

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.04.2017

CORAM:

THE HON'BLE MR. JUSTICE **M.SUNDAR**

C.R.P.(PD) No.1262 of 2017

and

C.M.P.No.5899 of 2017

N.Gopalakrishnan

..Petitioner

Vs.

N.Babu

.. Respondent

The Civil Revision has been filed under Section 115 of the Civil Procedure Code against the decree and fair order dated 27.2.2017 passed in E.A.No.107 of 2016 in E.P.No.229 of 2010 in RCOP No.1301 of 2009 on the file of the X Judge, Small Causes Court, Chennai.

For Petitioner : Mr.R.Ponnusamy

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ORDER

The matter arises under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as "the Rent Control Act").

2 The tenant is the revision petitioner before me. Though obvious, I am to state that the sole respondent before me is the landlord. The parties are referred to as the tenant and landlord in this order for the sake of

convenience and clarity.

3 The landlord filed a petition for eviction against the tenant. This petition is R.C.O.P. No.1301 of 2009 on the file of the X Judge, Small Causes Court, Chennai. The eviction was ordered vide order dated 16.3.2011, by the XI Judge (Incharge of X Judge), Small Causes Court, Chennai.

4 The matter was carried in an appeal by the tenant by way of a statutory appeal under Section 23 of the Rent Control Act. The statutory appeal is R.C.A.No.307 of 2012 on the file of the VII Judge, Small Causes Court, Chennai. The appeal was dismissed on 28.11.2014.

5 As against the dismissal of the appeal by the Rent Control Appellate Authority, the tenant approached this court by way of the civil revision petitions, being C.R.P.(NPD) Nos.4491 and 4492 of 2015.

6 This Court, vide order dated 8.3.2016 in the said C.R.Ps, granted an order of interim stay subject to the tenant depositing Rs.3,06,600/- being 50% of the arrears within a time frame set out therein. The relevant portion of the order is paragraph 5, which reads as follows :

“5.Considering the same, there shall be an order of interim stay, subject to the petitioner depositing Rs.3,06,600/- (Rupees Three Lakhs Six Thousand and Six Hundred Only, which is 50% of the rent due/damages for use and occupation), within a period of three weeks from today to the credit of RCOP No.1301 of 2009 on the file of the XI Court (Incharge X Court), Court of Small Causes, Chennai.”

7 It is now not in dispute before me that this amount has also not

been deposited. The reason given is that the jural relationship of the landlord-tenant is not admitted and that the tenant and the landlord are blood brothers. It is also submitted that a S.L.P. has been filed in the Supreme Court against this order. But no details of the same are available in the hearing.

8 Be that as it may, the landlord filed an execution petition, being E.P.No.229 of 2010 on the file of the X Judge, Small Causes Court, Chennai for executing the above said order of eviction made by the Rent Controller.

9 The tenant who entered appearance took out an application in the execution petition. This application is E.A.No.107 of 2016. This application has been filed invoking Section 47 of the Code of Civil Procedure, 1908 ("C.P.C.", for brevity).

10 The primary contention in the section 47 petition is that there is no jural relationship of landlord tenant between the parties, particularly in the light of the fact that the parties are blood brothers.

11 The executing court, after hearing both sides, dismissed the section 47 petition (E.A.No.107 of 2016) in and by an order dated 27.2.2017, which has been called in question before me in the instant C.R.P.

12 I have perused the order passed by the executing court.

13 I find no infirmity or illegality in the said order.

14 There can be no doubt about the legal proposition that an executing court cannot go behind the decree, which is being sought to be executed by launching the execution petition. The executing court has proceeded on that principle.

15 I am also not inclined to interfere in the matter in the light of the

fact that the tenant, who was given a reprieve by this court vide order dated 8.3.2016 in C.R.P.(NPD)No.4491 and 4492 of 2015, did not choose to avail of the same by depositing the sum ordered within the time frame. There would have been no difficulty for the defendant to do so without prejudice to his rights and contentions.

16 Owing to all that have been stated supra, I find no merit in the civil revision petition. The civil revision petition is dismissed. Consequently, the connected miscellaneous petition is closed.

04.04.2017

vvk

To

The X Judge,
Small Causes Court,
Chennai.

M.SUNDAR, J.

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04.04.2017

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