

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

FRIDAY, THE TWENTY NINTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY THREE

**:PRESENT:
THE HONOURABLE SRI JUSTICE T.VINOD KUMAR**

CIVIL REVISION PETITION NO: 2957 OF 2023

Petition Under Article 227 constitution of India aggrieved by the Order dated 11.09.2023 made in I.A. No. 623 of 2023 in O.S. No. 59 of 2021 on the file of the Court of the Principal District and Sessions Judge Cum-Family Court, Medhchal-Malkajgiri District, At Malkajgiri

Between:

Smt. Swaroopa Charabuddi, W/o. Ananda Reddy, Aged about 56 years, Occ. Business, R/o. 7-134/2/1, Sri Krishna Sai Colony, Near Balaji Function Hall, Malkajgiri, Mechal-Malkajgiri District

... Petitioner/Petitioner/Defandant

AND

1. Mr. Medikonda Kiran Peter John, S/o. M.Peter John, Aged about 52 years, Occ. Business, NRI, R/o. 40, Back Street, Philipsburg, St.Martin. Presently R/o. Plot No. 319, Phase - II, Saket Colony, Kapra, Medchal-Malkajgiri District.
2. Mrs. Medikonda Glory,, W/o. M. Kiran Peter, Aged about 46 years, Occ. Business, NRI, R/o. 40, Back Street, Philipsburg, St.Martin. Presently R/o. Plot No. 319, Phase - II, Saket Colony, Kapra, Medchal-Malkajgiri District.

... Respondents/Respondents/Plaintiffs

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of further proceedings in O.S.No.59 of 2021 on the file of the Court of the Principal District and Sessions Judge-Cum-Family Court, Medhchal-Malkajgiri District, At Malkajgiri.

Counsel for the Petitioner : Sri Srinivasa Rao Putluri

Counsel for the Respondents : Sri Bommineni Vivekananda

The Court made the following : ORDER

THE HON'BLE SRI JUSTICE T. VINOD KUMAR

CIVIL REVISION PETITION No. 2957 of 2023

ORDER:

1. This Civil Revision Petition is filed aggrieved by the order dated 11.09.2023 in I.A.No. 623 of 2023 in O.S.No. 59 of 2021 of the Principal District and Sessions Judge – cum – Family Court at Malkajgiri, Medchal-Malkajgiri District, as being illegal and contrary to settled principles of law.
2. Heard learned counsel for the petitioner and perused the record.
3. The respondents herein is the plaintiff in the suit filed for eviction and recovery of arrears of rents. The petitioner herein being the sole defendant in the suit filed the underlying interlocutory application under section 24 of the Code of Civil Procedure, 1908 (for short 'the Code, 1908') seeking to transfer the suit to the commercial court.
4. The Trial Court on hearing the parties dismissed the application on the ground that the said application was filed as an

after-thought after the petitioner's defence was struck off. Aggrieved by the same the instant revision is preferred.

5. Learned counsel for the petitioner herein contends that the Court below ought to have allowed the application since the disputes in the main suit were essentially commercial in nature. It is further contended that since the question of jurisdiction goes to the root of the issue, the fact that the petitioner's defence was struck off does not bar the petitioner from raising the same plea. *Alternately*, it is contended that striking off defence in case of failure to pay rents is not mandatory under the provisions of the Rent Control Act, therefore, the fact that the petitioner's defence was struck off had no relevance to adjudicate an application to transfer the suit.

6. I have taken note of the submissions made.

7. A perusal of the record indicates, that along with the main suit the respondents herein had filed an interlocutory application numbered as I.A.No. 359 of 2021 under Order 15 Rule 5 of the Code, 1908 seeking deposit of monthly rents. The said application was allowed *vide* order dated 28.12.2021 directing the petitioner

herein to deposit monthly rents from April, 2021 to December, 2021 at the agreed tariff rate failing which the petitioner's defence would be struck off.

8. The petitioner herein aggrieved by the said order had preferred C.R.P.No. 122 of 2022 before this Court. After hearing the matter on admission this Court *vide* order dated 11.03.2022 while granting stay of the impugned order had directed the petitioner herein to pay the municipal taxes within four (4) weeks from the date of the order, failing which the interim stay would stand vacated. This Court had further directed the respondents herein to cooperate with the petitioner to obtain the TIN number and renew his license to run the restaurant. By the said order this Court had also clarified that the municipal taxes paid by the petitioner herein would be adjusted towards arrears of rents.

9. Subsequently, when the matter was taken up on 01.04.2022, this Court noted that though the municipal taxes were paid by petitioner on 20.03.2022, the TIN number could not be issued to the petitioner by the said date. Therefore, this Court while extending the time granted *vide* order dated 11.03.2022 had

imposed a condition that the petitioner herein was to pay 1/4th of the total rents ordered, to the respondents directly. However, since the petitioner herein had failed to comply with the above said conditional order, this Court *vide* order dated 27.04.2022 had vacated the interim stay granted earlier.

10. Thereafter, the petitioner herein on 01.09.2022 filed a interlocutory application numbered as I.A.No. 1066 of 2022 under Order 7 Rule 11 of the Code, 1908 seeking rejection of plaint. The said application was dismissed by the Court below *vide* order dated 19.01.2023. It is not shown to this Court that the petitioner herein had initiated any further proceedings as against the said order.

11. The petitioner's defence was then struck off by the Court below *vide* docket order dated 28.03.2023. It is to be observed that the petitioner herein had filed the underlying application seeking transfer of the main suit on 17.04.2023 *i.e.*, immediately after his application for rejection of plaint was dismissed.

12. Further, it is to be seen that the Court below had observed the petitioner herein had not raised the plea of jurisdiction in his written statement. Further, the impugned order categorically

records that the said plea was never raised until his defence was struck off.

13. It is pertinent to note the conduct of the petitioner herein in *firstly*, willfully disobeying the conditional order dated 01.04.2022, *secondly*, filing the application under Order 7 Rule 11 of the Code, 1908 on 01.09.2022, after the interim stay granted by this Court in C.R.P.No. 122 of 2022 was vacated on 27.04.2022 and *finally*, in filing the underlying application seeking transfer of the suit only after his application for rejection of plaint had failed. When the above conduct is considered in the light of the fact that the petitioner herein had failed to raise the plea of jurisdiction at the very first instance *i.e.*, at the time of filing his written statement, it is clear that the aforesaid speculative exercise was undertaken only with an intention to circumvent the order of the Court below directing the petitioner to pay rents and to incidentally delay the proceedings in the suit.

14. The Supreme Court in *A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai*

*Sangam*¹, held that a wrongdoer or a litigant who takes his chances cannot be permitted to gain undue advantage by using the court as a tool. The relevant observations are as under:

“338. A wrongdoer or in the present context, a litigant who takes his chances, cannot be permitted to gain by delaying tactics. It is the duty of the judicial system to discourage undue enrichment or drawing of undue advantage, by using the court as a tool. In Kalabharati Advertising v. Hemant Vimalnath Narichania [MANU/SC/0674/2010 : (2010) 9 SCC 437], it was observed that courts should be careful in neutralizing the effect of consequential orders passed pursuant to interim orders. Such directions are necessary to check the rising trend among the litigants to secure reliefs as an interim measure and avoid adjudication of the case on merits. Thus, the restitutionary principle recognizes and gives shape to the idea that advantages secured by a litigant, on account of orders of court, at his behest, should not be perpetuated; this would encourage the prolific or serial litigant, to approach courts time and again and defeat rights of others -- including undermining of public purposes underlying acquisition proceedings. Furthermore, the restitutionary principle requires that the advantage gained by the litigant should be suitably offset, in favour of the other party.”

(emphasis supplied)

15. In light of the aforesaid discussion, this Court is of the view that entertaining the present revision would enable the petitioner to indirectly do what he could not directly achieve. Thus, this Court is of the view that the order of the Court below in rejecting the interlocutory application does not call for interference by this Court in exercise of its powers under Article 227 of the Constitution of India.

¹ (2012) 6 SCC 430

16. Accordingly, this Civil Revision Petition is dismissed.

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

SD/- T JAYASREE
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Pri District and Sessions Judge-cum-Judge, Family Court, Medchal-Malkajgiri District, at Malkajgiri.
2. One CC to Sri Srinivasa Rao Putluri, Advocate [OPUC]
3. One CC to Sri Bommineni Vivekananda, Advocate [OPUC]
4. Two CD Copies.

YJR

KMS

HIGH COURT

TVK, J

DATED: 29/12/2023



ORDER

CRP.No.2957 of 2023

DISMISSING OF THE CRP

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