

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.2829 of 2015
and M.P.No.1 of 2015

S.K.Subbaiyan

... Petitioner

Vs.

M/s.Hyder Trading Company Pvt. Ltd.,
Office at No.63, New No.47,
Usman Road, T.Nagar,
Chennai - 600 017.

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 23.06.2015 made in M.P.No.566 of 2014 in R.C.A.No.1041 of 2006 on the file of the VIII Judge, Court of Small Causes, Chennai.

For Petitioner : Mr.Richardson Wilson
for M/s.P.Wilson Associates

For Respondent : Mr.A.Chidambaram

ORDER

Heard Mr.Richardson Wilson, the learned counsel for the petitioner and Mr.A.Chidambaram, the learned counsel for the respondent.

2.Challenging the order passed in M.P.No.566 of 2014 in R.C.A.No.1041 of 2006 on the file of the VIII Judge, Court of Small Causes, Chennai, the tenant has filed the above Civil Revision Petition.

3.The respondent/landlord filed R.C.O.P.No.96 of 2005 on the file of XIII Judge, Court of Small Causes, Chennai for fixation of fair rent. After contest, the Rent Controller fixed the fair rent. Aggrieved over the fixation of fair rent, the tenant preferred an appeal in R.C.A.No.1041 of 2006. During the pendency of the Rent Control Appeal, the tenant took out an application in I.A.No.566 of 2014 seeking for appointment of an Advocate Commissioner to note down the physical features.

4.The learned counsel appearing for the petitioner submitted that during the pendency of the Appeal, the respondent/landlord demolished the 1st floor in the premises on 23.07.2013 and therefore, the tenant is not in occupation of the 1st floor of the premises.

5.In order to establish that the building was demolished by the respondent/landlord on 23.07.2013, the tenant sought for appointing an Advocate Commissioner. The respondent/landlord opposed the application stating that they have not demolished the 1st floor of the premises and that

the tenant is using the 1st floor and the same is in his occupation. The Rent Control Appellate Authority dismissed the application finding that there is no necessity to appoint an Advocate Commissioner and the application has been filed only to drag on the proceedings.

6.Since the petitioner/tenant has specifically averred that the landlord has demolished the 1st floor of the premises and that he is not in occupation of the 1st floor of the premises, I am of the view that an Advocate Commissioner can be appointed to inspect the property and find out the existence of the 1st floor. By appointing an Advocate Commissioner, no prejudice would be caused to the respondent/landlord. Further, it would only facilitate the Rent Control Appellate Authority in adjudicating the matter in a proper manner.

7.The learned counsel for the respondent also submitted that a time limit may be fixed for disposal of the Rent Control Appeal.

8.Having regard to the submissions made by the learned counsel on either side, the fair and decretal order passed in M.P.No.566 of 2014 in R.C.A.No.1041 of 2006 are set aside. The petition in M.P.No.566 of 2014 stands allowed. The Civil Revision Petition is allowed.

9. Since the Rent Control Appeal is pending from 2006, I direct the Rent Control Appellate Authority - VIII Judge, Court of Small Causes, Chennai, to dispose of the appeal in R.C.A.No.1041 of 2006, on merits and in accordance with law, within two months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

16.07.2015

To

The VIII Judge,
Court of Small Causes,
Chennai.

M.DURAIWAMY,J.
va

C.R.P.(NPD).No.2829 of 2015
and M.P.No.1 of 2015

16.07.2015