

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2017

CORAM:

THE HONOURABLE Ms.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.1793 & 1794 of 2017
and
CMP.Nos.8472 & 8473 of 2017

K.Sivakumar

..Petitioner in both CRPs

Vs.

1.T.M.T.Khadijath Nooriya
2.M.Anwar Hussain
3.M.Aishath Munawar
4.M.Aishath Najiya
5.M.Aishath Razeema
6.M.Authad
7.M.Aishath Lubaina

.. Respondents in both CRPs

Common Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 24.01.2017 made in C.M.P.No.569 of 2016 in RCOP No.1522 of 2013 and C.M.P.No.570 of 2016 in RCOP No.522 of 2014 on the file of the Court of Small Causes No.X, Chennai.

For Petitioner : Mr. N.Manokaran

COMMON ORDER

Since the issues involved in these revision petitions are one and the same, they both are taken up together and a common order is being passed.

2. The petitioner is the tenant and the respondents are the landlords of the petition mentioned property. The respondents filed two petitions in RCOP.No.1522 of 2013 and RCOP.No.522 of 2014 on the file of Court of Small Causes, Chennai under Section 10(2) (i) of the Tamil Nadu Buildings Lease and Control Act, seeking eviction against the petitioner. The order of eviction sought by the respondents against the said petitioner in the two Rent Control Original Petitions are on two different grounds. In RCOP.No.1522 of 2013, the eviction was sought on the ground that the respondents wanted to demolish the old building and to put up a multi-storied building, whereas in RCOP.No.522 of 2014, the eviction was sought on the ground of willful default of the petitioner in paying the rent.

2.1. In both the RCOP proceedings, during trial, one Sathyanarayan was examined on behalf of the respondents as

P.W.1. He filed proof affidavit and marked the documents as Ext.A-1 to A-17 in both the RCOPs. Ext.A-16 is the Power of Attorney executed by the respondents in favour of Mahnoor Enterprises, to take care of the petition premises, to collect rents and to conduct a case against the tenants in the petition premises. Ex-A1 is the authorisation letter given to Sathyanarayan (P.W.1) by Mahnoor Enterprises to give evidence on behalf of the respondents. Thereafter, the respondents filed applications in CMP.No.569 and 2016 and CMP.No.570 of 2016 to eschew the evidence of Sathyanarayana (P.W.1) on the ground that the said Sathyanarayana had left the service of Mahnoor Enterprises, after chief examination in these RCOP proceedings and his whereabouts are not known.

3. The petitioner filed 2 separate counters and opposed the said applications on the ground that the respondents have not stated that they have given Power of Attorney to the Mahnoor Enterprises in RCOP proceedings and the said fact was brought to the knowledge of the petitioner only in the present application. According to the petitioner, some of the respondents are not alive and even the Mahnoor Enterprises is not entitled to maintain the

RCOP proceedings. In such a case, the said applications filed in I.A.Nos.569 of 2016 and 570 of 2016 by the respondents are only to drag on the RCOP proceedings and therefore prayed the trial Court to dismiss the said applications. The learned Judge considering the averments in the affidavit, counter affidavit and on perusing the materials in Ext.A1 to A-17 had allowed the said applications vide his order dated 24.01.2017.

4. Against the said order dated 24.01.2017 passed in I.A.Nos.569 and 570 of 2016, the petitioner has filed these revision petitions.

5. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

6. From the materials available on record, it is seen that the respondents have filed the two applications in I.A.Nos.569 of 2016 and 570 of 2016 to eschew the evidence of Sathyanarayan (P.W.1) on the ground that he had left the service of Mahnoor Enterprises and the whereabouts of the said Sathyanarayana is not known. The respondents have stated that they have executed a

Power of Attorney with Mahnoor Enterprises to collect rents from the tenants and to file a case against the tenants in the petition premises. It is also stated that the said Sathyanarayana (P.W.1) who is the employee of the Mahnoor Enterprises was authorised to give evidence on behalf of the respondents and same was proved vide Ext.A1 and Ext.A16, the Authorisation Letter and Power of Attorney respectively filed by the respondents, and the said documents were also marked as evidence before the Court during trial. In the said circumstances, the petitioner denying that he did not have the knowledge of those documents at the time of trial cannot be accepted. In view of the statement that the whereabouts of said Sathyanarayana (P.W.1) was not known and that he could not be made available before the Court at the time of cross-examination by the petitioner, the learned Judge had allowed the applications with a view that by eschewing the evidence of Sathyanarayana (P.W.1), an opportunity would be granted to the petitioner to cross-examine the other witnesses to substantiate his claim. The learned trial Judge has rightly considered the facts of the case and allowed the application in I.A.Nos.569 of 2016 and 570 of 2016. Under the said circumstances, there is no illegality or irregularity in the order dated 24.01.2017 passed by the learned

X Judge, Small Causes Court, Chennai, in I.A.No.569 of 2016 and I.A.No.570 of 2016 warranting interference by this Court.

7. In the result, these Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

07.06.2017

Speaking Order/Non-speaking Order
Index : Yes
ds

To

The X Small Causes Court
Chennai.

V.M.VELUMANI, J.
ds

C.R.P.(PD)Nos.1793 & 1794 of 2017
and
C.M.P.No.8472 & 8473 of 2017

07.06.2017

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