

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2017

CORAM

THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

Civil Revision Petition (NPD) No.1225 of 2017
and
CMP.No.5799 of 2017

Dinesh Jain

...Petitioner

..Vs..

Sri Jain Swetamber Terapanthi Trust Board,
Trust Rep. By its Managing Trustee,
Mr.Gokul Chand Bhandari,
No.34, Managappan Street,
Sowcarpet, Chennai 600 079.

...Respondent

Prayer: Civil Revision Petition is filed under Section 25 of Tamil Nadu Buildings (Lease & Rent) Control Act, against the fair and decretal order dated 16.12.2016 passed in M.P.No.378 of 2016 in RCA No.467 of 2015 by Learned VII Judge, Small Causes Court, Chennai.

For Petitioner : Mr.Venkatesh

For Respondent : Mr.Mahendar Bhansali

ORDER

This Civil Revision petition has been filed against the fair and decretal order dated 16.12.2016 passed in M.P.No.378 of 2016 in RCA No.467 of 2015 by Learned VII Judge, Small Causes Court, Chennai.

2. Heard Mr.Venkatesh, learned counsel appearing for the petitioner and Mr.Mahendar Bhansali, learned counsel appearing for the respondent.

3. The learned counsel appearing for the petitioner submits that the respondent has filed RCOP No.779 of 2013 against the petitioner for eviction for their own use and occupation and the lower Court has allowed the RCOP, against which the petitioner has filed the above RCA. No.467 of 2015. The building of the respondents consists of ground plus four floor and the entire building is under the use and occupation of the respondent, except the two shop portions, which are under the possession of the petitioner and his brother; and entire portions are kept vacant and no spiritual activity is conducted by the respondent. Moreover, the respondent is letting out the premises for marriages and other functions and they are having sufficient space in the building and total extent of the building is more than 4000 sq.ft. Hence, in order to prove the same the revision petitioner has filed the MP No.378 of 2016 before the VII Small Causes Court, Chennai, for appointing the advocate commissioner to inspect the petition premises and to note down the physical features along with detailed measurement of all the floors and submit a report. The said

application was dismissed by the Rent Control Appellate Authority. Hence the petitioner has filed the present Revision Petition.

4. Per contra, the learned Counsel appearing for the respondent would submit that the Appellate Court has rightly come to conclusion that the petitioner has not stated any valid reason for appointing the Advocate Commissioner, even though the prayer in the application is to note down the physical features of the property only to prove the factum of possession and therefore, dismissed the application of the petitioner.

5. I have considered the submissions made by both the parties and perused the materials available on record.

6. According to the learned counsel for the petitioner the said application was filed by the petitioner in the appeal mainly on two grounds. First ground is the entire floors of the premises is kept vacant and second ground is, to note down the physical features of the premises and to take measurement of all the floors.

D.KRISHNAKUMAR, J.,

7. Insofar as the first ground is concerned, the Appellate Authority has given a detailed order by citing various decisions of the High Court, particularly, *Manikandan v. Nandan @ Gnanamuthu and Others* [(2011) 6 MLJ 920] and rightly dismissed the said ground stating that the aforesaid application filed belatedly cannot be allowed as a matter of right, unless the petitioner has satisfied Order 26 Rule 9 of C.P.C. Insofar as the second ground is concerned, the learned counsel for the respondent relied on para 3 of the counter filed before the appellate Court and stated that there is no dispute with regard to the extent of the demised property viz., 4461 sq.ft. In view of the above, there is no prima facie case made out. Therefore this Court cannot interfere with the order passed by the Appellate Authority. Hence, the Civil Revision Petition is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

jv

04.04.2017

Index : Yes / No

Internet : Yes / No

To

The VII Judge Small Causes Court, Chennai.

CRP(NPD) No.1225 of 2017

<http://www.judis.nic.in>