

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

FRIDAY, THE TWENTY THIRD DAY OF AUGUST
TWO THOUSAND AND TWENTY FOUR



PRESENT

THE HONOURABLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

CIVIL REVISION PETITION NO: 770 OF 2024

Petition under Article 227 of the Constitution of India, praying that in the circumstances stated in the grounds filed herein, the High Court may be pleased to allow the revision while setting aside the Order dated 09.02.2024 in I.A.No.555 of 2021 in O.S.No.43 of 2021 on the file of the I Additional District Judge, Vizianagaram.

BETWEEN:

Mehmood Sherriff @ Mehmoodulla Sheriff, S/o. Bahrullah Sheriff, Aged 39 years, R/o. 1-2-24A, Tailukula Street, Cantonment, Vizianagaram Town and District.

...PETITIONER/RESPONDENT NO.2/DEFENDANT NO.2

AND

1. Dr. Mohammed Azazur Rehman, S/o Late Abdullah Rehman, Aged 48 Years, R/o Cantonment, Vizianagaram Town and District

... ..RESPONDENT/PETITIONER/PLAINTIFF.

2. Noohman, S/o Late Abdullah Rehman, Aged 39 years, R/o D. No. 21-44-10, Dwaramvari Street, Changalraopeta, Near Jamia Masjid, Visakhapatnam

...RESPONDENT/RESPONDENT NO.1/DEFENDANT NO.1.

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings in O.S. No. 43 of 2021 on the file of the I Additional District Judge Court, Vizianagaram pending the Civil Revision Petition.

Counsel for the Petitioner : SRI S V S S SIVA RAM

Counsel for the Respondents : SYED AZMATULLAH

The Court made the following ORDER :

THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

CIVIL REVISION PETITION No. 770 OF 2024

ORDER:-

1. This civil revision petition is filed under Article 227 of the Constitution of India, challenging the order in I.A.No.555 of 2021 in O.S.No.43 of 2021 dated 09.02.2024 passed by the I Additional District Judge, Vizianagaram.

2. For the sake of convenience, parties will hereinafter be referred as referred before the Trial Court.

3. The petitioner herein is the second defendant in O.S.No.43 of 2021. The first respondent herein/plaintiff filed O.S.No.43 of 2021 for eviction of the defendants from the plaint schedule property, besides claiming recovery of arrears of rent from the month of April, 2019 onwards till the end of October, 2019 @ Rs.20,000/- per month for 7 months commencing from April, 2019 onwards till the end of October, 2019, amounting to Rs.1,40,000/- and also claimed use and occupation damages amounting to Rs.2,00,000/- from September, 2019 to March, 2020.

4. The petitioner/plaintiff filed I.A.No.555 of 2021 in O.S.No.43 of 2021 to direct the respondents therein to pay Rs.1,40,000/- towards

arrears of rent from April, 2019, till the end of October, 2019 @ Rs.20,000/- per month and also to pay Rs.50,000/- tentatively per month from November, 2019 onwards.

5. Upon hearing both the parties, the Trial Court partly allowed I.A.No.555 of 2021 in O.S.No.43 of 2021 on 09.02.2024, the operative portion of the order is extracted hereunder:

"In the result, the petition is allowed in part directing the respondents/defendants to deposit an amount of Rs.1,40,000/- towards arrears of rent from April, 2019 till the end of October, 2019 @ Rs.20,000/- per month to the credit of the suit, and shall continue to deposit the rent @ Rs.20,000/- per month from November, 2019 till disposal of the suit, and with regard to other reliefs claimed, it shall be decided only after full fledged trial in the main suit.

6. Learned counsel for the petitioner submits that, admittedly, the first respondent is the absolute owner and possessor of the suit schedule property of O.S.No.43 of 2021 and O.S.No.123 of 2021. Further, the said vacant land was parted in favour of the second respondent as well as the petitioner through separate unregistered lease deeds dated 07.11.2008 and 30.11.2008 for a period of 11 months. As per the terms of the said lease deeds, the petitioner was granted lease in respect of Northern Part

of the schedule property, agreeing to pay an amount of Rs.9,800/- per month on or before the 5th of succeeding month.

7. Similarly, first respondent also executed another lease deed in favour of the second respondent herein dated 07.11.2008 in respect of north east corner part of the suit schedule property for a period of 11 months i.e. upto 07.11.2008 to 06.10.2019 @ 9,800/- per month. He further submits that the petitioner has been paying monthly rent without any default and after completion of lease period, the first respondent renewed the lease for a period of 20 years. Accordingly, the petitioner has been continuing as lessee in respect of entire suit schedule property after expiry of lease in favour of the second respondent herein since no extension was granted. He submits that the petitioner is willing to pay the arrears payable from March, 2021 to April, 2022 i.e. for a period of 14 months @ Rs.9,800/- per month and to continue the admitted rent hereafter pending suit. He further submits that the Court below after believing the version of the first respondent, came to an erroneous conclusion and directed the petitioner to pay Rs.20,000/- per month from April, 2019 to October, 2019, as prayed by the petitioner, as if the entire suit schedule property was leased out to the petitioner contrary to the fact that the second respondent is the lease holder for part of the schedule property for a period of 11 months from 11.07.2018 to 06.10.2019.

8. He further submits that, since the petitioner has spent Rs.12,00,000/- for development of the suit schedule property, since it is a pit of 8 feet depth, pursuant to which only the nominal rent of Rs.9,800/- was fixed by the first respondent. Therefore, the assumption of the Court below that the entire suit schedule property would fetch only Rs.20,000/- per month and directed to pay Rs.20,000/- till existence of lease till October, 2019 for a period of 7 months is contrary to the facts and circumstances of the case and contrary to the terms of lease agreement, as such the order of the Court below is liable to be set-aside.

9. The other contention of the learned counsel for the petitioner is that, the Court below also erred in directing the petitioner herein as if the petitioner is only leaseholder of the entire suit schedule property and directing to pay Rs.20,000/- per month to the credit of the suit from November, 2019 is also contrary to the terms of the lease agreement, therefore, the order of the Court below is liable to be set-aside.

10. Learned counsel for the first respondent filed counter affidavit and would submit that, the petitioner/defendant No.2 and respondent/Defendant No.1 together after entering into lease deed dated 07.11.2018 had obtained the GSTIN No.37BWFPS8044G11Z5 under the trade name S.U.S Traders. The effective date of registration is 13.11.2018. As per

the GST records the legal name of business stands in the name of Mehmoodullah Sheriff and trade name as S.U.S. The full form of S.U.S. stands for Sara, Usma, and Sufiyan, these are the names of three children of Noohman i.e. the respondent/defendant No.1. Given the facts above, the allegations that the petitioner/defendant No.2 alone had entered into a lease with the first respondent after the cancellation of the lease with respondent/defendant No.1 is a ploy devised by the petitioner/defendant No.2 and the respondent/defendant No.1 collusively to squat on the tenanted site without paying the rent nor clearing the huge accumulated arrears by creating unfounded and imaginary confusion.

11. He affirms that the petitioner herein is the leaseholder of the entire suit schedule property and the firm is also in the name of the petitioner. For the sake of tax benefit, at his request, two lease deeds were executed by the first respondent. Thereafter, the lease deed in favour of the second respondent was cancelled by the first respondent herein, who is the lessor of the entire suit schedule property, after expiry of the lease period.

12. He further submits that, the other contention of the petitioner that he already had spent Rs.12,00,000/- towards development of the suit schedule property is also not true and correct, and the entire property is

surrounded by compound wall and the petitioner having felt that it is secured place to keep the business stock since the entire vacant land is surrounded by a compound wall. Therefore, the petitioner is liable for payment of Rs.20,000/- from November, 2018 to November, 2019, since he is in possession and enjoyment of the entire property.

13. He further submits that, the subject lease was already expired by October, 2019 itself. But, for the extraneous reasons, the petitioner has been continuing in possession and enjoyment of the property without paying even admitted rent even after specific direction of the Court below and got filed O.S.No.123 of 2021 on the file of the Principal Junior Civil Judge, Vizianagaram and obtained temporary injunction against the first respondent herein. The entire action of the petitioner is contrary to the terms and conditions of the lease. He further submits that, a person who is in default of payment of the lease amount as per the terms and conditions of the lease deed, the first respondent herein is entitled to get evicted the petitioner from the suit schedule property, for which, he filed suit O.S.No. 43 of 2021 on the file of the I Additional District Judge, Vizianagaram, for eviction and damages.

14. He further submits that, I.A.No.555 is filed by the first respondent for recovery of arrears as well as the amounts payable by the petitioner,

pending disposal of the suit O.S.No. 43 of 2021 on the file of the I Additional District Judge, Vizianagaram.

15. Learned counsel for the respondent submits that, the Court below rightly held that, since the petitioner is in occupation of the suit schedule property and as such, the petitioner is liable to pay monthly rent @ Rs.20,000/- per month and also directed to pay Rs.20,000/- per month, pending suit. He further submits that, there are no grounds to interfere with the order of the Court below and the order of the Court below is a well considered order after considering the facts and circumstances, balance of convenience and prima facie case and requested to dismiss the civil revision petition.

16. Heard learned counsel for the revision petitioner, learned counsel for the respondent, perused the material available on record.

17. The fact remains that, there are two lease deeds executed by the first respondent in favour of the second respondent as well as the petitioner on 07.11.2018 and 30.11.2018 in respect of the entire suit schedule property in two parts for a period of 11 months, lease @ Rs.9,800/- per month each. Therefore, the entire lease amount fixed against the two lease holders is Rs.19,600/- per month. Whereas, the respondent contended that the lease granted in favour of the second

respondent was cancelled and entire suit schedule property was under occupation of the petitioner herein but, it is not substantiated by any such document of cancellation and more so, the same is not filed herewith along with the counter affidavit to substantiate his claim. But, it is an admitted fact that the period of lease was already expired long back in the year 2019.

18. It is further observed that, the respondent filed one GST Registration Certificate of SUS Traders in the name of the petitioner to prove that the only firm is doing business in the entire suit schedule property. He also filed copies of GST Registration Certificate with Registration No.37BWFPS8044G1Z5 on behalf of SUS traders, as sole proprietor of the said firm which has been occupied the entire suit schedule property for its business purpose. Therefore, the contention of the respondents that the entire suit schedule property is under occupation and utilization by the petitioner only even though the lease was executed in favour of the petitioner as well as the second respondent and also the contention of the respondent that the two lease deeds were executed at the behest of the petitioner to avoid tax liability appears to be valid and reasonable, for the reason that, after expiry of lease period, the petitioner herein is only continuing in the possession.

19. In fact, there are two lease deeds dated 07.11.2018 and 30.11.2018. Lease Deed dated 07.11.2018 was cancelled and thereafter, the petitioner had entered into another Lease Deed dated 30.11.2018. The admitted lease amount payable by the petitioner is Rs.9,800/- only from November, 2018 to October, 2019. It is further observed that, in the absence of any lease for further period, either in favour of the petitioner as well as the second respondent, since the petitioner admitted his possession over the entire suit schedule property by filing O.S.No.123 of 2021, the petitioner is liable for payment of monthly rent in respect of the entire suit schedule property as per the terms of the lease was directed by the Court below.

20. In view of the said facts, the Court below allowing the I.A.No.555 of 2021 in O.S.No.43 of 2021, directing the petitioner to pay the entire lease amounts, ignoring the fact that part of the suit schedule property was leased out to the second respondent is erroneous. The Court below also erred in arriving at Rs.20,000/- should be paid by the petitioner from the date of lease, whereas, the agreed amount is Rs.19,600/- (Rs.9,800/- x 2) per month in respect of the entire suit schedule property, as such the petitioner is liable to pay Rs.9,800/- per month till the end of the lease period i.e. upto October, 2019. Thereafter, the petitioner is only liable to pay the amount as directed.

21. In view of the reasons stated above, the civil revision petition is disposed of, modifying the order of the Court below and the petitioner is liable to pay arrears @ Rs.9,800/- per month from April, 2019 to October, 2019. Thereafter, the petitioner shall deposit an amount of Rs.19,600/- per month, as directed till date and shall deposit every month as per the terms of the lease.

22. Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.

SD/- P.VENKATA RAMANA
JOINT REGISTRAR

//TRUE COPY//


SECTION OFFICER

To,

1. The I Additional District Judge, Vizianagaram.
2. One CC to Sri. S.V.S.S.Siva Ram, Advocate [OPUC]
3. One CC to Sri. Syed Azmatullah, Advocate [OPUC]
4. THREE CD COPIES

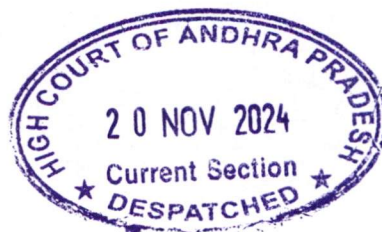
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HIGH COURT

DATED:23/08/2024

ORDER

CRP.No.770 of 2024



CIVIL REVISION PETITION IS DISPOSED OFF.