

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

CIVIL REVISION PETITION NO.643 of 2023

Between:

Casa Lights and Home Appliances Private Limited

...Petitioner

AND

1. K.Beerappa and two others

...Respondents

ORDER PRONOUNCED ON: 14.09.2023

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE K.SARATH

1. Whether Reporters of Local : Yes/No
newspapers may be allowed to see
the Judgment ?
2. Whether the copies of judgment : Yes/No
may be marked to Law
Reports/Journals
3. Whether Their Lordship/Ladyship : Yes/No
wish to see the fair copy of
judgment

JUSTICE K.SARATH

+CIVIL REVISION PETITION NO.643 OF 2023

%Dated 14.09.2023

Casa Lights and Home Appliances Private Limited

...Petitioner

AND

\$ 1. K.Beerappa and two others

...Respondents

! Counsel for Petitioner: Sri P.Ramachandran

^ Counsel for Respondents: Sri N.Saida Rao

< GIST :

> HEAD NOTE :

? Case(s) referred:

1. 2011 (1) ALT 467 (S.B.)

THE HONOURABLE SRI JUSTICE K.SARATH

CIVIL REVISION PETITION No.643 of 2023

ORDER:

Heard Learned Senior Counsel appearing for the petitioner and Learned Counsel appearing for the respondents and perused the records.

2. Learned Senior Counsel appearing for the petitioner submits that the Petitioner-Company filed the suit for injunction in O.S.No.257 of 2021 dated 11.01.2023 on the file of the VI Additional District and Sessions Judge-cum-VI Additional Metropolitan Sessions Judge-cum-Family Court, Ranga Reddy District at Kukatpally. The petitioner herein has obtained interim injunction against the respondents which is subsisting as on this date in I.A.No.1160 of 2021. The petitioner is the tenant of the respondents. Pending suit, the respondent No.1 filed the petition under Order XV-A Rule 1 of CPC read with Section 151 of CPC in I.A.No.1472 of 2021 to direct the petitioner herein to pay the arrears of the monthly rents from August 2021 till December 2022. Pending disposal of the suit, the

petitioner herein filed a detailed counter and without considering the same, the Court below partly allowed I.A.No.1472 of 2021 on 11.01.2023 directed the petitioner to pay the arrears of monthly rents at the rate of Rs.10,00,000/- per month, if not paid, from August, 2021 till December, 2022 within one month from the date of the order and he is further directed to continue to deposit Rs.10,00,000/- per month in the Court, till the disposal of the suit. It is also made clear that in case of amicable understanding between the petitioner and respondent Nos.2 and 3, they can be permitted to withdraw the said sum in the ratio as agreed upon, which should be communicated to the Court in writing. The said orders are questioned in the present CRP.

3. The learned Senior Counsel for the petitioner further submits that the petition filed by the respondent No.1 herein under Order XV-A Rule 1 of CPC read with Section 151 of CPC is not maintainable in an injunction suit filed by the petitioner herein. The Court below erred in passing an order of allowing the same directed to pay the arrears of rent which is bad in law basing on the petition filed by the

respondent No.1 and the order passed by the Court below is liable to be set aside on the ground that the Court below has no power and jurisdiction under Order XV-A Rule 1 of CPC to direct the Plaintiff to pay the rents to the defendants.

4. The learned Senior Counsel for the petitioner further submits that the Court below has to pass orders in Order XV-A of CPC when the plaintiff seeks eviction of the tenant from his premises. In the instant suit filed by the petitioner is injunction suit being a tenant of the premises and the defendants cannot file the petition under Order XV-A Rule 1 of CPC for payment of arrears and requested to allow the CRP for setting aside the orders passed by the Court below. The Learned Senior Counsel for the petitioner relied on the following judgment:

Prakash Arts Vs. Mohammed Rafiuddin¹

5. On the other hand, the Learned Counsel appearing for the respondent Nos.1 to 3 submits that the CRP is not maintainable either in eye of law or in facts and

¹ 2011 (1) ALT 467 (S.B.)

circumstances of the case. The petitioner filed the present CRP by suppressing the real facts and the Revision petitioner is liable to pay the arrears of rent by virtue of the registered lease agreement executed by the respondent No.3 jointly with the Respondent No.2 in favour of the revision petitioner

6. The Learned Counsel appearing for the respondent Nos.1 to 3 further submits that the Court below after hearing both sides, passed the impugned orders directing the revision petitioner to deposit the rent as admitted by the revision petitioner at the rate of Rs.10 Lakhs per month and the petitioner without paying the rents as admitted by him questioning the orders on the ground that the Order XV-A of CPC is not applicable to the petitioner. The petitioner is liable to pay the monthly rents at the rate of Rs.10 Lakhs per month pending suit as admitted by the petitioner. The provision of Order XV-A was introduced by the amendment of CPC in the year 2015 for the protection of leased building owners i.e., lessor for the payment of rent during the pendency of the suit if they want to evict the tenant from the leased out premises. The concept of the

provision of Order XV-A is to protect the leased building owner and continuing the payment of rent as agreed by the tenant. The respondent No.1 filed the petition under Order XV-A read with Section 151 of CPC, but the orders passed by the Trial Court in above IA basing on the rent admitted by the revision petitioner that he is liable to pay Rs.10 Lakhs per month. When the claim is a legal for which the respondents are entitled mere mentioning of the provision under Order XV-A or other is not bar to the Court to grant the relief basing on the admissions made by the parties. The revision petitioner is not entitled to continue his tenancy without payment of rent either by the compliance of the order or in terms of registered lease agreement. Therefore, there is no illegality in order passed by the Court below and requested to dismiss the Civil Revision Petition.

7. After hearing both sides and perusing the records, this Court is of the considered view that the petitioner is tenant to the respondent Nos.1 to 3 and there is registered lease agreement between the parties. The petitioner approached the Court below for injunction against respondent Nos.1 to 3 and the Court below granted interim injunction in

I.A.No.1472 of 2021 and thereafter, the respondent No.1 being one of the owners filed a petition under Order XV-A Rule 1 of CPC read with Section 151 of CPC for payment of arrears and monthly rents till the disposal of the suit. The Court below after hearing both sides partly allowed the said petition and directed the petitioner herein to pay the arrears of the rent at the rate of Rs.10 Lakhs per month, if not paid, from August, 2021 till December, 2022 within one (1) month from the date of the order and further directed to continue to deposit Rs.10 Lakhs per month in the Court, till the disposal of the suit.

8. The Order XV-A Rule 1 of CPC is as follows:

“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 up to 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”.

9. The said order clearly shows that the suit must be recovery of possession. The prayer for recovery of rent or

compensation for use of and occupation the defendant must plead no arrears or no arrears are paid to the land lord or plaintiff which needs to examine what Court to decide what admitted rent. If the Court feels that the admitted rents and the arrears have to be paid by the defendant in the suit and as per the Order XV-A of the CPC, the Court has power to pass orders to pay the arrears of rent and continue to pay rent till disposal of suit was not complied by the defendant his defence has to be struck off. In the instant case, if the order was not complied by the petitioner, there is no question of struck off of the defence arise as the petitioner herein is the plaintiff in the suit. The Order XV-A of CPC has to be filed by the plaintiff for eviction. But the instant suit is filed for injunction by the tenant against the owners.

10. Moreover, the Judgment relied by the Learned Senior Counsel for the petitioner is squarely apply to the instant case. This Court in ***Prakash Arts Vs. Mohammed Rafiuddin(Supra-1)*** held as follows:

"There is no dispute that the petitioner was the licensee of the respondent. This fact would certainly have clothed the

Trial Court to entertain an application under Order XVA CPC., and to issue directions for payment of arrears of license fee with threat of forfeiture of defence, in the event of default in payment of rent, or license fee. However, another basic and important factor is that the suit must be filed for the relief of eviction. That, in turn, presupposes the continued existence of lease or licence. In the instant case, it is matter of record that the petitioner terminated the lease. The legality, or otherwise of such termination, is the very issue in the suit. The prayer itself is for declaration of the termination of lease, as illegal and untenable. More than that, there is no prayer in the suit for eviction of the petitioner. Therefore, the very basis, or foundation, for invoking Order XVA CPC is lacking".

11. There has to be prayer in the suit for eviction of the parties for invoking the Order XV-A of CPC. In the instant case, the suit is filed for injunction and the petition filed under Order XV-A by the defendant is not maintainable and the Court below lost sight on applying the Order XV-A of CPC in the petition filed by the respondent No.1 without taking into account that non compliance of impugned order, the struck off of defence of the petitioner does not arise.

12. In view of the same, the impugned order is liable to be set aside. In fact, the petitioner admitted that he has to pay Rs.Ten (10) Lakhs per month as per registered

agreement. The respondent Nos.1 to 3 has to approach competent Civil Court to get the arrears in appropriate proceedings.

13. In view of the above findings, the CRP is disposed of by setting aside the orders dated 11.01.2023 passed in I.A.No.1472 of 2021 in O.S.No.257 of 2021 on the file of VI Additional District and Sessions Judge-cum-VI Additional Metropolitan Sessions Judge-cum-Family Court, Ranga Reddy District at Kukatpally and granting liberty to the respondent Nos.1 to 3 to approach appropriate forum for payment of rents and recovering arrears from the petitioner herein by filing appropriate petitions. There shall be no order as to costs.

14. Miscellaneous petitions pending, if any, in this petition shall stand closed.

JUSTICE K.SARATH

Dated:14.09.2023.

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