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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.03.2015

CORAM:

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

C.R.P. (MD) .Nos.2698 and 2699 of 2014

and

M.P. (MD) .No.1 of 2014

and

M.P. (MD) .No.1 of 2015

in

C.R.P. (MD) .No.2698 of 2014

Devadoss

... Revision Petitioner in both
C.R.Ps

vs.

1.Somu Chettiar

2.Kannan

... Respondents in both C.R.Ps

COMMON PRAYER: The Civil Revision Petitions filed under Article 227 of the Constitution of India, against unnumbered E.A.No...2014 in E.A.NoS.111 and 112 of 2014 in E.P.No.30 of 2014 in R.C.O.P.No.10 of 2012 on the file of the District Munsif Court, Paramakudi order dated 15.12.2014.

For Petitioner in

both C.R.Ps

: Mr.PT.S.Narendra Vasan

For Respondents in

both C.R.Ps

: Mr.D.Senthil

COMMON ORDER

These revisions are filed by the tenant challenging the return of his application in unnumbered E.A.../2014 in E.A.Nos.111 and 112 of 2014 in E.P.No.30 of 2014.

2.The Rent Control Petition in R.C.O.P.No.10 of 2012 filed by the landlords for eviction on the ground of wilful default, owners' occupation, demolition and reconstruction.

3.The tenant was set exparte on 16.12.2013 and R.C.O.P was allowed. Aggrieved by the same, the tenant had preferred R.C.A with delay application. Later, the delay was condoned and it was numbered as R.C.A.No.2 of 2015, which is pending. In the mean while, the landlords had levied the execution for delivery in E.P.No.30 of 2014. Though the counter was filed by the tenant, the execution petition was allowed on 21.11.2014. Pursuant to the same, the landlords filed E.A.No.111 of 2014 for breaking-open and E.A.No.112 of 2014 for giving police protection. In the said applications, no notice was ordered to the tenant. Therefore, the tenant



filed unnumbered E.As to set aside the exparte order of breaking-open and for giving police protection to the landlords. The said applications were returned by the learned District Munsif, Paramakudi with an endorsement that 'the order was passed on merits. Hence, the E.As were returned as not maintainable'.

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3.Heard the learned counsel for the petitioner and the learned counsel for the respondents.

4.It is admitted by the learned counsel for the respondents/landlords that notice was not served on the tenant. He also contended that when he attempted to serve the papers on the counsel, who appeared for the tenant, he refused to receive it. However, there is no evidence to the same. Though the tenant had filed an appeal in R.C.A.No.2 of 2015, has not taken any attempts to get an order of stay of the eviction order. The tenant complains that there is no presiding officer in the jurisdictional Court and only the Presiding Officer, who is in-charge comes once in a week. However, the tenant cannot be permitted to take advantage of his own wrong, as he has filed the Rent Control Appeal itself with delay.

5.The only point that has to be seen is whether the tenant has to be given a chance in the execution proceedings.

6.Admittedly, the landlords had not given notice to the tenant in E.A.Nos.111 and 112 of 2014, which were filed for breaking open and for giving police protection, to take delivery of possession. Though the order passed in E.A.Nos.111 and 112 of 2014 may be on merits, without giving notice to the other side it loses its sanctity. Therefore, the order passed in E.A.Nos.111 and 112 of 2014 by the District Munsif, Paramakudi are set aside. The civil revision petitions are allowed. No costs. The landlords are directed to take notice to the tenant in the said applications. On service of notice, the tenant is directed to file his counter within a week. The District Munsif Court, Paramakudi is directed to dispose of the E.A on or before 15th April 2015. It is unnecessary for the tenant to re-present the unnumbered I.A. Consequently, the connected miscellaneous petitions are closed.

Sd/

Assistant Registrar

/True copy/

sub Assistant Registrar(c.s)

To

The District Munsif Court, Paramakudi.

+lcc to M/S. D.Senthil, Advocate in SR.No. 10278

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WEB COPY

3

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