

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2016

CORAM

THE HONOURABLE MS. JUSTICE R.MALA

C.R.P.No.3867 of 2015
and
M.P.Nos.1 and 2 of 2015

K.R.Vijayakumar

... Petitioner

Vs

Kunjalathabai Govind Das

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the ex parte order of eviction dated 31.07.2015 passed in M.P.No.233 of 2014 in R.C.O.P.No.1603 of 2010 by the learned XIII Judge, Small Causes Court, Chennai.

For Petitioner : Mr.R.Chellappa

For Respondent : Mr.K.Mani

ORDER

Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

2. The petitioner has come forward with this Revision to set aside the ex parte order of eviction dated 31.08.2015 passed in M.P.No.233 of 2014 in R.C.O.P.No.1603 of 2010 by the learned XIII Judge, Small Causes Court, Chennai and to direct the learned trial Judge to hear and consider the case afresh on merits after giving adequate opportunity to both parties and pass appropriate orders. From the perusal of records, it is seen that the date of order is 31.07.2015 and not 31.08.2015.

3. The learned counsel appearing for the petitioner would submit that the petitioner is a Tenant under the respondent and the respondent/landlady filed a petition for eviction on the ground of wilful default and owner occupation, in which this petitioner filed a counter and contesting the same. The landlady filed an application under Section 11(1) of Tamil Nadu Buildings (Lease and Rent) Control Act in M.P.No.233 of 2014. During the pendency, she also filed another application in M.P.No.518 of 2014 under Section 11(3) of the Act. M.P.No.233 of 2014 has been allowed on 22.04.2015 directing the

tenant/revision petitioner herein to pay a sum of Rs.3,80,000/- on or before 02.06.2015, failing which further proceedings in RCOP will be stopped and eviction will be ordered and the matter was posted for compliance on 02.06.2015. Against which, a Rent Control Appeal in RCA.No.275 of 2015 along with M.P.No.357 of 2015 for stay was filed before the VII Judge, Court of Small Causes, Chennai. In that Appeal, the Rent Control Appellate Authority on 01.06.2015 granted interim stay till 15.06.2015 on condition to deposit Rs.4,10,000/- on or before 15.06.2015. Against which, a Revision in CRP.No.2204 of 2015 has been filed before this Court, in which, on 15.06.2015, a direction has been given to the tenant to deposit Rs.4,10,000/- on or before 25.06.2015 and a direction to the Rent Control Appellate Authority to get along with the matter. But the amount has not been deposited by the tenant. However, the tenant/petitioner herein has come forward with M.P.No.2 of 2015 in CRP.No.2204 of 2015 seeking extension of time to deposit the amount. Even though, time was extended by this Court till 16.07.2015 with a direction to the Rent Control Appellate Authority to vacate the interim stay and dispose of the matter in accordance with law, in the event the petitioner/tenant fails to comply with the order, the tenant has not chosen to deposit the amount. Therefore, on 31.07.2015 eviction has been ordered by the Rent Control Appellate Authority. Against which, the tenant preferred this Revision.

4. The learned counsel appearing for the revision petitioner/tenant would submit that this Court in M.P.No.2 of 2015 in CRP.No.2204 of 2015 has passed the following order:-

"4. Taking into consideration the reasoning given by the petitioner in the affidavit filed in support of the petition, I am of the view that the petitioner can be granted time till 16.07.2015 to comply with the order dated 15.06.2015.

5. Accordingly, I grant time till 16.07.2015 to comply with the order dated 15.06.2015. The interim stay granted by the Rent Control Appellate Authority, shall continue till 16.07.2015. It is also made clear that if the petitioner fails to comply with the order dated 15.06.2015 on or before 16.07.2015, it is open to the Rent Control Appellate Authority to vacate the interim stay and dispose of the matter in accordance with law."

but the copies were not ready till 31.07.2015 and therefore, the petitioner was not in a position to deposit amount in time. However, on 31.07.2015, the impugned order has been passed in M.P.No.233 of 2014, which reads as follows:-

"Memo filed by the petitioner/landlady's counsel stating that the order of the Hon'ble High Court dated 15.06.2015 was not complied by the respondent and the Appellate Court has dismissed the stay petition and posted the RCA on 10.08.2015. Further the respondent/tenant has filed another petition in M.P.No.2 of 2015 in CRP PD No.2204 of 2015 for extension of time and the Hon'ble High Court has granted extension of time for depositing Rs.4,10,000/- on or before 16.07.2015. Further the respondent has not deposited Rs.4,10,000/- even after extension of time by the Hon'ble High Court. Memo recorded.

No representation for the respondent/tenant till 4.00 p.m. In view of this memo, this petition is allowed and all further proceedings in this petition is stopped and eviction is ordered. Time for eviction one month. No costs."

5. This Revision has been preferred on 10.08.2015 and adjourned periodically at the instance of the petitioner's counsel. No representation twice. When the matter was posted for dismissal on 30.11.2015, the counsel appeared and then only notice has been ordered and report has been called for. On 20.01.2016, it was represented that the tenant has sufficient money to comply with the conditional order. Hence, to show his bona fide that he has sufficient money, he was directed to file the relevant documents. Today, he filed additional typed set of papers, in which there are two Demand Drafts dated 22.01.2016 for Rs.4,10,000/- and Rs.60,000/- respectively, which are after the passing of order by this Court on 20.01.2016, which shows that the tenant has not filed any document to show that before 16.07.2015 he had sufficient money to deposit the amount before the Rent Control Appellate Authority. The learned counsel for the petitioner would also submit that he must be given an opportunity to put forth his case.

6. It is pertinent to note that the petitioner has come forward with this petition to recall the impugned order passed by the trial Court on 31.07.2015 and to set aside the same and to give direction to the trial Judge to decide the case afresh on merits after giving adequate opportunity to both parties to put forth their case and contentions. Even though there was a specific direction by this Court in CRP.No.2204 of 2015, it is stated by the learned counsel for the petitioner that fair copies made ready only on 31.07.2015 and delivered only on 03.08.2015 and therefore, the petitioner cannot comply with the

order in time. At this juncture, the learned counsel for the respondent/landlady by stating the averments made in the counter by the revision petitioner/tenant that "even though the landlady's plea for her own requirement is not genuine as his son had shifted from the same premises earlier and they have got several places, the respondent is willing to vacate by the end of the academic year and the respondent is also willing to pay whatever arrears after adjusting the loss of Rs.69,000/- and on the landlady returning the cheques and on issuing receipts for all payments made earliest within two months from the date the petitioner gives as stated above" would submit that in the counter itself, the tenant has specifically stated that he is ready to vacate the premises by the end of the academic year. The counter was filed on 22.12.2010. We are in the year 2016. In such circumstances, there will be no purpose served if the impugned order is set aside and an opportunity is given to the petitioner to put forth his case. Furthermore, it is pertinent to note that the tenant is not a layman, he is an Advocate, he know each and every steps in the Court proceedings. The tenant periodically sought for extension of time, once eviction has been ordered. To show his bona fide, he has not deposited the amount also. After this Court had directed to file documents to show his bona fide, the revision petitioner/tenant had taken Demand Drafts only on 22.01.2016 and filed them before this Court today, which shows his mala fide intention to drag on the proceedings, since Execution Petition has been filed and pending. In such circumstances, considering the counter affidavit filed in RCOP, I am of the view that no purpose will be served to send the matter for full-fledged trial. Hence, this petition deserves to be dismissed as devoid of merit.

7. Accordingly, the Civil Revision Petition is dismissed. The order of eviction dated 31.07.2015 passed in M.P.No.233 of 2014 in R.C.O.P.No.1603 of 2010 by the learned XIII Judge, Small Causes Court, Chennai, is hereby confirmed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mra

To

The XIII Judge,
Small Causes Court,
Chennai.

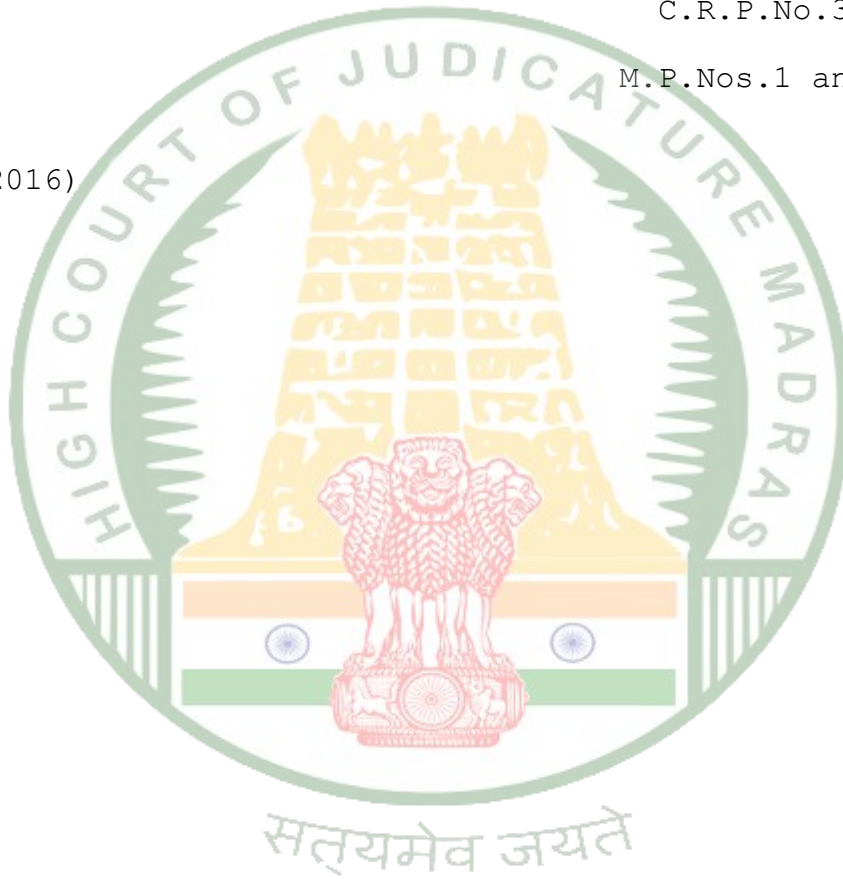
+1cc to Mr.K.Mani, Advocate, S.R.No.4922

+2cc to Mr. R. Chellappa Advocate Sr No.4403 (12.2.2016)

+1 cc to Mr.K.Mani, Advocate, SR.3233 (6/5/16)

C.R.P.No.3867 of 2015
and
M.P.Nos.1 and 2 of 2015

SVI (CO)
CA(09/02/2016)



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