

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3660 of 2015
and M.P.No.1 of 2015

P.R.K.Bhaskaran

.. Petitioner

Vs.

Zahir Hussain

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 05.08.2015 made in E.P.No.159 of 2015 in R.C.O.P.No.813 of 2014 on the file of the XIII Small Causes Court, Chennai.

For Petitioner : Mr.G.Ravi Raja for
Mr.K.P.Ashok

For Respondent : No appearance

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 05.08.2015 made in E.P.No.159 of 2015 in R.C.O.P.No.813 of 2014 on the file of the XIII Small Causes Court, Chennai.

2. The petitioner is tenant and respondent is landlord. The respondent filed R.C.O.P.No.813 of 2014 on the file of the XIII Small Causes Court, Chennai, for eviction of the petitioner from the entire ground floor portion of the petition premises bearing door No.2/2, Ranganathan street, T.Nagar, Chennai-17, measuring 130 sq.ft. on the ground of cease to occupy.

3. According to the petitioner, the landlords for the said premises are four persons namely, A.Mohammed Yusuf Khan, Zeauddin, A.Sarbuddin and A.Zahir Hussain/respondent herein. The respondent along with other three owners already filed R.C.O.P.No.401 of 2004 on the file of the XII Small Causes Court, Chennai, against the petitioner for eviction on the ground of additional accommodation. The petitioner is contesting the same. Along with the petition premises, there is another portion measuring

50 sq.ft., which is adjacent to the petition premises and for both the portions, there is only one shutter. The petitioner is carrying on business in the name and style of 'Leo coffee'. The respondent, who is one of the co-owners, by manipulating the records, filed the present R.C.O.P.No.813 of 2014 for eviction of the petitioner on the ground that the petitioner has ceased to occupy the petition premises.

4. According to the petitioner, the respondent is alleging that the petitioner ceased to occupy the petition premises from 01.09.2013 to 26.03.2014 i.e. for more than six months. The respondent in the present R.C.O.P. has given the address of the petitioner as old No.129, Coral Merchant street, Chennai-600 001. The petitioner has nothing to do with the said address. The petitioner or his family members are not residing in the said address. The respondent suppressed the earlier R.C.O.P.No.401 of 2004 filed by him along with three others, wherein he has given the address of the petitioner as 'Proprietor, Leo Coffee Grinding Works at Old No.2, New No.1, Ranganathan street, T.Nagar, Chennai-17. The respondent by playing fraud on the Court created documents as though the petitioner has been served in the R.C.O.P. and obtained

an order of eviction on 04.12.2014. The respondent played the similar fraud in E.P.No.159 of 2015 and without serving the petitioner, obtained order of delivery and subsequently, with the help of police, evicted the petitioner illegally on 25.08.2015. The petitioner came to know about the order of eviction and delivery only when the respondent came to the petition premises along with rowdy elements and police, where the petitioner is carrying on business and forcefully evicted, damaged the shop and removed valuable machinery, display board, weighing scale, stationary and stocks of Rs.25 Lakhs and cash sales, register etc., worth about Rs.50,00,000/-. The respondent and others also abused the staff of the petitioner and molested the lady staff. The police refused to listen to the explanation of the petitioner and no notice was served on the petitioner. Another R.C.O.P.No.401 of 2004 filed by the respondent along with three others is pending. The petitioner filed M.P.No.516 of 2015 to set aside the exparte order of eviction dated 04.12.2014. The respondent filed counter and said M.P. is pending.

5. In view of the illegal act of the respondent evicting the petitioner illegally, the petitioner filed the present Civil Revision Petition under Article 227 of the Constitution of India, to set aside

the order of delivery of possession dated 05.08.2015 made in E.P.No.159 of 2015 in R.C.O.P.No.813 of 2014 and consequently, for redelivery of the possession of the petition premises namely, Leo coffee bearing No.2/2, Ranganathan street, T.Nagar, Chennai-17, measuring 197 sq.ft. back to the petitioner.

6. Though the respondent entered appearance through advocate, there was no representation on behalf of the respondent on 02.02.2018 and hence, the matter is directed to be posted today. Today also, there is no representation on behalf of the respondent.

7. Heard the learned counsel for the petitioner and perused the materials available on record.

8. From the materials available on record and contention of the learned counsel for the petitioner, it is seen that the respondent has sought for eviction of the petitioner on the ground of cease to occupy. The respondent has not sent notice to the petition premises address, where the petitioner is carrying on business. In the R.C.O.P. and E.P., according to the petitioner, no notice was served on him through Court or RPAD. In both the proceedings, the

petitioner was served only by substituted service. The petitioner has contended that he or his family members never lived in the address given by the respondent in R.C.O.P.No.813 of 2014 and subsequent proceedings. The petitioner has also contended that no notice was sent to the petition premises. He has made this averment in M.P.No.516 of 2015, which was filed to set aside the exparte order of eviction dated 04.12.2014 and also in the grounds of revision.

9. The respondent filed counter in the Civil Revision Petition, in which, he has not stated that notice was sent to the petition premises and also not stated that notice sent to the petitioner to the petition premises address was returned unserved. The ground on which the respondent sought for eviction in the present R.C.O.P. is that the petitioner ceased to occupy the petition premises from 01.09.2013 to 26.03.2014 i.e. for more than six months. When the respondent is alleging that the petitioner is ceased to occupy the petition premises, he ought to have sent notice to the petition premises address and filed returned cover which would have substantiated the claim of the respondent that the petitioner ceased to occupy the petition premises for more than six months. This clearly proved that the respondent, with ulterior motive has given

wrong address and did not send notice to the petition premises only with a view to get exparte order of eviction and delivery of the possession. The respondent has also not denied that the petitioner was carrying on business in the petition premises when the petitioner was evicted on 25.08.2015. The respondent has also not denied in the counter filed in the present Civil Revision Petition that he has filed earlier R.C.O.P.No.401 of 2004 for eviction of the petitioner on the ground of additional accommodation showing the address of the petition premises as Old No.2, New No.1, Ranganathan street, T.Nagar, Chennai-17.

10. Considering the above facts, I hold that this is a fit case for exercising extraordinary discretionary power of this Court under Article 227 of the Constitution of India to set right irregularity and illegality in the order of delivery of petition premises to the respondent. Accordingly, order dated 05.08.2015 made in E.P.No.159 of 2015 ordering delivery of possession is set aside. The petitioner is entitled to possession of petition premises. The learned Judge is directed to order re-delivery and deliver the petition premises to the petitioner through Court amin and with police aid, if necessary, within three weeks from the date of receipt of a copy of

this order and file compliance report before this Court. Further, in view of the irregularity committed by the respondent in getting exparte order of eviction, M.P.No.516 of 2015 is liable to be set aside and it is hereby set aside by exercising power under Article 227 of the Constitution of India. The learned Rent Controller is directed to take R.C.O.P.No.813 of 2014 on file and dispose of the same on merits and in accordance with law, after giving opportunity to the petitioner to file counter and after hearing both the parties, within three months from the date of filing of the counter.

11. In the result, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

05.02.2018

Index:Yes/No

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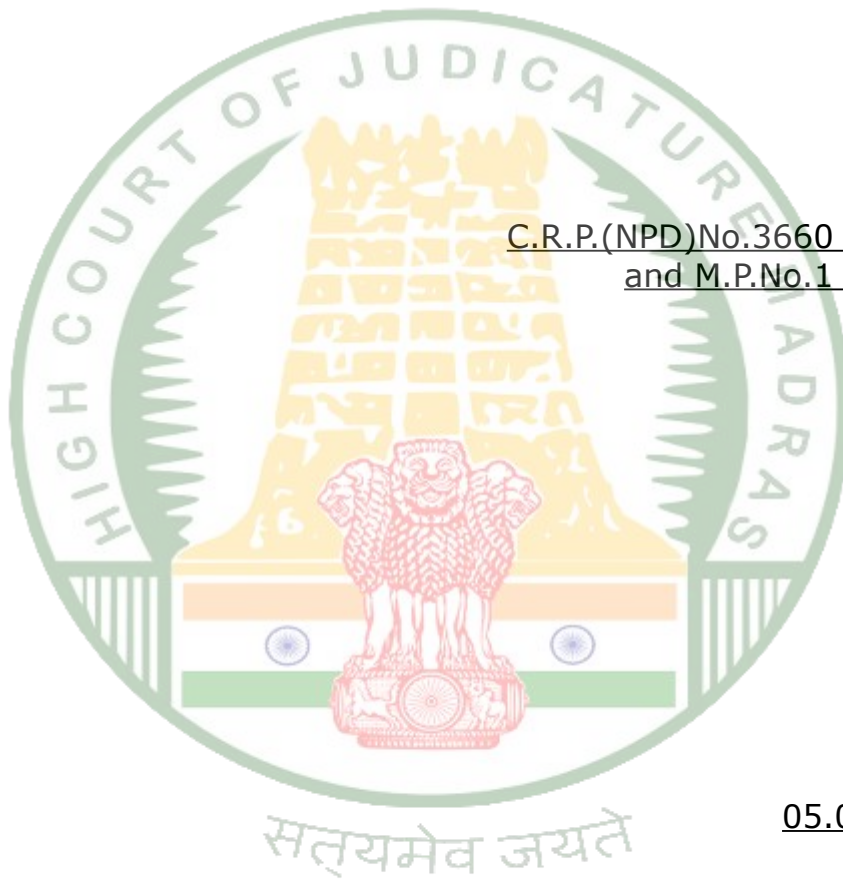
To

XIII Small Causes Court, Chennai.

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V.M.VELUMANI,J.

Kj



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