

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition Nos.7345 and 7790 of 2018

COMMON ORDER :

Since these two Civil Revision Petitions arise out of the same suit between the same parties, they are being disposed of by this common order.

2. O.S.No.297 of 2017 was filed by plaintiffs (respondent nos.1 and 2 in Civil Revision Petition No.7345 of 2018 / petitioners in Civil Revision Petition No.7790 of 2018) against defendants (petitioners in Civil Revision Petition No.7345 of 2018 who are respondent nos.1 and 2 in Civil Revision Petition No.7790 of 2018).

3. The parties will be referred to as per their array in the above suit.

4. The said suit was filed by plaintiff for eviction of defendants from the suit schedule property, and for recovery of arrears of rent of Rs.94,79,782/-, etc.

5. The suit schedule property consists of ground + three floors of built-up area.

6. The relationship of landlord and tenant between plaintiffs and respondents is admitted.

7. The monthly rent was claimed by plaintiffs to be Rs.4,50,000/-.

8. The defendants claimed that they invested Rs.2 crores for completion of civil, electrical and other works in order to occupy the building, and claimed to have been assured by plaintiffs that they need not pay the monthly rent till the completion of the recovery of the said amount of Rs.2 crores which they have invested. The defendants admitted receipt of payment of Rs.30 lakhs towards security deposit.

9. The Lease Deed between parties is not registered.

10. Pending suit, the plaintiffs filed I.A.No.274 of 2017 for a direction to defendants to pay Rs.94,79,782/- alleged to be arrears of rent, and also a direction to defendants to pay every month future monthly rent at agreed rate of Rs.3 lakhs from 01.03.2015.

11. It is admitted by plaintiffs that defendants had vacated and handed over possession of the ground floor of the leased premises in August, 2016, and that defendants had been in possession of the balance area in the premises on a monthly rent of Rs.3 lakhs. The defendants however contended that they vacated the ground floor premises in January, 2016. They contended that in view of the investment of Rs.2 crores, they need not pay any amount.

12. By order dt.12.11.2018, the Court below partly allowed I.A.No.274 of 2017 holding that there is no evidence adduced by defendants to show that they spent Rs.2 crores for development of the building, but it took note of the payment of Rs.30 lakhs advance and computed the amount payable as Rs.35,86,282/- after deducting the

said Rs.30 lakhs from the claim of Rs.65,86,282. It further directed that defendants should deposit 10% excess than the contract rate of rent tentatively every year commencing from October, 2016. It also noted a sum of Rs.31,26,004/- was paid pending suit, and that is required to be set off from the amount payable by defendants.

13. The counsel for defendants contended that if the amount of Rs.30 lakhs as advance and the sum of Rs.31,26,004/- paid pending suit is taken into account, no amount is payable by defendants to plaintiffs.

14. The counsel for plaintiffs contended that any adjustment of the advance can only be at the time of vacating the premises and the amount of Rs.30 lakhs cannot be now taken into account.

15. He however did not dispute that if the arrears from March, 2015 to December, 2015 and July, 2016 to October, 2016 are taken into account, the amount payable will only be Rs.4.5 lakhs x 10 months + Rs. 3 lakhs x 4 months, i.e., Rs.57 lakhs, and not Rs.65,86,282/-; and that there is a typographical error in the affidavit filed along with I.A.No.274 of 2017. Therefore, the claim of plaintiffs that Rs.65,86,282/- as arrears of rent due cannot be accepted.

16. I also disagree with the contention of counsel for petitioner that Rs.30 lakhs cannot be set off against the dues of defendants, and that the said adjustment ought to be made only at the time of vacating the premises.

17. I am of the opinion that Rs.30 lakhs is also liable to be deducted from Rs.57 lakhs arrears apart from the sum of Rs.31,26,004/- paid pending suit from the arrears payable by defendants to plaintiffs.

18. That apart, the Court below had no jurisdiction to direct defendants to pay 10% excess on the contractual rate of rent tentatively commencing from October, 2016 pending suit, because no such power is vested in it under Order 15-A of Civil Procedure Code, 1908.

19. Therefore, the Civil Revision Petition No.7345 of 2018 is partly allowed, and defendants are directed to continue to deposit at the rate of Rs.3 lakhs per month during pendency of suit after adjusting the amount of Rs.4,26,004/-, i.e., [Rs.30 lakhs + Rs.31,26,004 (-) Rs.57,00,000], and that defendants need not pay the 10% excess as directed by the Court below.

20. The contention of plaintiffs in Civil Revision Petition No.7790 of 2018 that the Court below should have directed deposit of the entire Rs.94,79,782/-, cannot be countenanced because it appears that the rental arrears are not properly calculated by the plaintiffs.

21. I am leaving open the issue of demand for Tax Deducted at Source (T.D.S.) and Service Tax to be adjudicated in the suit.

22. Accordingly, Civil Revision Petition No.7345 of 2018 is partly allowed; and Civil Revision Petition No.7790 of 2018 is dismissed. No order as to costs.

23. As a sequel, miscellaneous petitions pending if any in these Civil Revision Petitions, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 25.03.2019

Ndr/*

