

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.588 of 2016
and C.M.P.No.3118 of 2016

Rajendran

... Petitioner

Vs.

Grace Mari
represented through her Power of Attorney
A.D.Rajendra Babu

... Respondent

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decretal order dated 06.08.2015 made in E.A.No.33 of 2015 in E.A.No.19 of 2014 in E.P.No.47 of 2013 in R.C.O.P.No.26 of 2008 on the file of the District Munsif Court, Thiruvottiur.

For Petitioner : Mr.J.Ramakrishnan
For Respondent : Mr.J.Franklin

ORDER

Challenging the fair and final order passed in E.A.No.33 of 2015 in E.A.No.19 of 2014 in E.P.No.47 of 2013 in R.C.O.P.No.26 of 2008 on the file of the District Munsif Court, Thiruvottiur, the Judgment Debtor has filed the above Civil Revision Petition.

2.Pursuant to the order of eviction granted in R.C.O.P.No.26 of 2008, the respondent/landlord filed an Execution Petition in E.P.No.47 of 2013. In the said Execution Petition, the Judgment Debtor filed an application in E.A.No.19 of 2014 to stay the Execution Petition till the disposal of the suit in O.S.No.93 of 2010 on the file of the Subordinate Court, Ponneri. The suit in O.S.No.93 of 2010 has been filed by the Judgment Debtor/tenant for specific performance.

3.It is the case of the petitioner that there is no landlord-tenant relationship between the petitioner and the respondent, hence, the order passed in R.C.O.P.No.26 of 2008, which was also confirmed by the Rent Control Appellate Authority is a nullity. The application in E.A.No.19 of 2014 filed under Order 21 Rule 29 of the Civil Procedure Code was dismissed for non-prosecution by the District Munsif Court, Thiruvottiyur. Thereafter, the Judgment Debtor filed an application in E.A.No.33 of 2015 to restore the application in E.A.No.19 of 2014, which was dismissed for default on 05.08.2014.

4.In the affidavit filed in support of the application in E.A.No.33 of 2015, the Judgment Debtor has narrated the facts of the case and in one

sentence, he has stated that due to illness, he was unable to instruct his counsel. Except stating that due to illness, he could not instruct his counsel, he has not stated any other reason for restoring the application. The application in E.A.No.33 of 2015 was filed on 25.02.2015. Though the affidavit was sworn on 09.01.2015, the petition was presented only on 25.02.2015. When the application was dismissed for default on 05.08.2014, the reason for the delay in filing the restoration application was not properly explained by the Judgment Debtor. After a lapse of six months, he has filed the application without saying any acceptable reason. Merely saying that he was ill and was not able to instruct his counsel, cannot be accepted for restoring the application.

5. When the order of eviction granted by the Courts below has become final, the Executing Court is bound by the decree passed by the Courts below. Mere filing of a suit for specific performance cannot be taken as a ground to stay the Execution Petition. Unless the decree granted by the Courts below in the Rent Control proceedings is set aside by the Competent Court, the Executing Court is bound by the decree. When admittedly, the order of eviction has become final, the Executing Court has rightly dismissed the application filed by the petitioner.

6.The learned counsel appearing for the petitioner, in support of his contention, relied upon the following judgments:

(i)(2010) 2 Supreme Court Cases 619 [Joseph Kantharaj and another Vs. Attharsunnisa Begum S.] and

(ii)AIR 1996 Supreme Court 1819 [Urban Improvement Trust, Jodhpur Vs. Gokul Narain and another].

7.Since the facts and circumstances of the case on hand are completely different, the judgments relied upon by the petitioner are not applicable. The Executing Court, taking note of all these aspects, rightly dismissed the application in E.A.No.33 of 2015.

8.I do not find any reason to interfere with the order passed by the Executing Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed.

9.The District Munsif Court, Thiruvottiyur is directed to dispose of the Execution Petition in E.P.No.47 of 2013 on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this

order. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

09.08.2016

To

The District Munsif Court,
Thiruvottiyur.

M.DURAIWAMY,J.
va

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