5. The petitioner filed O.S. No.461 of 2015 for eviction of the respondent from the suit schedule property on various grounds. It is the case of the petitioner that the monthly rent of the suit schedule property is Rs.11,000/-. The respondent filed a counter in I.A.No.455 of 2015 taking a specific plea that the rent of the suit schedule property per month is Rs.3,500/-. On 18.06.2015 the respondent filed Caveat No.107 of 2015 on the file of the Junior Civil Judge, City Civil Court at Secunderabad. In order to appreciate the rival contentions, it is not out of place to extract hereunder the relevant portion of the caveat:

“The Caveator submits that the caveator is the Tenant and possessor of Mulgi Bearing No.M-39, in ground floor situated at Minerva Complex being part of the property bearing Municipal No.1-2-137 to 154 and 1-2-219 to 234 (Old No.94) situated at Sarojini Devi Road, Secunderabad having a total build up area of 425 sq.fts along with undivided share of land equivalent to 8 sq.yds and bounded as North by : 10 ft Common Passage, South by : Mulgi No.M-40, East by : 10 ft Common Passage and Ramp and West by : Mulgi No.M-38, by virtue of Rental Agreement and ever since the same the Caveator herein was in peaceful possession and enjoyment of the same on a monthly rent of Rs.11,000/- per month.”

6. A perusal of the above para clearly demonstrates that the respondent admitted the jural relationship of landlord and tenant between him and the petitioner. The respondent also admitted that the monthly rent of the suit schedule property is at Rs.11,000/-.

7. Learned counsel for the respondent submitted that a mistake was crept in the caveat petition due to typographical mistake. A perusal of the caveat petition reveals that the respondent signed the affidavit in English. This clearly indicates that he is well educated person. It is needless to say that one has to take a reasonable care before filing of the sworn affidavits in the Courts. The possibility of taking the plea of typographical mistake is not uncommon, in order to overcome the laches on the part of the party to the proceedings. It is needless to say that one has to sign the affidavit, more particularly, the educated persons to verify each and every line of the affidavit. As rightly pointed out by the learned counsel for the respondent, the respondent has taken a plea in the counter that the monthly rent of the suit schedule property is Rs.3,500/-. The possibility of taking such pleas, in order to prevent the legal consequences, cannot be ruled out completely. Therefore, I am unable to accede to the contention of the learned counsel for the respondent that it is only a typographical mistake. Unless and until the contrary is proved, the Court can *prima facie* place reliance on the caveat petition filed by the respondent.

8. The trial Court has considered the averments made in the caveat petition and allowed I.A.No.455 of 2015. The appellate Court at paragraph No.8(c) of the impugned order made an observation that the finding recorded by the trial Court is partly correct and there is no infirmity in it. When there is no infirmity in the order of the trial Court, this Court is unable to understand how the appellate Court modified the same. This Court is also unable to understand how the appellate Court came to a conclusion that

the finding of the trial Court is partly correct. The appellate Court modified the order without any basis. The order passed by the appellate Court is not sustainable either on facts or in law. If the order of the appellate Court is allowed to stand, certainly it would cause prejudice to the petitioner. Viewed from any angle, the finding recorded by the appellate Court is not sustainable. Therefore, it is a fit case to set aside the order of the appellate Court.

9. In the result, the Civil Revision Petition is allowed setting aside the order dated 05.03.2018 passed in C.M.A.No.12 of 2017 on the file of the I Additional Chief Judge, City Civil Court at Secunderabad, confirming the order dated 06.05.2016 passed in I.A.No.455 of 2015 in O.S.No.461 of 2015 on the file of the I Junior Civil Judge, City Civil Court, Secunderabad. There shall be no order as to costs.

10. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 04.07.2018
Ivd