

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.2026 OF 2019

ORDER:

This Civil Revision Petition, under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C') is filed aggrieved by the order, dated 30.07.2019, in E.P.No.4 of 2019 in R.C.No.48 of 2015 passed by the Additional Rent Controller, City Small Causes Court, Secunderabad, whereunder the Execution Petition filed by the respondent/decree holder was allowed and directed to issue warrant to the petitioner/judgment debtor for delivery of vacant physical possession of E.P schedule property.

2. Heard the learned counsel for the revision petitioner/J.Dr. In spite of service of notice, there is no representation on behalf of the respondent/D.Hr. Perused the record.

3. Learned counsel for the petitioner/J.Dr would contend that the subject Execution Petition was not filed within six (6) months from the date of eviction order, dated 30.06.2016, passed in R.C.No.48 of 2015 by the Additional Rent Controller, City Small Causes Court, Secunderabad and there is delay and laches on the part of the respondent/D.Hr in filing the subject E.P. It is further submitted that no separate application was filed to condone the delay, however, the Court below had erroneously allowed the subject E.P and ultimately, prayed to set aside the same.

4. The material placed on record reveals that the respondent/D.Hr filed R.C.No.48 of 2015 on the file of Additional Rent Controller, Secunderabad, for eviction of the petitioner/J.Dr

from the subject premises. The said application was allowed on 30.07.2016 directing the revision petitioner to vacate the subject premises and deliver the vacant physical possession of the same to the respondent/D.Hr within three months. Since, no appeal is preferred, the said order has become final and the execution proceedings were initiated vide S.R.No.148/19, dated 19.03.2019.

5. It is apt and appropriate to refer Rule 23(1) of the Andhra Pradesh Building (Lease, Rent and Eviction) Control Rules, 1961, which reads as under:

“Every application for execution of orders passed under this Act, shall be in writing, signed and verified by the decree-holder and filed before the Controller within six months from the date of the order accompanied by a certified copy of the order concerned together with the necessary process fee.

Provided that an application may be admitted after the specified period if the applicant satisfies the Controller that he has sufficient cause for not preferring the application within such period.”

6. In the case on hand, the respondent/D.Hr had set-up a defence that he filed O.S.No.514 of 2016 against the petitioner/J.Dr and one K.Yadagiri, alleging that he is the owner and possessor of the said property and he also obtained an *ex parte* injunction order, on 06.09.2016 in I.A.No.334 of 2016 restraining the petitioner/J.Dr from interfering with his peaceful possession and enjoyment over the subject property. However, application for interim injunction was dismissed on 06.07.2018. Thereafter, the respondent/D.Hr took all measures and filed the present Execution Petition. The Court below, had also relied on the

decisions reported in Andhra Pradesh Transport Company, Vijayawada v. Ghansyams Thosniwal¹ and Tadi Konda Parvathamma v. Ali Bag² and observed that the period of six months mentioned in Rule 23 should not only be given literal meaning but also be construed in a reasonable manner.

7. The requisite condition to condone the delay is that the respondent/D.Hr has to satisfy the Rent Controller with regard to delay caused. No separate application is required to be filed. The Court below, having examined the whole issue and the decisions supra, accepted the defence setup by the respondent/D.Hr and passed the eviction order. As seen from the entire material placed on record, there is substantial material to condone the delay in filing the Execution Petition. The Court below neither committed any irregularity or illegality in passing the order under challenge. The Court below has rightly exercised the jurisdiction vested therein. Therefore, the Civil Revision Petition is devoid of merit and the same is liable to be dismissed.

8. Accordingly, the Civil Revision Petition is dismissed at the stage of admission.

Miscellaneous petitions, if any, pending in this revision petition shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

SEPTEMBER 13, 2019
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¹ AIR 1983 AP 12 (CRP No.4883/1981)

² APLJ High Court 415 (CRP No.1149/1983)