

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.3226 & 3227 of 2009
& M.P.Nos.1 & 1 of 2009

Adrine Mariapragasam

.. Petitioner in both CRPs

Vs.

M.Varghese

.. Respondent in both CRPs

COMMON PRAYER : Civil Revision Petitions filed under Article 227 of the Constitution of India, against the order and decretal order of the XIII Judge, Court of Small Causes in E.A.Nos.11 & 9 of 2008 in MP Nos.144 & 142 of 2008 in EP Nos.128 & 127 of 2008 in RCOP Nos.375 & 374 of 2007 respectively, both dated 18.09.2009.

For Petitioner : Mr.Mr.V.Raghavachari
in both CRPs

For Respondent : No appearance
in both CRPs

COMMON ORDER

These Civil Revision Petitions have been filed against the order and decretal order of the XIII Judge, Court of Small Causes in E.A.Nos.11 & 9 of 2008 in MP Nos.144 & 142 of 2008 in EP Nos.128 & 127 of 2008 in RCOP Nos.375 & 374 of 2007 respectively, both dated 18.09.2009.

2. The issues and parties in both the CRPs are one and the same and therefore both the CRPs are disposed of by this common order.

3. The petitioner is the landlord and the respondent is the tenant. The petitioner filed RCOP Nos.375 & 374 of 2007 against the respondent for eviction on the ground of willful default. The petitioners filed applications under Section 11 (4) of the Act for a direction to the respondent to deposit the rent in M.P.Nos.403 & 404 of 2007. Both the applications were allowed on 13.08.2007. Against the said order passed in MP Nos.403 & 404 of 2007, the respondent filed two RCA Nos.546 & 545 of 2007. Both the RCAs were dismissed by the judgment and decree dated 26.11.2007. The petitioner filed EP Nos.128 & 127 of 2008 and the said EPs were allowed ordering delivery of possession. According to the petitioner,

the possession of the petition premises was also taken. The respondent filed M.P.Nos.144 & 142 of 2008 for re-delivery of suit property alongwith other petitions for review, stay and not to record the delivery. The petitioner filed counter in all the applications.

4. According to the learned counsel for the petitioner, when the petitions were taken up for hearing, he represented that typed set of papers were not served on him and the learned Judge passed over the matter. Subsequently, learned Judge reserved the applications for orders. However, on the next day, the learned counsel for the petitioner represented to the learned Judge and the learned Judge directed the learned counsel for the petitioner to argue the matter on the same day itself. After hearing the arguments for more than 25 minutes, the applications in I.A.Nos.144 & 142 of 2008 were reserved for orders. The learned Judge, by order dated 25.08.2008 allowed the applications in I.A.Nos.144 & 142 of 2008. The petitioner filed E.A.Nos.11 & 9 of 2008 to set aside the order passed in I.A.Nos.144 & 142 of 2008 on the ground that even though the learned counsel for the petitioner argued the matter for more than 25 minutes, the learned Judge recorded that no oral arguments were advanced by the learned counsel for the petitioner and without considering the arguments

made by the learned counsel for the petitioner, order was passed and therefore it is only an exparte order and prayed for setting aside the exparte order.

5. The learned Judge dismissed both the applications in EA Nos.11 & 9 of 2008 holding that the orders in MP Nos.144 & 142 of 2008 were passed on merits, after considering the averments in the affidavit and counter affidavit. If the petitioner is aggrieved by the said order, he has to file only an appeal. Against the said order of dismissal dated 18.09.2009, the present Civil Revision Petitions are filed.

6. Heard the learned counsel for the petitioner. There is no representation for the respondent.

7. From the impugned order of the learned Judge, it is seen that the petitioner was not given opportunity to advance his arguments in M.P Nos.144 & 142 of 2008. In the applications filed by the petitioner in E.A Nos.11 & 9 of 2008 to set aside the exparte order dated 25.08.2008, the learned Judge held that the said order was not an exparte order and was passed on merits, after considering the averments in the affidavit and counter affidavit. By

the said order, the learned Judge has committed an irregularity as the learned Judge has not given any opportunity to the petitioner to argue M.P Nos.144 & 142 of 2008 filed by the respondent for re-delivery. In view of the admitted fact that no opportunity was given to the petitioner, both the Civil Revision Petitions are allowed setting aside the order dated 25.08.2008 passed in M.P Nos.144 & 142 of 2008. The learned Judge is directed to re-hear the M.P Nos.144 & 142 of 2008 afresh, after giving ample opportunities to both the parties and pass orders on merits and in accordance with law, within a period of eight (8) weeks from the date of receipt of a copy of this order.

8. In the result, both the Civil Revision Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

17.07.2017

Index : Yes/No
rgr

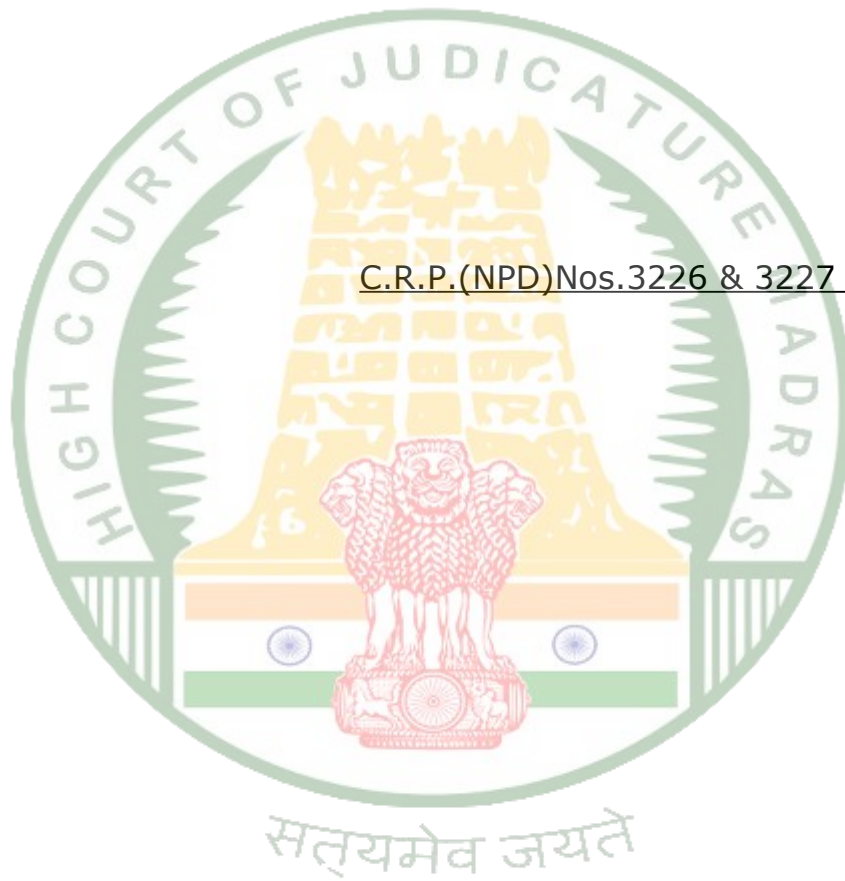
To

The XIII Judge,
Court of Small Causes,
Chennai.

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V.M.VELUMANI, J.

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