



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE **V.M.VELUMANI**

C.R.P(MD)No.45 and 46 of 2017 (PD)

and

C.M.P(MD)No.171 of 2017 (PD)

C.Parameswaran

...Petitioner/Petitioner/Respondent
in both CRP

Vs.

V.Jansi

...Respondent/ Respondent/ Petitioner
in both CRP

PRAYER: Civil Revision Petitions are filed, under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 05.11.2016 made in I.A.Nos.385 and 386 of 2016 in R.C.O.P.No.01 of 2014 on the file of the District Munsif Court cum Rent Controller, Sattur and to allow this Civil Revision Petition.

For Petitioner : Mr. C.Jeyaprakash
in both CRP

For Caveator/
Respondent : Mr. R.Pandi Maharaja
in both CRP

ORDER

The issue involved in both the CRPs are interlinked and hence, both CRPs are disposed of by common order.

2.The petitioner has filed these Civil Revision Petitions to set aside the fair and decreetal order, dated 05.11.2016 made in I.A.Nos.385 and 386 of 2016 in R.C.O.P.No.01 of 2014 passed by the District Munsif Court-cum- Rent Controller, Sattur.

3.The petitioner/Tenant is the respondent in R.C.O.P.No.1 of 2014. The respondent/landlord is the petitioner. The respondent filed R.C.O.P.No.1 of 2014 for eviction on the ground of demolition and re-construction before the District Munsif-cum-Rent Controller, Sattur. Trial commenced on 04.01.2016. The respondent side evidence was closed on 05.01.2016 and RCOP was posted for service to the petitioner. The petitioner filed applications and took time. The



petitioner side evidence was closed and posted for arguments on 20.09.2016. The respondent argued the main RCOP. When it was posted for arguments on the side of the petitioner, the petitioner filed I.A.No.385 of 2016 to re-open the case and I.A.No.386 of 2016 to scrap the report of the Advocate Commissioner. According to the petitioner, he wanted to examine the Advocate Commissioner and the said I.A., was allowed on payment of Rs.1,500/- as expenses to the Advocate Commissioner. The petitioner intends to file a Review petition to reduce the expenses as Rs.1,500/- ordered is on higher side. Suddenly, he fell sick and therefore, he could not file Review application. The learned Judge closed the evidence. Therefore, he has filed I.A.No.385 of 2016 to re-open the case. The respondent filed counter and opposed the said applications stating that the petitioner filed application only to drag-on the proceedings. The learned Judge considering the sequences of the events from the time trial started on 04.01.2016 and considering the averments in the affidavit and counter affidavit, dismissed the applications holding that the petitioner has filed the applications only to drag-on the proceedings.

4. Against the said order of dismissal, the petitioner filed above two Civil Revision Petitions.

5. The learned counsel for the petitioner submitted that the learned Judge failed to consider the contention made in the applications of the petitioner to re-open and scrap the report of the Advocate Commissioner. The learned Judge failed to see that the Advocate Commissioner submitted that he inspected the property along with qualified engineer. But he did not file any report of the engineer and filed his report without the report of the engineer. Subsequently, the report of the engineer was on record and it was not explained how it was found place in the Court record. The learned Judge has not given any independent reason for dismissing the application to scrap the report of the Advocate Commissioner. The petitioner could not file Review Application, due to his illness. Therefore, the learned Judge ought to have allowed the application for re-opening.

6. In support of his contention, the learned counsel for the petitioner relying on the judgment reported in 2015(2) MWN (Civil) 358 (R.Malligeswari vs. V.Munuswamy)

"17. Under Order 26, Rule 10(3), the Trial Court has got discretion to Order a fresh commission or not. However, the Court is not bound to do so in every case where the result of the local investigation is found to be unsatisfactory. Trial Court can decide the case on the evidence. But where the Trial Court is dissatisfied with the whole proceedings of the Commissioner that it thinks it may do so. Where the Court is of opinion, on considering the objection of the parties, if any, that



the Commissioner has so misconceived his duties as to render his Report valueless, it may wipe out and supersede the First Report by a specific Order to that effect, and may issue a fresh commission."

7. The learned counsel appearing for the caveator/respondent submitted that the petitioner already filed C.R.P.(MD)No.1337 of 2016 challenging the order passed in I.A.No.57 of 2016 to scrap the Advocate Commissioner's report. The said Civil Revision Petition was dismissed at the admission stage itself. Suppressing the said fact, the petitioner has come out with the present petition. The petitioner has filed number of applications before the Rent Controller. Even after taking number of adjournments for letting evidence, he has filed various applications before the Rent Controller Authority. The intention of the petitioner is only to drag-on the proceedings from preventing the Court to decide the case on merit.

8. I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the caveator/respondent and also perused the entire materials on record.

9. From the records, it is seen that the respondent filed RCOP for eviction on the ground of demolition and re-construction. The respondent filed C.R.P.(MD)No.1337 of 2016 for early disposal of the RCOP as the same was being dragged on. This Court, by the order, dated 21.07.2015 disposed the Civil Revision Petition directing the Rent Controller to dispose the RCOP within four months. Trial commenced from 04.01.2016 and it is seen from the order of the learned Judge that the petitioner filed various application with intention to drag-on the proceedings. The petitioner has not utilized the opportunity given to him to let in evidence as well as file application at the earliest. When the arguments were advanced on behalf of the respondent and RCOP was posted for arguments on the side of the petitioner, the petitioner has come out with the two applications to re-open and to scrap the Advocate Commissioner's Report. The contention of the learned counsel for the respondent is that already the petitioner filed I.A.No.57 of 2016 to scrap the report of the Advocate Commissioner which was dismissed. Against that, the petitioner filed C.R.P.(MD) No.2119 of 2015 and the said Civil Revision Petition was also dismissed. Suppressing the above facts, the petitioner filed above Civil Revision Petition. The petitioner has not denied the said fact. In the circumstances, the learned Judge considering the averments in the affidavit filed in support of the above application and also the order of this Court and various steps taken by the petitioner to delay the disposal of the RCOP, ~~diverses posted in the services~~ application by giving cogent and valid reason and there is no illegality or irregularity warranting interference by this Court. In the circumstances, the judgment relied on by



learned counsel for the petitioner is not applicable to the facts of the present case.

10. In the result, the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

/True Copy/

Sd/-
Assistant Registrar(Writs)

Sub Assistant Registrar

To

1. The District Munsif Court-cum-Rent Controller,
Sattur.
2. The Section Officer,
V.R. Section, Madurai Bench of Madras High Court,
Madurai.

+1cc to R.PANDI MAHARAJA Advocate in Sr.No.2624

+1cc to C.JEYAPRAKASH, Advocate in sr.No.2005

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