IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

TUESDAY, THE FIFTEENTH DAY OF OCTOBER

TWO THOUSAND AND TWENTY FOUR

:PRESENT:

THE HONOURABLE DR. JUSTICE G.RADHA RANI

IA No. 2 OF 2024
IN
IA No. 1 OF 2024
IN
CCCA NO: 78 OF 2024

IA No. 1 OF 2024

Between:

1. Mr. M.B. Chander, S/o M. Bhadriah,
2. Mrs. Padma Chander, W/o M.B. Chander,
3. Rishi Public School Educational Society, Rep., by its authorized officer Mrs. Padma Chander, Having its Branch office at #3-6-325, Hyderguda, Hyderabad-029.

...Petitioner/Appellants/Petitioners
(Appellant in CCCA 78 OF 2024
on the file of High Court)

AND

M/s Balakrishna Rao Charitable Trust, Having its office at Door No.3-6-293/2/D, Hyderguda, Hyderabad- 029, Rep by its Managing Trustee Sri Jayant Tagore, Aged about 52 years, Occ. Business, R/o. Jubilee Hills, Hyderabad.

...Respondents/ Respondents
(Respondents in-do-)

Petition under Section 151 of C.P.C praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay the operation of the Judgment and Decree, dt: 02.04.2024 passed in OS No.1005 of 2014 on the file of the Ld. XIV Additional Chief Judge, City Civil Court at Hyderabad pending disposal of CCCA No. 78 of 2024, on the file of the High Court.

IA No. 2 OF 2024

Between:

M/s Balakrishna Rao Charitable Trust, Having its office at Door No.3-6-293/2/D, Hyderguda, Hyderabad- 029, Rep by its Managing Trustee Sri Jayant Tagore, Aged about 52 years, Occ. Business, R/o. Jubilee Hills, Hyderabad.

...Petitioner/Respondent/Respondent
(Respondent in CCCA 78 OF 2024
on the file of High Court)

AND

1. Mr. M.B. Chander, S/o M. Bhadriah, R/o Plot No.54-C, Jubilee Hills, Film Nagar, Road No.1, Hyderabad
2. Mrs. Padma Chander, W/o M.B. Chander, R/o Plot No.54-C, Jubilee Hills, Film Nagar, Road No.1, Hyderabad
3. Rishi Public School Educational Society, Rep. by its authorized officer Mrs. Padma Chander, Having its Branch office at #3-6-325, Hyderguda, Hyderabad-029.

...Respondents/Petitioner/Appellant
(Respondents in-do-)

Petition under Section 151 of C.P.C praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to vacate the interim order dated 02-05-2024 in IA No.1 of 2024 in CCCA No.78 of 2024, Pending disposal of CCCA No.78 of 2024, on the file of the High Court.

The petition coming on for hearing, upon perusing the Petition and the affidavit filed in support thereof and the order of the High Court dated 02.05.2024 made in IA No.1 of 2024 and upon hearing the arguments of SRI A VENKATESH Senior Counsel rep. for SRI VADEENDRA JOSHI Advocate for the Petitioner in IA No.1 of 2024 and Respondent in IA No.2 of 2024 and of SRI VIVEK JAIN Advocate for the Respondents in IA No.1 of 2024 and petitioners in IA No.2 of 2024, the Court made the following

ORDER

THE HONOURABLE Dr. JUSTICE G. RADHA RANI

I.A.No.2 of 2024
In
I.A.No.1 of 2024
in
C.C.C.A.No.78 of 2024

ORDER:

This application is filed by the petitioners - respondents to vacate the interim order dated 02.05.2024 passed in I.A.No.1 of 2024 in C.C.C.A.No.78 of 2024.

2. Heard Sri Vivek Jain, learned counsel for the petitioner – respondent and Sri A.Venkatesh, learned Senior Counsel representing Sri Vadeendra Joshi, learned counsel for the respondents – appellants.

3. I.A.No.1 of 2024 is filed by the respondents – appellants along with the appeal seeking stay of operation of the judgment and decree dated 02.04.2024 passed in O.S.No.1005 of 2014 on the file of the learned XIV Additional Chief Judge, City Civil Court at Hyderabad. While passing the order in I.A.No.1 of 2024 on 02.05.2024, this Court granted Stay subject to the petitioners paying an amount of Rs.4,00,000/- to the respondent – plaintiff on or before 14.06.2024.

4. Learned counsel for the vacate petitioners submitted that the appellants – defendants were tenants of the suit schedule property. The vacate petitioner was

the plaintiff. The plaintiff filed the suit for recovery of arrears of Rs.26,18,200/-, which fell due as on the date of filing the suit apart from seeking the relief of eviction and mesne profits of Rs.5,00,000/- per month. The execution of the lease agreement dated 27.03.2003 was not in dispute. The stipulated lease in the lease agreement expired on 27.03.2008. Thereafter, the lease continued on month to month basis governed under Section 106 of the Transfer of Property Act, 1882 terminable by 15 days notice. The plaintiff issued a notice dated 21.07.2014 and the same was duly served on the appellant - defendant under Ex.A5. The notice was valid. The plaintiff having validly terminated the lease under Section 106 of the Transfer of Property Act, 1882 was entitled for recovery of possession. He could not be compelled to continue to let out the premises nor was the plaintiff under any obligation to do so notwithstanding the fact that the appellant was running a school. The appellant - defendant failed to pay rents and fell due a sum of Rs.26,18,200/- towards rents as on the date of filing of the suit. The appellant obtained Stay orders on the ground that the petitioner – respondent - plaintiff was receiving monthly rents with respect to the suit schedule property and that there would be no prejudice caused to the rights of the plaintiff. But the appellants did not have a *prima facie* case or balance of convenience in their favor. It was the plaintiff, who would be put to irreparable loss, since the appellants were enjoying prime property by paying a meager amount of Rs.99,225/- towards rent and was continuing for more than a decade amounting to exploitation of the plaintiff's property denying the plaintiffs right to receive the property's value worth rents. The appellant avowed not to vacate the subject premises by raising sympathetic grounds of running a school in the subject property at the cost of loss of more than several crores of rupees and obtained interim orders dated 02.05.2024. There had always been huge arrears of rents. Even during the pendency of the proceedings, the rents had not been paid regularly and filed an annexure to the affidavit showing the payments of the rents received by the petitioner - plaintiff - owner of the property and further submitted that a tenant had no right to continue in the property after the termination of lease. He further submitted that the appellant had successfully dragged the matter for 10 long years from the date of institution of the suit. Even as per the admitted lease deed, the rent was agreed to be enhanced at 5% per annum. As such, the rents for the period for the year 2013-14 would have been Rs.1,50,000/-, for the year 2014-15 it would have been Rs.1,57,500/-, for the year 2015-16 it would have been Rs.1,65,375/-, for the year 2016-17 it would have been Rs.1,73,643/-, for the year 2017-18 it would have been Rs.1,82,325/-, for the year 2018-19 it would have been Rs.1,91,441/-, for the year 2019-20 it would have been Rs.2,01,013/-, for the year 2020-21 it would have been Rs.2,11,063/-, for the year 2021-22 it would have been Rs.2,21,616/-, for the year 2022-23 it would have been Rs.2,32,696/-, for the year 2023-24 it would have been 2,44,330/-. The appellant was unnecessarily dragging the suit and was squatting over the property by paying a rent of Rs.99,295/- payable as on the year 2011-12. The plea of the appellant that he was running a school, would not entitle him to continue the lease after termination. The very purpose of terminating the lease was defeated, since for the past 10 years, the appellant had been irregularly remitting Rs.99,225/-. When infact the lease continued, the total rents for the period 2014-24 would have been Rs.2,44,330/- per month as against a meager payment of Rs.99,225/- per month paid by the appellant.

5. Learned counsel for the petitioner relied upon the judgment of the Hon'ble Apex Court in **M/s.Atma Ram Properties (Private) Limited v. M/s.Federal Motors Private Limited**[1] on the aspect that:

> "Condition that may be imposed under Order XLI Rule 5(3)(c) is not the only condition which the Appellate Court can impose. Since the power to grant Stay is equitable in nature, an applicant for Stay must do equity for seeking equity. Hence, depending on the facts of a given case, an Appellate Court while passing an order of Stay may put the parties on such terms, the enforcement whereof would satisfy the demand for justice of the party found successful at the end of the appeal. The applicant can be put on such reasonable terms as would in the opinion of the Appellate Court reasonably compensate the

[1] (2005) 1 SCC 705

> decree holder for loss occasioned by delay in execution of the decree by the grant of Stay, in the event of the appeal being dismissed."

6. Learned Senior Counsel for the respondent - appellant on the other hand contended that the jurisdiction of the Civil Court was barred to try the suit in view of the express bar under Section 151 of the Endowments Act. Under the provisions of the Charitable Hindu Religious Institutions and Endowments Act, 1987, the Endowments Tribunal was having jurisdiction to decide the reliefs prayed for by the plaintiff. The notice dated 21.07.2014 would not amount to valid termination of lease, since none of the ingredients of Section 106 of the Transfer of Property Act, 1882 were fulfilled. The petitioners - plaintiffs failed to provide for a covered and developed terrace as promised under the Agreement and despite the same, the appellants were paying the rent amount in total. The contention that there were huge arrears of rent during the pendency of the proceedings was incorrect. The trial court had already decided the issue of enhancement of rent, which was the ground for appeal and denied that the defendant was squatting over the property. He contended that there were no merits to vacate the petition filed vide I.A.No.1 of 2024 and prayed to dismiss the same.

7. Perused the record.

8. The record would disclose that the suit was filed by the plaintiff for eviction of the defendants seeking the relief of delivery of vacant possession of the suit schedule property, for recovery of arrears of rent of Rs.26,18,200/- for the months of July, 2013 to November, 2014 and for mesne profits of Rs.5.00 lakhs per month from the date of suit till the date of delivery of the actual vacant physical possession of the suit schedule property. The plaintiff was a charitable trust and the defendants 1 and 2 were running an educational society by name Rishi Public School (defendant No.3) represented by defendant No.2. The suit schedule property was consisting of ground, first and second floors and terrace totally admeasuring 11,484 square feet. As per the lease agreement dated 27.03.2003, the rent agreed for each of the ground, first and second floors of the suit schedule property was at Rs.15,500/- per month and Rs.7,750/- per month for the terrace and the total amount of the lease of the suit schedule property stood at Rs.54,250/- per month. The defendants had deposited a refundable Security Deposit of Rs.1,93,750/-. It was agreed between the parties that the lease would be enhanced at 5% rent per annum. It was further stated that the ground and second floors were handed over on 27.03.2003, the first floor in December, 2003 and the terrace was stated to be handed over on 02.04.2003. The lease expired on 27.03.2008. As it was an un-registered lease, the trial court considered that the defendants occupied the property on month to month basis. The trial court on considering the evidence observed that the last paid

rent by the defendants was Rs.99,225/- per month and observed that since the plaintiff claimed arrears from July, 2013 to November, 2014 by applying the last paid rent of Rs.99,225/- considered that it would amount to Rs.15,87,600/- and by deducting the property tax of Rs.11,36,742/- paid by the defendants, decreed the suit directing the defendants to vacate the suit schedule property within 30 days and deliver the same to the plaintiff and directed to pay Rs.14,81,458/- towards arrears of rent and directed to pay the rental amount @ Rs.99,225/- from the date of suit till the date of eviction.

9. As seen from above record, the trial court had not considered that the agreed enhancement of rent was at 5 % per annum by the date of entering into the lease agreement itself on 27.03.2003. As such, as on the date of filing of the suit in the year 2014 itself, the rent would have been Rs.1,50,000/- as contended by the learned counsel for the petitioner - respondent - defendant.

10. The Hon'ble Apex Court in **M/s.Atma Ram Properties (Private) Limited v. M/s.Federal Motors Private Limited** (cited supra), observed that:

> "4. Ordinarily this Court does not interfere with discretionary orders, more so when they are of interim nature, passed by the High Court or subordinate Courts/Tribunals. However, this appeal raises an issue of frequent recurrence and, therefore, we have heard the learned counsel for the parties at length. Landlord-tenant litigation constitutes a large chunk of litigation pending in

the Courts and Tribunals. The litigation goes on for unreasonable length of time and the tenants in possession of the premises do not miss any opportunity of filing appeals or revisions so long as they can thereby afford to perpetuate the life of litigation and continue in occupation of the premises. If the plea raised by the learned senior counsel for the respondent was to be accepted, the tenant, in spite of having lost at the end, does not lose anything and rather stands to gain as he has enjoyed the use and occupation of the premises, earned as well a lot from the premises if they are non-residential in nature and all that he is held liable to pay is damages for use and occupation at the same rate at which he would have paid even otherwise by way of rent and a little amount of costs which is generally insignificant.

7. Sub-Rule (1) and (3) of Rule 5 of Order XLI of the Code read as under:-

"**5.Stay by Appellate Court**:

(1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

* * *

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the court making it is satisfied -

> (a) that substantial loss may result to the party applying for stay of execution unless the order is made;
>
> (b) that the application has been made without unreasonable delay; and
>
> (c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

* * *

8. It is well settled that mere preferring of an appeal does not operate as stay on the decree or order appealed against nor on the proceedings in the court below. A prayer for the grant of stay of proceedings or on the execution of decree or order appealed against has to be specifically made to the appellate Court and the appellate Court has discretion to grant an order of stay or to refuse the same. The only guiding factor, indicated in the Rule 5 aforesaid, is the existence of sufficient cause in favor of the appellant on the availability of which the appellate Court would be inclined to pass an order of stay. Experience shows that the principal

consideration which prevails with the appellate Court is that in spite of the appeal having been entertained for hearing by the appellate Court, the appellant may not be deprived of the fruits of his success in the event of the appeal being allowed. This consideration is pitted and weighed against the other paramount consideration: why should a party having succeeded from the Court below be deprived of the fruits of the decree or order in his hands merely because the defeated party has chosen to invoke the jurisdiction of a superior forum. Still the question which the Court dealing with a prayer for the grant of stay asks to itself is: Why the status quo prevailing on the date of the decree and/or the date of making of the application for stay be not allowed to continue by granting stay, and not the question why the stay should be granted.

9. Dispossession, during the pendency of an appeal of a party in possession, is generally considered to be 'substantial loss' to the party applying for stay of execution within the meaning of clause (a) of sub-rule (3) of Rule 5 of Order XLI of the Code. Clause (c) of the same provision mandates security for the due performance of the decree or order as may ultimately be passed being furnished by the applicant for stay as a condition precedent to the grant of order of stay. However, this is not the only condition which the appellate Court can impose. The power to grant stay is discretionary

and flows from the jurisdiction conferred on an appellate Court which is equitable in nature. To secure an order of stay merely by preferring an appeal is not the statutory right conferred on the appellant. So also, an appellate Court is not ordained to grant an order of stay merely because an appeal has been preferred and an application for an order of stay has been made. Therefore, an applicant for order of stay must do equity for seeking equity. Depending on the facts and circumstances of a given case an appellate Court, while passing an order of stay, may put the parties on such terms the enforcement whereof would satisfy the demand for justice of the party found successful at the end of the appeal. In **South Eastern Coalfields Ltd. vs. State of M.P. & Ors.,** [(2003) 8 SCC 648], this Court while dealing with interim orders granted in favor of any party to litigation for the purpose of extending protection to it, effective during the pendency of the proceedings, has held that such interim orders, passed at an interim stage, stand reversed in the event of the final decision going against the party successful in securing interim orders in its favor; and the successful party at the end would be justified in demanding compensation and being placed in the same situation in which it would have been if the interim order would not have been passed against it. The successful party can demand (a) the delivery to it of benefit earned by the opposite party under the interim order of the High Court, or (b) compensation for what it has lost, and to grant such relief is the inherent jurisdiction of the Court. In our opinion, while granting an order of stay under Order 41 Rule 5 of the CPC, the appellate court does have jurisdiction to put the party seeking stay order on such terms as would reasonably compensate the party successful at the end of the appeal in so far as those proceedings are concerned. Thus, for example, though a decree for payment of money is not ordinarily stayed by the appellate Court, yet, if it exercises its jurisdiction to grant stay in an exceptional case it may direct the appellant to make payment of the decretal amount with interest as a condition precedent to the grant of stay, though the decree under appeal does not make provision for payment of interest by the judgment-debtor to the decree-holder. Robust commonsense, common knowledge of human affairs and events gained by judicial experience and judicially noticeable facts, over and above the material available on record - all these provide useful inputs as relevant facts for exercise of discretion while passing an order and formulating the terms to put the parties on. After all, in the words of Chief Justice Chandrachud, speaking for the Constitution Bench in **Olga Tellis and Ors. Vs. Bombay Municipal Corporation and Ors.** [(1985) 3 SCC 545]

> "Common sense which is a cluster of life's experiences, is

often more dependable than the rival facts presented by warring litigants".

18. That apart, it is to be noted that the appellate Court while exercising jurisdiction under Order 41 Rule 5 of the Code did have power to put the tenant-appellant on terms. The tenant having suffered an order for eviction must comply and vacate the premises. His right of appeal is statutory but his prayer for grant of stay is dealt with in exercise of equitable discretionary jurisdiction of the appellate Court. While ordering stay the appellate Court has to be alive to the fact that it is depriving the successful landlord of the fruits of the decree and is postponing the execution of the order for eviction. There is every justification for the appellate Court to put the tenant-appellant on terms and direct the appellant to compensate the landlord by payment of a reasonable amount which is not necessarily the same as the contractual rate of rent. In **Marshall Sons & Co. (I) Ltd. Vs. Sahi Oretrans (P) Ltd. & Anr.,** [(1999) 2 SCC 325], this Court has held that once a decree for possession has been passed and execution is delayed depriving the judgment- creditor of the fruits of decree, it is necessary for the Court to pass appropriate orders so that reasonable mesne profits which may be equivalent to the market rent is paid by a person who is holding over the property.

11. The Hon'ble Apex Court noted that the Appellate Court can put the appellant - tenant on terms and direct the appellant to compensate the landlord by payment of a reasonable amount, which was not necessarily the same as the contractual rate of rent. But in the present case, even the contractual rate of rent, which was agreed to be enhanced @ 5 % per annum, is not even granted.

12. Considering that the property was situated in a prime locality and the entire property consisting of ground, first and second floors and terrace was occupied by the tenant and that he was squatting over the property since more than a decade by paying a meager amount of Rs.99,225/- and as it would be the petitioners who are the respondents in this appeal, who would be put to irreparable loss, and only an amount of Rs.4,00,000/- is ordered to be paid out of the arrears of rent of Rs.14,81,458/- decreed by the trial court, it is considered fit to direct the appellant to pay the balance arrears of rent of Rs.10,81,458/- within a period of one month and rent @ Rs.3,00,000/- per month from October 2024 onwards till his eviction or till the disposal of the appeal. As it was reported that the appellant - tenant was very irregular in payment of rents and that he had not filed any proof of payment of rents from the month of July, 2024 onwards, he is directed to file proof of it immediately and he is directed to deposit the enhanced rent on or before 10th of every month from November, 2024 onwards.

13. In the result, this I.A. is disposed of with the above directions and modification.

SD/-V.HARI PRASAD
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Ld. XIV Additional chief Judge, City Civil Court at Hyderabad.
2. One CC to SRI VADEENDRA JOSHI Advocate [OPUC]
3. One CC to SRI VIVEK JAIN Advocate [OPUC]
4. One spare copy

HIGH COURT

DR.GRR,J

DATED:15/10/2024

ORDER

IA No. 2 OF 2024
IN
IA No. 1 OF 2024
IN
CCCA NO: 78 OF 2024

HIGH COURT FOR THE STATE OF TELANGANA
SPECIAL CELL
28 OCT 2024
★ DESPATCHED ★

DIRECTION