

HONOURABLE SRI JUSTICE S.RAVI KUMAR
CIVIL REVISION PETITION Nos.1296 OF 2014

&

3172 OF 2014

Dated 31-3-2015

CIVIL REVISION PETITION No.1296 OF 2014

Between:

Harish Rawtani.

..Petitioner.

And:

Penumalli Sulochana.

..Respondent.

CIVIL REVISION PETITION No.3172 OF 2014.

Between:

Penumalli Sulochana.

..Petitioner.

And:

Harish Rawtani.

..Respondent.

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COMMON ORDER:

These two revisions are preferred against orders dated 9-12-2013 in I.A.No.2380 of 2013 in O.S.No.172 of 2012 on the file of II Additional Chief Judge, City Civil Court, Hyderabad.

Revision petitioner in C.R.P.No.1296 of 2014 is the defendant and revision petitioner in C.R.P.No.3172 of 2014 is plaintiff in O.S.No.172 of 2013 on the file of II Additional Chief Judge, City Civil Court, Hyderabad. Plaintiff is landlord and defendant is tenant in respect of premises bearing door No.8-2-293/82/A/796-A, admeasuring 3000 square feet build up area on plot No.796-A admeasuring 1162 square yards, situated at road Number 36, Jubilee Hills, Hyderabad.

Parties are hereinafter referred to as landlady (plaintiff) and tenant (defendant) for convenience and better understanding.

Landlady filed the above referred suit for eviction and recovery of arrears of Rs.24,27,097/- for the period from 1-2-2012 till date of filing of suit i.e., 13-3-2012 and for recovery of damages at the rate of Rs.17,10,000/- per month from the date of suit, till handing over vacant possession together with interest at 24% p.a.,

Tenant filed his written statement contesting the suit. Now landlady filed I.A.No.2380 of 2013 with a prayer to strike of defence of the tenant/defendant under Order 15A C.P.C. unless the tenant pays a sum of Rs.64,75,359/-. Trial court allowed the petition directing the tenant to deposit a sum of Rs.38,09,697/- towards arrears of rent till November, 2013, property tax and service tax payable by tenant and granted one month time for deposit of the said amount and directed tenant to pay future rent at the rate of Rs.5,50,000/- per month before 10th of every succeeding month besides payment of service tax and property tax and failure to do so, ordered that the defence of the tenant shall be struck off. Aggrieved by the said order, both landlord and tenant preferred separate revisions.

The grievance of landlady is that the lower court ought to have held that the rent payable to the landlady has to be enhanced by Rs.50,000/- for every year and that the tenant has to pay rent at the rate of Rs.6,20,000/- per month from February, 2012 till 31-1-2013 and at the rate of Rs.6,70,000/- per month from February, 2013 till the date of filing of the petition besides property tax and service tax but it directed only to pay Rs.5,50,000/- only and to that extent, order of the trial court is challenged by the landlady. Tenant aggrieved by the findings of the trial court that he is liable to pay property tax and service tax besides the rent, preferred the other revision.

Both side advocates vehemently argued on behalf of their respective clients supporting the case of their respective parties. The main

argument of the learned counsel for landlady is that tenant filed a suit for specific performance of an agreement for extension of lease and in that plaint, tenant admitted that rent has to be enhanced at the rate of Rs.50,000/- every year, therefore, rent payable to the landlady from 1-12-2012 has to be calculated at that rate only and if the rent is not deposited at that rate, tenant has no right to contest the suit and his defence has to be struck off as per the provisions of order 15A of C.P.C. but the trial court has only directed tenant to pay at the rate of Rs.5,50,000/- and the same is not tenable and trial court committed error in giving such a direction to deposit only Rs.5,50,000/-.

On the other hand, advocate for tenant submitted that when the landlady is disputing the agreement pleaded by the tenant in his specific performance suit i.e., O.S.No.560 of 2012, the contention that the rent pleaded by the tenant in his suit has to be taken for the purpose of deposit and it would amount to blowing hot and cold which cannot be allowed. He further submitted that according to tenant after expiry of earlier lease period on 31-1-2012, there were further negotiations according to which, the landlady agreed to extend the lease period for a further period of five years from February, 2012 on the condition of payment of rent at Rs.5,50,000/- from February, 2012 with increase of rent by Rs.50,000/- every year and the service tax is included in the said rent and if the landlady wants to claim rent at that rate, she has to agree the other terms also like extension of lease by five years more etc., but she cannot be permitted to contend that rent is to be paid as per these terms.

He contended that Section 15A has no application at all because lease period came to an end on 31-12-2012 as per the specific case of landlady and from 1-2-2012, she claimed only damages but not rent in her suit O.S.No.172 of 2012 and Section 15A C.P.C. comes into play only in case of admitted rent.

He further submitted that when there is a dispute with regard payment of service tax, the trial court was not right in directing the tenant to deposit service tax also by making it a condition and thereby trial court committed error in giving such a direction.

Now the point that would arise for my consideration in these two revisions is whether the order of trial court is legal, correct and proper?

POINT:

From the pleadings and submissions of both parties, there was a lease agreement between the parties executed on 6-12-2006 in pursuance of which, the tenant occupied the premises. According to the terms of lease deed, lease period commenced from 1-2-2007 and

lease term is five years which came to an end on 31-1-2012. Landlady earlier filed C.R.P.No.4506 of 2012 challenging the order dated 3-8-2012 in I.A.No.1494 of 2012 in O.S.No.172 of 2011 on the file of II Additional Chief Judge, City Civil Court, Hyderabad. Defendant herein filed I.A.No.1494 of 2012 under Section 8 of the Arbitration and Conciliation Act, 1998 read with 151 C.P.C. with a prayer to dismiss the suit and refer the matter to Arbitration in view of the Arbitration Clause in the lease agreement. Trial Court allowed that application and dismissed the suit with a direction to refer the matter to Arbitration and that order was challenged before this court in the above referred revision and this court while allowing the revision observed that the lease came to an end with effect from 31-1-2012 and the suit was preceded by notice under Section 106 of Transfer of Property Act, therefore, suit is maintainable.

In that case, this court observed that “The only purpose that a lease deed would serve is that it governs the relationship between a lessor and a lessee as long as the lease subsists. The subsistence of lease under the deed can be up to the specific period mentioned in it. If there exists any provision for extension of lease subject to certain conditions, there is a possibility to construe that the term of the lease, covered by the document, can be extended. Where, however, the term is for fixed time and the parties also understood that the lease does not spillover beyond a date mentioned therein, the relationship between the parties ceases to be governed by the lease deed. Once the lease deed became redundant, any clause contained in it also ceases to be of any relevance to the parties”.

The above finding is in the very same case in between the same parties. So, after the lease period is over that lease has become redundant and any clause contained in such deed ceases to be of any relevance. Even in the plaint, landlady, the claim after 1-2-2012 is only for payment of damages but not rent. Now I shall refer here to Order 15A C.P.C. to examine the contention of both sides with reference to this provision.

Order 15A reads as follows: (High Court Amendment:- Andhra Pradesh)

1. 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 date 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. Where 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 the parties and in case any amount is found due, the defendant shall be under obligation to deposit the amount 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 areas” shall mean the sum of rent, or licence fee, calculated for the period for which is 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 acknowledgement; and
- c. deposited into the Court, in any proceedings, in relation to the said property.

From a plain reading of the above provision, as per the explanation to the above provision, the sum of rent undisputed represent arrears for the period for which it remained unpaid after deducting from it, any amount paid as tax to a local authority in respect of the property.

Here from the material, it is clear that the tenant has been paying property tax separately and not deducting it from the rent payable.

At the time of hearing of this case, advocate for landlady contended that there is huge arrears of property tax and GHMC issued notice to the landlady. For this, advocate for tenant submitted that as on 25-2-2015, there are no arrears payable to GHMC and the property tax payable for current year is only due and the tenant has time to clear the said dues upto 31-3-2015 and that the tenant would pay that amount before due date. It is further submitted that though the internet copy discloses arrears which includes the interest payable on the arrears, but Government waived interest and

therefore, the arrears reflected in the internet copy which includes the interest cannot be taken into consideration.

From the submissions of both sides, it is also clear that the trial has commenced and already plaintiff's side evidence is over and on defendant's side, D.W.1 is examined and the trial is nearing completion.

This court when the matter has come up for admission passed an order directing the court below to proceed with the trial of the suit without striking of the pleadings of the tenant, if conditions imposed are complied. On 1-9-2014, this court made the following order.

"There is no dispute that the petitioner is the tenant of the premises. The original period of lease expired and the petitioner has also filed a suit in relation to extension of lease. The respondent claimed that the petitioner is under an obligation to pay the enhanced rent, the service tax and the property tax. The trial Court took note of the contentions and passed the order under revision.

According to the lease deed, monthly rent is at Rs.5,50,000/-. The respondent contends that the petitioner was paying the property tax and service tax till the expiry of the lease period and stopped payment thereof after the expiry of lease. The petitioner is continuing in the premises. Across the Bar, it is represented that the petitioner has no objection to pay the property tax. The respondent insists that the petitioner is under obligation to pay enhanced rent. Various points urged by the parties need to be dealt with at the hearing of the revision.

Therefore, the C.M.P. is disposed of directing that,

- a. *the petitioner shall be under obligation to pay the rent at the rate of Rs.5,50,000/- per month and if there are any arrears, they shall be cleared within four weeks from today;*
- b. *he shall continue to pay the rents at the rate of Rs.5,50,000/- per month before tenth of every succeeding month, as directed by the trial Court.*
- c. *The petitioner shall also be under obligation to pay the property tax for the premises, as long as he is in occupation of the same and*
- d. *If condition (a) is complied with, the defence of the petitioner shall not be struck off and the trial Court shall proceed to decide the suit."*

From a reading of pleadings of both parties in both the suits, there is dispute with regard to payment of service tax and enhancement of rent after expiry of the original lease period. Now these aspects have to be decided only on appreciation of evidence and they cannot be decided at interlocutory stage.

As rightly pointed out by advocate for tenant, party cannot be

allowed to contend that he or she would take advantage of some portion of a document or pleading which is beneficial to that party and cannot be allowed to dispute the remaining part of pleading which is disadvantageous when the pleadings of the tenant with regard to his specific performance suit is with positive assertion that lease period was extended for five more years with specified condition like payment of rent at enhanced rate. When landlady denied such extension, her contention that rent at enhanced rate as pleaded by tenant in his specific performance suit, has to be taken for the purpose of deciding admitted rent cannot be accepted because landlady has disputed the very agreement itself. This enhanced rent pleaded in specific performance suit can be accepted as rent only if the landlady admits the version of tenant as to extension of lease period by another five years from 1-2-2012. When that extension is disputed, other terms cannot be applied, therefore, contention of landlady that the admitted rent has to be at the rate of enhancement of Rs.50,000/- per each year cannot be accepted at this stage. On a scrutiny of material, I am of the considered view that provision of Section 15 A C.P.C. are not at all attracted to the case on hand and the order of the trial court putting condition of striking off defence by invoking Section 15 A C.P.C. and directing to pay service tax has to be set aside but the direction with regard to payment of rent at the rate of Rs.5,50,000/- and property tax till disposal of the suit has to be continued. Dispute relating to service tax has to be decided in the trial while appreciating evidence of both parties.

Arguments at length are advanced about interpretation of documents and acceptance of part of pleading with supporting rulings on behalf of landlady but they are not relevant at this stage and the interpretation pointed out is mixed with factual aspects which can be decided only while appreciating oral and documentary evidence of both parties in the main suit but not at the interlocutory stage.

For these reasons, both the revisions are ordered by setting aside the findings of trial court to the extent indicated above and by directing trial court to expedite the trial and dispose of the suits O.S.No.172 of 2012 within three months from the date of receipt of this order without being influenced by any of the observations made by this court in these revisions and also with its own observations in the impugned order dated 9-12-2013 in I.A.No.2380 of 2013 in O.S.No.172 of 2012 on the file of II Additional Chief Judge, City Civil Court, Hyderabad. No costs.

As a sequel to the disposal of this revision, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI KUMAR

Dated 31-3-2015.

Dvs.

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