

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.12.2016

Coram

The Honourable MRS.JUSTICE **PUSHPA SATHYANARAYANA**

C.R.P.PD.No.2234 of 2016
and
C.M.P.No.11575 of 2016

Subhadrabai Saddharma Niketan Trust

Rep.by Trustees

1.V.Govind Krishna Das

2. Lodd Ramgopal

.. Petitioners

Vs

Asokan

Prop.M/s.Padhma Enterprises

Chennai 600 002.

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 13.04.2016 passed by the learned X Judge, Court of Small Causes, Chennai in M.P.No.6 of 2016 in RCOP No.1047 of 2013.

For Petitioners : Mr.B.R.Ramesh Bapu

For Respondent : Mr.K.P.Ashok

ORDER

Aggrieved by the order of dismissal passed by the court below in

the application filed by the petitioners, seeking appointment of an Advocate Commissioner to fix the fair rent in respect of the building, which is in occupation of the respondent/tenant in a rent control proceedings, this Civil Revision Petition has been filed.

2. The brief facts of the case is as follows:

(a) The petitioner, being a Private Family Trust, is the owner/landlord of the entire petition mentioned premises. They have let out the entire premises to the respondent/tenant on a monthly rent of Rs.42,200/-. Since it is felt by the landlord that fair rent was not fixed, filed a petition before the court below in RCOP No.1047 of 2013 praying to fix a fair rent. Along with the RCOP, the landlord also filed an application in M.P.No.6 of 2016 seeking appointment of an Advocate Commissioner to note down the physical features and measurements of the petitioned premises and to direct him to file a report on the following:

(i) The physical features of the entire ground and first floor of the building [together with details of the staircase portion and head room on the terrace] and with the toilet, 'dark room' situated in the ground floor and the details of the open space on the ground floor of the petition premises.

(ii) To state the measurements of/and the portions under the occupation of the respondent/tenant.

(iii) To state whether the petitioner/landlord is in occupation of any portion/s in the petition building and premises.

(iv) To find out and report the distances between the petition building and the building/shops referred to in the model sale deeds filed by the witnesses marked under Exhibit P5 and Exhibit R3.

(v) To state whether the passage in front of the petition building is named or not.

(b) The respondent/tenant resisted the said application by contending that the landlord has filed the above petition only to side track the issue; that the reliefs sought for by the landlord is totally contradictory and far beyond the scope of the pleadings in the affidavit; that the landlord has sought for appointment of an Advocate Commissioner not only to note down the physical features of the petitioned premises but also for inspecting almost the entire area and several properties, which is far beyond the scope of the principles of appointment of Advocate Commissioner. Accordingly, he prayed for the

dismissal of the above petition.

(c) The court below after hearing both sides had observed that the landlord has filed the above petition only to add evidences through the court procedures. Further the Advocate Commissioner cannot do the work of an Engineer and give report about the nature and kinds of the building. Accordingly, dismissed the application.

(d) Being aggrieved by the same, the landlord has preferred the above revision.

3. Heard both sides.

4. The learned counsel appearing for the revision petitioner/landlord submitted that the conclusion arrived at by the learned Rent Controller is imaginary. He would further submit that though the Commissioner is not an expert, he is only an Officer appointed by the court to ascertain the details of measurement of the tenancy area occupied by the respondent. As a landlord, the petitioner has got every right to fix the rent in respect of the premises let out by him. Accordingly, he prayed for setting aside the order passed by the court below.

5. The learned counsel appearing for the respondent/tenant would fairly submit that he has no objection for appointing an Advocate Commissioner but the Commissioner cannot disturb the possession of the tenant and he can generally take physical measurements of the petition mentioned premises and cannot go and take measurements, which are in possession of the respondent/tenant, by causing hardship and inconvenience.

6. Considering the submissions made on either side, this Court is of the view that the Commissioner could be appointed only to note down the physical features of the petition mentioned premises with respect to clauses (i), (ii), (iv) and (v) as prayed for in M.P.No.6 of 2016 before the Court below, for which the learned counsel appearing for the respondent also has no serious objection.

7. In the result the impugned order dated 13.04.2016 passed by the learned X Judge, Court of Small Causes, Chennai in M.P.No.6 of 2016 in RCOP No.1047 of 2013 is modified to the above extent and the Civil Revision Petition is disposed of with the above direction.

PUSHPA SATHYANARAYANA,J.,
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However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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vj2

Index: Yes/No

Internet: Yes

To

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Madras

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