

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

TUESDAY, THE TWENTIETH DAY OF JULY
TWO THOUSAND AND TWENTY ONE

**PRESENT
THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO**

CIVIL REVISION PETITION NOS: 527, 631 AND 663 OF 2021

CRP NO.527 OF 2021:

Petition under Article 227 of Constitution of India, aggrieved by the Order dated 04/03/21 in IA No.139 of 2021 in OS No.230 of 2019 on the file of the Court of the IX Additional Chief Judge, City Civil Court, Hyderabad.

Between:

1. K.N.Murthy, S/o. Satyanarayana,
2. Shailaja, W/o. K.N.Murthy,

...PETITIONERS/RESPONDENTS/PETITIONERS

AND

1. Surender Bantia @ Premraj Surender Bantia, S/o. G.P.Bantia, R/o. 207, Sikh Road, Secunderabad.
2. Bantia Furniture's (Bantia Furniture Enterprises Private Limited), Rep. by Surender Bantia, H.No.16-11-1/1/2, Srinivasa Towers, Saleemnagar, Malakpet, Hyderabad.

...RESPONDENTS/PETITIONERS/RESPONDENTS

IA NO: 1 OF 2021

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to direct the court of IX Additional Chief Judge, City Civil Court, Hyderabad, to proceed with O.S.No.230 of 2019 by striking off the defense of the defendants.

For the Petitioner : SRI VEDULA SRINIVAS, Advocate

For the Respondents : SRI K.S.SUNEEL, CHANDRASEN LAW OFFICE

CRP NO.631 OF 2021:

Petition under Article 227 of Constitution of India, aggrieved by the Order dated 03/02/20 in IA No.114 of 2020 in OS No.230 of 2019 on the file of the Court of the IX Additional Chief Judge, City Civil Court, Hyderabad.

Between:

1. K.N.Murthy, S/o. Satyanarayana,
2. Shailaja, W/o. K.N.Murthy,

...PETITIONERS/RESPONDENTS/PETITIONERS

AND

1. Surender Bantia @ Premraj Surender Bantia, S/o. G.P.Bantia, R/o. 207, Sikh Road, Secunderabad.

2. Bantia Furniture's (Bantia Furniture Enterprises Private Limited), Rep. by Surender Bantia, H.No.16-11-1/1/2, Srinivasa Towers, Saleemnagar, Malakpet, Hyderabad.

...RESPONDENTS/PETITIONERS/RESPONDENTS

IA NO: 1 OF 2021

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to direct the court of IX Additional Chief Judge, City Civil Court, Hyderabad, to proceed with O.S.No.230 of 2019 by striking off the defense of the defendants.

For the Petitioner : SRI VEDULA SRINIVAS, Advocate

For the Respondents : SRI K.S.SUNEEL, CHANDRASEN LAW OFFICE

CRP NO.663 OF 2021:

Petition under Article 227 of Constitution of India, aggrieved by the Order dated 02/11/20 in IA No.597 of 2020 in OS No.230 of 2019 on the file of the Court of the IX Additional Chief Judge, City Civil Court, Hyderabad.

Between:

1. K.N.Murthy, S/o. Satyanarayana,
2. Shailaja, W/o. K.N.Murthy,

...PETITIONERS/RESPONDENTS/PETITIONERS

AND

1. Surender Bantia @ Premraj Surender Bantia, S/o. G.P.Bantia, R/o. 207, Sikh Road, Secunderabad.
2. Bantia Furniture's (Bantia Furniture Enterprises Private Limited), Rep. by Surender Bantia, H.No.16-11-1/1/2, Srinivasa Towers, Saleemnagar, Malakpet, Hyderabad.

...RESPONDENTS/PETITIONERS/RESPONDENTS

IA NO: 1 OF 2021

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to direct the court of IX Additional Chief Judge, City Civil Court, Hyderabad, to proceed with O.S.No.230 of 2019 by striking off the defense of the defendants.

For the Petitioner : SRI VEDULA SRINIVAS, Advocate

For the Respondents : SRI K.S.SUNEEL, CHANDRASEN LAW OFFICE

The Court made the following: COMMON ORDER

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION NOS.527, 631 AND 663 OF 2021

COMMON ORDER

These three Revisions arise out of the same suit between the same parties and so they are being disposed of by this common order.

2. The petitioners in these cases are landlords of the respondents / tenants.

The suit O.S.No.230 of 2019

3. The petitioners had filed O.S.No.230 of 2019 before the IX Additional Chief Judge, City Civil Court at Hyderabad for eviction of the respondents from the suit schedule properties and to direct the respondents to pay Rs.12,87,452/- along with interest at 18% per annum from the date of the suit till realization and also to pay damages @ Rs.7,00,000/- per month from the date of the suit till the date of vacating and handing over possession of the suit schedule properties.

4. It is the case of the petitioners that the respondents had not been paying rents from November, 2018 till January, 2019 including maintenance and GST; that they issued legal notice to the respondents on 25.01.2019 terminating the lease; and so they are entitled to damages also at Rs.7,00,000/- per month.

5. Written statement was filed on 26.06.2019 by the 1st respondent opposing the suit claim on several grounds.

I.A.No.451 of 2019

6. Along with the suit, the petitioners filed I.A.No.451 of 2019 under Order XV-A CPC for a direction to the respondents to deposit admitted monthly rents of Rs.12,87,452/- towards arrears of rent, including maintenance and GST and to continue to deposit the monthly rents at the rate of Rs.4,29,150.66 ps. per month till disposal of the main suit.

7. On 27.08.2019, this Application was allowed with costs and the respondents were directed to deposit the arrears of monthly rents for the suit schedule properties at the rate of Rs.3,50,426.50 ps. from December, 2018 to January, 2019 and to continue to pay monthly rents at the same rate from February, 2019 on or before 5th of each calendar month directly to the petitioners, and in default of either of the conditions, it was directed that the defence of the respondents/defendants in the suit shall be struck off.

I.A.No.1759 of 2019

8. Subsequently, the respondents filed I.A.No.1759 of 2019 in the Court below for modification of the order dt.27.08.2019 in I.A.No.451 of 2019 contending that they had made a counter claim to the tune of Rs.1,55,50,000/- with interest against the petitioners, and so the rental amounts directed in the order have to be modified to the extent of permitting the respondents to deposit arrears of rents into the Court instead of paying them directly to the petitioners without any security.

9. This Application was dismissed by the Court below on 02.12.2019.

C.R.P.No.263 of 2020

10. In the meantime, the petitioners had filed C.R.P.No.263 of 2020 challenging the order dt.27.08.2019 passed in I.A.No.451 of 2019 contending that though the Court below had mentioned in para 5 of the said order that the respondents are due rents from November 2018, in the last paragraph of the order the Court below had incorrectly directed the respondents to pay rents only from December, 2018. It was also contended that there is liability to pay Goods and Service Tax on the rents payable by the respondents to the petitioners, and that the said liability should also be discharged by the respondents; and though this contention was raised in the Court below, it did not advert to this point when it passed the order on 27.08.2019 in I.A.No.451 of 2019.

11. Both these contentions were accepted by this Court and the CRP was allowed on 12.03.2020 directing the respondents to pay rent for the month of November, 2018 as well to petitioners; and to pay every month to the Competent Authority under the GST Act, 2017, tax @ 18% on the rent of Rs.3,50,462/- payable every month to the petitioners; the arrears of GST on the rent for the period from November, 2018 till 12.03.2020 were directed to be deposited to the credit of the suit within four (4) weeks along with the rent for the month of November, 2018.

It was made clear that in default of payment of the same, the defence of the respondents was liable to be struck off.

It also permitted the amount deposited towards the rent for November, 2018 and the amounts deposited towards GST by the

respondents to be withdrawn by the petitioners so that they can transmit the GST amounts to the Competent Authority under the GST Act, 2017.

I.A.No.114 of 2020

12. The petitioners subsequently filed I.A.No.114 of 2020 to strike off the defence of the respondents stating that the respondents did not comply with the order passed by the Court below in I.A.No.451 of 2019 though two months have elapsed by then.

13. Counter affidavit was filed to this Application by the 1st respondent stating that they were ready to pay the rents, that the respondents have tried to hand over a cheque bearing No.000411 dt.15.01.2020 for Rs.12,61,668/- on 20.01.2020, but the petitioners refused to receive the same. He stated that the respondents, in order to show their *bonafides*, had obtained Demand Draft bearing No.008773 for Rs.12,61,668/- dt.28.01.2020 in favour of IX Additional Chief Judge and were ready to deposit the same to the credit of the suit and the said amount is towards four (4) months rent after deducting TDS.

14. By order dt.03.02.2020, the Court below dismissed the said Application observing that there are many contentious issues to be tried, that the counter claim of the respondents is also to be tried by framing appropriate issues, and that the defence of the respondents in the written statement which also contains their counter claim, cannot be struck off.

15. Assailing the same, the petitioners filed **C.R.P.No.631 of 2021.**

I.A.No.597 of 2020

16. Thereafter, the petitioners filed I.A.No.597 of 2020 again to strike off the defence of the respondents on the ground that the order passed by this Court on 12.03.2020 in C.R.P.No.263 of 2020 directing the respondents to pay the rent for November, 2018 and to continue to pay the rents along with GST @ 18% on the rent of Rs.3,50,462/- payable every month, was not complied with; and the arrears of GST on the rents from November, 2018 had not been deposited to the credit of O.S.No.230 of 2019 within four (4) weeks from the date of receipt of this Court's order in the CRP No.263 of 2020 along with rent for November, 2018.

17. Again a counter affidavit was filed thereto by the respondents stating that they had deposited on 24.08.2020, Rs.6,30,834/- *vide* D.D.No.009013, that they had deposited the same amount *vide* another D.D.No.00844 of the same date, and the same amount through another D.D.No.009067 dt.03.10.2020. They also stated that they had filed an Application along with D.D.No.008773 dt.28.01.2020 for Rs.12,61,688/- seeking permission to deposit the same into the suit account. They also claimed that at the time when the respondents were inducted as tenants, they had paid interest free security deposit of Rs.15,90,000/- and after deducting the said security deposit and the amounts paid by way of demand drafts, the respondents are only liable to pay monthly rents for a period of six months and not 23 months as claimed by the petitioners. They again referred to the counter claim filed by them. They also referred

to certain Government Orders issued by the State of Telangana directing the property owners to defer collection of monthly rents for three months.

18. The respondents thus admitted that the rents were due for six months and because there is pandemic of Covid-19, it would be unfair and unjust on the part of the petitioners to expect the tenants to pay rents.

19. By order dt.02.11.2020, the Court below disposed of I.A.No.597 of 2020 observing that the respondents should pay Rs.4,13,545/- from October, 2020 without any further default and directed the parties to get ready for trial.

It noted that it appeared from the record that the respondents were still in default of payment of huge amount of Rs.4,13,545/- being the monthly rent + GST at 18% as per the order passed in C.R.P.No.263 of 2020 from October, 2020.

But instead of striking off the defence of the respondents, when there is specific order passed by this Court on 12.03.2020 in C.R.P.No.263 of 2020, the Court below directed the parties to get ready for trial.

20. This is challenged by the petitioners in **C.R.P.No.663 of 2021**.

I.A.No.139 of 2021

21. Subsequent thereto, the petitioners filed another I.A.No.139 of 2021 under Order XV-A CPC to direct the respondents to deposit the admitted monthly rents of Rs.59,28,816/- towards arrears of rent and also

direct the respondents to pay monthly agreed rent till the disposal of the main suit.

22. By a cryptic order dt.04.03.2021, the Court below *closed* the said I.A. on the ground that similar petitions were filed earlier, and after elaborate enquiry they were ordered; that the petitioners had withdrawn certain rents deposited in the Court by filing cheque petitions, and the petitioners cannot be expected to invite orders again and again. It observed that the calculation memos filed by the parties will be considered at the time of the trial.

23. Challenging the said order, petitioners filed **CRP No.527 of 2021**.

Contentions of counsel for petitioners

24. Sri Vedula Srinivas, learned Senior Counsel appearing for the petitioners sought to contend that having regard to the finding recorded in the order dt.02.11.2020 in I.A.No.597 of 2020 by the Court below about non-compliance by the respondents of the order passed by this Court on 12.03.2020 in C.R.P.No.263 of 2020, the Court below had no choice except to strike off the defence of the respondents, and there is no necessity for giving opportunity to the respondents to contest the matter in view of the language contained in Order XV-A CPC and so the CRPs are to be allowed.

Contention of Counsel for respondents

25. Sri Sunil, learned counsel appearing for M/s.Chandrasen Law Offices appearing for the respondents however contended that since only

small portion of the amount was found to have been defaulted by the respondents, the Court should take lenient view of the matter and allow the trial to proceed. He offered to deposit the amounts liable to be paid by the respondents. He also admitted that GST was not paid to the Competent Authority by the respondents after order dt.12.03.2020 in C.R.P.No.263 of 2020.

Consideration by the Court

26. I find considerable force in the contentions of the counsel for the petitioners.

27. Admittedly in I.A.No.451 of 2019, there was a direction to the respondents to deposit arrears of monthly rent at the rate of Rs.3,50,426.50 ps. from December, 2018 to January, 2019 and continue to pay monthly rents at the same rate from February, 2019 on or before 5th of each calendar month directly to the petitioners.

28. This order was modified in C.R.P.No.263 of 2020 on 12.03.2020 asking the respondents to deposit rent for November, 2018 also with arrears of GST on rent from November, 2018 till 12.03.2020 in four (4) weeks.

29. By virtue of the observation in the said order, the liability to pay GST is on the tenants only.

30. There was also a direction to the respondents to pay GST @ 18% on the rent of Rs.3,50,462/- payable every month to the petitioners.

31. In the table given by the Court below in para 7 of its order in I.A.No.597 of 2020 at page 6, the dates of deposit by the respondents are indicated.

32. Since the Court below had directed deposit from December, 2018 to January, 2019 in its initial order on 27.08.2019, the payment to the petitioners should have started immediately after the said order. If the petitioners had declined to receive any payments, then permission of the Court should have been taken to deposit the same in the Court.

33. But the payments for the months of November, 2018 to January, 2019 were made through D.D.No.008773 dt.28.01.2020, D.D.No.009013 dt.24.08.2020 and D.D.No.008844 dt.24.08.2020 .

34. The rents for February and March, 2019 were deposited vide D.D.No.009067 dt.03.10.2020 and D.D.No.009076 dt.09.10.2020.

35. Even according to the Court below, from April, 2019 to September, 2020, no deposits have been made and no amount was credited towards GST to the Competent Authority under the GST Act.

36. In the order passed by it on 02.11.2020 in I.A.No.597 of 2020, the Court below had observed as under:

"Therefore, as seen from the calculations in the above table, the respondent in total has deposited a sum of Rs.37,85,004/-. From November 2018 to September 2020 i.e. for a total period of 23 months, the respondent has to pay Rs.95,11,535/- towards arrears of rent along with GST at 18% for 23 months and out of which a sum of Rs.37,85,004/- if deducted, the remaining amount of arrears of rent comes to Rs.57,26,531/-. Therefore, the sum of Rs.37,85,004/- can be

*adjusted approximately towards 9 months rent including GST at 18%.
As per the table shown above, still the respondent is due monthly rents
+ GST at 18% for 14 months....."*

37. Thus, there is a clear finding that the respondents are due monthly rents + GST at 18% for 14 months.

38. Therefore, there is clear non-compliance with the lower Court's order dt.27.08.2019 in I.A.No.451 of 2019 as modified in the order dt.12.03.2020 in C.R.P.No.263 of 2020 by this Court.

39. In view of the same, under Rule (2) of Order XV-A CPC, the defence of the respondents in the suit is liable to be struck off.

40. Therefore, the three CRPs are allowed with costs of Rs.1,00,000/- to be paid by the respondents to the petitioners; the defence of the respondents in the suit O.S.No.230 of 2019 is struck off; and the Court below is directed to proceed further in the matter and decide the suit.

41. Pending miscellaneous petitions, if any, in these Revisions shall stand closed.

CRP NOS.527, 631 AND 663 OF 2021
MEMORANDUM OF COSTS

The Costs of Rs.1,00,000/- to be paid to the petitioners by the Respondents.

Rs.1,00,000/-

(Rupees One Lakh only)

//TRUE COPY//

Sd/-K.SAILESHI
ASSISTANT REGISTRAR

SECTION OFFICER

To

1. The IX Additional Chief Judge, City Civil Court, Hyderabad.
2. One CC to Sri Vedula Srinivas, Advocate (OPUC)
3. One CC to Sri K.S.Suneel, Chandrasen Law Office Advocate (OPUC)
4. Two CD Copies
5. One Spare Copy

Kj.



HIGH COURT

DATED:20/07/2021



ORDER

CRP.Nos.527, 631 and 663 of 2021

ALLOWING THE CRP's.

PKK
02/08

(6)