

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.7037 of 2018

ORDER:

This Revision is filed assailing the order dt.13-08-2018 in I.A.No.1735 of 2017 in O.S.No.863 of 2017 of the IX Additional Chief Judge, City Civil Court at Hyderabad.

2. The petitioner is defendant in the said suit.
3. The respondent/plaintiff filed the suit alleging that petitioner is his tenant in respect of ground floor (7 shutters) comprising 600 sq. fts at Ameerpet, Hyderabad; that there was an unregistered lease deed executed on 01-10-2017 by petitioner in his favour fixing monthly rent of Rs.44,500/- from 01-03-2007; the tenancy was initially for 11 months, but could be extended at the option of respondent on condition of enhancement of 10% for every 11 months; that in August, 2014, the respondent was not inclined to continue the lease and requested the petitioner to vacate and hand over vacant and peaceful possession of the suit schedule property, but the petitioner requested for grant of time and ultimately on 23-06-2017, the respondent issued a legal notice terminating the tenancy.
4. Along with the relief of eviction, the respondent sought recovery of a sum of Rs.40,12,618/- towards arrears of rent and a sum of Rs.2,00,000/- p.m. from August, 2014 till date of delivery of vacant possession and also direction to the petitioner to pay interest

@ 24% p.a. on the arrears from the date of filing of suit till date of realization.

5. The respondent also filed I.A.No.1735 of 2017 invoking Order 15-A r/w Section 151 C.P.C. to direct the petitioner to deposit arrears of rent of Rs.40,12,618/- along with monthly rent of Rs.2,00,000/- on the 1st day of every month till disposal of the suit.

6. Counter-affidavit was filed by petitioner opposing the same and alleging that he was conducting business in 3 shutters upto 2012, but later he handed over two shutters and confined his business activity to a single shutter for which only Rs.15,000/- p.m. was payable. He also contended that respondent had started business of Wine shop in 2 shutters in 2013 itself which were vacated by petitioner. He also contended that respondent refused to receive the rents and so rents were being deposited through cheques in the bank account of respondent. He contended that respondent, ever since commencement of tenancy, did not issue any receipts acknowledging the receipt of monthly rentals. He also claimed to have invested Rs.3.00 lakhs in the single shutter run by him for carrying out his business activity. He denied that respondent had asked him to vacate the premises. He contended that he was being harassed by respondent and that the lease deed filed by respondent was a fraudulent and incomplete document created for the purpose of this suit. He also contended that it is an invalid and unregistered document not signed by parties to the document and all the clauses

therein were one sided in favour of respondent. Other contentions on merits were also raised.

7. Neither party led any evidence in the said I.A.

8. By order dt.13-08-2018, the Court below allowed I.A.No.1735 of 2017 and directed the petitioner to pay admitted rent of Rs.44,500/- from August, 2014 till June, 2017 which works out to Rs.40,12,618/-; deposit the same on or before 10-10-2018; and continue to pay monthly rent at Rs.44,500/- on or before 10th of every calendar month. It held that the lease deed is not denied except alleging that the document is incomplete, invalid and unregistered, but the reply notice of petitioner shows that the unregistered lease deed is admitted and so it was just to direct the petitioner to deposit the said amounts. It observed that rest of the disputed facts are open to trial and can be decided after full fledged trial. It also observed that though petitioner claims to have paid rents upto date till the end of 2016, no such evidence was placed on record.

9. Assailing the same, this Revision is filed.

10. Learned counsel for petitioner sought to contend that the order passed by the Court below cannot be sustained; that petitioner was in possession of only one shutter, for which rent of Rs.15,000/- p.m. was payable; that rents upto date had already been paid; and though certain documents had been filed to show that 2 other shutters which were in petitioner's occupation had been redelivered to the

respondent, they had not been marked in the evidence erroneously by learned counsel for petitioner in the Court below.

11. Alternatively, learned counsel for petitioner contended that the matter be remitted back to the Court below to give the petitioner an opportunity to mark such evidence.

12. Learned counsel for respondent refuted the above contentions and supported the order passed by the Court below.

13. It is admitted that at one point of time, petitioner was in occupation of 3 shutters for which rent payable is Rs.15,000/- p.m. for each shutter. But the plea of petitioner that he had subsequently vacated 2 other shutters and is in occupation of only one shutter at the time of filing of the suit, is not supported by either oral or documentary evidence. Since the petitioner failed to lead such evidence in the said I.A. in the Court below when opportunity was given to the petitioner to lead such evidence, the petitioner cannot seek a remand to get a second opportunity to lead such evidence. Purpose of a remand cannot be to enable a party to fill the lacuna in his evidence. Once the tenancy is admitted and the quantum of rent was admitted, the petitioner cannot avoid compliance of the directions of the Court below under Order XV-A C.P.C. and refuse to make the payments as directed by the Court below.

14. Therefore, I see no merit in the Revision and it is accordingly dismissed. No costs.

15. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 28-01-2019

Vsv