

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.Nos.1288 and 1321 of 2019

COMMON ORDER:

These two Revisions arise out of the same suit and between the same parties, and so they are being disposed of by this common order.

2. Petitioners in both these Revisions are Defendants 1 and 2 in O.S.No.102 of 2019 on the file of the Principal Junior Civil Judge, Siddipet.

3. Admittedly, the suit schedule property was leased out by the 1st petitioner to the 1st respondent on 17.03.2017 in consideration of a monthly rent payable as per the terms thereof, and the 1st petitioner delivered the suit schedule property to the 1st respondent/plaintiff on 20.11.2018 by executing the Possession Letter dt.19.02.2018.

4. The 1st respondent then completed certain infrastructural work in the suit schedule property allegedly in March, 2018, though according to the 1st respondent, the 1st petitioner did not complete the same in terms of the lease agreement.

5. According to the 1st respondent/plaintiff, the 1st petitioner had to register the Lease Deed, submit land ownership document and also obtain NOC from TSIIC industrial area for change of land use, but the 1st petitioner did not do so and so the 1st respondent raised a plea through a letter dt.24.12.2018 that the 1st

respondent was disabled from utilizing the lease premises and so no rent was payable.

6. According to the 1st respondent, he paid monthly rents till November, 2018 notwithstanding the disputes, but stopped paying rent since December, 2018 on the above ground that the 1st petitioner did not honour his part in the contract and expedite the process of NOC as well as registration. It was alleged that the petitioners came to the suit schedule property with rogue/anti-social elements on 15.04.2019 and threatened the employees of the 1st respondent-company with dire consequences and demanded them to vacate the premises; that this was repeated on 17.04.2019; and therefore on 18.04.2019, the suit was filed for perpetual injunction restraining the petitioners from forcibly evicting the 1st respondent from the suit schedule property without following due process of law and for a permanent injunction restraining the petitioners from interfering with the peaceful possession and enjoyment of the suit schedule property by the 1st respondent.

7. Along with the suit, 1st respondent had filed I.A.No.439 of 2019 seeking temporary injunction under Order XXXIX Rule 1 & 2 CPC reiterating the contents of the plaint.

8. Plaint was returned by the office of the Principal Junior Civil Judge, Gajwel with certain objections which was represented on 23.04.2019 after complying with the objections and the suit was

registered and numbered as O.S.No.78 of 2019 on the file of the Principal Junior Civil Judge, Gajwel.

9. Since the petitioners filed Caveat Petition No.155 of 2019, the Principal Junior Civil Judge, Gajwel had declined to grant any relief *ex-parte* in favour of the 1st respondent and issued urgent notice to the petitioners and posted the matter for counter of the petitioners to 26.04.2019.

10. On 26.04.2019, the relief under I.A.No.439 of 2019 against respondents 3 and 4 was not pressed and the matter was posted for counter of petitioners on 29.04.2019.

11. On 29.04.2019, a Memo was filed by the 1st respondent's counsel stating that 1st respondent was dispossessed from the suit schedule property on 25.04.2019.

12. In the meantime, the suit was withdrawn from the Court of the Principal Junior Civil Judge, Gajwel by the Principal District & Sessions Judge, Medak at Sangareddy, by proceedings Dis.No.1895/2019 dt.25.04.2019 and was transferred to the Court of the Principal Junior Civil Judge, Siddipet and renumbered as O.S.No.102 of 2019.

13. On 03.05.2019, counter affidavit was filed by the petitioners in I.A.No.439 of 2019 stating that the 1st respondent had voluntarily delivered possession of the suit schedule property to

them on 15.04.2019. The pleadings in the said counter to the extent relevant for our purpose are extracted hereunder:

“15. It is submitted that the Answering Respondent sent further notices on 06.03.2019 and the other dated 08.04.2019, requesting the petitioner herein to take all the materials and equipment kept in the petition schedule property and to hand over the premises in good condition, but the petitioner returned the notice sent by as on 06.03.2019 unclaimed and subsequently approached us and sought time for payment of the lease amount. The Answering respondent did not agree and insisted the petitioner to vacate the premises and also take out their material from the petition schedule property. Accordingly, in the presence of witnesses, the petitioner removed some of his material and equipment from the petition schedule premises and handed over the possession to the Answering respondents on 15.04.2019 amidst heated conversations and exchanging curses and threatened the respondents with dire consequences. Sensing the ill-intention of the petitioner, the Answering Respondents got filed a Caveat application before this Hon'ble Court on 16.04.2019 and also informed the local police authorities regarding the taking over of possession of the property and the apprehension of danger from the petitioners.”

14. On 09.05.2019, the Principal Junior Civil Judge, Siddipet dismissed I.A.No.439 of 2019 taking note of the Memo filed by the 1st respondent on 29.04.2019 that the 1st respondent was dispossessed from the suit schedule property on 25.04.2019.

15. On 01.05.2019 itself, the 1st respondent had filed I.A.No.452 of 2019 stating that the suit was filed on 18.04.2019, that there was delay in numbering of the suit; that it was posted to

22.04.2019 because of filing of caveat and copies of papers had to be served on the petitioners and other defendant which was done on 19.04.2019; that on 22.04.2019 counsel for the petitioners filed vakalat and requested time till 26.04.2019 but on 25.04.2019 highhandedly the petitioners used illegal force and thrown out the employees of the 1st respondent and took possession of the suit schedule property. They contended that the illegal action of the respondents in highhandedly dispossessing the 1st respondent is nothing but abuse of law and the 1st respondent be restored back to the possession of the suit schedule property.

16. Counter affidavit was filed to this application on 06.05.2019 by petitioners, who reiterated that the 1st respondent itself voluntarily delivered possession of the suit schedule property on 15.04.2019 and denied that on 25.04.2019 petitioners had highhandedly used illegal force and thrown out the employees of the 1st respondent from the suit schedule premises and had taken possession of the premises. A further plea was also raised that after taking possession of the suit schedule property from the 1st respondent, petitioners 1 and 2 had leased out the premises to another private entity on 18.04.2019 under a registered Lease Deed.

17. By order dt.09.05.2019, I.A.No.452 of 2019 was allowed by the Court below referring to the decisions, (1) in ***State of U.P. and others v. Maharaja Dharmander Prasad Singh and***

others¹ of the Supreme Court, (2) **Jaipur Mohammad Salim v. Smt Shahin Sah and Ors**² rendered by the Rajasthan High Court, and (3) **K.V.Mohammed Vs. Paikkatt Subhadra Amma**³ rendered by the Kerala High Court.

18. The Court below observed that in view of the said decisions, the petitioners, being the landlords, can only evict the 1st respondent/tenant by following due process of law and the 1st respondent should be allowed to continue in possession as a tenant and if there are arrears of rent, the same can be recovered from the 1st respondent by following due process of law. It declined to grant any finding with respect to existence or non-existence of jural relationship between the petitioners and the 1st respondent of landlord and tenant in respect of the suit schedule property and stated that it would be outside the scope of the I.A.

19. The 1st respondent had also filed I.A.No.453 of 2019 under Section 151 CPC, to grant police aid, along with I.A.No.452 of 2019 reiterating the same pleadings.

20. Counter affidavit was filed by the petitioners opposing the same.

21. In view of the decision rendered by it in I.A.No.452 of 2019, the Court below allowed I.A.No.453 of 2019 also stating that the 1st respondent apprehended that the petitioners may resist the

¹ 1989(2) SCC 505

² AIR 2006 RAJ 200

³ MANU/KE/0872/1999

attempts of the 1st respondent in getting into possession of the suit schedule property and it was a fit case to grant police aid.

22. Challenging the order in I.A.No.452 of 2019, petitioners filed **CRP.No.1288 of 2019** and challenging the order in I.A.No.453 of 2019, they filed **CRP.No.1321 of 2019**.

23. It is the contention of the counsel for the petitioners that the 1st respondent had not adduced any evidence about the alleged forcible dispossession from the suit schedule property and in the absence of the same, the Court below could not have allowed both I.A.Nos.452 and 453 of 2019. He also contended that the relief granted is in the nature of interim mandatory injunction and the parameters for such grant of relief have been set out in **Dorab Cawasji Warden v. Coomi Sorab Warden and Ors⁴**; that to grant such relief, the Supreme Court held that the plaintiff should show a strong case for trial of a higher standard than a *prima facie* case which is normally required for a prohibitory injunction; that it should be necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money; and that balance of convenience is in favour of the plaintiff. According to him, these conditions are not fulfilled.

24. Counsel for the 1st respondent refuted the said contentions and supported the orders passed by the Court below. He contended that when even according to the petitioners, 1st

⁴ AIR 1990 SCC 867= 1990(2) SCC 117

respondent had stopped payment of rents from December, 2018, it would be an unnatural act on the part of the 1st respondent, who had already exhibited hostility towards the petitioner, to willingly surrender possession of the suit schedule property. He also referred to para 15 of the counter affidavit filed by the petitioner in I.A.No.439 of 2019 (*which is extracted above*) and contended that after heated conversations and exchange of curses and threats, it would be highly unlikely that on 15.04.2019, 1st respondent voluntarily delivered possession of the suit schedule property to the petitioners. He also stated that though the orders passed by the Court below are not happily worded, the facts of the instant case show that the 1st respondent had fulfilled all the parameters set out for grant of interim mandatory injunction in the judgment cited by the petitioners in **Dorab Cawasji Warden's** case(4 supra).

25. In **Dorab Cawasji Warden's** case(4 supra) the Supreme Court laid down the parameters for grant of interlocutory mandatory injunction. It observed that:

“16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice

or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

- (1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.
- (2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.
- (3) The balance of convenience is in favour of the one seeking such relief.

17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion.”

26. In the instant case, it is not in dispute that a lease was granted by the petitioners to the 1st respondent on 17.03.2017, that possession of the property was also delivered by the 1st petitioner to the 1st respondent on 20.11.2018, and that there was also a Possession Letter dt.19.02.2018 executed by the 1st petitioner.

27. It is the case of both parties that 1st respondent stopped payment of rents from December, 2018.

28. *Prima facie*, when there is a dispute about payment of rent by the 1st respondent and providing of facilities by the petitioners, it is improbable that on 15.04.2019 voluntarily and willingly 1st respondent would have delivered possession of the suit schedule property to the petitioners.

29. Even according to the petitioners (*as stated in para 15 of the counter affidavit filed by them in IA.No.439 of 2019*) when there was a friction and even on 15.04.2019 there were heated arguments and exchange of curses and threats, it would be highly improbable that the 1st respondent would have delivered voluntarily the possession of the suit schedule property to the petitioners.

30. No doubt police complaint might not have been given by the 1st respondent on that day regarding the actions of the petitioners, but it cannot be said that the said factor has any bearing, because the dispute being civil in nature 1st respondent might have felt that the police might not entertain the same.

31. *Prima facie*, from the stand taken by the parties, it is difficult to believe that there was a voluntary surrender of possession of the suit schedule property by the 1st respondent to the petitioners and there is a strong probability of forcible eviction of the 1st respondent by the petitioners.

32. This Court in ***Cheni Chenchiah vs Shaik Ali Saheb And Others***⁵ and ***Jamaluddin v. Mirza Quader Baig(Tenant) and another***⁶ has held that under Section 151 CPC there can be restoration of possession to a plaintiff, who was dispossessed

⁵ 1993(2) ALT 517

⁶ 1995(1) ALT 115

pending a suit for permanent injunction, and that Section 144 of CPC will have no application.

33. No doubt, the order passed by the trial Court is not that happily worded, but its conclusion that the 1st respondent is entitled to restoration of possession, in my considered opinion in the facts and circumstances of the case, does not warrant any interference by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India.

34. Similarly, its action in granting police aid to the 1st respondent as a follow-up to its order of restoration of possession cannot also be found fault with.

35. Therefore, I do not find any error of jurisdiction in the orders passed by the Court below in I.A.No.452 and 453 of 2019 in O.S.No.102 of 2019 on the file of the Principal Junior Civil Judge, Siddipet.

36. Accordingly, both the Civil Revision Petitions are dismissed. No order as to costs.

37. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

20th June, 2019.

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