

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2015

CORAM:

THE HON'BLE MR. JUSTICE D.HARIPARANTHAMAN

C.R.P.Nos.2553 & 3115 of 2015

and

M.P.Nos.1 & 1 of 2015

C.R.P.No.2553 of 2015

K.Muniappan
S/o.K.M.R.Krishnan Chettiar
Proprietor
Vishnu Maligai Jewellers
No.1033, Cross Cut Road
Gandipuram
Coimbatore - 641 012.

.. Petitioner/Respondent/Respondent/Petitioner

Vs.

K.T.Somasundaram
S/o.Sri Thangavel Nadar
Duraisingh Stores
Door No.1038, Cross Cut Road
Gandipuram
Coimbatore - 641 009.

.. Respondent/Petitioner/Petitioner/Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 24.11.2014 passed in I.A.No.309 of 2014 in I.A.No.109 of 2014 in RCOP.No.64 of 2008 on the file of the I Additional District Munsif, Coimbatore.

For Petitioner : Mr.I.Abrar Md Abdullah

For Respondent : Mr.K.G.Vasudevan

C.R.P.No.3115 of 2015

K.Muniappan
S/o.K.M.R.Krishnan Chettiar
Proprietor
Vishnu Maligai Jewellers

No.1033, Cross Cut Road
Gandipuram
Coimbatore - 641 012.

.. Petitioner/1st Respondent/Petitioner
-Vs.-

1.K.T.Somasundaram
S/o.Sri Thangavel Nadar
Duraisingh Stores
Door No.1038, Cross Cut Road
Gandipuram
Coimbatore - 641 009.

.. Respondent/Petitioner/2nd Respondent

2.P.Vijayakumar

.. Respondent/2nd Respondent/2nd Respondent

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 21.07.2015 passed in I.A.No.214 of 2015 in RCOP.No.166 of 2007 on the file of the I Additional District Munsif, Coimbatore.

For Petitioner : Mr.I.Abrar Md Abdullah

For Respondents: Mr.K.G.Vasudevan, for R1
Mr.K.Venkatasubban
for M/s.Sarvabhauman Associates
for R2

C O M M O N O R D E R

C.R.P.No.2553 of 2015 arises out of the order dated 24.11.2014 made in I.A.No.309 of 2014 in I.A.No.109 of 2014 in RCOP.No.64 of 2008 on the file of the I Additional District Munsif, Coimbatore.

2. The revision petitioner, who is the tenant, is the respondent in the aforesaid RCOP.No.64 of 2008 which was filed by the respondent in C.R.P.No.2553 of 2015 for fixation of fair rent. The respondent in C.R.P.No.2553 of 2015 has purchased the property from one Vijayakumar, under whom the the revision petitioner was originally the tenant.

3. The respondent in C.R.P.No.2553 of 2015 who purchased the property as stated above had also filed another rent control proceedings in RCOP.No.166 of 2007 for eviction. In the said RCOP, the erstwhile owner, Thiru.Vijayakumar was impleaded as second respondent at the instance of the revision petitioner.

4. It is the case of the revision petitioner that he had paid an advance amount of Rs.6,25,000/- to the erstwhile owner Thiru.Vijayakumar, who was impleaded as second respondent in RCOP.No.166 of 2007. Hence, the revision petitioner had filed an

application in I.A.No.214 of 2015 in RCOP.No.166 of 2007 seeking for a direction to the erstwhile owner as well as the later purchaser viz., the respondents 1 and 2 to refund the excess advance amount of Rs.6,25,000/- to the petitioner. In the said application, the erstwhile owner took the stand that he never received any advance as contended by the revision petitioner/tenant.

5. After considering the submissions made by both sides, the learned I Additional District Munsif, Coimbatore, dismissed the said application by an order dated 21.07.2015, against which the Civil Revision Petition in C.R.P.No.3115 of 2015 has been preferred.

6. As already stated, the landlord, who is the respondent in C.R.P.No.2553 of 2015 had filed RCOP.No.64 of 2008 for fixation of fair rent. In the said RCOP proceedings, he had also filed an application in I.A.No.109 of 2014 under Order 18 Rule 17 CPC to reopen the evidence of RW1 to cross-examine the witness. That is, the revision petitioner, who was examined as RW1 was to be recalled for cross-examination.

7. The said application in I.A.No.109 of 2014 in RCOP.No.64 of 2008 filed by the landlord was allowed by the Trial Court on 01.07.2014 on payment of costs of Rs.300/- to be paid to the revision petitioner/tenant on or before 21.07.2014.

8. However, the land lord failed to pay the costs to the revision petitioner/tenant as directed by the Trial Court. The cost was tendered only on 21.08.2014 and so, the tenant refused to receive the same stating that the order of the Trial Court was not complied with.

9. In spite of the same, the cost memo was filed by the learned counsel for the landlord, wherein there is an endorsement made by the learned counsel who represented the revision petitioner in the Trial Court that the cost was tendered only on 21.08.2014 and hence, it is refused. The said cost memo was filed in the Trial Court on 22.08.2014, even as per the docket relating to the said cost memo.

10. While so, the learned I Additional District Munsif, Coimbatore had recorded as if the order was complied with and the memo was filed on 22.07.2014 and accepting the same, the interim application in I.A.No.109 of 2014 in RCOP.No.64 of 2008 was allowed on 22.07.2014.

11. In these circumstances, the revision petitioner filed an application in I.A.No.309 of 2014 in I.A.No.109 of 2014 in RCOP.No.64 of 2008 to initiate appropriate contempt proceedings in accordance with law against the respondent therein and all other

persons concerned for having interfered with the administration of justice of the Trial Court in I.A.No.109 of 2014. The said application was dismissed by the Trial Court by an order dated 24.11.2014, against which the Civil Revision Petition in CRP.No.2553 of 2015 has been preferred.

12. When the matter was listed for admission, the learned counsel for the revision petitioner demonstrated that though the cost memo was filed only on 22.08.2014, the learned I Additional District Munsif, Coimbatore had passed an order as if the cost memo was filed on 22.07.2014 and allowed the application in I.A.No.109 of 2014 in RCOP.No.64 of 2008 on 22.07.2014 referring to the cost memo dated 22.08.2014.

13. Hence, this Court passed an order dated 07.07.2015 directing the learned I Additional District Munsif, Coimbatore to submit his explanation in that regard. Another order was also passed on 07.07.2015 granting stay of the proceedings in RCOP.No.64 of 2008, while notice of motion was ordered in C.R.P.No.2553 of 2015.

14. Pursuant to the order dated 07.07.2015, the learned I Additional District Munsif, Coimbatore had sent a letter in D.No.859, dated 13.07.2015, wherein she has admitted the aforesaid allegations made by the learned counsel for the revision petitioner. The learned Trial Judge had stated that on 22.08.2014, about 204 cases were posted for hearing and hence due to work burden, she did not notice the endorsement made by the learned counsel for the revision petitioner/tenant who appeared in RCOP.No.64 of 2008 and further, due to oversight she misunderstood the date of cost memo as 22.07.2014 instead of 22.08.2014.

15. It is also pertinent to note that the revision petitioner has not questioned the order dated 22.07.2014 which was erroneously passed by the learned I Additional District Munsif, Coimbatore in allowing the application in I.A.No.109 of 2014 in RCOP.No.64 of 2008. Hence, the revision petitioner shall face cross examination in RCOP.No.64 of 2008.

16. The learned counsel for the revision petitioner has contended that in view of the admission made by the learned I Additional District Munsif, Coimbatore, the revision petitions can be disposed of by transferring both the rent control proceedings in RCOP.No.166 of 2007 and RCOP.No.64 of 2008 to any other competent Court.

17. Further, it is also admitted by the learned counsels who represented the respective parties that the issue relating to the payment of the advance amount can be decided at the time of the final disposal of RCOP.No.166 of 2007.

18. In these circumstances, without casting any aspersions, the Civil Revision Petitions are disposed of by transferring the RCOP.No.166 of 2007 and RCOP.No.64 of 2008 to the file of the learned Principal District Munsif Court, Coimbatore. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

- 1.)The I Additional District Munsif, Coimbatore
- 2.)The Principal District Munsif, Coimbatore

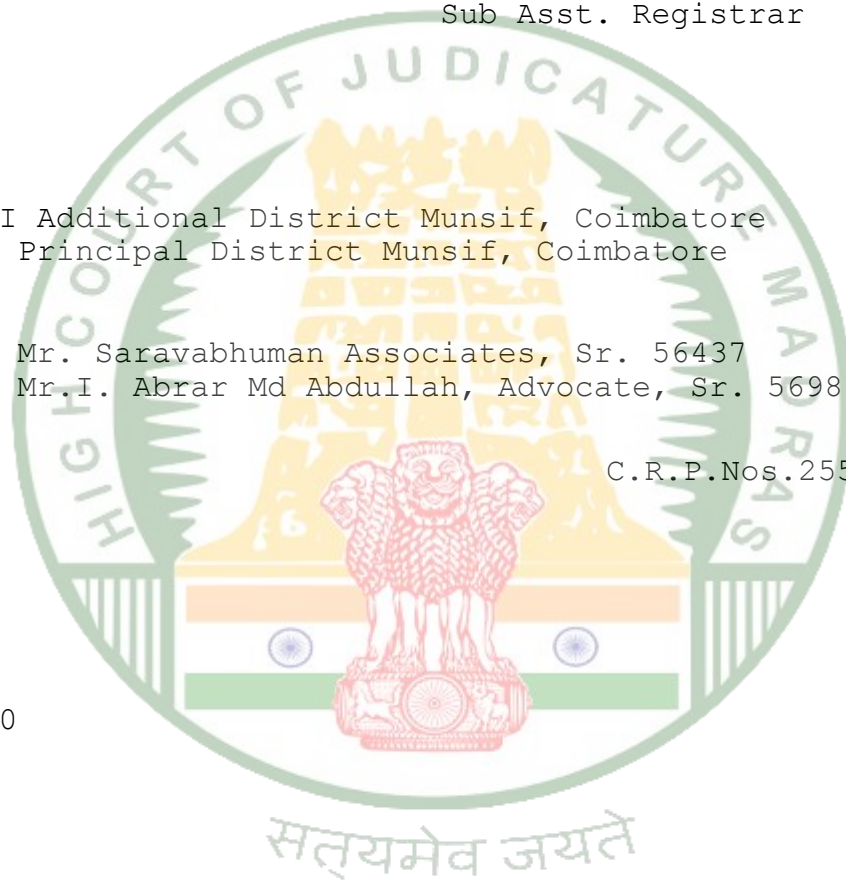
1 cc to Mr. Saravabhuman Associates, Sr. 56437

1 cc to Mr.I. Abrar Md Abdullah, Advocate, Sr. 56984

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