

HIGH COURT OF ANDHRA PRADESH

MAIN CASE No: C.R.P.No.852 of 2021

PROCEEDING SHEET

Sl. No	DATE	ORDER	OFFICE NOTE
1.	06.08.2021	<p><u>DR,J</u></p> <p style="text-align: center;"><u>C.R.P.No.852 of 2021</u></p> <p>Notice before admission.</p> <p>Post after four weeks.</p> <p style="text-align: right;">DR, J</p> <p style="text-align: center;"><u>I.A.No. 2 of 2021</u></p> <p>Heard Sri M.V.Suresh Kumar, learned Senior Counsel appearing for petitioner and Sri J.Sravan Kumar, learned counsel appearing for caveator/respondent.</p> <p>Learned Senior Counsel mainly relied on the orders passed by this Hon'ble Court as well as the Hon'ble Supreme Court.</p> <p>The petitioner/plaintiff filed O.S.No.173 of 2013 for eviction of the schedule property and for recovery of Rs.2,05,11,560/- towards arrears of rent and the said suit was decreed by the Family cum-VIII Additional District Judge, Ongole, Prakasam District on 27.12.2016. As against the said decree, the respondent filed A.S.No.98 of 2017 before this Court. Considering the grounds raised therein by the respondent/appellant, this Court passed an interim order in A.S.M.P.No.264 of 2017 in A.S.No.98 of 2017 on 16.02.2017, which reads as follows:</p>	

		<p><i>"Learned Senior Counsel for the appellant submits that his client will pay Rs.1,00,00,000/-within ten (10) days from today and the balance of Rs.2,00,00,000/- within seven (7) weeks thereafter. Accordingly, the judgment and decree of the lower Court are suspended subject to the following terms:</i></p> <p><i>(a) The appellant shall deposit Rs.1,00,00,000/- to the credit of the E.P.No.8 of 2017 before the lower Court within twelve (12) days from today.</i></p> <p><i>(b) The appellant shall also deposit balance amount of Rs.2,00,00,000/- within seven (7) weeks thereafter.</i></p> <p><i>(c) The application/appellant shall also deposit costs awarded under the decree within the time stipulated in '(b)' supra.</i></p> <p><i>(d) The applicant/appellant shall continue to deposit license fee/rent at the rate of RS.5,25,000/- every month in future.</i></p> <p><i>(e) On deposit of the amounts, as directed above, the respondent is entitled to withdraw the said sum without furnishing any security.</i></p> <p><i>(f)In default of any of the above conditions, as stipulated above, regarding payments, the interim order automatically stands vacated. Without any further reference to this Court."</i></p> <p>Subsequently, the petitioner filed vacate stay petition in the said appeal. After elaboration, the Hon'ble Court has modified the earlier order and passed an order, dated</p>	
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		<p>50% within four (4) weeks thereafter. The appellant shall continue to pay the respondent-plaintiff rent at Rs.8,42,400/- each month thereafter, after deducting TDS and remitting the deducted TDS amount to the Income-Tax Department, till the appeal is finally heard and decided. In default of the conditions mentioned hereinabove, the order now passed by us, and the interim order passed earlier on 16.02.2017, shall stand automatically vacated without any further reference to this Court.”</p> <p>Learned Senior Counsel further stated that while pendency of the suit, the petitioner filed an application in I.A.No.1411 of 2013 in O.S.No.173 of 2013 under Order XV-A read with Section 94(E) and Section 151 of the Code of Civil Procedure to direct the respondent to deposit the arrears of rent and for subsequent period. Ultimately, the Hon’ble Supreme Court has considered the said matter and passed the order on 16.10.2015, which is as follows:</p> <p>“In furtherance of the prayer made by learned senior counsel for the petitioner, we hereby extend the period of payment of arrears of rent, by four months from today, subject to the condition that if arrears are not paid within the aforementioned extended/stipulated time, the defence of the petitioner shall be deemed to be struck off.”</p> <p>As the respondent failed to make deposits after passing of conditional orders by the Hon’ble Supreme Court as well as the High Court in appeals filed by the respondent, the Division Bench of this Court passed an order, dated 06.04.2021, in A.S.No.98 of</p>	
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		<p>2017, which reads as follows:</p> <p><i>"It appears that in spite of repeated opportunities, the appellant has failed and neglected to make deposits as per the earlier orders of this Court. Execution proceedings are pending and adjournments are sought for in the said proceedings in view of the prayers for extension of time to make deposits. In order to see bona fides of the appellant, he is directed to deposit 50% of the arrears before the Court below by the adjourned date."</i></p> <p>After exhausting all remedies, the respondent has filed the present E.A.No.56 of 2021 in E.P.No.278 of 2019 in O.S.No.173 of 2013 under Section 47 read with Section 151 of the Code of Civil Procedure before the Judge, Family Court-cum-VIII Additional District Judge, Ongole, to declare the judgment and decree in O.S.No.173 of 2013, dated 27.12.2016, is nullity and cannot be executed and the same is allowed vide its order, dated 07.07.2021.</p> <p>Sri Jada Sravan Kumar, learned counsel appearing on behalf of caveator/respondent has mainly contended that on the basis the document i.e, Sub-License Agreement, dated 09.02.2009, executed by the defendant, the suit was decreed. The main contention of the petitioner/plaintiff is that original document is with defendant. After passing orders in I.A.No.1411 of 2013, the petitioner/plaintiff filed the said document. Hence, the very contention of the petitioner/plaintiff is nothing but obtaining a decree is by way of fraud. Hence, the said decree itself has become</p>	
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