

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.226 of 2020

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.05-12-2019 in O.S.No.255 of 2013 of the Chief Judge, City Civil Court, Hyderabad refusing to treat the said suit as a suit falling within the purview of the Commercial Courts Act, 2015 (for short 'the Act') though petitioner and the respondent both requested the Court to transfer the matter to the Commercial Court.

2. The suit O.S.No.255 of 2013 was filed by the petitioner against respondent for recovery of money on the basis of a registered lease deed dt.28-04-2008.

3. The following reliefs were sought in the plaint:

"A) A decree passed in favour of the plaintiff and against the defendant directing the Defendant to pay a sum of Rs.3,30,75,754/- towards arrears of rent with interest therein due up till July, 2016 along with interest @ 24% p.a. from the date of suit till realization.

B) A decree be passed in faovur of the plaintiff and against the Defendant directing the Defendant to pay a sum of Rs.14,63,763/- being the service tax payable by the Defendant to the department with interest thereon at 24% p.a. from the date of suit till realization.

C) A decree be passed in favour of the Plaintiff and against the Defendant directing the Defendant to pay a sum of Rs.14,12,880/- being the loss suffered by the Plaintiff due to non-furnishing of certificates of tax deducted at source by the Defendant, with interest thereon @ 24% from the date of suit till realization.

D) Cost of the suit be awarded.

E) Any other relief or reliefs to which the Plaintiff is entitled to may also be granted.”

4. Learned counsel for petitioner placed reliance on Section 2(1)(c)(vii) of the Act which defines term ‘commercial dispute’ as “a dispute arising out of agreements relating to immovable property used exclusively in trade or commerce”.

5. There is an explanation to Section 2 of the Act, which also states:

“Explanation: A commercial dispute shall not cease to be a commercial dispute merely because-

(a) it also involves action for recovery of immovable property or for realization of monies out of immovable property given as security or involves any other relief pertaining to immovable property;

(b) one of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions;”

6. The Court below took the view that not only was there no pleading to the effect that the suit falls within the ambit of Section 2(1)(c) of the Act but that no averments were made in the pleadings attracting the provision of Section 2(1)(c) of the Act.

7. It is not in dispute that the trial of the suit has concluded and the matter was posted for arguments in the Court below. At that point this plea was raised on 08-11-2019 by the learned counsel for petitioner.

8. Though learned counsel for petitioner sought to contend that the suit in question would be a suit dealing with a commercial dispute as

defined in Section 2(1)(c)(vii) of the Act, and that the property in question was leased out only for the purpose of trade or commerce by the petitioner to the respondent, the suit is a simple suit between a landlord and tenant for recovery of arrears of rent based on a registered lease deed.

9. Merely because the premises is used for trade or commerce, it cannot be said that the dispute in question, which is subject matter of the suit, is a commercial dispute merely looking at the value of the claim of the petitioner.

10. I therefore do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court with the impugned order in exercise of its jurisdiction under Article 227 of the Constitution of India.

11. Accordingly, the Civil Revision Petition fails and is dismissed at the stage of admission. No costs.

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

M.S.RAMACHANDRA RAO, J

Date: 10-02-2020

Vsv