

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(NPD) NO.123 OF 2015
AND M.P.NO.1 OF 2015

Gopibai Kundandas ... Petitioner

Vs.

Syed Shafiullah ... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order returning the application in E.A.S.R.No.405 of 2015 dated 07.01.2015 praying to recall the illegal order of delivery of possession made in E.P.No.546 of 2014 on the file of XV Small Causes Judge, Chennai.

For Petitioner : Mr.S.Senthilnathan
For Respondent : Mr.G.V.Sridharan

ORDER

This Civil Revision Petition is directed against the order dated 07.01.2015 passed in E.A.S.R.No.405 of 2015 in E.P.No.546 of 2014 by the XV Judge, Small Causes Court, Chennai.

2.The petitioner in this Civil Revision Petition is the tenant. The respondent initiated eviction proceedings against the petitioner in R.C.O.P.No.1063 of 2010 under Section 10(2)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act. After contest, the Eviction Petition was allowed on 21.11.2012.

3.Aggrieved by the order, the tenant filed an appeal. The appellate authority, confirmed the findings of the Rent Controller and dismissed the appeal in R.C.A.No.730 of 2012 on 21.03.2013.

4.Challenging the concurrent findings, the tenant filed a Civil Revision Petition in C.R.P.(NPD) No.1970 of 2013. Since the tenant has not complied with the conditional order of this Court passed on 01.08.2014, the interim stay granted in favour of the tenant was vacated and the Executing Court was permitted to proceed with the execution proceedings, vide order dated 24.11.2014.

5.Based on the decree passed by the original authority, the landlord levied an Execution Petition on 18.12.2014. In the Execution Petition, the tenant filed an application to recall the order of delivery of possession contending that the tenant is entitled for notice under Order 21 Rule 22 of the

Civil Procedure Code. The Executing Court rejected the application. Challenging the same, the present Civil Revision Petition is filed.

6.Mr.S.Senthilnathan, learned counsel for the petitioner has submitted that the Execution Petition was filed based on the order dated 21.11.2012 passed in R.C.O.P.No.1063 of 2010 and the same is beyond the period of two years and therefore, the tenant is entitled for notice.

7.Per contra, Mr.G.V.Sridharan, learned counsel for the respondent landlord has submitted that the Execution Petition was filed within a period of two years from the date of order passed in the appeal and therefore, the tenant is not entitled for notice.

8.It is settled law that any order passed by the original authority will merge with the order passed by the appellate authority. In the case on hand, the appellate authority has dismissed the appeal on 21.03.2013 and admittedly, the Execution Petition was filed within two years from the date of order of the appellate authority. Hence, the petitioner is not entitled for notice under Order XXI Rule 22 of the Civil Procedure Code.

9.In the result, this Civil Revision Petition is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

27.01.2015

Index : Yes/No

Internet : Yes/No

TK

To

The XV Small Causes Judge
Chennai.

K.KALYANASUNDARAM, J.

TK

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27.01.2015