

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2015

CORAM:

THE HON'BLE MR. JUSTICE D.HARIPARANTHAMAN

C.R.P.No.3559 of 2015

and

M.P.Nos.1, 2 & 3 of 2015

Indira Venkatan

.. Petitioner/Appellant/Respondent/Tenant

Vs.

Nirmala Nithyanandan

.. Respondents/Respondents/Petitioner/Landlord

Prayer:

Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 against the order and decreetal order dated 12.09.2014 made in R.C.A.No.26 of 2012 on the file of the II Additional Subordinate Judge, Coimbatore in erroneously confirming the order and decreetal order dated 27.06.2011 made in R.C.O.P.No.116 of 2007 on the file of the Rent Controller cum First Additional District Munsif, Coimbatore.

For Petitioner : Mr.V.Lakshminarayanan,
for Mr.Govind Chandrasekhar

For Respondent : Mr.G.Masilamani, Senior Counsel
for Mr.Bharath Kumar

O R D E R

The revision petitioner is the tenant. She suffered the judgment and decree of eviction dated 27.06.2011 in R.C.O.P.No.116 of 2007 on the file of the I Additional District Munsif Court, Coimbatore. Thereafter, she filed an appeal in R.C.A.No.26 of 2012 before the II Additional Subordinate Court, Coimbatore and the same was also dismissed on 12.09.2014. The present Civil Revision Petition is preferred against the aforesaid order dated 12.09.2014 made in R.C.A.No.26 of 2012.

2. Heard the learned counsel appearing for the petitioner and the learned Senior Counsel appearing for the respondent.

3. It is an admitted fact that R.C.O.P.No.116 of 2007 was filed by the respondent herein on the sole ground of owner's occupation. The learned Rent Controller found favour with the respondent/landlord and allowed the RCOP on 27.06.2011. Against the said order, the revision petitioner/tenant preferred an appeal in R.C.A.No.26 of 2012 before the appellate forum. The learned Rent Control Appellate Authority also confirmed the view taken by the learned Rent Controller and dismissed the appeal.

4. On perusal of the order passed by the learned Rent Controller as well as the learned Rent Control Appellate Authority, I do not find any infirmity in the orders made in R.C.O.P.No.116 of 2007 as well as R.C.A.No.26 of 2012. Hence, I am of the considered view that the present Civil Revision Petition is liable to be dismissed. However, I intend to add some more events that took place during the course of transaction.

5. The respondent herein filed an Execution Petition in E.P.No.241 of 2011 in R.C.O.P.No.116 of 2007. In the said proceeding, the revision petitioner/tenant was set exparte on 13.08.2015. While so, on 24.08.2015, the Court Ameen reported that the door was locked. On the very same day, viz., 24.08.2015, the applications in E.A.Nos.304 & 305 of 2015 were filed by the respondent to break open the lock and to provide police protection.

6. The applications in E.A.Nos.304 & 305 of 2015 were allowed on 25.08.2015. Thereafter, immediately the delivery warrant was executed and vacant possession was taken on 27.08.2015, when the order dated 13.08.2015 made in the Execution Petition was to deliver vacant possession on or before 15.10.2015.

7. When the Civil Revision Petition came up for admission on 10.09.2015, this Court passed an order to redeliver possession. The said order was passed based on the assumption that the Executing Court acted in haste and the possession was taken without even waiting for the usual time available to file the Civil Revision Petition.

8. But after hearing both sides, I am of the view that the Executing Court did not act in haste and there is no fault on the Executing Court in passing orders in E.A.Nos.304 & 305 of 2015.

9. Further, in the instant case, the R.C.A.No.26 of 2012 was dismissed on 12.09.2014 and the application for certified copy of the order and decreetal order in R.C.A.No.26 of 2012 was made on 16.09.2014. However, the revision petitioner received the certified copy of the order only on 07.02.2015.

10. While so, when the revision petitioner filed the Civil Revision Petition in the month of March 2015, she did not file the certified copy of the order made in R.C.O.P.No.116 of 2007. When the

Appeal itself was dismissed on 12.09.2014, the revision petitioner must have been in possession of the copy of the order made in R.C.O.P.No.116 of 2007 atleast for the sake of arguing the appeal. At this juncture, it is useful to state that Rule 15 of the Tamil Nadu Buildings (Lease and Rent Control) Rules, 1974 contemplates that an appeal has to be filed along with the copy of the impugned order.

11. Ofcourse, an appeal can be entertained by dispensing with the production of the order. But the revision petitioner cannot plead that she did not have the copy of the order made in RCOP, even after the disposal of the Rent Control Appeal.

12. Furthermore, R.C.A.No.26 of 2012 was dismissed on 12.09.2014 and the revision petitioner filed an application for obtaining the certified copy of the order and decretal order on 16.09.2014. Even on that date, viz., 16.09.2014, nothing prevented the revision petitioner from filing copy application to get the copy of the order made in R.C.O.P.No.116 of 2007. But she chose to file the copy application to get the copy of the order made in R.C.O.P.No.116 of 2007 only on 19.03.2015 because the Civil Revision Petition filed by the revision petitioner was returned for want of certified copy of the order made in R.C.O.P.No.116 of 2007.

13. That apart, a memo was filed by the respondent herein before the Executing Court on 15.06.2015 regarding the dismissal of the Rent Control Appeal by the Appellate Authority. Thereafter, the Executing Court recorded the memo and adjourned the Execution Petition to 13.08.2015 for filing counter affidavit. That is, the matter adjourned for more than 2 months. However, on 13.08.2015, the revision petitioner failed to appear before the Court. One can appreciate if the revision petitioner had appeared before the Executing Court and informed the Court that this Civil Revision Petition was filed on 16.03.2015 and it was not taken up due to non-furnishing of the copy of the order made in R.C.O.P.No.116 of 2007.

14. In any event, the order made in R.C.O.P.No.116 of 2007 was obtained by the revision petitioner on 09.07.2015, much before hearing date of E.P.No.241 of 2011 viz., 13.08.2015. However, it was not produced immediately to get the Civil Revision Petition numbered and to get an interim order.

15. On the other hand, the respondent remained exparte on 13.08.2015 and consequently, the orders were passed as stated above, leading to delivery of possession. It is also stated that the possession was handed over by the revision petitioner herself.

16. In these circumstances, the delivery of possession ordered by the Executing Court is in order and further, it is stated that no redelivery of possession as ordered by this Court on 10.09.2015 has taken place so far. Hence, this Court is not inclined to interfere with the impugned order and the Civil Revision Petition is dismissed.

Consequently, M.P.Nos.1 and 2 of 2015 are also dismissed. M.P.No.3 of 2015 is closed. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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To

1.The II Additional Subordinate Judge,
Coimbatore.

2.The Rent Controller-cum- I Additional District Munsif, Coimbatore.

1 cc to Mr.R.Bharath Kumar , Advocate Sr.No.51258

C.R.P.No.3559 of 2015

gp (co)

pmk.23.9.2015



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