

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2018

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

C.R.P (NPD) .No.468 of 2003

and

C.M.P.No.4683 of 2003

E.D.Sundaramurthy

...Petitioner

Vs

1. Paul Pandiya Nadar

2. D.Shankar

3. P.Krishnan

4. N.K.Jayanalbdeen

5. Ahmed Moideen

6. A.R.Basheer

7. P.Sheik Mohamed

8. B.Meera Sahib

9. P.Nagoor Meeran

10.P.Nagoor Meeran

11.A.Nagoor Meeran

12. A.J.Arshad Ali

13.K.Themeen Amari

14.B.Mohamed Rafiq

15.J.Ali Akbar

16.B.Musthaffa

17.Abubucker @ Iniyavan

...Respondents

PRAYER: Civil Revision Petition filed under Section 227 of Constitution of India against the fair and final order passed by the learned XI Judge, Small Causes Court (Rent Controller),

Chennai made in M.P.No.314 of 2001 in E.P.No.332/2001 in R.C.O.P.No.2796/1980 dated 04.10.2002.

For Petitioner : Mr.H.Kishore

For Respondents : R1-Died
No appearance for R3 to 16
R17 -Ex-parte

ORDER

The present Revision Petition is a classic example of how the legal system is misused to deny a landlord who had obtained an eviction order against the tenant as early as in the year 1982, which order has been confirmed right up to the Hon'ble Supreme Court possession of his property, the tenants adopted various dilatory tactics and the last of such is to bring in parties who are totally unrelated to the property to file obstruction petitions.

2. The facts which has culminated in the filing of the Civil Revision Petition is being narrated here under:

The petitioner herein is the owner of the property comprising land and building situated in Plot Nos.23, 24, Gangaiyamman Koil Street, Puliyur, Chennai - 600 024. The Revision Petitioner had leased out the said premises to the first respondent herein for carrying on his business of retail sales of fire wood shop on a monthly rent of Rs.100/-. As the petitioner wanted to pull down the existing structure and put up a new construction, he had requested the petitioner to vacate and hand over possession. However, the first respondent was not willing for the same constraining the revision petitioner to file R.C.O.P.No.2796 of 1980 on the file of the Rent Controller (IX Small Causes Judge), Chennai. The first respondent put forward a defence that he was the tenant only in respect of the land and that the superstructure was put up by him. He therefore contended that the petition under the Tamil Nadu Buildings (Lease and Rent Control) Act was not applicable and that he is entitled to the benefits of the City Tenant Protection Act. The Rent Controller after an elaborate enquiry allowed the petition and ordered eviction.

3. The first respondent/tenant took up this order in appeal to the learned Appellate Authority (IV Small Causes Judge), Chennai in H.R.A.No.599 of 1981. The learned Appellate Authority confirmed the order of the learned Rent Controller and rendered a finding that the superstructure belonged only to the revision petitioner and the first respondent was in occupation of the same only as a tenant. The unsuccessful first

respondent/tenant took up the order in revision to this Hon'ble Court in C.R.P.No.143 of 1982. By an order dated 12th August 1983, this Hon'ble Court passed the following order.

"The tenant will have three months time to vacate the premises subject to the condition that the petitioner pays the entire arrears, if any upto date on or before 10th September 1983 and continues to pay regularly the rents on or before 10th of every succeeding month. Failure to comply with any one of the conditions will result in withdrawal of this concession."

4. The first respondent carried this order by way of an appeal to the Hon'ble Supreme Court in Civil Appeal No.10820 of 1983. By an order dated 11th September 1996, the Hon'ble Supreme Court was also pleased to confirm the order of this Court. The Hon'ble Supreme Court did not grant any time to the tenant to vacate.

5. Mean while, after the disposal of the Civil Revision Petition by this Court, the revision petitioner had filed E.P.No.1209 of 1983 for delivery of vacant possession. It was at this juncture that the first respondent /tenant approached the Hon'ble Supreme Court originally in S.L.P (C).No.15031 of 1983 which upon the special leave petition being ordered was converted into an appeal in Civil Appeal No.10820 of 1983. Therefore, E.P.No.1209 of 1983 was dismissed, in view of the pendency of the appeal before the Hon'ble Supreme Court. At no point when the appeal was pending before the Supreme Court or when the appeal was dismissed did the tenant contend that he was no longer in possession of the demised property. On the contrary it was he confirmed in possession.

6. After the dismissal of the appeal before the Hon'ble Supreme Court on 11.09.1996, the revision petitioner filed a fresh execution petition on 18.10.1997. Originally the Registry of the Small Causes Court returned the papers stating that E.P.No.1209 of 1983 was pending, but later it was reported that the entire back papers relating to the rent control proceeding had gone missing. The petitioner through his counsel made several attempts to trace the bundles, but to no avail. Thereafter, the counsel for the petitioner gave a complaint on 14.10.1999 to the learned Chief Judge, Small Causes Court. However, this complaint also yielded no result and therefore the petitioner took out an application to reconstruct the records in M.P.No.189 of 2000 in R.C.O.P.No.2796 of 1980. This petition was allowed and thereafter the records were reconstructed. The execution petition filed by the revision petitioner came to be numbered as E.P.No.332 of 2001. The learned XI Small Causes Judge was pleased to direct the bailiff of the Court to deliver

vacant possession of the petition property to the revision petitioner by his order dated 23rd April 2001, nearly two decades after the revision petitioner had obtained the order of eviction before the learned Rent Controller. The bailiff who went to the petition premises on the very same day returned his warrant stating that there were about 19 persons claiming to be tenants of the revision petitioner and therefore reported his inability to hand over vacant possession to the revision petitioner in view of the obstructions.

7. The revision petitioner filed a petition to remove the obstructors and direct delivery of possession to him against the first respondent and 16 other persons who had obstructed the bailiff. The 16 obstructors have filed identical counters in which they had *inter alia* contended that they had nothing to do with the first respondent and that they were directly tenants under revision petitioner. Each of them pleaded different rates of advance amounts and monthly rents having been paid to the revision petitioner. They also took a stand that in R.C.O.P.No.2796 of 1980* respondent R17 was ex-parte. The petition has been initiated against the first respondent in order to use the eviction order to throw out the obstructors, who were the real tenants from the petition premises.

8. The learned XI Small Causes Judge, Chennai proceeded to dismiss the petition in M.P.No.314 of 2001 in E.P.No.332 of 2001 and the learned Judge has held against the revision petitioner on the following grounds :

a) The petitioner had failed to take out an application to appoint an Advocate Commissioner who would have reported as to who was in possession of the petition premises.

b) Though, the Hon'ble Supreme Court had dismissed the appeal filed by the first respondent on 11.09.1996, the petitioner has not taken steps to evict the first respondent and there is no explanation for the delay that it is clear from the petition filed by the petitioner that the first respondent is no longer in possession of the petition's premises.

9. On the basis of the above reasonings, the learned XI Small Causes Judge, Chennai has proceeded to dismiss the petition filed by the petitioner.

10. Though, the matter was posted on 15.03.2018 and 22.06.2018 there was no representation on the side of the respondents. The matter was argued by the learned counsel for the revision petitioner on 22.06.2018 and this Court had posted the matter under the caption 'for orders' on the next sitting date. Today, the matter was posted in the list and till 3.00

p.m none appeared on behalf of the respondents. Therefore on the basis of the records placed before this Court the matter is being disposed of.

11. From a perusal of the records, it is clear that even till the year 1996 when the appeal was disposed of by the Hon'ble Supreme Court, the same was being hotly contested by the first respondent who had contested the appeal on the ground that he was in possession of the property and that he was a lessee/tenant only with reference to the land and not with reference to the superstructure, the same having been put up by him. Nowhere had the first respondent pleaded that he has handed over vacant possession of the premises to the revision petitioner. The obstructors had filed separate counters to M.P.No.189 of 2000 contending that they have been put in possession of the property, by the revision petitioner in and around the year 1991 to 1995. It is necessary to state here that the appeal had been disposed of by the Hon'ble Supreme Court only in the year 1996 when according to the respondents 2 to 16 herein they had been inducted as tenants. The first respondent has been contesting the application from the year 1980 and had continued right up to the Hon'ble Supreme Court. The respondents 2 to 16 have not let in an iota of evidence to show that they are direct tenants under the revision petitioner, either in the form of a written document or by showing payment of rents in favour of the revision petitioner. Except for filing the counter statement making vague allegations the respondents 2 to 16 have not let in any evidence to prove their contentions.

12. The learned IX Small Causes Judge, Chennai has not applied his mind to the facts on hand which is evident from his finding that the revision petitioner had delayed in filing the execution petition, after the dismissal of the Civil Appeal especially when as early as in the year 1999 the revision petitioner has given a complaint to the Chief Judge of the Small Causes Court informing that the entire back papers in R.C.O.P.No.2796 of 1980 had gone missing and requesting permission to reconstruct the same. He has merely proceeded on a presumption that the respondents 2 to 16 are tenants under the revision petitioner, on the account of the fact, that they had obstructed the execution of the warrant by the bailiff.

13. Considering the fact that the revision petitioner's right to get back possession of the property leased out to the first respondent, has been confirmed right up to the Hon'ble Supreme Court, this Court should endeavour to give effect to the decree obtained by the revision petitioner. A mere semblance of an obstruction without concrete proof cannot be permitted to overturn a legally obtained decree, that too after contest. The learned XI Small Causes Judge has not returned

any finding on the revision petitioner's claim that respondents 2 to 16 are third parties not connected with the property and this omission has resulted in the erroneous order.

14. In view of the reasonings, I am inclined to allow the civil revision petition and consequently set aside the order of the learned XI Small Causes Judge, Chennai dated 04th October 2002 in M.P.NO.314 of 2001* in E.P.No.332 of 2001. In the result, this Civil Revision Petition is allowed. Consequently, the executing Court is directed to order re delivery to the petitioner. C.M.P.No.4683 of 2003 is therefore closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS VI)
dt. 20.07.2018

Corrected as per order of this
Court, dated 10.09.2018 and made
in CRP (NPD) 468/03

Sd/-
Assistant Registrar(CS-VI)
dt.17.09.2108

//True Copy//

Sub Assistant Registrar

dh

To

The XI Judge,
Small Causes Court (Rent Controller),
Chennai.

To be substituted in the
place of order despatched
on 03.08.2018

+1cc to Mr.H.Kishore, Advocate SR.NO.62408/2018*

GP(CO)
sm:23.7.2018
Eu 17.09.2018

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