

Advocate for third party applicant filed I.A. No.5 U/s.151 of C.P.C. stating that they have filed review petition before Hon'ble High Court of Karnataka as against judgment in RFA and they will obtain the stay and till then the hearing on I.A. No.2 may be deferred. The third party Advocate also filed memo with documents and filed additional affidavit of third party applicant. Sri. Kiran V. Ron, Advocate filed vakalath for third party along with K.L. Patil, Advocate.

For adjournment, Advocate for Decree-Holder opposed.

Heard both side on I.A. No.5. It appears that the present third party was not party to RFA before Hon'ble High Court of Karnataka. The judgment passed in RFA is confirmed by Hon'ble Apex Court in SLP as well as in review petition. Hence, whether the present third party can file review petition has to be decided by Hon'ble High Court of Karnataka. Only on this ground this Court cannot defer hearing on third party applicant. Accordingly I.A. No.5 is rejected.

Heard both side on I.A. No.2.

PSCJ and JMFC, Hubballi.

Advocate for third party argued that the evidence is required and detail enquiry is required on I.A. No.2. Advocate for Decree-Holder opposed said submission. Perused the materials on record. The present third party is stated to have come into possession of the suit property as a legal heirs of K.H. Patil, who was sub-lessee of Sidlingappa Bulla. Decree-Holder has denied the lease deed dated 06.04.1964 as well as extension of the said lease on 03.04.1984 executed by Sidlingappa Bulla in favour of K.H. Patil. The Decree-Holders have also denied that the third party applicants / lessees have put up construction of commercial building over the leasehold property. The third party obstructers have produced the lease deed dated 06.04.1964 and extension of the said lease deed dated 03.04.1984. As per the earlier lease deed the lease was for the period of 15 years and as per the condition No.10 of the said lease deed lessee shall construct the building over the leasehold property and at the time of vacating the premises they shall make valuation of the said building and lessor shall pay the valuation of the building. Now Decree-Holders and Judgment-Debtor No.1, 5 and 6 are claiming the possession of the

said building. But looking to the nature of the lease in favour of K.H. Patil under a lease deed dated 06.04.1964 this Court is of the considered opinion that the detail enquiry is required on I.A. No.2. As per the citation relied by the Decree-Holder in **AIR 1998 SC 1754** itself it is held as under:

“Court can make the adjudication on admitted facts or even on the averments made by the resister. Of course the Court can direct the parties to adduce evidence for such determination if the Court deems it necessary.”

So, by applying the said ruling and the facts of this case I hold that the evidence is required to determine the rights of the parties.

This Court while passing the order on IA No.1, 3 and 4 U/o.21 Rule 97 of C.P.C. has held that no evidence is required, but the said sub-lessees are claiming rights through defendants No.12 and 13 of the suit i.e. L.Rs. of Sidlingappa Bulla (who were parties to the suit). But the present third party is claiming right from original purchaser of the leasehold rights Sidlingappa Bulla. So, considering the nature of the lease in favour of third party and terms and conditions of the lease I hold that

the detail enquiry is required. The valuation of the building has to be done and whether lessee shall remove the building or shall recover the valuation of the building from lessor etc., requires to be considered. For that evidence is required. The order on application U/o.21 Rule 97 of C.P.C. is treated as decree. So, I hold that the detail enquiry has to be considered on I.A. No.2.

For evidence, call on 04.04.2024.

PSCJ and JMFC, Hubballi.