

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.2668 of 2015

and

M.P.No.1 of 2015

C.P.Sudhakar

.. Petitioner

Vs

J.S.Raghusekar

.. Respondent

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 13.03.2015 made in I.A.No.6 of 2014 in R.C.O.P.No.8 of 2012 on the file of the Rent Controller (Principal District Munsif), Vellore.

For Petitioner : Mr.P.Chandrasekar
For Respondent : Mr.P.Ashok

ORDER

The Civil Revision Petition is filed against the order dated 13.03.2015 made in I.A.No.6 of 2014 in R.C.O.P.No.8 of 2012 on the file of the Rent Controller (Principal District Munsif), Vellore.

2.Learned counsel for the petitioner submitted that the

respondent/landlord filed a petition in R.C.O.P.No.8 of 2012 for eviction on the ground of additional occupation. He also filed I.A.No.2 of 2012, wherein Advocate Commissioner was appointed, he inspected the property and filed a report. The petitioner/tenant filed objection and also filed a petition in I.A.No.6 of 2014 for rejection of the Advocate Commissioner's report. The Trial Court after hearing both sides has dismissed the application. Against which, the present Civil Revision Petition has been filed by the petitioner/tenant.

3.Learned counsel for the petitioner submitted that the Advocate Commissioner has acted beyond the scope of the warrant issued. He further submitted that there is no direction by the Court to take the help of the Civil Engineer but he got the assistance of the Civil Engineer to measure the property. He would also submit that in the report he has given the finding that the place is necessary for additional occupation as if he render judgment. He also submitted that the Advocate Commissioner was appointed only to collect material evidence and as per the decision reported in **CDJ 2013 MHC 376 (Banu @ Banumathi and others vs. Muniammal)**, wherein it was clearly stated that no Commissioner shall be appointed for collecting material evidence. That factum was not considered by the Trial Court. He would also relied upon another decision reported in **CDJ 2006 MHC 1958 (P.Sankarappan vs.**

R.Jayachandran), wherein it was stated that Advocate Commissioner cannot be appointed for finding out the facts and gather evidence to prove the case of the parties. Hence, he prayed for setting aside the order passed by the Trial Court.

4.Resisting the same, the learned counsel for the respondent would submit that the Advocate Commissioner has not exceeded his limit or scope of the warrant. He would also submit that the Advocate Commissioner is entitled to seek for assistance of Civil Engineer and for that reason, he relied upon the decision reported in **2004 (1) MLJ 72 (R.S.Kumarasamy Iyer Firm by its Partner, R.S.K.Sivakumar and another vs. T.V.Krishnamoorthy and others)**, wherein it was held that the Advocate Commissioner has not gone beyond the scope of the warrant. He further submitted that as against the order passed in I.A.No.2 of 2012 for appointment of Advocate Commissioner, the revision in C.R.P.No.1469 of 2013 has been filed and the same was dismissed. So, only with a view to drag on the proceeding, the present revision has been filed. Hence, he prayed for dismissal of the revision petition.

5.Considered the rival submissions made by both sides and perused the typed set of papers.

6.The respondent/landlord as a petitioner filed a petition in R.C.O.P.No.8 of 2012 for eviction on the ground of additional occupation. During the pendency of the petition, he filed an application for appointment of Advocate Commissioner in I.A.No.2 of 2012 wherein Advocate Commissioner has been appointed. Against which, the petitioner herein preferred a revision in C.R.P.No.1469 of 2013, which was dismissed. The Advocate Commissioner inspected the property and filed a report. After filing of the report, the petitioner filed an objection and also filed I.A.No.6 of 2014 for rejection of the report. At first, the learned counsel for the petitioner raised the point that without the permission of the court, the Advocate Commissioner got the assistance of the Civil Engineer. At this juncture, it is appropriate to consider the decision relied upon by the learned counsel for the respondent/landlord reported in **2004 (1) MLJ 72 (R.S.Kumarasamy Iyer Firm by its Partner, R.S.K.Sivakumar and another vs. T.V.Krishnamoorthy and others)** wherein it was stated that the Advocate Commissioner can take the assistance of a qualified Engineer for submitting his report though the warrant does not specifically authorise him to do so. It is appropriate to incorporate the relevant portion, which is as follows:

“An Advocate Commissioner appointed in rent control proceedings can take the assistance of a qualified engineer

for submitting his report though the warrant does not specifically authorise him to do so.

Against an order refusing to scrap the report of an Advocate Commissioner, a revision petition under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 is not maintainable.”

So, the argument advanced by the learned counsel for the petitioner for rejection of the Advocate Commissioner's report on the ground of taking assistance of the Civil Engineer is no way helpful and the same is unacceptable.

7.The second point raised by the learned counsel for the petitioner is that the Advocate Commissioner has given a finding in his report report. At this juncture, it is appropriate to consider the warrant issued to the Advocate Commissioner, wherein it was stated that the Advocate Commissioner has to inspect the property in the front portion, reception and also the petition mentioned premises where the petitioner is running a Bakery. On that basis only, the Advocate Commissioner inspected the property and filed a plan along with the report. In such circumstances, I am of the view that the argument advanced by the learned counsel for the petitioner that the Advocate Commissioner has given the report as a fact finding authority does not merit acceptance.

8.The learned counsel for the petitioner also relied upon two decisions viz., ***CDJ 2006 MHC 1958 (R.Sankarappan vs. R.Jayachandran)*** and ***CDJ 2013 MHC 3796 (Banu @ Banumathi and others vs. Muniammal)*** wherein it was held that the Advocate Commissioner cannot be appointed to find out the facts and gather evidences to prove the case of the parties. There is no quarrel over the ratio decendi laid down in both the citations. But here in this case, the Advocate Commissioner was not appointed for collecting material evidence. Furthermore, the appointment of Advocate Commissioner was challenged by the petitioner in C.R.P.No.1469 of 2013 and it was ended in dismissal. In such circumstances, the petitioner shall not agitate the matter once again. Therefore, the argument advanced by the learned counsel for the petitioner does not merit acceptance. So, I am of the view that only with a view to drag on the proceedings, this revision petition has been filed which shows the abuse of process of Court. Hence, the revision petition deserves to be dismissed.

9.In the result, the present Civil Revision Petition is dismissed with cost of Rs.5,000/- (Rupees Five Thousand Only) to be paid to the Chief Minister Flood Relief Fund. Consequently, connected miscellaneous petition is closed.

10. At this juncture, the learned counsel for the respondent/landlord sought for early disposal of R.C.O.P.No.8 of 2012. Considering the request made by the learned counsel for the respondent/landlord, the Trial Court is directed to dispose of the petition in R.C.O.P.No.8 of 2012 within three months from the date of receipt of a copy of this order.

17.12.2015

Index: Yes/No
Internet: Yes/No
cse

To

The Rent Controller (Principal District Munsif), Vellore.

R.MALA. J.,

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