

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.4701 OF 2017

ORDER:

This revision petition is preferred under Article 227 of Constitution of India challenging the order dated 18.07.2017 passed in I.A.No.610 of 2017 in O.S.No.171 of 2017 by the Principal Senior Civil Judge, Ongole, whereby the petition filed under Order XV-A of Code of Civil Procedure (for short, hereinafter, referred to as "C.P.C.") was allowed directing the petitioner herein to pay the arrears of rent i.e. Rs.48,000/- within 15 days from the date of the order and continue to pay or deposit the rent from the month of July, 2017 on or before 6th day of every calendar month, failing which, the respondent herein is at liberty to take legal steps to recover the dues through the Court or seek appropriate orders in the main suit and the respondent shall take appropriate steps to prove the quantum of rent, by adducing evidence, during trial in the main suit.

The petitioner herein was the respondent/defendant before the trial Court and the respondent herein filed a suit for eviction of the petitioner after following necessary procedure claiming that the respondent herein became the owner of the property by registered sale deed through his power of attorney holder and the petitioner herein admitted that he is continuing as tenant and he was inducted as tenant by the original owner initially for a period of two years, which was expired in the year 2014, later the same was extended for another five years, which will expire by 31.12.2019, hence, the petitioner herein is entitled to continue as tenant as the vendor of the respondent i.e. lessor of the petitioner intending to

file a suit for cancellation of the document, thereby the respondent is not entitled to claim relief in the petition, but the trial Court passed the impugned order referred above assigning its own reasons.

Aggrieved by the order of the trial Court, the present revision is filed mainly on the ground that there was no relationship of landlord and tenant and the petitioner herein admittedly paying rent at the rate of Rs.12,000/- per month, whereas the respondent is claiming rent at the rate of Rs.30,000/- per month and thus there is a dispute with regard to quantum of rent payable by the tenant in occupation, but the trial Court did not consider this objection in proper perspective and also failed to consider the relationship of landlord and tenant and attornment of tenancy and committed an error in passing the order.

Learned counsel for the petitioner reiterated the grounds urged in the petition, whereas the learned counsel for the respondent supported the order passed by the trial Court.

Though the trial Court directed to deposit the arrears of rent at the rate of Rs.12,000/- per month subject to decision in the main suit, the respondent herein (petitioner before the trial Court) did not prefer any revision aggrieved by the said order regarding quantum of rent. Therefore, this Court need not examine the legality of finding of the trial Court regarding direction to deposit rent at the rate of Rs.12,000/- per month subject to determination of rent in the main suit payable for the premises.

The petitioner herein, who is the defendant before the trial Court, alone preferred this revision on the ground that there was no relationship of landlord and tenant between the petitioner and

respondent. This contention cannot be accepted in view of transfer of title of the property to the respondent herein by executing registered sale deed by the lessor of the petitioner. When a sale deed was executed and the respondent also intimated the purchase of the property, to the petitioner herein by issuing notice, that itself is suffice to conclude that the respondent complied with the requirement under Section 109 of Transfer of Property Act. When the tenancy is attorned, the petitioner herein being a tenant in occupation as per his own admission, is bound to pay the rent to the landlord or deposit the rent if there is any dispute with regard to the relationship of landlord and tenant, but cannot avoid to pay the rent even after service of notice in compliance of Section 109 of Transfer of Property Act.

According to Order XV-A of C.P.C., when a suit is filed for eviction or recovery of possession on application of either of the parties to the suit or *suo motu* by the Court, the Court shall direct the tenant in occupation or person in possession of the property to deposit the arrears of rent or mesne profits etc., otherwise the Court can strike off the defence set up by the tenant or person in occupation or in any other capacity. But here in this case, on the ground that the original owner contemplating to file a suit for cancellation of sale deed executed in favour of the respondent, the petitioner did not pay the rent to the respondent. The contemplation to file suit for cancellation of sale deed is not a ground to deny the payment of rent to the title holder i.e. respondent herein, who issued notice in compliance of Section 109 of Transfer of Property Act. Therefore, the direction issued by the Court below does not suffer from any illegality or irregularity

warranting interference of this Court while exercising power under Article 227 of Constitution of India. Hence, the order is free from legal infirmity and the revision lacks merit. Consequently, the revision is liable to be dismissed.

In the result, the civil revision petition is dismissed. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

19.02.2018
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