

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(NPD).No.4015 of 2016
and C.M.P.No.20268 of 2016

S.Umapathy

.. Petitioner

Vs.

Syeda Syadunissa

.. Respondent

Prayer:- Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decreetal order dated 22.07.2016 made in E.A.No.151 of 2015 in E.A.No.66 of 2011 in E.P.No.260 of 2011 in RCOP.No.991 of 2008 on the file of the learned 14th Judge, Small Causes Court (Rent Controller), Chennai.

For Petitioner : Mr.A.C.Kumaragurubaran

ORDER

Civil Revision Petition is filed against the fair and decreetal

order dated 22.07.2016 made in E.A.No.151 of 2015 in E.A.No.66 of 2011 in E.P.No.260 of 2011 in RCOP.No.991 of 2008 on the file of the learned 14th Judge, Small Causes Court (Rent Controller), Chennai.

2.At the time of admission, argument of the learned counsel for the petitioner is heard in length.

3.The respondent as a landlord filed a petition in R.C.O.P.No.991 of 2008 for eviction on the ground of wilful default. That RCOP was dismissed on 02.02.2009, against which, the respondent/landlord preferred an appeal in R.C.A.No.121 of 2009 and the same was also dismissed on 23.11.2010. Aggrieved over the same, the respondent/landlord has preferred CRP.NPD.No.4585 of 2010 before this Court, which was allowed on 01.03.2011. Immediately, the respondent/landlord has filed a petition in E.P.No.260 of 2011, wherein delivery of possession was ordered and that the delivery has also been effected. Challenging the same, the petitioner/tenant has preferred E.A.Nos.64, 66 and 67 of 2011 to direct the landlord to return the goods taken by her, to direct the landlord to redeliver the possession to the tenant and to not to record the delivery of possession in E.P.No.260 of 2011 till the disposal of the redelivery petition

respectively. The respondent/landlord has filed a common counter affidavit in those applications. In the meanwhile, the petitioner/tenant has come forward with an application in E.A.No.151 of 2015 to issue subpoena to the bailiff to depose evidence and to mark his report, stating that the respondent/landlord without obtaining an order of break open, had broken the lock of the shop and taken possession. Therefore, examination of bailiff and the witnesses, who have said to have witnessed the delivery of possession of the premises is necessary. That factum was not considered by the Executing Court and it has erroneously dismissed the application. Hence, he prays for allowing the revision.

4.On perusal of the typed set of papers, it reveals that the respondent/landlord as the petitioner filed R.C.O.P.No.991 of 2008 for eviction on the ground of wilful default and the same was dismissed, against which, the respondent/landlord preferred R.C.A.No.121 of 2009 and the same was also dismissed, against which, the respondent filed C.R.P.No.4585 of 2010, which was allowed on 01.03.2011.

5.According to the learned counsel for the petitioner/tenant, as his name has not been printed in the cause list, he could not be

able to advance his argument in CRP and hence, the eviction order was passed. Thereafter, the respondent/landlord filed E.P.No.260 of 2011, in which, delivery of possession was ordered and the same was effected.

6.The grievance of the petitioner/tenant is that he is a two wheeler mechanic and doing repair work on his own in the petition premises. As soon as delivery has been ordered, the respondent/landlord broke open the lock, entered into the premises and took the goods and the vehicles. But they have not shown any Court order to break open the shop. Since the tenant has not taken his goods in the shop, examination of bailiff and the other witnesses, who have witnessed the delivery of possession, is necessary. Therefore, he has filed the applications to direct the landlord to return the goods, to redeliver the possession and not to record the delivery of possession till the disposal of these applications and the same are pending. In the meanwhile, the petitioner has preferred E.A.No.151 of 2015 to issue subpoena to the bailiff to depose evidence and to mark his report. That application was dismissed by the Executing Court.

7.The Executing Court in para-6 of its order held that as on

today, the application for redelivery is still pending. The only reason assigned by the petitioner/tenant is that the bailiff took possession without any order of break open the lock. On perusal of the report filed by Nazir section reveals that the shop was in open, the bailiff waited in the premises, he has not turned up and then only the bailiff took the possession. Further, the tenant has received all the articles as per the bailiff report. On that basis, the Executing Court dismissed the application. Under such circumstances, I am of the view that as soon as delivery has been ordered, the bailiff has gone to the petition premises, which was opened and he was also waiting for the judgment debtor/tenant for his presence. Then only, the bailiff took possession and handed over the same to the landlord. Further, on considering the bailiff report, wherein it was stated that the goods were received by the tenant, the Executing Court came to the correct conclusion. Therefore, I do not find any infirmity or illegality in the fair and decreetal order passed by the Executing Court in E.A.No.151 of 2015 and the same is hereby confirmed. Consequently, the Civil Revision Petition is dismissed.

8.In the result, the Civil Revision Petition stands dismissed by confirming the fair and decreetal order passed by the Executing Court

in E.A.No.151 of 2015. If the petitioner succeeds in C.R.P.NPD.No.4585 of 2010, he has every right to file an application under Section 144 of CPC, for redelivery of possession. No costs. Consequently, connected Miscellaneous Petition is closed.

23.12.2016

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Index:Yes/No

To

The learned 14th Judge, Small Causes Court
(Rent Controller), Chennai.

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