

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

+ C.C.C.A. No.223 of 2018

% Date: 27-8-2018

M/s Tejaswi Jeswllers (Pvt.) Ltd., 6-3-883/A/1,
Tejaswi Plaza, Punjagutta, Hyderabad and
Plot No.540/5, Sy.No.1009, Phase VI KPHB Colony,
Kukatpally, Balanagar Mandal, Ranga Reddy Dist.,
Rep. by its Director, B.S. Neelakanta
... Appellant/Defendant
Vs.

\$ 1. Mr. Sadiq Ali Chandrani S/o Late Sadruddin Chandrani,
R/o Flat 13, Karimabad Housing Society,
Chirag Ali Lane, Abids, Hyderabad,
Presently at Thomas Street Scarsdale, New York 10583

2. Mr. Abdul Majeed S/o Late Yousuf Ali
3. Ms. Aameena W/o Abdul Majeed
4. Mr. Abdul Aziz (Sr) S/o Abdul Majeed
5. Mr. Abdul Aziz (Jr) S/o Abdul Majeed
(R.2 to R.5 are R/o 1106, Nandanam Apartments,
Fateh Sultan Lane, Chirag Ali Lane, Abids, Hyderabad)
... Respondents/Plaintiffs

! Counsel for Appellant: Mr. L.Ravichander, Sr. Counsel,
Rep. Ms. N.Niyatha

Counsel for Respondents 1to5: Mr. S.R. Mahajir

< Gist:

> Head Note:

? Cases referred:
Nil.

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Judgment: (per V.Ramasubramanian, J.)

This regular appeal arises out of a decree for recovery of possession and for arrears of rent.

2. Heard Mr. L.Ravichander, learned Senior Counsel for the appellant/defendant and Mr. S.R. Mahajir, learned counsel for the respondents/plaintiffs.

3. The respondents filed a suit in O.S.No.59 of 2016 on the file of the IX Additional Chief Judge, City Civil Court, Hyderabad, for recovery of possession, arrears of rent and mesne profits, past and future.

4. Though the appellant/defendant filed a written statement contesting the claim on every aspect, their defence was struck off, by an order dated 06-02-2017 in I.A.No.1758 of 2016, on the ground that the arrears of rent as ordered in the application under Order 15A, CPC was not paid. Therefore, the decision was only on the basis of the plaint averments and the plaint documents.

5. The above appeal is of the year 2018. When the application for interim suspension of the decree came up for hearing, the learned Senior Counsel appearing for the appellant submitted that in the normal course, the appellant would be entitled to stay of recovery of possession, though not to a stay of recovery of arrears of rent. But if the appellant is

made to pay the entire arrears of rent as ordered by the Court below, the appellant may as well seek an opportunity to contest the suit on merits.

6. The above submission merits acceptance, for the simple reason that if a stay of execution of the decree is granted on condition that the appellant pays the arrears of rent as awarded by the Trial Court, the appellant may enjoy the benefit of stay probably for 10 years, since a regular first appeal may take as much time to ripe for final disposal. Eventually, when the matter comes up for final disposal, the matter can only be remitted back to the District Court, to enable the appellant/ defendant to contest the suit on merits. Such a course of action may actually be harmful to the respondents/ landlords. After all, if the appellant has complied with the order passed in the application under Order 15A, CPC, they would have been liable to pay an arrears of Rs.86,03,000/-. Today the decree for money, up to date, has risen to Rs.2,75,72,858/-, according to the calculations shown at the bar. The monthly rent as on date is also stated to be Rs.9,77,500/-.

7. Actually, the decree reads as follows:

“1. That the suit is decreed with costs.

2. That to direct the defendant to vacate and hand over vacant possession of the premises to the plaintiffs on or before 30-6-2018.

3. That further the defendant is directed to pay the liquidated amount of Rs.86,03,000/- with interest thereon at 12% on the principal sum Rs.8,50,000/- from the date of suit till realisation, towards arrears of rents up to July

2015 and thereafter for the months August 2015, September 2015 and October 2015.

4. That further the defendant is liable to pay two notices charges of Rs.60,000/- and the defendant is also liable to pay mesne profits at Rs.10,00,000/- per month from November 2015 onwards till handing over vacant possession of the premises to the plaintiffs.

5. That the defendants do also pay a sum of Rs.1,94,274/- to the plaintiff towards costs of the suit.”

8. Therefore, the best possible course of action in the facts and circumstances of the case would be to direct the appellant/defendant to pay the entire arrears of rent and remit the matter back to the Trial Court for a consideration on merits. This will ensure that the appellant gets a chance to contest the suit on merits. At the same time, it will also ensure that the respondents/plaintiffs recover the entire arrears immediately and have a disposal on merits before the Trial Court, without waiting for the above first appeal to ripe for final hearing in a period of more than 10 years. Fortunately, this solution was accepted by the learned counsel on both sides.

9. Therefore, the appeal is allowed and the judgment and decree of the Trial Court are set aside. The suit is remanded back to the Trial Court for a fresh consideration on merits, restoring the defence of the appellant/defendant, subject to the following conditions:

(i) The appellant shall pay the arrears of rent as fixed in the decree by the Trial Court, which works out to Rs.2,75,72,858/- (Rupees two crores, seventy five lakhs,

seventy two thousand, eight hundred and fifty eight only) up to date on or before 31-12-2018 in four equated monthly instalments, the first of such instalment being paid on or before 10th of September, 2018 and the subsequent instalments paid on or before 10th of October, November and December, 2018.

(ii) In addition to the arrears, the appellant shall also pay the monthly rent of Rs.9,77,500/- (Rupees nine lakhs, seventy seven thousand and five hundred only), as per the lease agreement, on or before 10th of every succeeding English calendar month.

(iii) If the appellant completes the payment of the entire arrears of rent by 31st December, 2018, the suit shall stand revived and the defence shall stand revived and the Trial Court can proceed with hearing of the suit and

(iv) The appellant shall be entitled to refund of Court Fee in view of the order of remand.

Pending applications, if any, shall stand closed.
No costs.

V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

27th August, 2018.
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