

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **02.12.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.3324 of 2016

V.Elango : Petitioner
versus

A.S.Saraswathi : Respondent

PRAYER: Revision filed against the order dated 23.8.2016, in M.P.No.112 of 2016 in R.CO.P.No.1334 of 2014 on the file of XIV Judge, Court of Small Causes, Chennai.

For petitioner :: Mr.K.Veeraraghavan

For respondents :: Mr.N.V.V.Krishna

ORDER

The petitioner, who is the respondent in RCOP No.1334 of 2014 is aggrieved by the order passed by the learned Rent Controller, appointing Advocate Commissioner to record the evidence of the respondent.

2. The respondent filed Rent Control Original Petition before the learned Rent Controller (XIV Judge, Small Causes, Chennai) for eviction. The petitioner filed counter and contested the eviction petition.

3. The respondent filed application in M.P.No.112 of 2016 contending that in view of her poor health condition, it would not be possible for her to appear before the Court for giving evidence. The respondent therefore sought appointment of Advocate Commissioner to record her evidence. The miscellaneous petition was allowed by the learned Trial Judge notwithstanding the objection raised by the petitioner in his counter affidavit.

4. The learned counsel for the petitioner contended that the respondent is hale and healthy and as such, the Trial Court was not correct in appointing Advocate Commissioner to record her evidence. According to the learned counsel, not even a scrap of paper was produced before the Trial Court to show that the respondent is incapable of appearing before the Court. The learned counsel placed reliance on the decision *in re Srinivasulu Naicker, AIR 1955 Madras 179*, in support of his contention that the Court must have an opportunity of observing the demeanor of the witness.

5. The learned counsel for the respondent contended that the respondent is aged about 88 years and is not keeping good health. Since the respondent was not in a position to appear before the Trial Court to give evidence, the application was filed. According to the learned counsel, it was only to drag on the matter, the petitioner has come up with this civil

revision petition.

6. Since the petitioner took up a contention that the respondent is hale and healthy and there are no documents to prove her health condition, I have issued a commission to verify and report about the health condition of the respondent and as to whether she is fit enough to appear before the Trial Court for giving evidence.

7. The report submitted by Ms.Rukmani, Advocate Commissioner, clearly indicates that it would not be possible for the respondent to move out of her house. Her movements are restricted. In short, the Advocate Commissioner reported that it would not be possible for the respondent to appear before the Trial Court for giving evidence.

8. The respondent is aged about 88 years. Even though medical certificate was not produced before the Trial Court, the report submitted by the Advocate Commissioner clearly supports her case that it would not be possible for her to appear before the Trial Court for giving evidence. In view of the factual report submitted by the Advocate Commissioner, I am of the view that no interference is called for in the order passed by the learned Trial Judge.

K.K.SASIDHARAN, J.
(tar)

9. The Advocate Commissioner appointed by the Trial Court is directed to record evidence of the respondent after issuing notice to both sides and file a report on or before 15 December 2016.

10. The learned XIV Judge, Small Causes, Chennai is directed to dispose of the eviction petition in R.C.O.P.No.1334 of 2014 as expeditiously as possible and in any case on or before 31 March 2017.

11. The civil revision petition is disposed of with the above direction. No costs. Consequently, C.M.P.No.17014 of 2016 is closed.

02.12.2016

Index:Yes/no
tar

To
The XIV Judge, Small Causes, Chennai

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