

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

Civil Revision Petition Nos.1668 & 1700 of 2021

COMMON ORDER:

Since the parties and the issue involved in both these Civil Revision Petitions are one and the same, they are being heard together and disposed of by way of this Common Order.

2. Civil Revision Petition No.1668 of 2021 is filed by the lessee and Civil Revision Petition No.1700 of 2021 is filed by the lessors challenging the order dated 07.09.2021 wherein the trial Court partly allowed I.A.No.376 of 2021 in OS NO.118 of 2021 filed under XV-A r/w Section 151 of Code of Civil Procedure, directing the lessor to deposit arrears of rents from April, 2019 till August, 2021 i.e., the remaining balance of Rs.5,89,270/- for 29 months (i.e.,Rs.13,75,920/- - Rs.7,86,650/- =5,89,270/-), which comes to Rs.1,70,88,830/- (Rupees one crore seventy lakhs eighty eight thousand eight hundred and thirty only) to be payable in four installments within four months from today and continue to deposit rents at the rate of Rs.13,75,920/- (Rs.Thirteen lakhs seventy five thousand nine hundred and twenty only) per month with effect from September, 2021 to be payable on or before 10th of every Calendar month, till disposal of the main suit. The respondent (lessee) was also directed to pay the above-said amounts directly to the petitioners (lessors) through Cheque/Demand

Draft or credit in their bank account. Failing which, the petitioners/plaintiffs (lessors) are entitled to the relief as provided under Order XV-A of Civil Procedure Code.

3. For the sake of convenience, the parties herein after will be referred to as arrayed in I.A.No.376 of 2021 in OS No.118 of 2019.

The petitioners filed the main suit for recovery of vacant possession, recovery of arrears of rents, permanent injunction and also a decree for future mesne profits from the date of termination of tenancy, till delivery of vacant possession of the suit property. The petitioners are the owners and lessors of the property bearing Sy.No.46, Jeedimetla Village, Medchal District (formerly Ranga Reddy District), acres 02.20 guntas. The respondent represented by Sri B.Rayapu Reddy, claiming to be franchisee of Delhi Public School, New Delhi, approached the petitioners and requested to let out the property of the petitioners to run an educational institution under the name and style of Delhi Public School, New Delhi and after mutual discussion, both the petitioners and respondent entered into a registered lease deed dated 29.03.2016 for a period of 9 years and eleven (11) months, commencing from 01.04.2016. In terms of the said lease deed, the tenancy is month to month as per the English Calendar. The rent is payable to the petitioners in proportion to the share of property owned by them i.e., ratio 80:20 respectively. The said

monthly rent is subject to periodical increase as per the terms of lease deed dated 29.03.2016 and the rent payable is Rs.16,53,652/- (Rupees Sixteen lakhs fifty three thousand six hundred and fifty two only) per month inclusive of GST i.e., Rs.14,01,400/- (Rupees fourteen lakhs one thousand and four hundred only) towards rent plus Rs.2,52,252/- (Rupees two lakhs fifty two thousand two hundred and fifty two only) towards GST with effect from the tenancy month of April, 2018. The rent is exclusive of electricity and water payment charges. The respondent has given interest free security deposit of Rs.2,00,00,000/- (Rupees Two crores only) to the petitioners, as mentioned in the lease deed dated 29.03.2016.

4. That after obtaining necessary permissions from the concerned departments, the petitioners constructed initially an area of 22,547 sq.feet comprising of part of upper Cellar and Ground floor portion and delivered to the respondent on 20.06.2016 for which the respondent agreed to pay rent at the rate of Rs.4,70,684/- per month from June, 2016, instead of Rs.6,58,366/- per month with effect from 01.04.2016 as per the area occupied. Subsequently, the petitioners constructed an area of 10,196 sq.feet comprising of balance area of upper cellar in the month of October, 2016 and thus, an area of 32,743 sq.ft was leased out to the respondent from October, 2016. The total rent payable for October and November 2016 was at the rate of Rs.7,05,203/- per month inclusive of Service Tax as per the area

occupied. Thereafter, the petitioners also constructed an area of 11,454 sq.ft comprising of sub-cellar and delivered and taken possession by the respondent in the month of December, 2016, totaling an area of 44,197 sq.ft was occupied by the respondent since December, 2016 and the rent payable as per the area occupied was Rs.9,44,632/- per month inclusive of Service Tax and/or GST. The petitioner also constructed an area of 25,575 sq.ft comprising of first and second floors and delivered to the respondent by the petitioners in the month of November, 2017 and the rent payable from November, 2017 is Rs.15,03,320/- per month inclusive of GST. Therefore, the respondent agreed to pay the rent i.e., Rs.16,53,652/- per month with effect from 01.04.2018 as per area under occupation i.e., 69772 sq.feet comprising part of Sub-Cellar, Cellar, Ground, First and Second floors. Even though the petitioners constructed 3rd and 4th floors, but the respondent did not take possession of the same in spite of being notified in the month of June, 2018 by the petitioners. Therefore, the respondent is in use and occupation of an area of 69,772 sq.ft comprising part of sub-cellar, cellar, ground, first and second floors.

5. The respondent committed default in payment of rents by violating the terms and conditions of registered lease deed. The respondent is due and payable a sum of Rs.1,64,90,484/- as on 31.03.2019. Since the respondent not only violated the terms and

conditions of registered lease deed but also defaulted in payment of rents as agreed upon, the petitioners issued legal notice dated 21.09.2018 for termination of tenancy with effect from 01.04.2019, as per clause 30 of registered lease deed dated 29.03.2016 and also to pay the arrears of rents of Rs.1,07,22,187/- after deduction of TDS as on the date of notice. As per clause 31 of the registered lease deed, the tenancy terminated with effect from the end of the academic year i.e., from 1st April, 2019. Even though the respondent received the said notice, he neither replied nor complied with the terms of legal notice.

6. The respondent is liable to pay an amount of Rs.2,86,52,286/- including GST, as on 31.08.2018 and out of the said amount, the respondent paid a sum of Rs.1,54,81,846/- and the balance amount payable is Rs.1,31,70,440/- as on 31.08.2018. The respondent is liable to pay rents from 01.09.2018 till 31.03.2019 comes to Rs.1,15,75,564/- (Rs.98,09,800/- towards rent and Rs.17,65,764/- towards GST), but he paid only Rs.82,55,520/- and the balance amount due and payable is Rs.33,20,044/-, thus the total arrears of rent payable by the respondent is Rs.1,64,90,484/- and sought for allowing the petition.

7. The respondent filed counter denying the averments in the affidavit filed in support of the application and stated that the

petitioners suppressed the existence of unregistered lease deed dated 16.03.2015 and that as per the terms and conditions of above lease deed, the respondent paid entire amount of Rs.200 lacs towards security deposit. In terms of lease deed dated 16.03.2015, the petitioners and respondent entered into another registered lease deed vide document no.2315/2016, dated 29.03.2016 and that both the lease deeds are binding between the parties. Even though the petitioners are supposed to handover three floors of area i.e., 31,419 sq.ft approximately, i.e., ground, first and second floors, but they have not even completed 50% of the work in the ground floor by 1st June, 2016 and the petitioners did not provide minimum facilities for running the school. The petitioners handed over part of upper cellar and ground floor portion in the month of June, 2016 and again in the month of December, 2016, sub-cellar was constructed and handed over to the respondent. Out of 44,797 sq.ft, approximately 31,845 sq.ft is parking area which is not used to conduct school class rooms. On 06.11.2017, the petitioners handed over the 1st and 2nd floors without painting. The petitioners have not completed the building as per the lease deeds and caused inordinate delay in construction of the work. However, the respondent agreed to pay lease amount of Rs.22,05,304/- for the period of 20.06.2016 to March, 2017, which was accepted by the petitioners and continued to pay the lease amounts till March, 2019. The petitioners raised objection for usage

of cellar and stilt by email dated 12.09.2018 even though they allowed the respondent for usage of the same. The petitioners once again raised a dispute in the month of April, 2019 regarding usage of cellar and sub-cellar, as such, the respondent stopped payment of lease amount to the cellar and sub-cellar and paid money to the occupied premises i.e., an amount of Rs.7,86,650/- from April, 2019 till date. The respondent is not using the said cellar and sub-cellar for any other purpose except 500 sq.ft for kitchen etc., and out of paid amount of Rs.7,86,650/- towards monthly lease amount, Rs.1,00,000/- paid towards using the cellar and remaining amount i.e., Rs.6,86,650/- is paid towards occupied building premises, which is being accepted by the petitioners without any objection. Since the petitioners have not constructed the building and handed over the same to the respondent, the question of payment of lease amount as per the lease deed dated 29.03.2016 does not arise. There is no due payable by the respondent and that the respondent did not commit or violated the terms of lease dated 29.03.2016, as such, the termination of tenancy does not arise. Since the alleged legal notice dated 21.09.2018 was not received by the respondent, as such, issuing reply to the same does not arise. The respondent is paying the rents as per the understandings, statements and invoices raised by the petitioners. The respondent is not liable to pay arrears of lease

amount of Rs.1,64,98,484/- as claimed by the petitioners and sought for dismissal of the application.

8. Reply affidavit is filed by the petitioners denying the averments in the counter affidavit filed by the respondent and stated that since registered lease deed dated 29.03.2016 was executed, the earlier unregistered lease deed dated 16.03.2015 was not in force and unenforceable in law. The lease deed dated 29.03.2016 was registered and executed after mutual agreement, as such, the parties are governed by the same. The respondent failed to deposit Rs.200 lakhs as security deposit as stipulated by the lease deed dated 29.03.2016. The petitioners borrowed Rs.7.25 crores of loan from SBI for construction of the building for the use of respondent. The total area sanction for construction is 94000 sq.ft and out of which, the respondent is already in occupation and use of an area of 69,772 sq.ft and the respondent has not chosen to take possession of third floor portion admeasuring 11115 sq.ft. There was no time schedule for the delivery of the possession to the respondent and there is no delay or latches on the part of the petitioners and that no inconvenience was caused by the petitioners. The respondent is misconstruing the statement given by the accountant of the petitioners and that there was no understanding or agreements to claim the rents as alleged in the statement as Annexure No.1, which is not true and correct and the same is contrary to terms and conditions of lease deed dated

29.03.2016 and that the respondent cannot make payments at his whims and fancies. The rent is charged as stipulated by the lease deed dated 29.03.2016, as such, the respondent is bound to pay *mesne* profits in respect of sub-cellar and cellar portions, since they are under use and occupation of the respondent and the same is not surrendered by it. The amount that is being deposited by the respondent is without consent of the petitioners, as no invoices are raised by the petitioners for the same. The rent payable by the respondent with effect from April, 2018 was Rs.16,53,562/- per month inclusive of GST and after deduction of TDS, the rent would be Rs.15,13,512/- per month and the respondent paid the rent for the month of April, 2018 and that the respondent has no right to reduce the rent contrary to the terms and conditions stipulated in lease deed dated 29.03.2016. The respondent is in use and occupation of an area 69772 sq.ft and the petitioners have not claimed the rent for the months of April and May, 2016. The respondent is due and payable a sum of Rs.1,64,90,484/- as claimed by the petitioners. Since the parties are bound by lease agreement dated 29.03.2016, the petitioners are justified in terminating the tenancy of the respondent.

9. After considering the rival contentions of both parties, the trial Court framed the point for consideration as follows:

“Whether the petitioners are entitled to the relief as prayed for?”

10. In order to substantiate the claim of the petitioners, they have marked Exs.A1 to A12. No documents have been marked on behalf of the respondent. Neither parties have adduced oral evidence.

11. After considering the documentary evidence i.e., Exs.A1 to A12 filed by the petitioners and also after hearing the both parties, the trial Court passed elaborate order allowing the claim of the petitioners partly directing the respondent to deposit arrears of rents from April, 2019 till August, 2021 i.e., the remaining balance of Rs.5,89,270/- for 29 months (i.e., $13,75,920/- - 7,86,650/- = 5,89,270/-$), which comes to Rs.1,70,88,830/-,(Rupees one crore seventy lakhs eighty eight thousand eight hundred and thirty only) to be payable in four installments within four months from that day and continue to deposit rents at the rate of Rs.13,75,920/- (Rs.Thirteen lakhs seventy five thousand nine hundred and twenty only) per month with effect from September, 2021 to be payable on or before 10th of every Calendar month, till disposal of the main suit. The respondent was also directed to pay the above-said amounts directly to the petitioners through Cheque/Demand Draft or credit in their bank account. Failing which, the petitioners/plaintiffs are entitled to the relief as provided under Order XV-A of Civil Procedure Code. Assailing the same, both these Civil Revision Petitions have been filed.

12. Heard Sri G.Arun, learned counsel for the petitioners (lessors) and Sri Ashok Anand Kumar, learned Senior Counsel appearing for Sri B.Rajeshwar Reddy, learned counsel for the respondent (lessee) and perused the record along with grounds of revision.

13. In this case, it is to be seen that the petitioners filed main suit i.e., O.S.No.118 of 2019 for possession, arrears of rents, *mesne* profits. They are the absolute owners and landlords of the suit schedule property i.e., Acs.2.20 guntas in Sy.No.46, Jeedimetla Village, Ranga Reddy District. The respondent approached the petitioners for taking out lease of the suit schedule property/building, to be constructed by the petitioners, for running a school, namely Delhi Public School. Therefore, the relationship between the petitioners and respondent as lessors and lessee, respectively, is not disputed. Petitioners and respondent have entered into an unregistered lease deed dated 16.03.2015 and subsequently executed registered lease deed dated 29.03.2016, which is marked as Ex.A2. There is no dispute that the respondent is running the school from 1st April, 2016 onwards and is in possession of the leased property.

14. A perusal of the contents of Ex.A2 goes to show that the lease was for a period of 9 years and 11 months and that the rent shall be enhanced by 10% upon expiry of every three years on the then rental amount existing for the tenure of the lease. As per Clause 1 of Ex.A2,

it is for the petitioners to construct and grant lease a built up area as mentioned in the lease deed to the lessee as per the due dates mentioned and the respondent-lessee agrees to take the lease of the said property as per the schedule mentioned in the lease deed. But there is no mention of dates in the entire lease deed for handing over the constructed area to the lessee. It is the specific contention of the learned counsel for the petitioners that they have constructed the building in a phased manner and handed over the same to the respondent, who has taken the same on lease as agreed in the lease deed. According to the petitioners, part of upper cellar and ground floor in an extent of 22,547 sq.ft was handed over to the respondent on 20.06.2016. Balance of upper Cellar in an extent of 10196 sq.ft was handed over to the respondent on October, 2016. Thereafter, the petitioners constructed Sub-cellar in an extent of 11454 sq.ft and handed over to the respondent on December, 2016 and also 25575 sq.ft area comprising of first and second floors in the month of November, 2017.

15. It is vehemently contended by the learned Senior Counsel for the respondent that out of 44,797 sq.ft, approximately, 31,847 sq.ft is parking area, which is not used to conduct school class rooms, as such, he is not liable to pay the rent for the same

16. According to the petitioners, the lease commenced with effect from 01.04.2016 and the tenancy is month to month as per the English Calendar. The rent payable is Rs.16,53,652/- per month inclusive of GST i.e., Rs.14,01,400/- towards rent plus Rs.2,52,252/- towards GST with effect from the tenancy month of April, 2018, which is exclusive of electricity and water charges. It is the specific allegation of the petitioners that the respondent has intentionally defaulted in paying the admitted rate of rents per month as per lease agreement under Ex.A2. Since the respondent committed default in payment of rent, as per Clause 30 of the Lease Deed dated 29.03.2016, the petitioners got issued a legal notice dated 21.09.2018 calling upon the respondent to pay the arrears of rents and also to discontinue the use of sub-cellar area for any other purposes except for the purposes it is required to be used i.e., parking, within one month, failing which the lease deed dated 29.03.2016 stands terminated with effect from 01.04.2019 and also to pay arrears of rents of Rs.1,07,22,187/-. As on 31.08.2018, the total rents payable by the respondent is Rs.2,86,52,286/- (Rupees two crores eighty six lakhs fifty two thousand two hundred and eighty six only) which includes Service tax/GST, out of which, the respondent paid only Rs.1,54,81,846/- and balance amount due and payable by the respondent is Rs.1,31,70,440/- towards arrears of rents as on 31.08.2018.

17. It is next contended by the learned counsel for the petitioners that the respondent is liable to pay Rs.1,15,75,564/- for a period seven months form 01.09.2018 till 31.03.2019 i.e.,Rs.98,09,800/- towards rents and Rs.17,65,764/- towards GST, out of which, the respondent paid only Rs.82,55,520/- and the balance amount due and payable is Rs.33,20,044/-, thus, the respondent is liable to pay Rs.1,64,90,484/- (Rs.1,31,70,440/- + 33,20,044/-) as on the date of filing of the suit i.e.,16.04.2019, as such, is liable to pay the rent including arrears, if any, to the petitioners for use and occupation of the leased premises.

18. As rightly observed by the trial Court, for invoking Order XV-A of CPC, the following conditions have to be fulfilled; i.e., a) a suit must be for recovery of possession of property, i.e, for eviction; b) there must be a prayer for recovery of rent or compensation for use and occupation; c) the defendant must plead no arrears or low arrears to be paid to landlord, which needs examination by Court to decide what is admitted arrears of rent.

19. In this case, as already observed supra, the petitioners filed suit for recovery of possession of leased premises by terminating the leased premises by way of legal notice and also for recovery of rent. The respondent pleaded no amount is due and payable to the petitioners,

as such, all the conditions have been fulfilled for invoking Order-XV-A of CPC.

20. It is not in dispute that as on the date of filing of the suit the respondent is running the school in the name and style of Delhi Public School, as such, he is in occupation the premises i.e, till 16.04.2019.

21. Whether the petitioners have completed the building as per the lease agreement and handed over to the respondent on specific dates; whether they have provided minimum basic amenities like lighting, painting etc., whether the respondent is using the cellar and sub-cellar without there being any valid permission, or whether the petitioners constructed the kitchen as alleged by the respondent in their counter and permitted the it to use the cellar and sub-cellar; that because of the delay on the part of the petitioners, the respondent could not admit students as desired by it; the first and second floors were handed over with delay and without doing painting and other miscellaneous works to run the school, cannot be decided in this interlocutory application, without adducing any oral evidence on either side. Even though, the petitioners claimed rent as per the statement, which is differing from month to month, as per the constructions made by the petitioners periodically, which is being denied by the respondent. Therefore, in order to meet the ends of justice, it is desirable to consider the admitted rate of rent by the respondent.

22. Even though it is stated that respondent has been paying rent at the rate of Rs.13,75,920/- (Rupees thirteen lakhs seventy five thousand nine hundred and twenty only) per month till March, 2019, but he paid only Rs.7,86,650/-(Rupees seven lakhs eighty six thousand six hundred and fifty only) thereafter by deducting lease amount for parking areas. Therefore, the same can be taken as admitted rent by the respondent. As already observed supra, whether the respondent was permitted to use the cellar and sub-cellar and parking by the petitioners or not or whether the respondent has surrendered/vacated the said area, can be decided only after recording of evidence. Unless and until evidence is adduced on either side regarding the facts in dispute, it cannot be said that the respondent is liable to pay Rs.13,75,920/-. Even though the trial Court observed that even after receiving legal notice under Ex.A3, the respondent did not choose to give any reply, but respondent disputed receipt of legal notice which aspect can be gone into in the main suit, as such, it cannot be said that the admitted rate of rent by the respondent can be taken as Rs.13,75,920/- per month since March, 2019. Since the respondent is admitting that rent payable is Rs.7,86,650/-he is liable to pay the same rate of rent and continued to pay the same.

23. Even though it is argued by the learned Senior Counsel for the respondent that the lease and sale of cellar and sub-cellar and

claiming rent for leasing the cellar and sub cellar is prohibited under Section 3(a) r/w Section 24 of the Andhra Pradesh Apartments (Promotion of Construction and Ownership) Act, 1987, but the said contention can be gone into in the main suit.

24. Learned Senior Counsel for the respondent-lessee vehemently argued that initially there was a lease agreement dated 16.03.2015 and in continuation of the same, a registered lease deed dated 29.03.2016 was executed between the parties, as such, the contents of unregistered leased deed dated 16.03.2015 are very much essential for deciding the *lis* between the parties. On the other hand, learned counsel for the respondents contends that registered lease agreement dated 29.03.2016 is not in continuation of earlier unregistered lease deed dated 16.03.2015 and that the same culminated into registered lease deed dated 29.03.2016, as such, the contents therein has no relevancy for deciding the issue on hand. As rightly pointed out by the trial Court that the said issue can be decided in the main suit, at the time of final hearing and not at this interlocutory state and more so, no oral evidence is adduced on either side to know the veracity of the said unregistered sale deed dated 16.03.2015.

In view of above facts and circumstances, the impugned order of the trial Court dated 07.09.2021 in I.A.No.376 of 2021 in OS No.118 of 2018 is liable to be modified and accordingly modified by directing

the respondent to pay admitted rent Rs.7,86,500/- per month and arrears, if any, at that rate from April, 2021, till disposal of suit. Failing which, petitioner/plaintiffs are entitled to the relief provided under Order XV-A of CPC.

There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, shall stand closed.

A.RAJASHEKER REDDY, J

Date:17.03.2022

kvs

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

Civil Revision Petition Nos.1668 & 1700 of 2021

Date:17.03.2022

kvs