

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.06.2017

CORAM

THE HONOURABLE MR.JUSTICE **D.KRISHNAKUMAR**

CRP.NPD.No.3498 2016 and
CMP No.17798 of 2016

1. A.Sultan Mohideen

2. Zaiba Sultan

..petitioners

Vs.

1. Mohamed Mujibuddin

2. Amarchand Kothari

3. Anil Kothari

4. Sakthi Kannan

..Respondents

Prayer: Civil Revision Petition is filed under Section 25 of Tamil Nadu Buildings (Lease and Rent) Control Act to set aside the Fair and decreetal order passed in M.P.No.179 of 2016 in RCA No.337 of 2016 on 12.09.2016 on the file of IX Court of Small Causes, Chennai by allowing the Civil Revision Petition with costs.

For Petitioner : Mr.V.Raghavachari

For R1 : Mr.M.Devaraj

For R2 & R3 : Mr.P.B.Ramanujam

ORDER

The Petitioner / decree holder has filed this Civil Revision Petition to set aside the Fair and decreetal order passed in M.P.No.179 of 2016 in RCA No.337 of 2016 on 12.09.2016 on the file of IX Court of Small Causes, Chennai by allowing the Civil Revision Petition with costs. The facts of the case is as follows.

2. The petitioner filed RCOP No.979 of 2005 praying for an order of eviction with costs against the fourth respondent. By order dated 02.07.2010, the learned Rent Controller / the X Judge, Court of Small Causes, Chennai allowed the application. Challenging the said order, the fourth respondent filed an appeal in RCA No.470 of 2010 and the said appeal was dismissed on 27.03.2012. Challenging the said order, the fourth respondent filed a Civil Revision Petition in CRP No.2479 of 2012 before this Court. The aforesaid Civil Revision Petition was also dismissed. The petitioner / decree holder filed an E.P.No.203 of 2014 against the fourth respondent before the Executing Court. At this stage, the first respondent filed an application in EA

No.58 of 2014 claiming the right over the demised property and to dismiss the eviction petition filed in E.P.No.203 of 2014 in the aforesaid RCOP. After considering the parties concerned, the Rent Controller dismissed the application on 21.06.2016. Challenging the said Order, the first respondent filed an appeal in RCA No.377 of 2016 before the Rent Control Appellate Authority. The first respondent also filed an application in MP.No.179 of 2016 to stay the Execution Petition in the aforesaid RCOP pending disposal of the said appeal. The Appellate Court granted an interim stay on 12.09.2016 in MP.No.179 of 2016 in the aforesaid appeal. Challenging the said order, the petitioner/decree holder filed this CRP before this Court.

3. The learned counsel for the petitioner would submit that the first respondent has filed a suit in O.S.No.1479 of 2015 for declaration that the sale deed executed by vendor of the petitioner is null and void. The said suit is pending. No Interim Order has been granted in the aforesaid suit. The said suit has been filed pursuant to the I.A. filed by the first respondent. According to the counsel for the petitioner, the first

respondent has claimed the right over the property of the vendor of the petitioner / decree holder. The first respondent has not filed any materials before the court below to show that the first respondent has legal right in the said property. The said application has been filed only to harass and drag on the petitioner from enjoying the fruit of the order passed by the Rent Control Appellate Authority. It is also submitted that the said application filed by the first respondent is not maintainable before Rent Control Appellate Authority. Therefore, the petitioner filed the present CRP against the interim order passed by the Appellate Court.

4. Per Contra, the learned counsel for the respondent would submit that the first respondent is in possession of the property. The said factum was not disputed by the petitioner. The dispute between the petitioner and the first respondent is with regard to the title of the property. The first respondent filed the suit in O.S.No.1479 of 2015. The said suit is also pending before III Assistant City Civil Court, Chennai. If the order passed by the Rent Control Appellate Authority is

executed, it would affect the suit filed by the first respondent. The petitioner has obtained the order without impleading the first respondent as a party in the said proceedings. Therefore, the appellate court granted the interim stay pending disposal of the appeal. No prejudice will be caused to the petitioner, if the said order is continued till the disposal of the said appeal. Therefore, there is no need to interfere with the order passed passed by the court below.

5. Heard both sides and perused the materials available on record.

6. In the present case, the petitioner has challenged the interim stay granted by the Appellate Court in MP.No.179 of 2016 pending disposal of the appeal in RCA No.377 of 2016. Challenging the stay order, the present CRP has been filed before this Court.

7. The contention of the petitioner is that, the petitioner has got an eviction order against the fourth respondent and has

now filed the present application, that the aforesaid EA is not maintainable for the reason that the first respondent has filed the suit for declaration and the same is pending. The said fact has also been admitted by the both sides. First respondent filed the suit in OS No.1479 of 2015 and the same is pending. The appeal in RCA No.377 of 2016 was filed by the first respondent against the eviction order passed in the RCOP No.979 of 2005. The application in MP No.179 of 2016 was also filed by the first respondent in which order of stay was granted in RCA No.377 of 2016 before the Rent Control Appellate Authority. In that, the first respondent filed the application to stay execution proceedings pending disposal of the appeal. Now, RCA is still pending. Whether the maintainability of the application filed by the first respondent in the EA No.58 of 2014 is maintainable or not will be adjudicated before the appellate court. At this stage, it is an admitted fact that the petitioner is in possession of the demised property in Shop No.2. Therefore, no prejudice will be caused, if the interim order is continued till the disposal of the appeal. It is open to the parties concerned to raise all the grounds on merits including the maintainability of the

application and appeal before the appellate court. Therefore there is no warrants to interfere with orders passed by the appellate court in the aforesaid MP No.179 of 2016 in the aforesaid appeal.

8. Both parties have made their consent to this court for disposing of the appeal itself within the time framed by this Court.

9. The counsel for the petitioner undertakes that till the disposal of the appeal, the petitioner will not proceed with the execution petition in EP.No.203 of 2014.

10. In the light of the undertaking given by the counsel for the petitioner this court is inclined to pass the following order.

i) The revision petitioner shall not proceed with the EP till the disposal of the appeal.

ii) The appellate court is directed to dispose of the appeal

in accordance with law as expeditiously as possible, preferably within a period of eight weeks from the date of receipt of a copy of this Order.

iii) The appellate court will decide the appeal without being uninfluenced by the observations made in M.P.No.179 of 2016

11. The Civil Revision Petition is disposed of with the above directions. Consequently, the connected miscellaneous petition is closed. No costs.

08.06.2017

Index : Yes/No
Internet : Yes/No
Speaking/Non-speaking
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D.KRISHNAKUMAR.J

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To
The IX Court of Small Causes,
Chennai

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