

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.3927 of 2018

ORDER:

This civil revision petition, under Section 115 of the Code of Civil Procedure, 1908, is filed assailing the order, dated 08.06.2018, of the learned Senior Civil Judge, Parchur, passed in IA.No.224 of 2018 in AS.no.9 of 2018.

2. I have heard the submissions of Smt. K. Lalitha, learned counsel appearing for the revision petitioner – appellant - defendant, and of Sri A. Abhishek Reddy, learned counsel appearing for the respondent – plaintiff. I have perused the material record.

3. The facts, which are necessary to be stated as a prelude, in brief, are as follows:

The plaintiff –Gram panchayat filed a suit against the revision petitioner – appellant – defendant for recovery of a single room with door no.3-118 in block no.3, Karamchedu gram panchayat area, morefully described in the schedule annexed to the plaint and for other reliefs including damages. The defendant contested the suit. On merits, the trial Court, by a judgment, dated 21.02.2018, decreed the suit with costs. The operative portion of the said decree reads as under: - **‘In the result, the suit is decreed with costs directing the defendants to deliver the possession of the plaint schedule property with free of obstructions, on or before 21.03.2008, failing which the plaintiff panchayat is at liberty to take necessary steps for the eviction of the defendants and to take possession of the plaint schedule property. Further damages of Rs.3,500/- per month from the date of filing of the suit till the date of eviction is also decreed. Suit is disposed**

off accordingly.' Aggrieved thereof, the defendant preferred the afore-stated appeal before the Court of the learned Senior Civil Judge, Parchur. Along with the said appeal, the defendant – appellant also filed the afore-stated Interlocutory Application requesting to grant stay of the execution of the decree of the trial Court in the afore-stated suit. The said application was resisted by the plaintiff by filing a counter. By the order impugned, the Court below, while allowing the application and granting stay orders, imposed the following conditions: -

1. The appellant shall pay Rs.3,500/- the amount of damages ordered by the Court below into the Court below within 10 days from the date of this order if the said amount is not paid thereat so far.
2. The appellant shall pay Rs.5,000/- per month as rent to the respondent/Gram panchayat so long the order of stay operates.
3. The order of this stay shall be in effect for three months from today viz., 08.06.2018.
4. Both the counsel shall advance their arguments in the main appeal within the said period of three (3) months or earlier as the case may be.

Aggrieved thereof, the appellant preferred this civil revision petition.

4. The case of the revision petitioner – appellant – defendant is as follows:
Valid and tenable grounds are raised in the memorandum of grounds of appeal; and, the said first appeal suit is pending on the file of the Senior Civil Court, Parchur. During the pendency of the said appeal, the appellant sought stay of the execution of the decree of the trial Court, *inter alia*, stating that the appellant has got fair chances of success in the appeal. When the decree and judgment of the trial Court are under challenge in the appeal suit and the when the decree and judgment of the trial Court had not attained finality, the Court below which is a fact finding court and last Court of fact ought not to have imposed the conditions much less onerous conditions while granting stay.

There is no evidence much less sufficient evidence adduced by the plaintiff panchayat in support of its claim in the suit. And, yet the suit was decreed. In the circumstances, while granting orders of stay of execution of the decree of the trial Court, pending disposal of the first appeal suit, the Court below ought not to have imposed the conditions mentioned in the impugned order. Hence, while confirming the orders of stay, the conditions imposed in the impugned order are liable to be set aside.'

5. Learned counsel for the plaintiff submitted that the defendant is a tenant in the schedule property and that the defendant is enjoying the property by being in possession illegally and that the schedule premises is located in a busy locality and that if the said property is leased out it would fetch Rs.20,000/- per month and hence, the conditions imposed by the Court below being just and fair are sustainable.

6. On 17.07.2018, this Court, while ordering notice before admission, granted an interim order. The operative portion of the said order reads as under:

"Having regard to the submissions, the first condition directing payment of Rs.3,500/- is suspended; and, the second condition directing payment of Rs.5,000/- per month is modified permitting the petitioner to deposit Rs.3,000/- from June, 2018, onwards until further orders of this Court. The arrears upto date at the above said rate of Rs.3,000/- per month shall be deposited within eight (8) weeks from today.

Subject to the above modifications, the stay order shall continue until the disposal of the revision petition."

7. I have given earnest consideration to the facts and submissions. I have seen the memorandum of grounds of appeal as well as the judgment and decree of the trial Court, which are impugned in the first appeal suit, which is pending before the Court below. After giving detailed and thoughtful consideration, this Court finds that imposition of onerous conditions is unfair as the sustainability or otherwise of the decree and judgment of the trial Court is yet to be examined, in detail, in the pending 1st appeal suit. Therefore, this Court is of the considered view that the modification of the conditions imposed in the impugned order is just and necessary to meet the ends of justice.

8. Accordingly, the Civil Revision Petition is partly allowed. However, while confirming the orders of stay of execution of the decree and judgment of the trial Court, as granted in the impugned orders, and while setting aside the conditions imposed in the said order, the following conditions are imposed in their place:

1. The appellant – defendant shall deposit Rs.3,000/- per month from June, 2018 onwards to the credit of the suit before the trial Court until the final disposal of the first appeal suit.

2. The appellant – defendant shall pay arrears up to 31.05.2018 @ Rs.3,000/- per month, if not already deposited as per the interim orders of this Court. In any event, the arrears shall be deposited within two weeks from the date of receipt of a copy of this order.

There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

14.09.2018

Vjl

