

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.691/2019

ORDER:

This Revision is filed challenging the order dt.05.03.2019 passed in I.A. No.243 of 2019 in O.S. No.95 of 2017 of the Senior Civil Judge, Medchal, Ranga Reddy District.

2. The petitioner herein is the 2nd defendant in the said suit.

3. The 1st respondent filed the said suit against the petitioner and the 2nd respondent for their eviction alleging that she is the absolute owner of the suit schedule property; that the 2nd respondent took the premises on rent from her; that the petitioner, who is the 2nd defendant, is an associate employee of the 2nd respondent and used to sit in the counter in the suit schedule property, which was being used as hotel by the 2nd respondent. It is alleged that the 2nd respondent/D1 defaulted payment of rents from February, 2017 and therefore, both the petitioner and the 2nd respondent be evicted there from. Arrears of rent of Rs.1,10,540/- were also claimed for the months from February to May, 2017 apart from damages at the rate of Rs.40,000/- per month.

4. Pending the suit, the 1st respondent filed I.A.No.526 of 2017 against both the petitioner and the 2nd respondent invoking Section 151 CPC and sought a direction to the petitioner and the 2nd respondent to deposit arrears of rent of Rs.1,10,540/- from 09.02.2017 to 08.06.2017.

5. After contest, the said I.A. was disposed of on 23.07.2018 and direction was given only to the 2nd respondent/D1 to deposit the said amount within (15) days from the date of the said order with a default clause that if

such payment is not made, the defense of the 2nd respondent/D1 will be struck off.

6. Later 1st respondent filed I.A. No.638 of 2018 under Section 151 CPC seeking a direction to respondent No.2 and petitioner to deposit arrears of rents of Rs.3,03,985/- from 09.06.2017 to 08.05.2018. This I.A. was allowed on 23.07.2018 and a direction was given to 2nd respondent to pay it and in default of such payment, his defense will be struck off.

7. Alleging that the petitioner, who is the 2nd defendant, had filed O.S. No.77 of 2017 seeking perpetual injunction against the 1st respondent alleging that the 2nd respondent had not paid as per above order and complied with the order passed in I.A. No.638 of 2018 and to strike off the defense of the petitioner as well as that of the 2nd respondent, the 1st respondent filed I.A.No.243 of 2019 in the said suit.

8. By order dt.05.03.2019, the Court below allowed the said application and struck off the defense of the petitioner though there was no order against the petitioner in I.A. No.526 of 2017 or I.A. No.638 of 2017 for deposit of rents.

9. In the said order in I.A. No.243 of 2019, the Court below observed that though there is no specific order against the petitioner, the order which has been passed against the 2nd respondent/D1, under Section 151 of CPC gets extended to the petitioner also, also and it would not cause any prejudice to the petitioner. It also observed that the petitioner cannot be permitted to cross examine P.W.1 since his defense has been struck off along with that of the 2nd respondent.

10. Assailing the same, this Revision is filed.

11. Counsel for the petitioner contended that there is no order against the petitioner in I.A. No.638 of 2018 and the direction was only to the 2nd respondent/D1 to pay Rs.3,03,985/- to the 1st respondent with a default clause; and since there was no order against the petitioner therein, petitioner's defense could not have been struck off and petitioner cannot be denied opportunity to cross examine P.W.1.

12. Though counsel for the 1st respondent sought to sustain the order passed by the Court below, he did not dispute there was no order passed against the petitioner on 23.07.2018 in I.A. No.638 of 2018 directing the petitioner to pay any amount to the 1st respondent with a default clause attached to it.

13. The reasoning of the Court below that the order passed in I.A. No.638 of 2018 can be extended to the petitioner also cannot be accepted because if the Court intended that there should be such an order against the petitioner, it ought to have passed such an order against the petitioner when it decided I.A. No.638 of 2018.

14. Accordingly, order dt.05.03.2019 passed in I.A. No.243 of 2019 in O.S. No.95 of 2017 of the Senior Civil Judge, Medchal, Ranga Reddy District insofar as it struck off the defense of the petitioner and denied opportunity to the petitioner to cross examination of P.W.1, is set aside; the defense of the petitioner is restored; and the petitioner shall be permitted by the Court below to cross examine P.W.1 and other witnesses produced by the 1st respondent and also lead evidence in support of his defense.

15. In the result, this Revision is allowed. There shall be no order as to costs.

16. As a sequel, miscellaneous applications, if any pending shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 11.07.2019
LSK



