

THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

Civil Revision Petition Nos.601 & 623 of 2013

COMMON ORDER:

These two revisions are directed against the common order dated 24-01-2012 passed in I.A.No.1425 of 2010 in O.S.No.309 of 2009 and I.A.No.322 of 2011 in O.S.No.308 of 2009 on the file of V Additional District Judge (Fast Track Court), Ranga Reddy District, at L.B.Nagar, whereby and whereunder, the learned Additional District Judge allowed the applications filed under Order XV-A CPC striking off the defence of the defendants.

2. The petitioners are the defendants in O.S.Nos.308 & 309 of 2009. The respondents in the revision petitions are the owners of the suit schedule premises. The plaintiffs in O.S.Nos.308 & 309 of 2009 own 2500 square feet each in a five floored building admeasuring 50000 square feet. The petitioners took the premises on lease under lease deeds dated 30-10-2008. The plaintiffs filed suits seeking eviction and recovery of rents and damages. The plaintiffs filed I.As seeking direction to the defendants for deposit of arrears of rent. Their applications came to be allowed and thereupon, the defendants carried the matter to this Court by filing revisions unsuccessfully. The fact of the defendants being in arrears of rent reached finality with the dismissal of the revisions filed by the petitioners/defendants. Thereafter, the defendants in O.S.No.309 of 2009 carried the matter to the Supreme Court. S.L.A (Civil) No.18605 of 2010 filed by them ended in dismissal on 9-8-2010. The defendants moved application for appointment of Commissioner to measure the area in their occupation. Initially, their applications are allowed by the trial Court

and thereupon, the plaintiffs carried the matter by filing revisions before this Court and the said revisions came to be allowed on 28.02.2012, vide C.R.P.Nos.5717 and 5718 of 2011. The defendants also made another effort to summon the deponents of the affidavit filed in support of I.A.No.1425 of 2010 and 322 of 2011 for the purpose of cross-examination. Their applications ended in dismissal and the defendants unsuccessfully challenged the orders by filing revisions before this Court; vide C.R.P.Nos.3967 & 3970 of 2012. The plaintiffs in O.S.No.309 of 2009 filed I.A.No.321 of 2011, whereas the plaintiffs in O.S.No.308 of 2009 filed I.A.No.322 of 2011 under Order XV-A read with Section 151 CPC to strike off the defence of the defendants for non-compliance of the deposit of arrears of rent, as directed in I.A.No.1197 of 2009 and 16 of 2011, as confirmed in C.R.P.No.866 and 1059 of 2011, dated 21-9-2011. The defendants filed counter resisting the applications. They took the plea in the counter that the area in their occupation is far less and the plaintiffs failed to maintain the premises, which led them to bear the expenses in maintaining the premises. They claim reimbursement of expenditure of Rs.73,44,000/- . The learned Additional District Judge, on considering the material brought on record and on hearing the counsel appearing for the parties, came to the conclusion that once the finding with regard to arrears of rents reached finality, in earlier applications, it is impermissible for the defendants to plead of the adjustment of the disputed expenditure towards arrears of rent, and thereby, proceeded to allow the applications, by a common order dated 24-01-2012. For better appreciation, I may refer paragraph (33) of the order dated 24-01-2012 impugned in the revisions and it is thus:-

“ To sum-up, the respondents without complying with the specific orders of this Court and of the Hon'ble High Court regarding payment of arrears of rent, filed Interlocutory

applications for measurement of the area under lease in both the suits. Though the FAC Court of this Court allowed those petitions, the Revisions preferred against those orders by the petitioners herein are allowed by the Hon'ble High Court in C.R.P.Nos.5717 and 5718 of 2011 on 18.2.2012. The respondents thereafter filed another set of Interlocutory applications in I.A.Nos.422 and 421 of 2012 to summon the petitioners herein who have filed affidavits in I.A.Nos.1425 of 2010 and 322 of 2011 for the purpose of cross-examining them. Those applications are dismissed by this Court on 25.7.2012. Against the said dismissal the respondents filed C.R.P.Nos.3967 and 3970 of 2012 which have also been dismissed by the Hon'ble High Court on 18.9.2012. A careful analysis of the conduct of the respondents, their commissions and omissions go to show that at any point of time they have no intention or no bonafides nor sincerity to comply with the orders of this Court merged with the orders of Hon'ble High Court.

So, for non-compliance of the orders of 1st Addl. District Judge in I.A.Nos.826/2009 dated 15.3.2010 confirmed by the orders of the Hon'ble High Court in C.R.P.No.1610 of 2010 dated 22.4.2010 and the common order of this Court in I.A.No.1197/2009 and 16/2011 dated 31.1.2011, confirmed by the common order of Hon'ble High Court in C.R.P.No.866 and 1059 of 2011 dated 21.9.2011 in depositing the rents as directed the defence of the respondents-defendants is liable to struck off in both the suits, i.e., O.S.No.308 and 309 of 2009. Accordingly, the two Interlocutory Applications are allowed with costs striking of the defence of the defendants. The point is answered accordingly in favour of the petitioners. “

3. Hence, these two revisions. More precisely, C.R.P.No.601 of 2013 is directed against the order passed in I.A.No.322 of 2011 in O.S.No.308 of 2009 whereas, C.R.P.No.623 of 2013 is directed against the order passed in I.A.No.1425 of 2010 in O.S.No.309 of 2009.

4. Heard Sri D.V.Sitharam Murthy, learned senior counsel representing Sri N.Ashwani Kumar, learned counsel appearing for the

petitioners and Sri V.R.N.Prashant, learned counsel appearing for the respondents.

5. Learned senior counsel contends that there are various contentious issues such as to date of commencement of lease, area of lease premises, amount spent by the petitioners/tenants in maintaining the premises and effecting re-wiring consequent on the premises being involved in fire accident and these contentious issues are required to be examined in the suit. Unless a finding is recorded on these contentious issues, arrears of rent payable by the petitioners to the respondent/landlord cannot be ascertained. Deposit of disputed amount is not contemplated under the provisions of Order XV-A CPC. A further contention has been advanced by the learned senior counsel that the premises covered under O.S.No.309 of 2009 has been vacated on 28-02-2011 and the same has been informed by filing memo in which case, there is no obligation on the part of the petitioners to pay the rents relatable to the period subsequent to the date of vacation. In support of his contentions, reliance has been placed on the judgment of this Court in **K Zakira Shaik v. K Saleem Basha**^[1]. In the said decision, it has been held that any direction for deposit of arrears prior to the date of filing of the suit can be issued, only when there is no dispute. If there is divergence of opinion between the parties as to the quantum or liability, the determination thereof has to be relegated to a subsequent stage and a finding has to be given after trial. An exercise contemplated under Order XV-A of CPC is totally inadequate and unsuited for final determination of the arrears of rent for the period anterior to the date of filing of the suit.

6. Learned counsel appearing for the respondents-plaintiffs submits

that the issue with regard to the arrears of rents has been set at rest with the dismissal of revision petition filed by the petitioners. Therefore, it is impermissible for the petitioners to canvass that the arrears of rent are in dispute. He would further submit that the petitioners filed applications before this Court in earlier revisions seeking extension of time for deposit of rents and even they made an effort seeking review of the order and their efforts proved to be futile. The petitioners also made an effort to stall the proceedings in the suit by moving various applications such as summoning the witnesses who have sworn to the affidavit filed in support of I.As and also appointment of Commissioner to measure the area in their occupation. They could not succeed in any of the applications and therefore, at this distant point of time, they cannot be permitted to dispute the quantum of rent or the area in their occupation. The petitioners did not plead of their spending money in maintenance or in effecting repairs to the building consequent on fire accident in earlier petitions. In a way, it is his contention that the petitioners have no valid defence to oppose the applications filed by the respondents under Order 15-A CPC and that the trial Court considered the material brought on record in a right perspective and proceeded to reject the plea advanced by them while striking off the defence.

7. Suits are filed for eviction and recovery of arrears of rent and damages. There is no dispute as to the existence of tenancy between the parties. There is no dispute with regard to the adjudication of the applications filed by the respondents on the issue of arrears of rent payable by the petitioners/tenants. After adjudication of the earlier applications as to arrears of rent, the respondents/landlord filed I.A.No.322 of 2011 under Order 15-A CPC to strike off the defence of

the tenants in view of their not paying the arrears of rent. Rule 15-A CPC, as applicable to the State of Andhra Pradesh reads as hereunder:-

“ In a suit for recovery of possession, on termination of lease, or licence, with or without a prayer for recovery of arrears of rent, or licence fee, known with whatever description, the defendant, while filing his written statement, shall deposit the amount, representing the undisputed arrears, calculated upto that due into the Court and shall continue to deposit such amount, which becomes payable thereafter within one week from the date on which it becomes due till the judgment is rendered in the suit. (2) Wherever the defendant pleads in the written statement that no arrears of rent or licence fee exists, it shall be competent for the Court to pass an order in this regard, after affording opportunity to both parties, and in case any amount is found due, the defendant shall be under obligation to deposit the same, within the time stipulated by the Court and continue to deposit the amount which becomes payable thereafter as provided under Rule 1: Provided that the time stipulated for payment of amount, as aforesaid, may be extended by the Court for reasons to be recorded for a period not exceeding 15 days. If the defendant commits default in making the deposits, as aforesaid, the Court shall strike off the defence. On such deposit it shall be competent for the plaintiff to withdraw the same. Explanation:- the expression “the amount representing the undisputed arrears” shall mean the sum of rent, or licence fee calculated for the period for which it remained unpaid, after deducting from it any amount: (a) paid as tax, to a Local Authority, in respect of the property (b) paid to the plaintiff under written acknowledgment, and (c) deposited into the Court, in any proceedings, in relation to the said property”.

8. This provision came into force with effect from 2005. The purpose underlying the provision is to ensure that the owner of the premises leased to the defendant in a suit pays the rents regularly, together with arrears, if any. The adjudication made by the trial Court on earlier applications does not give room for doubt with regard to the quantum

of rent and the area of the leased premises in occupation of the petitioners/tenants. Once the dispute with regard to arrears of rent reached finality in the earlier applications, it is impermissible for the petitioners/tenants to raise the self-same dispute in an application under Rule XV-A of C.P.C. Even the petitioners/tenants on earlier occasion, moved an application before this Court in C.R.P.M.P.No.4520 of 2010 seeking extension of time for deposit of rent. The request of the petitioners has not been considered by this Court. The defendants in O.S.No.309 of 2009 sought for review of the order passed in C.R.P.No.1610 of 2010 on the ground that the counsel sought for deposit of arrears without their instructions. The review application ended in dismissal on 16-8-2010. It is trite to refer the relevant portion of the order and it is thus:-

“ On 22-4-2010, when this Court upon hearing the learned senior counsel for the petitioners and the learned counsel for the respondents and upon perusing the impugned order and other material on record, refused to interfere with the order under revision and was about to dismiss the C.R.P., the learned senior counsel for the petitioners made a submission that the petitioners will deposit the arrears of rent within two months from that date and will continue to pay the agreed monthly rent as directed by the Court below.

In view of the above stand taken by the learned senior counsel for the petitioners, this Court did not feel the necessity to refer to the merits of the case, and it is then, placing on record the submission of the learned senior counsel for the petitioners, this Court disposed of the C.R.P., granting two months' time to the petitioners to deposit the arrears of rent.

Accordingly, clarifying as above, the C.R.P.M.P. is disposed of. No costs.”

9. The material brought on record indicates that the dispute with regard to the arrears of rent payable by the petitioners/tenants has reached finality by dismissal of C.R.Ps filed by them by this Court on

18.9.2012. Since the arrears of rent are not paid, the defence of the petitioners/tenants is liable to be struck off. The trial Court has considered the material brought on record in a right perspective and proceeded to allow the application filed by the landlords striking out the defence of the tenants. I do not see any flaw in the order impugned in the revisions warranting interference of this Court in exercise of powers under Article 227 of the Constitution of India.

10. Accordingly, both the revisions are dismissed. No costs.

B.SESHASAYANA REDDY, J

Dt.30-04-2013
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