

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI
FRIDAY, THE SIXTH DAY OF AUGUST
TWO THOUSAND AND TWENTY ONE

:PRESENT:

THE HONOURABLE SRI JUSTICE D RAMESH



IA No. 2 OF 2021
IN
CRP NO: 852 OF 2021

Between:

Balina Srimannarayana, S/o.Chenchu Ramaiah, aged 32 years, Business, R/o.
Jyothi Plaza, APSRTC Campus, Ongole, Prakasam District.

.... Petitioner/Petitioner

AND

S.R.R.Hospitalities Pvt.Ltd., Rep. by its Director Chekuru Sreekanth, R/o.D.No.7-
324,(24), Sambasiva Nagar South Bypass Road, Ongole, Prakasam District.

.... Respondent/Respondent

Counsel for the Petitioner : Sri ARAVALA SREENIVASA RAO
Counsel for the Respondent : Sri JADA SRAVAN KUMAR

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 suspend the order dt. 7.7.2021 passed in E.A. No. 56 of 2021 in E.P. No. 278 of 2019 in O.S. No. 173 of 2013 on the file of court of Family cum VIII Additional District Judge, Prakasam at Ongole and the question of either fraud or nullity does not arise, pending disposal of CRP No. 852 of 2021, on the file of the High Court.

The court while directing issue of notice to the Respondents herein to show cause as to why this application should not be complied with, made the following order.(The receipt of this order will be deemed to be the receipt of notice in the case). The Court made the following
ORDER:

"Heard Sri M.V.Suresh Kumar, learned Senior Counsel appearing for petitioner and Sri J.Sravan Kumar, learned counsel appearing for caveator/respondent.

Learned Senior Counsel mainly relied on the orders passed by this Hon'ble Court as well as the Hon'ble Supreme Court.

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:

"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:

- (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.**
- (b) The appellant shall also deposit balance amount of Rs.2,00,00,000/- within seven (7) weeks thereafter.**
- (c) The application/appellant shall also deposit costs awarded under the decree within the time stipulated in '(b)' supra.**
- (d) The applicant/appellant shall continue to deposit license fee/rent at the rate of RS.5,25,000/- every month in future.**
- (e) On deposit of the amounts, as directed above, the respondent is entitled to withdraw the said sum without furnishing any security.**
- (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."**

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 30.07.2018 in I.A.No.3 of 2017 (A.S.M.P.No.1237 of 2017) in A.S.M.P.No.264 of 2017 in A.S.No.98 of 2017, as follows:

"As noted hereinabove, the Court below had, in its order in I.A.No.1411 of 2013, directed the appellant to pay arrears of rent at Rs.5,85,000/- per month from 01.12.2010 to 31.03.2012 at Rs.7,02,000/- per month from 01.04.2012 to 31.03.2015, and for the subsequent period, from 01.04.2015 to 31.03.2018, at Rs.8,42,400/- per month.

While the rival submissions, put forth by the learned Senior Counsel on either side, shall be examined when the appeal is finally heard, suffice it to modify the order of the Division Bench, dated 16.02.2017 and direct that the interim stay granted earlier shall continue till the appeal is finally heard and disposed of subject to the condition that the appellant pays Rs.8,42,000/- each month to the respondent-plaintiff from the date of the order of the Division Bench i.e., 16.02.2017 till the appeal is finally disposed of since the amount reflected in the order passed by the Court below, in I.A.No.1411 of 2013 in O.S.No.173 of 2013, dated 02.04.2015, was not disputed even before the Supreme Court; and the appellant herein

had merely sought four months time from the Supreme Court to pay the said amount. The differential rent of Rs.3,17,400/- per month (difference between Rs.8,42,400/- as directed to be paid by the Court below in its order in I.A.No.1411 of 2013 in O.S.No.173 of 2013 dated 02.04.2015, which was confirmed by the Supreme Court, and Rs.5,25,000/-), shall be paid from 06.02.2017 till 31.07.2018 in two equal instalments, the first within four (4) weeks from today and the balance 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."

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:

"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."

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 2017, which reads as follows:

"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."

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.

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 nullity and requested time to file all the relevant documents to support his contention.

Considering the submissions made by the learned Senior Counsel appearing on behalf of the petitioner and also the learned counsel appearing on behalf of the caveator/respondent, on perusal of the various orders passed by this Court as well as Hon'ble Supreme Court and also on perusal of memorandum of grounds mentioned in A.S.No.98 of 2017, this Court came to conclusion that after exhausting all the remedies, E.A.No.56 of 2021 in E.P.No.278 of 2019 in O.S.No.173 of 2013 is filed and in view of the observations made, the order impugned in the revision, dated 07.07.2021, stands suspended, for a period of eight (8) weeks.

Post after four (4) weeks.

Meanwhile, the respondents are directed to file their counter."

//TRUE COPY//

Sd/-K.TataRao
ASSISTANT REGISTRAR
SECTION OFFICER
REGISTRAR

To,

1. The Director Chekuru Sreekanth, S.R.R.Hospitalities Pvt. Ltd., R/o.D.No.7-324,(24), Sambasiva Nagar South Bypass Road, Ongole, Prakasam District.(by RPAD- along with a copy of petition and memorandum of grounds)
2. One CC to Sri. Aravala Sreenivasa Rao Advocate [OPUC]
3. One CC to Sri. Jada Sravan Kumar Advocate [OPUC]
4. One spare copy

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HIGH COURT

DRJ

DATED:06/08/2021

POST AFTER FOUR WEEKS.

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DIRECTION

