

HONB'E SRI JUSTICE CHALLA KODANDARAM

CIVIL REVISION PETITION No.1395 OF 2017

ORDER:

The civil revision petition is filed challenging the docket order dated 21.02.2017, passed by the Principal Senior Civil Judge, Nellore in E.P.No.35 of 2017 in O.S.No.565 of 2011.

Heard Smt K. Pallavi, learned counsel for the petitioner and Sri P. Vikram, learned counsel for the respondent.

It is the case of the petitioner/plaintiff/JDr that he had filed a suit in O.S.No.565 of 2011 against the respondent/1st defendant/DHr and her sons on the file of I Additional Senior Civil Judge, Nellore, for grant of permanent injunction restraining them from interfering with the possession of the petitioner over the schedule mentioned property. It is further stated that the defendants in the said suit filed their written statement and were contesting the suit. While so at the instance of the well wishers of the both the parties the suit was compromised and the matter was referred to Lok Adalat and the Lok Adalat Bench, Nellore passed an award in Award No.400/2012 on 28.04.2012. It is also stated that as per the terms of the compromise the petitioner herein had agreed to vacate the schedule property by 31.01.2017 and agreed to hand over vacant possession of the schedule premises to the decree holder and the decree holder is entitled to execute the said award in case if the JDr fails to vacate the schedule property by 31.1.2017. However, the suit against the defendants 2 and 3 who are the sons of the decree holder was not pressed. It is further stated that the JDr was ordered to pay damages @ Rs.50,000/- per month to the decree holder from 1.2.2017 till the JDr is evicted under the due process of law. When the petitioner/JDr failed to vacate and deliver the vacant possession of the premises to the decree holder by 31.1.2017, the decree holder had filed the E.P.No.35 of 2017 in

O.S.No.565 of 2011 on the file of Principal Senior Civil Judge, Nellore for execution of the Award dated 28.04.2012 passed by the Lok Adalat in Award No.400/2012. Questioning the same, the present civil revision petition is filed.

A perusal of the Award dated 28.04.2012, passed by the Lok Adalat, discloses that the same was passed on the consent given by both the parties and hence it has become a consent order. Further, this is a case where no interference is called for with the orders of the court below as admittedly the Award passed by the Lok Adalat is a consent Award. Being a consent Award, the same is not amenable for challenge and as a matter of fact the consent Award passed by the Lok Adalat is binding on both the parties. As a matter of fact filing of the civil revision petition by the petitioner resisting the execution petition is nothing but abuse of process of Court and in violation of the mutual agreement entered into and approved in the Lok Adalat proceedings. In those circumstances, there are no merits in the civil revision petition and the civil revision petition is liable to be dismissed with exemplary costs.

Accordingly the Civil Revision Petition is dismissed with exemplary costs of Rs.25,000/- (Rupees twenty five thousand only) payable by the petitioner to the respondent.

Miscellaneous Petitions, if any pending, in the civil revision petition shall stand closed.

CHALLA KODANDA RAM,J

Date:28.04.2017,
Gk

After pronouncement of the order, learned counsel appealed to the Court as an alternative submission, reference may be made to judgments of Supreme Court in (1) **State of Punjab and another v. Jalour Singh and others**¹, (2) **K.N. Govindan Kutty Menon v. C.D. Shaohji**² and

¹ (2008) 2 CC 660

Sanjay Kumar and another vs. Secretary, City Civil Court Legal Services Authority, Hyderabad³ that her client is willing to vacate the suit premises unconditionally if some time is granted and also willing to pay a sum of Rs.1,00,000/- per month for the extended period. Petitioner also submits that her client is willing to file an unconditional undertaking before this court to vacate the premises if a reasonable time is granted.

Learned counsel for the respondent on instructions opposes any time being granted. Further contended that the petitioner has also filed a suit and harassing his client, as such his client is not interested to continue the petitioner in the premises, even if Rs.1,00,000/- is offered for the extended period. Learned counsel for the respondent also further submit that they are not interested in dealing with the petitioner considering that the petitioner has been dishonest and further harassing the respondent in various ways.

Having considered the respective submissions there is no dispute that the right of the respondent seeking eviction of the petitioner has been crystallized by the consent order made by the Lok Adalat. The effort made by the petitioner also is unsuccessful before this Court on account of the dismissal of the present Civil Revision Petition. However, considering the fact that the petitioner is running a footwear shop and he requires some time for moving the stocks by finding an alternative accommodation, this Court is willing to accede to the request of the petitioner's counsel to grant two months time to vacate and clear all goods from the suit schedule premises, on the condition of petitioner paying Rs.1,00,000/- per month as rent for the extended period, subject to the condition of petitioner filing an unconditional undertaking before this Court within 10 days from the date of this Order agreeing to vacate

² (2012) 2 SCC 51

³ (2010) 3 ALD 330

the suit schedule premises and handover the same to the respondent on or before 30.06.2017. As the respondent had already kept a sum of Rs.3,00,000/- with the petitioner towards the deposit, respondent is entitled to retain the said amount and shall refund the balance at the time of petitioner vacating the premises. If the respondent is entitled to retain any amount on account of the damages with respect to the property she shall be entitled to do so. If the undertaking is not filed by the petitioner, the order passed earlier before pronouncement in the CRP shall stand in force.

CHALLA KODANDA RAM,J

Ssv



HONB'E SRI JUSTICE CHALLA KODANDARAM

CIVIL REVISION PETITION No.1395 OF 2017

Date:28.04.2017

Gk/Ssv

