

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.916 of 2011

&

M.P.No.1 of 2011

A.Chandrasekaran

...Petitioner

vs.

T.Venugopal

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the original docket order passed by the learned XV Rent Controller, Court of Small Causes, Chennai on 21.02.2011 in M.P.Sr.No.2950 of 2011 in R.C.O.P.No.193 of 2006, Rent Control Proceedings pending on the file of the learned XV Rent Controller, Court of Small Causes, Chennai.

For Petitioner : Mr.S.V.Jayaraman
Senior Counsel
for
Mr.P.Karl Marx

For Respondent : Mr.V.Lakshminarayanan

ORDER

This Civil Revision Petition has been filed against the order of the learned Rent Controller (XV Judge, Small Causes Court) at Chennai dated 21.02.2011 made in M.P.Sr.No.2950 of 2011 in R.C.O.P.No.193 of 2006. The

said R.C.O.P has been filed by the respondent herein against the petitioner herein for eviction on the ground of willful default under Section 10(2)(i), owner's occupation under Section 10(3)(a)(i) and under Section 10(3)(c) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. The petition is resisted by the revision petitioner herein contending that he is in possession of the petition premises not as a tenant but as an agreement holder having obtained possession in part performance of an agreement for sale allegedly executed by the respondent herein in favour of the petitioner on 02.02.1999.

2. Though the eviction petition came to be filed in the year 2006, it has been dragged on for 8 long years. The alleged agreement executed by the respondent in favour of the petitioner is denied by the respondent. It seems the revision petitioner has chosen to file a suit on the original side of this Court in C.S.No.51 of 2006 for the relief of specific performance. Consequent to the changes in the pecuniary jurisdiction, the said suit was subsequently transferred to the City Civil Court and the same is pending as O.S.No.11949 of 2010 on the file of XVII Additional Judge, City Civil Court, Chennai. It also transpires that the revision petitioner has obtained an order of interim injunction pending disposal of the said suit restraining the respondent herein from interfering with his physical possession of the suit property and also from alienating the said property in favour of third parties. Under the said circumstances, the revision petitioner chose to file a memo dated 01.09.2008 praying for the dismissal of the eviction petition R.C.O.P.No.193 of 2006. After the respondent herein filed an objection for the memo, the said memo

was rejected by the Rent Controller by a detailed order dated 04.11.2008. As against the said order dated 04.11.2008 rejecting the memo praying for the dismissal of the eviction petition on the ground of absence of jurisdiction, the revision petitioner filed a revision before this Court in C.R.P.No.3820 of 2008. The said C.R.P came to be disposed of by an order dated 19.01.2009 with the following observation and direction.

"7. All the pleadings and the merits of the contentions of both the parties have to be gone into only on appreciation of evidence on record and this Court cannot sit in judgment under Article 227 of the Constitution of India to pass any orders affecting the rights of the parties in this stage.

8.This Court deems it more appropriate to direct the Rent Controller to restore the memo, which was closed by it on 04.11.2008 and to afford an opportunity to the respondent to file objections and dispose of the same.

9.In fine, the Civil Revision petition is disposed of with a direction to the Rent Controller to restore the memo filed by the petitioner on 01.09.2008, which was closed on 04.11.2008 and afford an opportunity to the respondent to file his objection and pass appropriate orders on the memo preferably within a period of two weeks from the date of receipt of copy of this order. No costs. Consequently, connected M.P is closed."

3. Thereafter, the revision petitioner filed his objections for the objections filed to the memo before the learned Rent Controller and the learned Rent Controller by an order dated 18.03.2009 rejected the prayer made in the memo and closed it. As against the said order, the revision

petitioner herein filed C.R.P. No.1145 of 2009 before this Court. It was contended therein that the order challenged in the said C.R.P was passed without giving an opportunity to him to put forward his case. Another learned single Judge of this Court by order dated 09.09.2009 rejected the contention raised therein by the revision petitioner . Accordingly, the said Civil Revision Petition came to be dismissed by order dated 09.09.2009. Thereafter, the revision petitioner herein filed a miscellaneous petition M.P.No.76 of 2011 praying that the question of jurisdiction might be decided as a preliminary issue. Pending disposal of the said miscellaneous petition, the revision petitioner, who is the respondent in the R.C.O.P, filed another miscellaneous petition in M.P.SR.No.2950 of 2011 to summon certain documents from the Corporation of Chennai as, according to him, the same would provide clinching evidence for answering the question of jurisdiction raised by him. The learned Rent Controller rejected the said petition in the SR stage itself, which is impugned in the present revision.

4. It is also brought to the notice of this Court by the learned counsel for the respondent that meanwhile the petitioner filed a Transfer Original Petition Tr.O.P.No.59 of 2010 on the file of the Chief Judge, Small Causes Court for the transfer of the R.C.O.P making wild allegations against the Rent Controller, especially an allegation which reads as follows:

"The learned XV Rent Controller is unfit to the core for human utilization, and it shall be construed as a misadventure

to have any transaction by the litigants or the lawyers in any manner whatsoever would expose themselves to detrimental health hazard."

5. The impugned order is dated 21.02.2011 and the contents of the order are extracted hereunder:

"Heard petitioner counsel. This petition is filed to summon Assistant Revenue Officer to produce a document in Z.X.R.D.C.No.A6/48/2007 dated 05.02.2008 to decide the preliminary issue of jural relationships between petitioner and respondent. On perusal of records it is found that the petition to decide the existence of jural relationship of tenant and landlord between the petitioner and respondent as preliminary issues is still pending in M.P.No.76 of 2011.

In such circumstances, this petition filed to summon Assistant Revenue to decide the preliminary issues is prematured. Hence the court is inclined to reject this petition since it is filed in premature stage.

In the result, this petition is rejected as not maintainable since filed in premature stage. No costs."

6. The learned senior counsel, who argued for the petitioner, contended that when the miscellaneous petition was filed seeking issuance of a summon to the Assistant Revenue Officer of the Corporation of Chennai to produce a document Z.X.R.D.C No.A6/48/07 dated 05.02.2008 on the premise that the same would help the Rent Controller to decide the preliminary issue regarding the presence or absence of jural relationship of

landlord and tenant between the respondent herein and the petitioner herein, the learned Rent Controller committed a mistake in dismissing the said petition in the SR stage itself holding the same to be premature.

7. Per contra, it is the contention of the learned counsel for the respondent that the said observation was made by the learned Rent Controller in view of the pendency of M.P.No.76 of 2011 which was filed by the revision petitioner herein to decide the existence or otherwise of the jural relationship of landlord and tenant between the respondent and the revision petitioner herein as a preliminary issue had not been decided as on the date of filing of the petition in M.P.Sr.No.2950 of 2011 and as on the date of passing of the impugned order and that the said observation cannot be said to be wrong or irrelevant.

8. However, it is the further contention of the learned counsel for the respondent that though the procedure adopted by the Rent Controller in rejecting the petition without even taking it on file may be irregular, still the ultimate result incorporated in the order can be justified on other grounds. According to the submissions made by the learned counsel for the respondent, the revision petitioner, who is facing eviction proceedings, had tried all methods available to stall the proceedings based on an alleged agreement for sale, which according to the respondent is a forged one. The learned counsel for the respondent also drew the attention of this Court to

the Tamil Nadu amendment introduced to Section 17 of the Registration Act, 1908 whereby sub-Section 1-A came to be included in respect of the sustainability of the claim of getting possession in part performance of the agreement for sale. According to the learned counsel for the respondent, the amendment came into force on 24.09.2001 itself and the same has disentitled the purchasers under the agreement for sale to use the said agreement for the purpose of Section 53-A of the Transfer of Property Act, 1882 unless the agreement containing such a clause has been registered. The learned counsel for the respondent argued that only in order to get rid of the difficulty in getting over sub-section 1-A of Section 17 of the Registration Act, the agreement has been prepared antedated and that the mere fact that there is an agreement in favour of the tenant shall not be enough to bring about a termination of the jural relationship of landlord and tenant between them.

9. The said aspect is quite outside the scope of consideration in the present revision. The question that arises for consideration in the present revision is whether the petitioner is bonafide in seeking an order for issuance of a summon to the Assistant Revenue Officer of the Corporation of Chennai to produce a document dated 05.02.2008. The said document, which has been sought to be summoned, is nothing but one containing property tax payment details of the respondent, who is admittedly the owner of the property. It is the contention raised on behalf of the revision petitioner that

the said document is sought to be summoned to show that it is the respondent who is residing in the petition premises. It is not in dispute that the petitioner is residing in the petition premises and that is the reason why the respondent has been constrained to file the R.C.O.P for the eviction of the revision petitioner. The document sought to be summoned shall be of no help to decide any of the issues in the R.C.O.P because, admittedly it is the revision petitioner who is in actual possession of the petition premises. For proving a fact which is not in dispute and on the other hand has been admitted, a document is sought to be summoned unnecessarily. The same will show how far the revision petitioner is bent upon dragging on the case.

10. It is also pertinent to note that the R.C.O.P itself has been taken up for disposal and witnesses on the side of the respondent herein/landlord were examined. The evidence on the side of the respondent was also closed on 21.08.2006. Thereafter when the matter stood posted for adducing evidence on the side of the revision petitioner herein, he took time for about 1 ½ years. Since he was not prepared to adduce evidence despite getting such adjournments, Rent Controller chose to close his evidence and posted the R.C.O.P for arguments. Besides refusing to proceed with R.C.O.P, according to the submission made by the learned counsel for the respondent, the revision petitioner also did not come forward to argue M.P.No.76 of 2011.

11. However, a perusal of the records shows that the Rent Controller,

without even disposing of M.P.No.76 of 2011 in which the revision petitioner has prayed for deciding the existence or otherwise of jural relationship of tenant and landlord as a preliminary issue, has chosen to proceed with the enquiry in the main R.C.O.P which might have started much earlier than the filing of the petition. Even then keeping such a petition pending and proceeding with the R.C.O.P shall not be a proper procedure to be adopted by the Rent Controller. The very fact that the Rent Controller has adopted such an irregular procedure has encouraged the petitioner to adopt further dilatory tactics by filing the petition in M.P.Sr.No.2950 of 2011 to summon a document, which shall not be relevant for the purpose of making a decision on the question that arose in the M.P.No.76 of 2011 and also by filing a Transfer Original Petition and thereby stalling the proceedings in the R.C.O.P.

12. Be that as it may, the fact remains that the document which is sought to be summoned does have no relevance to the issue to be decided in the R.C.O.P either as a preliminary issue or as a main issue. The document sought to be summoned is for proving that it is the revision petitioner who is in possession of the petition premises. As pointed out supra, the possession of the revision petitioner is not in dispute and it is an admitted one. Hence, this Court is of the considered view that the petition filed M.P.Sr.No.2950 of 2011 only as a ruse to drag on the proceedings and it will also be an attempted abuse of process of Court. Though the reasons assigned by the learned Rent Controller for the rejection of the said petition may not be

proper, this Court in exercise of its jurisdiction under Article 227 of the Constitution of India can uphold the order by substituting its reasons. The above said reason assigned by this Court shall be enough to sustain the order of rejection of M.P.Sr.No.2950 of 2011. Accordingly, this Court comes to the conclusion that the present revision deserves dismissal.

13. In the result, the Civil Revision Petition is dismissed. However, since it is brought to the notice of the Court that the learned Rent Controller is trying to proceed with the main R.C.O.P without disposing of M.P.No.76 of 2011 praying for deciding a particular issue as a preliminary issue, there shall be a direction to the learned Rent Controller to decide the said miscellaneous petition at the first instance and then proceed with the further enquiry in the R.C.O.P. M.P.No.76 of 2011 shall be disposed of without two weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

12.01.2015

Index: Yes
Internet: Yes
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To

XV Rent Controller,
Court of Small Causes, Chennai

P.R.SHIVAKUMAR.J.,

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