

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.522 of 2019

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.27.11.2018 passed in Interlocutory Application No.169 of 2018 in Original Suit No.1328 of 2007 on the file of Principal Rent Controller-cum-XVII Junior Civil Judge, Secunderabad.

2. The petitioners herein are legal representatives of the sole defendant in the above suit who died pending suit, and the petitioners herein were impleaded in the said suit.

3. The said suit was filed by respondent against petitioners for eviction of defendants / petitioners from the suit schedule property, for recovery of a sum of Rs.46,000/- towards arrears of rent and for *mesne* profits.

4. It is the case of respondent that the original defendant is his tenant on a monthly rent of Rs.2,000/-, that he committed default in payment of rents, and so, the respondent had terminated the tenancy through a notice issued on 18.03.2005 with effect from 30.04.2005.

5. Pending suit, the respondent filed application under Order 15-A of Civil Procedure Code, 1908, i.e., Interlocutory Application No.112 of 2007 and obtained a direction against petitioners for deposit of arrears of rent as well as rents.

6. The said order was not complied with by petitioners and the defence of petitioners was struck off on 29.11.2010 by the Principal Rent Controller-cum-XVII Junior Civil Judge, Secunderabad. But, immediately thereafter on the same day, the said Court also decreed the suit though the respondent had not adduced any evidence.

7. Challenging the same, the petitioners filed Appeal Suit No.69 of 2014 before the I Additional Chief Judge, City Civil Court, at Secunderabad.

8. The said appeal was allowed on 11.06.2018 observing as under:

“8(d) The matter was posted for trial. As seen from the docket proceedings, though the matter was posted for trial, no evidence had been lead by the plaintiff. When the defendant from the very beginning disputed the relationship of landlord and tenant between them, the trial Court has to decide the additional issue to prove the said aspect. It would be appropriate to decide the relationship at the first instance rather than deciding I.A.No.112 of 2007. Furthermore, the trial Court after striking off the defence immediately pronounced the judgment which is a great error committed by the trial Court.

(e) It is apparent on the face of the record that the trial Court has been prejudicial and pronounced the judgment on the same day without giving opportunity to the defendant to submit his arguments. The trial Court did not follow the basic principles of trial “Audi Alteram Partem”. Hence, there is no alternation for this Court except to remand back the matter to trial Court to take evidence and decide the matter afresh.

9. *In the result, this appeal is allowed setting aside the judgment and decree dt.29.11.2010 passed in O.S.No.1328 of 2007 on the file of the Principal Rent Controller – cum – XVII Junior Civil Judge, Secunderabad and the case is remanded back to the trial Court*

and the Section is directed to send back the record to the trial Court immediately. No order as to the costs.”

9. After such remand, the petitioners filed Interlocutory Application No.169 of 2018 to re-open the case for the purpose of recording their evidence. They contended that they are disputing the relationship of landlord and tenant between themselves and respondent, that an additional issue has to be framed to decide the said issue; and after allowing the respondent to lead evidence on 05.11.2018, the Court below had closed the evidence of respondent and also that of petitioners. They alleged that availing of opportunity by the respondent to lead evidence causes grave prejudice to them, and therefore, the suit is to be re-opened for leading of evidence by petitioners.

10. Counter-affidavit was filed by respondent opposing the said application, stating that in the order of remand passed by the appellate court, the order in Interlocutory Application No.112 of 2007 was not set aside specifically, and the said order had attained finality and would revive even when the decree in the suit is set aside, and so, the Trial Court did not commit any irregularity in refusing to permit the petitioners to lead evidence.

11. By order dt.27.11.2018, the Court below dismissed the said application. It noted the directions of the appellate Court in Appeal Suit No.69 of 2014 and observed that the order dt.29.11.2010 passed in Interlocutory Application No.112 of 2007 by the Principal Rent

Controller-cum-XVII Junior Civil Judge, Secunderabad, striking off the defence of petitioners in the main suit had attained finality since the petitioners did not chose to get it set aside and even in the appellate order in Appeal Suit No.69 of 2014 it was not set aside; and so, the Court had no option but to post the suit for arguments after closure of respondent's evidence.

12. Assailing the same, the present Civil Revision Petition is filed.

13. The counsel for petitioners sought to contend that petitioners would suffer grave prejudice if they are not allowed to lead evidence on the aspect of non-existence of relationship of landlord and tenant between petitioners and respondent. This plea cannot be countenanced because the petitioners did not challenge the order dt.29.11.2010 passed in Interlocutory Application No.112 of 2007 and did not get the said order specifically set aside in Appeal Suit No.69 of 2014 which was decided on 11.06.2008; and did not even file a Review Petition in the said Appeal Suit and tried to get the order dt.29.11.2010 passed in Interlocutory Application No.112 of 2007 set aside. Without the said order being set aside, the petitioners cannot be permitted to make submissions on the existence of relationship of landlord and tenant between respondent and petitioners.

14. However, the counsel for petitioners raised a new contention, i.e., that the Civil Court would not have jurisdiction to entertain the suit, and that the competent authority under the Andhra Pradesh

Buildings (Lease, Rent and Eviction) Control Act, 1960 alone would have the jurisdiction in view of alleged admissions on the quantum of rent in the pleadings of the respondent.

15. To the limited extent of permitting the petitioners to raise the said contention alone, without adducing any evidence in that regard, the Civil Revision Petition is disposed of otherwise confirming the order passed by the Court below. No order as to costs.

16. Since the suit is of the year 2005, the Court below shall endeavour to dispose of the suit preferably within six (06) months from the date of receipt of copy of the order.

17. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 10.07.2019

Ndr/*