

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

CIVIL REVISION PETITION No.5635 of 2018

ORDER : (Oral)

The present petition is filed against the order dated 14th August 2018, in I.A.No.140 of 2018 in O.S.No.260 of 2015, whereby, the petition filed by the petitioner herein under Order 14 Rule 5 and Section 151 of CPC, to frame additional issues, has been dismissed.

2. It is not in dispute that O.S.No.260 of 2015 is set for arguments. The issue framed by the trial Court is, whether the plaintiff/respondent is entitled for eviction and damages as prayed for ? While filing the application under Order 14 Rule 5, it is stated that the elders of the locality settled the lease by duly renewing for another two years, but the plaintiff/respondent suppressed the same. On account of the said lease agreement, the question of termination does not arise. The respondent/plaintiff is accepting the rents sent by the petitioner/defendant during pendency of the suit. The lease was again renewed during the pendency of the suit. Accordingly, the petitioner herein has been paying the enhanced rent. Therefore, the respondent/plaintiff is estopped from seeking the alleged relief.

3. The learned trial Court framed a comprehensive issue whether the plaintiff is entitled for eviction and damages. It is the contention of the petitioner that the respondent is receiving rents during the

pendency of the suit. Hence, the plaintiff abandoned the right of eviction in view of the principle of estoppel.

4. However, whether the petitioner paid rents during pendency of the suit and the same were received by the respondent, is a question of fact to be decided in the suit.

5. The learned trial Court has rightly observed that unless the main issue framed in the suit, which is a comprehensive issue, is decided, the issue whether the plaintiff abandoned the right of eviction in view of receiving the rents, cannot be decided.

6. In view of the observations made by the trial Court, I find no ground to interfere with the order dated 14th August 2018, in I.A.No.140 of 2018 in O.S.No.260 of 2015.

7. The revision petition is accordingly dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

SURESH KUMAR KAIT, J

28th September, 2018

ajr