

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.87 of 2004
C.M.P.No.463 of 2004

K.Venkatarathinam

.. Petitioner

Vs.

1. Dhanalakshmi Engineering
rep.by its Proprietrix
Thillaikarasi
No.27, Cross street
New Washermanpet
Chennai 600 081

2. Lakshmi Engineering Works

3. K.P.Sridharan

4. K.P.Govindan

.. Respondents

PRAYER: Civil Revision Petition filed Under Article 227 of the Constitution of India, against the fair and decretal order dated 15.12.2003 made in M.P.No.154 of 1992 in E.P.No.165 of 1991 in R.C.O.P.No.1900 of 1985 on the file of the XI Judge, Court of Small Causes, Chennai.

For Petitioner	: Mr.P.Seshadri
For R1	: Mr.H.Kishore
For R2 to R4	: Dispensed with vide order dated 30/08/2017

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 15.12.2003 made in M.P.No.154 of 1992 in E.P.No.165 of 1991 in R.C.O.P.No.1900 of 1985 on the file of the XI Judge, Court of Small Causes, Chennai.

2. The petitioner landlord filed R.C.O.P.No.1900 of 1985 on the file of the XI Judge, Court of Small Causes, Chennai against the respondents 2 to 4 for eviction on the ground of wilful default. The petitioner also filed M.P.No.75 of 1986 under Section 11(4) of the Act for a direction to the respondents 2 to 4 to deposit the arrears of rent. In the said M.P, the respondents 2 to 4 were directed by the Rent Controller to deposit the arrears of rent. The respondents 2 to 4 did not pay the rent as ordered. The learned Rent Controller ordered eviction on 16.07.1986. The respondents 2 to 4 filed R.C.A.Nos.783 of 1986 and 723 of 1987, challenging the order of eviction passed in R.C.O.P.No.1900 of 1985 and in M.P.No.75 of 1986. The petitioner and respondents 2 to 4 entered into compromise and a new rental agreement was entered on 01.07.1988, whereby the petitioner recognised Dhanalakshmi

Engineering of which respondents 3 and 4 are its partners and agreed to withdraw the eviction petition. The respondents 3 and 4 are partners as tenant. The respondents 3 and 4 withdrew the above two R.C.As' filed by them. Subsequently, the petitioner filed E.P.No.165 of 1991 against the respondents, for evicting the respondents 2 to 4 to execute the order of eviction passed by the learned Rent Controller.

3. The first respondent filed M.P.No.781 of 1991 for impleading him as a party in the said E.P proceedings. According to the first respondent, the respondents 3 and 4 as partners of Dhanalakshmi Engineering, sold the said firm as a running industry along with machineries. The petitioner recognized the first respondent as tenant and he was receiving rent. The first respondent also filed M.P.No.93 of 1992 to record him as obstructor at the time of execution. The said M.P.No.93 of 1992 filed by the first respondent was rejected as not maintainable. The petitioner proceeded with E.P.No.165 of 1991 and took delivery through Court. After taking delivery, the first respondent filed present M.P.No.164 of 1992 for redelivery. According to the first respondent, the petitioner and bailiff colluded together and name board of

Dhanalakshmi Engineering was manipulated to show that it is only Lakshmi Engineering and delivery was effected to the petitioner. The first respondent filed O.S.No.6744 of 1991 on the file of the VI Assistant Judge, City Civil Court to declare him as a tenant under petitioner in respect of the property and for injunction. The petitioner also entered appearance and took time for counter. Further, the first respondent obtained decree against the respondents 2 to 4 in O.S.No.7293 of 1988 on the file of the III Assistant Judge, City Civil Court, Madras, restraining them from interfering with the peaceful possession and enjoyment of the suit property. Suppressing these facts, the petitioner took possession of the petition premises and therefore sought for redelivery.

4. The petitioner filed counter affidavit and denied all the averments made by the first respondent. According to the petitioner, M.P.No.781 of 1991 filed by the first respondent for impleading him in the E.P as a respondent was dismissed and another M.P.No.93 of 1992 filed by the first respondent to record him as an obstructor in the E.P was rejected as not maintainable and hence, the present application for the relief sought for is not maintainable. For the above reason, prayed for dismissal of the M.P.No.154 of 1992.

5. Before the learned Judge, on the side of the first respondent, one Amburose was examined as PW1 and marked 20 documents as Exs.P1 to P20. The petitioner and respondents 2 to 4 did not let in any oral evidence. On behalf of the petitioner 2 documents were marked as Exs.R1 and R2. The learned Judge, considering the averments in the affidavit, counter affidavit, materials on record and the agreement dated 11.11.1987 marked in M.P.No.781 of 1991, allowed the application and ordered redelivery.

6. Against the said order dated 15.12.2003 made in M.P.No.154 of 1992 in E.P.No.165 of 1991 in R.C.O.P.No.1900 of 1985, the present civil revision petition is filed by the petitioner.

7. The contention of the learned counsel appearing for the petitioner is that the learned Rent Controller erred in relying on the documents marked in M.P.No.781 of 1991 for impleading the first respondent as party and ordering redelivery. The M.P.No.781 of 1991 filed by the first respondent for impleading him as respondent in E.P was dismissed after contest and first respondent did not take further proceedings and the said order has become final. The

learned Rent Controller failed to see that in M.P.No.781 of 1991, it was held that the first respondent is not a tenant and erred in ordering redelivery. The learned Rent Controller also failed to see that the petition filed by the first respondent, M.P.No.93 of 1992 to record him as a obstructor in the E.P was rejected 'as not maintainable'. The learned counsel appearing for the petitioner further submitted that the suit in O.S.No.6744 of 1991 filed by the first respondent was also dismissed and the first respondent has not taken any further proceedings.

8. Per contra, the learned counsel appearing for the first respondent submitted that the petitioner admitted that the petitioner recognized Dhanalakshmi Engineering of which respondents 3 and 4 are partners as tenants he purchased Dhanalakshmi Engineering from respondents 3 and 4 with all the machineries as a running industry and petitioner received rent from the first respondent and entered into an agreement dated 11.11.1987. Once Dhanalakshmi Engineering became the tenant, the petitioner is not entitled to execute the order of eviction against the Dhanalakshmi Engineering and prayed for dismissal of the civil revision petition.

9. No notice was served on the respondents 2 to 4 in the M.P.No.154 of 1992. The first respondent is the contesting respondent. Therefore, notice to the respondents 2 to 4 are dispensed with.

10. Heard the learned counsel appearing for petitioner and first respondent and perused the materials available on record.

11. Points for Consideration:

1. *Whether after dismissal of M.P.No.781 of 1991 filed by the first respondent for impleading him as respondent in E.P, claiming to be the tenant, the learned Rent Controller is right in ordering redelivery?*
2. *Whether the document filed in the earlier petition, M.P.No.781 of 1991 which was dismissed on merits after contesting can be relied on while deciding the present petition?*

Points 1 and 2:

12. The first respondent has claimed redelivery on the ground that he has become the tenant of petition premises. The original partnership firm, Lakshmi Engineering was reconstituted with

respondents 3 and 4 as partners in the name and style, Dhanalakshmi Engineering. The petitioner recognized the name by agreement dated 11.11.1987. In view of the same, the petitioner is not entitled to execute the order of eviction obtained against the second respondent, Lakshmi Engineering. The said contention is without merits. The first respondent to substantiate his case is relying on the agreement dated 11.11.1987 entered into between the respondents and recognized Dhanalakshmi Engineering of which respondents 3 and 4 are partners and rental receipts paid by Dhanalakshmi Engineering. These documents were not marked in the present M.P.No.154 of 1992, but were marked in the M.P.No.781 of 1991 filed by the first respondent to implead him as a party in the E.P. The said application was dismissed by the learned Rent Controller holding that the first respondent is not a tenant of the petitioner. The application filed by the first respondent as obstructor in M.P.No.93 of 1992 was rejected by the learned Rent Controller as not maintainable. The learned Judge, failed to consider these facts. The learned Judge erred in relying on the agreement dated 11.11.1987 as well as the document filed in M.P.No.781 of 1991. The learned Rent Controller has took note of the fact that in the agreement dated 11.11.1987, the petitioner did not agree to

withdraw the E.P. The first respondent has not produced any document in the present M.P.No.154 of 1992 to show that the petitioner recognised him as tenant and first respondent attorned the tenancy after alleged purchase of Dhanalakshmi Engineering. For the above reasons, the first respondent is not entitled to redelivery.

13. In view of the above facts, the order of the learned Judge is erroneous in allowing the application relying on the document filed in M.P.No.781 of 1991 which was dismissed for not recognizing the first respondent as tenant. Having failed to prove that the first respondent has become a tenant under petitioner by any acceptable evidence, the first respondent is not entitled to redelivery.

14. For the above reason, the order passed by the learned Judge is set aside and the civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

30.08.2017

Index: Yes/No

gsa

V.M.VELUMANI,J.

gsa

To

1. The XI Judge,
Court of Small Causes, Chennai.
2. Thillaikarasi
Proprietrix
Dhanalakshmi Engineering
No.27, Cross street
New Washermanpet
Chennai 600 081



C.R.P.(NPD)No.87 of 2004

C.M.P.No.463 of 2004

WEB COPY

30.08.2017