

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.5909 OF 2017

O R D E R

This civil revision petition under Section 115 CPC arises out of the Docket Order dated 06.10.2017 passed by the learned I Additional Junior Civil Judge, Ranga Reddy District at L.B.Nagar, in E.A.No.147 of 2017 in E.P.No.204 of 2017. By the said order, the executing Court directed the judgment-debtors/defendants to pay half of the admitted amount on 13.10.2017. Aggrieved thereby, the judgment-debtors/defendants are before this Court.

By order dated 03.11.2017, this Court granted interim stay of further proceedings in the execution petition taking note of the fact that the application filed by the judgment-debtors/defendants to set aside the *ex parte* judgment and decree dated 20.01.2017 in O.S.No.756 of 2015, from which the subject execution proceedings arose, was pending before the Court below and there was no admission as to the amount claimed being payable by them.

Heard Sri Swaroop Oorilla, learned counsel for the judgment-debtors/defendants, and Sri G.Sekhar Reddy, learned counsel for the decree-holder/plaintiff.

Parties shall hereinafter be referred to as arrayed in the suit.

O.S.No.756 of 2015 was filed for eviction of the defendants and for recovery of rents, quantified at Rs.1,19,000/-. Having heard the counsel for the plaintiff, the Court below decreed the suit by its judgment dated 20.01.2017, directing eviction of the defendants from the suit schedule property within three months and also payment of arrears to the tune of Rs.1,19,000/-. In February, 2017, I.A.No.1061 of 2017 was filed by the defendants under Order 9 Rule 13 CPC to set

aside the said judgment and decree and it is pending consideration. While so, the plaintiff initiated execution proceedings in E.P.No.204 of 2017 in July, 2017. Thereupon, the defendants filed E.A.No.147 of 2017 in E.P.No.204 of 2017 under Order 21 Rule 29 CPC seeking stay of further proceedings in the E.P., including their dispossession from the suit schedule property. This application was filed by them in September, 2017. By Docket Order dated 03.10.2017, the executing Court allowed the said application. This order reads as under:

‘Notice to other side given through Speed Post to the Decree Holder counsel. No representation for the counsel for respondent/decree holder. Heard the counsel for petitioner. The petitioner mentioned in the petition he is intending to file set aside exparte decree and filed petition. So it is needless to say it is exparte decree. The petitioner intending to contest the suit even after receipt of notice, the counsel for respondent absent. It presumes that respondent has knowledge. So the petition is allowed as prayed for on payment of costs of Rs.500/- to other side on 06.10.2017. In the meanwhile the warrant is kept in abeyance till 06.10.2017.’

The aforestated order demonstrates that the application filed by the defendants was allowed as prayed for and the matter was posted on 06.10.2017 only for reporting payment of costs. However, the executing Court passed a further Docket Order on 06.10.2017, which reads as under:

‘Costs paid. So the petitioner is directed to appear and ready to pay half of the admitted amount on 13.10.2017.’

Having allowed E.A.No.147 of 2017 in E.P.No.204 of 2017 by the earlier Docket Order dated 03.10.2017, there was no further cause for the executing Court to add an additional rider by way of the subsequent order. The only condition imposed, while allowing the application, was for payment of costs. Therefore, the executing Court

ought not to have come up with a fresh condition by way of the subsequent order, having already allowed the application.

Sri Swaroop Oorilla, learned counsel, would impress upon this Court that the amount decreed by the Court below, *vide* the judgment dated 20.01.2017 in O.S.No.756 of 2015, was not admitted by his clients. He would further state that there is a dispute as to enhancement of the rental effected by the plaintiff, which led to the exorbitant quantification of arrears in the suit prayer, and that this was one of the reasons why his clients filed the petition to set aside the said judgment and decree.

Sri G.Sekhar Reddy, learned counsel, would however state that the defendants have not been paying rentals since April, 2014 and even if they disputed the enhancement of the rental claimed by the plaintiff, they should at least pay the admitted rentals. To this extent, Sri Swaroop Oorilla, learned counsel, could raise no objection.

In that view of the matter, as the learned counsel are in tacit agreement as to this aspect and as the executing Court has already allowed E.A.No.147 of 2017 in E.P.No.204 of 2017, staying all further proceedings in the E.P., the civil revision petition is allowed to the extent of directing the defendants to deposit the amount of rental admitted by them, including the arrears thereof till date, to the credit of E.P.No.204 of 2017 on the file of the learned I Additional Junior Civil Judge, Ranga Reddy District at L.B.Nagar, within eight weeks from the date of receipt of a copy of this order. Upon such deposit, the plaintiff may withdraw the said amount without furnishing security. The defendants shall continue to deposit the monthly rental, to the extent admitted by them, on or before the 10th day of each calendar month and upon such deposit, the plaintiff is granted

liberty to withdraw such monthly rental without furnishing security. In the event of non-compliance with these conditions, the stay granted by the executing Court shall stand vacated and it would be open to the plaintiff to proceed with E.P.No.204 of 2017, notwithstanding the pendency of the set aside application filed by the defendants in the suit.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. Interim order dated 03.11.2017 shall stand vacated. No order as to costs.

19th JANUARY, 2018

Svv

SANJAY KUMAR, J

