

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2016

CORAM

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

C.R.P.(PD) No.1007 of 2016
and
C.M.P.No.5638 of 2016

Syed Meeran Mohammed Hussainy

... Petitioner

vs.

1.G.Selvaraj (Deceased)
2.S.Babu

... Respondent

(2nd respondent brought on record
as LR of the deceased sole respondent
vide order of this Court dated 10.11.2016
in CMP No.16911 of 2016 in CRP No.1007
of 2016)

Civil Revision Petition filed under Article 227 of the
Constitution of India against the order dated 3.3.2016 made in
M.P.No.8 of 2016 in RCOP No.1868 of 2013 on the file of the
(Rent Controller) XVIth Small Causes Court, Chennai.

For Petitioner : Mr.S.Sathiaseelam

For 2nd respondent : Mr.S.Babu

ORDER

The petitioner filed R.C.O.P.No.1868 of 2013 before XVI Small Causes Court, Chennai, against the respondent for eviction. Before the Trial Court, the petitioner produced the notices issued by the respondent through his counsel and marked as Exs.P.4 and P.20. According to the respondent, no such instruction was given to Thiru.D.Vijaya Raama Krishnaa, Advocate to send the notices. The petitioner, therefore, filed a Petition in M.P.No.8 of 2016 to issue subpoena to the Advocate to confirm as to whether the notices were sent pursuant to the instructions given by the respondent. The Petition was dismissed by the Trial Court for the reason that Counsel shall not be compelled to answer in respect of the communication between the Counsel and the party. The Order dated 3.2.2016 in M.P.No.8 of 2016 in RCOP No.1868 of 2013 is under challenge in this Civil Revision Petition.

2. Heard the learned counsel for the petitioner. None appears on behalf of the respondent.

3. The documents available on record indicates that the petitioner placed reliance on the notices issued by the deceased respondent G.Selvaraj, against whom RCOP was filed. The notices were marked as Exs.P.4 and P.20. The respondent denied the statement regarding the issuance of notice or giving instructions to the counsel to send such notices. It was only on account of such denial, the petitioner filed the Application in M.P.No.8 of 2016 to issue subpoena to confirm as to whether notices were sent by the advocate pursuant to instruction.

4. The notices in Ex.P.4 and P.20 indicates that it was issued pursuant to the instruction given by G.Selvaraj. When it is made out that the person on whose instruction the notices were sent denied the instruction given to the counsel to send the notices, the only option available to the petitioner is to issue subpoena to the Advocate to confirm as to whether notices were sent by him pursuant to the instruction given by the party. This aspect was not considered by the Trial Judge. I am therefore of the view that the impugned order is liable to be set aside.

5. In the result, the order dated 3.3.2016 is set aside.
The Petition in M.P.No.8 of 2016 in RCOP No.1868 of 2013 is
allowed.

6. The Civil Revision Petition is allowed. No costs.
Connected Miscellaneous Petition is closed.

01.12.2016

Index : yes / no

Internet :yes / no

asvm

To
The Judge,
XVI Small Causes Court, Chennai.

K.K.SASIDHARAN, J.

(asvm)

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