

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2016

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Crl.O.P.NO.5078 of 2010

Mr. Srinath Rajam

... Petitioner

Vs.

Mr. Krishna Kumar Sood

Managing Director

M/s. MPI Exports (P) Ltd.,

formerly known as Metal Processing Industries (P) Ltd.,

Rep by his Power of Attorney Mr.Srinivasan.

Industrial Estate

Ambattur, Chennai- 58.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to quash the proceedings in C.C.No.439 of 2008 pending on the file of Judicial Magistrate, Ambattur, Chennai, in so far as the petitioner is concerned and to pass further orders.

For Petitioner : Mr. S.V. Udayakumar

For Respondent : Mr. Abdul Hameed

for M/s. P.H. Manoj Pandian

सत्यमेव जयते
O R D E R

The petitioner has come forward with this Criminal Original Petition to quash the proceedings initiated against him under Sections 406, 409 and 420 IPC in C.C. No.439 of 2008, pending on the file of learned Judicial Magistrate, Ambattur.

2. The petitioner submits that he is a tenant of the respondent herein and there was an agreement on 01.08.2005, for a period of 10 years and in that agreement there is a specific clause for the amount payable to the landlord and also a clause permitting the tenant to sublet the premises. According to the petitioner, as per the Lease Agreement, the petitioner will have to pay a sum of Rs.2,79,600/-, on or before 7th of every month

and that there will be an escalation of rent of 5% per annum till the lease period is over.

3. Learned counsel for the petitioner submitted that during September 2008, the respondent/ landlord has given a complaint to the Inspector of Police, Ambattur, on the ground that the petitioner has committed an offence under Sections 406, 409 and 420 IPC. He further submitted that the entire transaction is of civil in nature and that for his grievance, he should have worked out his remedy before the Civil Court and invoking criminal jurisdiction is only to bring the tenant to the premises of the landlord.

4. In reply, learned counsel for the respondent/ landlord submitted that the petitioner did not pay the rent regularly, he has sublet the premises to third parties and had collected money, apart from the fact that he has not paid the rent properly. Hence, the respondent/ landlord has filed a case in R.C.O.P No. 7 of 2008 and the petitioner was set ex-parte and ultimately he has taken possession. He came to know that the petitioner has collected some amount as advance from the sub tenants and the same has not been returned, which made the respondent/ landlord to pay the said amount to those persons and thereafter they have been evicted. He further submitted that there is misappropriation of funds and criminal breach of trust. Civil and criminal proceedings have been initiated against the petitioner. A complaint was filed to the Inspector of Police, Ambattur and ultimately, the matter is pending before the Judicial Magistrate, Ambattur in C.C. No. 439 of 2008.

5. A reading of the agreement dated 01.08.2005 makes it very clear about the total amount payable by the lessee/ tenant to the lessor/ landlord. If the respondent needs to get more amount, he should have taken steps to evict those persons, as the respondent had the benefit of an ex-parte order. Whether the advance amount received by the petitioner has been returned by the landlord or not, cannot be gone into now and there is no evidence to prove that, when the petitioner is disputing the same. According to the petitioner, he has paid the entire rental amount to the landlord/ respondent and there is no amount due to the respondent and this fact has not been disputed by the respondent.

6. As the dispute is of civil in nature, I find that the remedy available is only before the Civil Court and the prayer sought, by the petitioner is to be accepted and therefore the proceedings in C.C. No.439 of 2008 pending on the file of Judicial Magistrate, Ambattur, Chennai, is quashed. It is made clear that this order will not preclude the respondent from

initiating any further proceedings, in accordance with law, in order to recover any amount, if any, payable by the petitioner or any of the sub tenants under the petitioner.

7. In the result, the Criminal Original Petition is allowed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

avr

To

1. The Judicial Magistrate, Ambattur.

2. Thro'The Chief Juducial Magistrate, Tiruvallur.

3.The Public Prosecutor, Madras High Court, Madras.

+1 cc to M/s.P.H.Manoj Pandian, Advocate, sr.9067

Cr1.O.P.NO. 5078 of 2010

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