THE HONOURABLE SMT. JUSTICE M.G. PRIYADARSINI

City Civil Court Appeal No.109 OF 2023

JUDGMENT:

Aggrieved by the judgment and decree dated 18.07.2023 in O.S.No.86 of 2021 (hereinafter will be referred as 'impugned judgment') passed by the learned I Additional Chief Judge, City Civil Court at Hyderabad (hereinafter will be referred as 'trial Court'), the appellant/defendant No.1 preferred the present appeal to set aside the impugned judgment.

2. For the sake of convenience, the parties hereinafter are referred to as they are arrayed before the trial Court.

3. The respondent No.1/plaintiff filed O.S.No.86 of 2021 against appellant/defendant No.1 and respondent No.2/ defendant No.2 for eviction, recovery of vacant possession, mesne profits and arrears of rents in respect of suit schedule properties i.e., commercial property bearing premises No.6-1-87 consisting of third floor (constructed area of 1500 sft), portion of 2nd floor admeasuring 700 sft situated at Musheerabad X Road, Secunderabad. The brief averments of plaint are as under:

a) The defendants alleged to have entered into lease agreement in respect of above mentioned suit schedule

properties vide registered document bearing No.646 of 2011, wherein the defendants alleged to have agreed to pay rent of Rs.10,000/- per month exclusive of commercial and sales tax, electricity and water charges. Both the parties alleged to have agreed to pay property tax equally. The rent was agreed to be enhanced after one year at the rate of 20% and thereafter for the subsequent year at 5% on the enhanced rent and the lease period of 11 years commenced from 10.04.2011 to 09.04.2022. The monthly rent shall be paid on or before 10th of every succeeding month regularly. Due to oversight, the name of defendant No.2 was not included in the registered lease deed and thus, defendant No.1 requested the plaintiff to include the name of defendant No.2 and accordingly a supplementary deed was entered in the month of May, 2011.

b) In the year 2013 the defendants approached the plaintiff to take two rooms on the ground floor admeasuring 700 square feet and the plaintiff has agreed to lease out the same on monthly rent of Rs.10,500/- and the same was enhanced to Rs.30,000/- and thereafter the said rent is being enhanced from time to time @ 5% on existing rent and thus, the enhanced rent comes to Rs.38,000/-. The defendants failed to pay the rents

from April, 2020 to October, 2020 @ Rs.38,000/- per month for seven months totalling to Rs.2,66,000/- in spite of repeated requests made by the plaintiffs. Hence, the plaintiff got issued legal notice dated 05.10.2020 calling upon the defendants to vacate the suit schedule property on or before 10.01.2021 and to hand over the possession to the plaintiff by clearing upto date rents. The said notices were got returned by the defendants as party left/unclaimed by managing the postal authorities. Despite issuance of said legal notice, the defendants neither vacated the suit schedule property nor gave any reply. Hence, the plaintiff filed the suit for eviction, recovery of vacant possession and for mesne profits.

4. After receipt of summons, the defendant Nos.1 and 2 filed their respective written statements and the brief averments of written statement filed by defendant No.1 are as under:

a) The defendant No.1 is carrying on hotel business in the name and style of "Golden Crown" in the suit schedule properties and suit premises in O.S.No.43 of 2021 and also renovated the premises by investing huge amounts. The defendant No.1 has not opened the hotel during the covid period and thereafter the plaintiff did not allow the defendant to open

the hotel and carrying on the business stating that gathering people in the hotel may spread covid. The defendant No.1 has not received any notice.

b) The plaintiff has received Rs.5,00,000/-, Rs.1,00,000/-, Rs.2,00,000/-, Rs.1,00,000/-, Rs.2,00,000/-, Rs.30,000/-, Rs.30,00,000/-, Rs.3,60,000/-, Rs.6,84,000/-, Rs.2,00,000/- and Rs.1,00,000/- on various dates towards advance and for performance of his son's marriage assuring that he will execute fresh lease deed after expiry of subsisting lease deeds.

c) On 17.04.2021 when the defendant No.1 started cleaning the hotel premises, the plaintiff and his son provoked this defendant and lodged false complaint under Section 307 of the Indian Penal Code and got arrested the defendant by Chilkaguda Police. Subsequently the defendant No.1 was released on bail on 27.04.2021.

d) The defendant No.1 has already paid huge amounts for renewal of the subsisting lease. Therefore, the plaintiff has no manner of right to terminate his tenancy and file present suit for eviction. The defendant already filed suit for specific performance i.e., O.S.No.58 of 2021 on the file of I Additional

Chief Judge, CCC, Secunderabad, which is still pending. There is no cause of action for filing the present suit and the same is liable to be dismissed.

5. The brief averments of written statement field by defendant No.2 are as under:

a) Initially the defendant No.2 was not inducted as joint tenant along with defendant No.1 and subsequently, the plaintiff executed a supplementary deed as defendant Nos.1 and 2 are partners of registered firm viz., Golden Crown and they continued their business till his retirement from the said firm i.e., till February, 2020. The said fact was informed to the plaintiff stating that from the month of March, 2020 the defendant No.1 alone is responsible for the business transaction over the suit schedule property and he will pay the rents and this defendant is no way concerned with the business affairs. On such intimation, the plaintiff agreed to collect the monthly rents from the first defendant from March, 2020 onwards and till February, 2020, there are no arrears of rents payable to the plaintiff. If at all the plaintiff is entitled to claim any amounts towards monthly rents, he can claim the same from the first defendant but not from him, as such, the suit is liable to be

dismissed against him with exemplary costs.

6. Prior to framing of the issues, the plaintiff filed I.A.No.1625 of 2021 under Order XV – A of the Code of Civil Procedure seeking direction to the defendants to deposit arrears of rent from the month of April, 2020 to January, 2021 @ Rs.38,000/- per month i.e., 10 months amounting to Rs.3,80,000/- and continue to deposit Rs.38,000/- pending disposal of the suit. On contest, the said petition was allowed directing the defendants to pay the arrears of rent at admitted rate of Rs.38,000/- per month within four months and to continue to deposit every month on or before 5th day of every succeeding month by the orders dated 01.04.2022. Since the said orders in I.A.No.1625 of 2021 were not complied within the stipulated time, the petition in I.A.No.989 of 2022 was filed to strike off defence and this court by passing orders dated 04.07.202 struck off the defence of the defendants and directed the plaintiff to proceed with and for leading plaintiff side evidence.

7. The plaintiff examined himself as PW1 and got marked Exs.A1 to A5 i.e., registered lease deed, office copy of legal notice, postal receipts and returned postal covers. On

considering the material on record, the trial Court decreed the suit in favour of the plaintiff and against the defendants. Aggrieved by the same, the defendant No.1 preferred the present appeal.

8. Heard both sides and perused the record including the grounds of appeal.

9. There is no dispute with regard to the jural relationship between the parties. There is no dispute even with regard to the ownership of the plaintiff in respect of suit schedule property. There is also no dispute with regard to the quantum of rent as pleaded by the defendants.

10. The first and foremost contention of the defendant No.1 is that the trial Court erred in assuming that if defense is truck off under order XV-A of the Code of Civil Procedure, the appellant is not entitled to participate in the trial proceedings. It is further contention of the defendant No.1 that despite filing application to recall PW1 for cross examination by the defendant No.1, the trial Court rejected the application filed vide I.A.S.R.No.4302 of 2023 on 20.04.2023 with perverse reasons without following the judgment of the Apex Court and posted

the suit for judgment. It is settled law that the effect of striking off the defense is that the Court will not consider the written statement filed by the defendants or give any credence to their defense; the allegations of plaintiff will be accepted and the court may proceed to pass a decree against the defendant based on the evidence presented by the plaintiff.

11. It is pertinent to note that even if the defense of the defendants is struck off, the defendants still have a right to appear before the Court, cross-examine the plaintiff's witnesses, and argue that a decree cannot be passed against them based on the evidence presented by the plaintiff. In this connection, learned counsel for the appellant/defendant No.1 relied upon a decision of the Honourable Supreme Court in **Modula India v. Kamakshya Singh Deo**[1], wherein it was observed that even though the defence on behalf of defendants is struck off, still the tenant is entitled to cross examine plaintiff's witness and address argument on basis of plaintiff's case. Further, learned counsel relied upon a decision of this Court in **Deepa Sharma v. Navneet Rai**[2], wherein it was observed that the defendant/tenant would not be entitled to lead any evidence of

[1] AIR 1989 Supreme Court 162
[2] 2019 (1) ALT 624

his own nor can his cross examination be permitted to travel beyond the very limited objective of pointing out the falsity or weakness of the plaintiff's case. At this juncture, it is pertinent to ascertain as to whether the trial Court has given an opportunity to cross examine plaintiff, who was examined as PW1 and whether the defendants could succeed in grabbing such opportunity of cross examining PW1. It is the specific contention of the plaintiff that he got examined himself as PW1 but the defendants did not choose to cross examine PW1, hence, the contention of the defendants that they were not given an opportunity to cross examine PW1 is incorrect. At paragraph No. 6 of the impugned judgment the learned trial Court observed that the oral evidence of PW1 was unchallenged. In the written arguments submitted by the plaintiff, it was specifically pointed out that on 31.03.2023 the defendant sought for an adjournment, for which the trial Court refused to grant an adjournment and recorded the cross examination of PW1 as 'Nil' and the matter was posted to 03.04.2023 for arguments. It is the contention of the plaintiff that the defendants have filed recall petition without filing any application to reopen the evidence.

12. As can be seen from the record, the defendant No.1 has filed I.A.S.R.No.4302 of 2023 under order XVIII Rule 17 read with Section 151 of the CPC to set aside the order dated 31.03.2023 recording the petitioner side cross examination as 'Nil' and consequently to recall PW1 for cross examination and also filed an application seeking adjournment by 30 days in order to prefer a Civil Revision Petition challenging the orders of the trial Court. A perusal of order dated 20.04.2023 in I.A.S.R.No.4302 of 2023 in O.S.No.86 of 2021 submitted by the defendant No.1, at paragraph No. 5 it was observed that defendant No.1 did not participate during the course of trial more particularly when PW1 was examined in chief, learned counsel for the defendants sought time for an adjournment. Even in the affidavit filed in support of the petition in I.A.S.R.No.4302 of 2023, the defendant No.1 averred that on 31.03.2023 his counsel requested but the trial Court without considering their representation closed the cross examination as "NIL". Thus, it is clear that the defendant No.1 had an opportunity to cross examine PW1 on 31.03.2023 but for the reasons best known, he failed to cross examine PW1.

13. It appears that the defendant No.1 intended to prefer

revision against the orders dated 21.02.2023 passed in I.A.No.2548 of 2022 and thus, requested the trial Court for permission to adjourn the case. There is no record as to whether the defendant No.1 has preferred revision against the orders dated 21.02.2023 passed in I.A.No.2548 of 2022. Even if the defendant No.1 intends to prefer revision against the orders dated 21.02.2023 passed in I.A.No.2548 of 2022, there is no explanation as to what prevented the defendant No.1 to cross examine PW1. Preferring revision against previous orders is not a sufficient ground to postpone cross examination of a witness, who is a crucial witness. The issue of granting of an adjournment at the stage of cross examination is a discretionary power of court. The discretionary power is fully granted to the court to use power of adjournment and the court may grant time to either of the parties of the case if they completely satisfy the Court that there is a sufficient cause. For the sake of arguments, even if the contention of the defendant No.1 that the trial Court has not given an opportunity to cross-examine PW1 is treated to be true and genuine, there is no explanation on behalf of the defendant No.1 as to what prevented him to challenge the said orders passed by the trial Court.

14. It is not the case of the defendant No.1 that immediately after closure of evidence of PW1, the trial Court has passed the impugned judgment. It is to be seen that cross examination of PW1 was closed on 31.03.2023 and whereas the impugned judgment was passed on 18.07.2023 i.e., four months after closing the evidence of PW1. Thus, the defendant No.1 has sufficient time to challenge the orders of the trial Court in closing the evidence of PW1 on the ground of not giving an opportunity. A recall petition has to be filed with sufficient and cogent reasons but except mentioning that he intends to prefer revision against the previous orders passed by the trial Court, the defendant No.1 has not mentioned any cogent and convincing reasons to recall PW1. It is not the case of the defendant No.1 that he has challenged the orders dated 01.04.2022 in a petition filed under Order XV-A of the Code of Civil Procedure. There is no explanation on behalf of defendant No.1 as to what prevented him in complying with the orders passed by the trial Court for payment of arrears of rent.

15. The written arguments filed by the plaintiff discloses that the applications filed for setting aside the order dated 31.03.2023 and the application filed for seeking adjournment of

30 days were dismissed by the trial Court but the defendants have not challenged the said orders, which became final. Further, the application filed by the plaintiff under Order XV-A of the Code of Civil Procedure was also not challenged by the defendants and thereby the said orders have also attained finality. The defendants have not even come forward to submit arguments prior to the passing of the impugned judgment.

16. The other contention of the defendant No.1 is that the trial Court erred in adjudicating the dispute despite bringing to the notice of the Court that the suit cannot be entertained for lack of pecuniary jurisdiction. The only source through which the defendant No.1 expressed his grievance is by filing a counter to the petition filed by the plaintiff under Order XV-A of the Code of Civil Procedure because the petition filed under Order XV-A of the Code of Civil Procedure was allowed and thereafter the right of defendants to file written statement was forfeited in view of non compliance of payment of arrears of amount. It is pertinent to note that the defendant No.1 has not at all raised this plea of lack of pecuniary jurisdiction before the trial Court in the counter. If at all the suit is barred by lack of pecuniary jurisdiction, the defendant No.1 ought to have raised

the said plea in the counter to the petition filed by the plaintiff under Order XV-A of the Code of Civil Procedure. Thus, it is evident that for the first time the defendant No.1 is raising this ground before this appellate Court and there is no explanation as to why the trial Court has no pecuniary jurisdiction to try the suit.

17. Though the counsel for the defendant No.1 contended that the defendant No.1 is challenging the non appealable interim orders dated 01.04.2022 passed in I.A.No.1625 of 2021 to deposit rents and orders dated 04.07.2022 in I.A.No.989 of 2022 to strike off the defence and order dated 16.11.2022 and order dated 21.02.2023 passed in I.A.No.2548 of 2022 and order dated 20.04.2023 passed in I.A.S.R.No.4302 of 2023 under order XLIII Rule 1A of the Code of Civil Procedure, there is no material as to whether he has challenged the said orders either before the appellate court or revisionary court and that the appellate authority has granted any stay in implementation of the above said orders. Thus, mere assertion that the defendant No.1 has been challenging the orders by the trial Court cannot be a ground to set aside the impugned judgment passed by the trial Court.

18. The grievance of the plaintiff is that the defendants have not been paying rents from April, 2020 to October, 2020 @ Rs.38,000/- per month totalling to Rs.2,66,000/- despite repeated requests, as such, the plaintiff got issued legal notice dated 05.10.2020 calling upon the defendants to vacate the suit schedule property on or before 10.01.2021 and to hand over the possession of the property to the plaintiff by clearing the arrears of rents. On the other hand, it is the contention of the defendants that the plaintiff received Rs.5,00,000/-, Rs.1,00,000/-, Rs.2,00,000/-, Rs.1,00,000/-, Rs.2,00,000/-, Rs.30,000/-, Rs.30,00,000/-, Rs.3,60,000/-, Rs.6,84,000/-, Rs.2,00,000/- and Rs.1,00,000/- on various dates towards advance and for performance of his son's marriage assuring that he will execute fresh lease deed after expiry of subsisting lease deed. It is further contended that the defendant already filed suit for specific performance vide O.S.No.58 of 2021 on the file of I Additional Chief Judge, CCC, Secunderabad directing the defendant therein and plaintiff herein to execute registered lease deed for a tenure of 18 years commencing from 10.04.2022. The lease deed in the case on hand between the plaintiff and defendants commenced from 10.04.2011 and ends on 09.04.2022. By the date of passing the impugned judgment

i.e., 18.07.2023 the lease term has elapsed. Thus, the defendants are continuing their business in the suit schedule property as tenants by sufferance.

19. Further, it is to be seen that the defendants being tenants shall use the premises for which purpose it was given under lease. But the defendants in the written statement admitted that they have renovated the premises by investing huge amounts. During the course of arguments before this Court in this case, the plaintiff submitted that structural changes were made without the consent of the plaintiff and damaged the suit schedule property. To this extent, the counsel for the plaintiff filed photographs to show that the structures in the suit schedule premises were damaged. On the other hand, it is the contention of the defendants that he has renovated the structures but not caused any damages. But it is to be borne in mind that a tenant cannot make alterations, changes, renovations, without the consent of the landlord/owner of the property. It is not the case of the defendants that after obtaining prior permission from the landlord/owner, they have made renovations to the schedule premises. If the tenant engages any construction work or makes alterations or

additions to the house without written consent from the landlord, it is a ground for eviction. Most of the leases and rental agreements contain a provision that prevents a tenant from making improvements or alterations to a rental unit without getting the written consent of the landlord. In the case on hand, the defendants have made alterations to the schedule of property under the guise of renovation that too without the written consent of the plaintiff/landlord.

20. Learned counsel for the plaintiffs contended that the defendant No.1 is attempting to misrepresent that by deposit of amounts in compliance of the condition imposed by the Court for suspension of the decree and judgment passed by the trial court, the defendant No.1 has allegedly complied with the directions of the trial Court in I.A.Nos.1625 of 2021 and also the orders passed in I.A.No.989 of 2022 and thereby trying to reopen the entire evidence of the defendants, which is not permissible. As per the written arguments filed by the plaintiff, after passing of the orders of striking off the defense on behalf of the defendants, on 04.07.2022 i.e., three months after the date of order, the defendants have filed an application for enlargement of time for compliance of the order dated

01.04.2022 until 31.07.2022 and the said application was returned; the defendants have not resubmitted the said petition nor challenged the said orders of returning the application. It is further contended that under Proviso to Rule (2) of Order XV-A, the court can extend time by only 15 days and therefore, orders dated 01.04.2022 passed in I.A.Nos.1625 and 1626 of 2021 cannot be complied by deposit of the arrears and costs after filing of the appeal. In **Shaik Mohammed v. Sajid Mazheruddin Quadri**[3] this Court observed as follows:

> *"The first Appellate Court further observed that the plaintiff being the owner of the schedule properties has issued legal notices to the defendants stating that he is intending to terminate the tenancy of the defendants and to evict them from the suit schedule properties. Admittedly, the defence of the defendants was struck off before the trial Court. It was further observed that the defendants have committed default in payment of rents. By observing so, the first Appellate Court dismissed the appeal upholding the judgment of the trial Court."*

21. Learned counsel for the plaintiff relied upon a decision of this Court in **V. Srinivasulu v. Optival Healthe Solutions Private Limited**[4], wherein the rigors for compliance with the orders passed under Order XV-A and the mandatory striking off of defense that follows has been made clear. In **A. Manimanjari (Dr.)(Smt.) v. P. Bhaskara Rao**[5] the High Court for the erstwhile State of Andhra Pradesh observed as under:

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[3] 2024 SCC Online TS 188
[4] 2021 SCC Online TS 379
[5] 2008 SCC Online AP 653

> *"The lower Court, while observing that the defendant committed repeated defaults in complying with the conditions imposed by the Courts, allowed the application on the ground that the defendant voluntarily came forward to deposit the amount, which is likely to reduce the multiplicity of proceedings. After going through the entire material, I am convinced that the common order passed by the lower Court is on misgiving sympathy and there are no justifiable grounds for the petitioner to offer deposit of rent at the belated stage after losing battles at all levels. In the light of the above circumstances, the common order passed by the lower Court cannot be sustained and the same is liable to be set aside."*

22. In the case on hand, the defendants have not approached the Court to set aside the orders passed in an interlocutory application filed under Order XV-A of the Code of Civil Procedure and in fact the present appeal is filed challenging the decree passed by the trial Court, wherein the defendants were directed to vacate the suit schedule property. It is not the stage, wherein the defendants can be permitted to go back and cross examine the plaintiff, who was examined as PW1, because the suit has already been disposed of and the defendants have not challenged any of the earlier orders passed by the trial Court prior to the passing of the judgment, more particularly, when there are no sufficient grounds to set aside the impugned judgment. If at all the intention of the defendants is to participate in the trial proceedings i.e., to cross examine PW1, their efforts shall be prior to the disposal of the suit not after disposal of the suit. As stated supra, PW1 was examined in chief on 31.03.2023 and whereas the impugned judgment was

passed on 18.07.2023 i.e., four months after the closure of evidence of PW1. The defendants after availing all the remedies to escape from the liability to pay the rents i.e., filing transfer petition, rejection of plaint petition, filing recall petition etc., preferred the present appeal.

23. It is pertinent to note that the defendants have moved an application for return of plaint on the ground that the learned trial Court has no pecuniary jurisdiction, however, the said application was dismissed on contest and the said orders have also become final as the defendants have not challenged the said orders. Originally O.S.No.41 of 2021 was filed by the plaintiff on the file of learned XI Junior Civil Judge, City Civil Courts at Secunderabad but the defendants have filed Transfer O.P.No.46 of 2021 to transfer the suit of plaintiff from XI Junior Civil Judge, City Civil Courts at Secunderabad to I Additional Chief Judge, City Civil Courts, Secunderabad. The said transfer petition was allowed and renumbered as O.S.No.86 of 2021. It is the contention of the plaintiff that despite defendants seeking a transfer of the suits of the plaintiff, they still moved applications for return of the plaints on the ground of lack of pecuniary jurisdiction. If at all the trial Court, which has

passed the impugned judgment, has no pecuniary jurisdiction to deal with the case, then certainly the defendants ought to have filed an application for return of plaint at the initiate stage itself i.e., before the learned XI Junior Civil Judge, City Civil Courts at Secunderabad.

24. The ground urged by the defendants in not depositing the rents into the account of the plaintiff is that he has advanced some amounts to the plaintiff on various dates towards advance and for performance of plaintiff's son's marriage on a condition that fresh lease deed would be executed after expiry of subsisting lease deeds. However, the defendants have not even filed any documentary evidence to that extent and they did not even mention the specific dates on which they alleged to have advanced the said amounts to the plaintiff. It is the contention of the plaintiff that the defendants have committed default in payment of rents from April, 2020 to October, 2020 and that compelled the plaintiff to issue termination notice dated 05.10.2020. Further, the defendants have made alterations to the suit schedule property without prior written consent of the plaintiff for doing so, which is not permissible.

25. In view of the above facts and circumstances, this Court

is of the considered opinion that the trial Court on considering all the aspects in proper perspective has decreed the suit in favour of the plaintiff and against the defendants and thereby there is no necessity to interfere with the well reasoned judgment passed by the trial Court. Therefore, there are no merits in this appeal and the same is liable to be dismissed.

26. In the result, this appeal is dismissed. There shall be no order as to costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

JUSTICE M.G. PRIYADARSINI

Date: 12.07.2024

Note: LR copy to be marked.
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