

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.R.P.No.4422 of 2018

ORDER:

This revision petition is filed under Article 227 of the Constitution of India assailing the order dated 02.05.2018 passed in I.A.No.1952 of 2016 in O.S.No.471 of 2013 on the file of the Court of II Additional Chief Judge, City Civil Court, Hyderabad.

2. Heard the learned counsel for the petitioner and perused the record.

3. A perusal of the record reveals that the respondent filed O.S.No.471 of 2013 on the file of the Court of II Additional Chief Judge, City Civil Court, at Hyderabad, against the petitioner for eviction from the suit schedule property and also for recovery of arrears of rent. During pendency of the suit, the respondent filed I.A.No.1952 of 2016 under Order XV-A read with Section 151 CPC to direct the petitioner to deposit the arrears of rent with effect from January 2014 onwards. The petitioner filed a counter opposing the claim of the respondent. The trial Court after affording a reasonable opportunity to both parties, allowed the petition. Hence, the revision.

4. Now, the point that arises for consideration is:

Whether there is any illegality, irregularity or impropriety in the impugned order?

5. There is no dispute between the parties with regard to the jural relationship of landlord and tenant. As per the averments made in the petition, the monthly rent of the petition schedule property is Rs.67,005/-. The contention of the learned counsel for the petitioner is two fold: (1) the monthly rent of the petition schedule property is Rs.52,500/- only and the trial Court failed to consider that the petitioner paid the arrears of rent up to August 2016.

6. A perusal of the record reveals that the respondent filed the petition claiming arrears of rent with effect from January 2014 to August 2016. In the petition, the respondent has taken a specific plea that the monthly rent of petition schedule property is Rs.67,005/-. As observed earlier, the contention of the learned counsel for the petitioner is that the monthly rent of the petition schedule property is Rs.52,500/- only. In order to appreciate the contention of the learned counsel for the petitioner, this Court carefully scanned the counter filed by the petitioner in I.A.No.1952 of 2016. The petitioner did not deny the quantum of rent in the counter filed by him before the trial Court. No one is entitled to advance arguments without a specific pleading either in the petition or in the counter. For the reasons best known, the petitioner did not dispute the quantum of rent in his counter. Without taking such a plea in the counter, the petitioner is not entitled to urge before the revisional Court for the first time that the rent of the suit schedule property is only

Rs.52,500/-. Viewed from any angle, the submission made by the learned counsel for the petitioner is not sustainable.

7. The next contention of the learned counsel for the petitioner is that the petitioner paid the rent up to August 2016 on 06.09.2016. As rightly pointed out by the learned counsel for the petitioner, the petitioner has taken a specific plea in the counter that he paid the rent up to August 2016. The trial Court disbelieved the version of the petitioner. In order to appreciate the contention of the learned counsel for the petitioner, it is not out of place to extract the relevant portion of the counter hereunder:

3. “.....On 06.09.2016 and requested to pay the due arrears of rent in cash as he is in dire necessity for his personal requirement and as such by considering the situation and relation and the requirement the respondent herein have paid the entire due amount up to the end of August 2016 in cash to the petitioner herein in the presence of two witnesses.....”

8. As per the averments made in the counter, the petitioner paid the arrears of rent in the presence of two witnesses. If really the petitioner paid the amount as pleaded by him, what prevented him to mention the names of those persons in whose presence he paid the amount towards arrears of rent up to the end of August 2016. Non-mentioning of the names of witnesses in the counter clearly indicates the mind of the petitioner. Therefore, I am unable to accede to the submission made by the learned counsel for the petitioner that the petitioner paid the arrears of rent up to

August 2016. The possibility of taking this type of pleas by the tenants cannot be ruled out completely. The trial Court considered the material available on record in right perspective and allowed the petition. I am fully endorsing the findings recorded by the trial court. There is no illegality, irregularity or impropriety in the order of the trial Court warranting interference of this Court while exercising the jurisdiction under Article 227 of the Constitution of India. Hence, the civil revision petition lacks merits and *bona fides* and the same is liable to be dismissed.

9. Accordingly, the Civil Revision Petition is dismissed. No order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

1st August 2018
Rns

T.SUNIL CHOWDARY, J