



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 12.03.2018

CORAM :
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

WEB COPY

C.R.P.(MD)No.408 of 2018
and
C.M.P.(MD)No.1802 of 2018

M.Viswas : Petitioner / Petitioner / Claimant /
3rd Respondent / 3rd Respondent / Tenant

vs.

1.G.Dhamodharan : 1st Respondent / 1st Respondent /
Petitioner / Landlord /
Decree Holder
2.V.Suriyamoorthy : 2nd Respondent / 2nd Respondent /
1st Respondent / 1st Respondent /
Judgment Debtor
3.D.Kaja Mohideen : 3rd Respondent / 3rd Respondent /
2nd Respondent / 2nd Respondent /
Judgment Debtor

PRAYER: Petition filed under Article 227 of the Constitution of India, to set aside the fair and executable order passed in E.A.No.35 of 2016 in E.P.No.69 of 2014 in R.C.O.P.No.18 of 2013 dated 11.01.2018 on the file of the Additional District Munsif Court, Madurai Town.

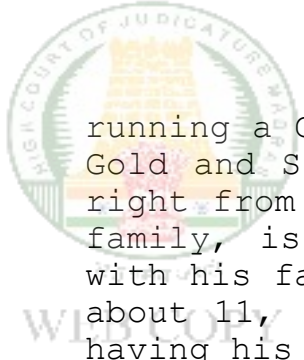
For Petitioner : Mr.M.Ponniah
For Respondents : Mr.J.Barathan
for M/s.T.R.Jeyapalam for R.1

ORDER

Assailing over the dismissal order of the learned Additional District Munsif, Madurai, in E.A.No.35 of 2016 in E.P.No.69 of 2014 in R.C.O.P.No.18 of 2013 dated 11.01.2018, the present civil revision petition was filed.

2. Among other things, the learned Counsel for the petitioner would submit that the petitioner's application to declare the order passed in R.C.O.P.No.18 of 2013 dated 20.12.2013 as null and void insofar as the petitioner is concerned and to declare him as the legally recognized tenant in the suit property came to be dismissed vide impugned order dated 11.01.2018 and challenging the same, he is before this Court.

3. The learned Counsel for the petitioner would submit that the suit property is a three floor building and the petitioner is



running a Gold Refine Pattarai, in the name and style of "New Renuka Gold and Silver Assayer", in the ground floor of the suit property right from 2006. The petitioner, who is the sole breadwinner of his family, is living in the first floor of the suit property, along with his family, viz., his wife and three School going children aged about 11, 9 & 3 years, respectively and in the second floor, he is having his Gold test lab and Gold Pattraai.

4. When the matter came up for admission, the learned Counsel for the petitioner submitted that the petitioner is ready and willing to vacate the premises, but, he would pray for some time, as the children are doing their School education. Further, he has lot of customers in and around the suit property, since, he is doing business for the past 12 years. The learned Counsel for the petitioner further submitted that the petitioner is ready to file an undertaking affidavit to that extent. Therefore, the matter was adjourned and on 02.03.2018, the petitioner, in the presence of the learned Counsel for the first respondent, has filed an undertaking affidavit dated 02.03.2018 stating that he will vacate the premises by 01.09.2018 and the same was placed on record. Thereafter, the matter was further adjourned to 05.03.2018 & 09.03.2018 for production of Demand Draft for arrears of rent due to the 1st respondent/landlord.

5. Such being so, when the matter was adjourned to 09.03.2018 for production of Demand Draft, on 08.03.2018, by way of mentioning, it was brought to the knowledge of this Court by the learned Counsel for the petitioner that the respondents were taking coercive steps to vacate the petitioner and therefore, the matter was directed to be listed before this Court on the same day, i.e., 08.03.2018.

6. On 08.03.2018, the learned Counsel for the petitioner has produced a Demand Draft for a sum of Rs.45,000/- towards rental arrears and he further submitted that the Court below has directed to list the matter for delivery on 09.03.2018 with police protection and therefore, he prayed for an order of interim stay. It is also submitted by the learned Counsel for the petitioner that he has informed the other side about the listing of the matter before this Court on 08.03.2018 and despite the same, none appeared on behalf of the respondents. Considering the circumstances of the case and the fact that the petitioner has already filed an undertaking affidavit and has produced the Demand Draft, this Court has granted an order of interim stay till 19.03.2018.

7. The learned Counsel for the first respondent would submit that as soon as the interim order was communicated, the eviction process was stopped, however, delivery of first and second floor was effected by that time. But, he would submit that the petitioner did not inform him about the mentioning before this Court at an earlier date. This Court is unable to accept the same, since, coercive steps were taken for evicting the petitioner and at this time, one can understand that the petitioner shall straight away appear before this Court and complain about the activities of the respondents when

already this Court has directed the petitioner to file an undertaking affidavit and to produce the Demand Draft.

8. It is very unfortunate that proceedings is pending before this Court and expressing his financial difficulties, the petitioner has requested time to vacate the premises and to that effect he has also filed an undertaking affidavit, which is not disputed by the respondents and when the case was directed to be listed before this Court on 09.03.2018 for further hearing, coercive steps were taken to evict the petitioner on 08.03.2018 and all the belongings of the petitioner have been thrown out. The photographs produced before this Court would show the way in which the belongings of the petitioner were thrown away, which really hurts and triggers the conscious of this Court.

9. Therefore, in order to meet the ends of justice, the respondents are hereby directed to receive the Demand Draft for the sum of Rs.45,000/- towards rental arrears and restore the suit property along with the belongings of the petitioner to him immediately, without waiting for a copy of this order.

10. The petitioner, as per his undertaking affidavit, shall vacate the premises within a period of six months, in any event not later than 01.09.2018. Till such time, the petitioner shall effect the monthly rent on or before 5th of every English Calender month.

11. With the above directions, this civil revision petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar(Crl side)

/True copy/

Sub Assistant Registrar

To

The Additional District Munsif,
Madurai Town.

+1cc to Mr.T.R.JEYAPALAM, Advocate, SR.No. 54732
+1cc to Mr.M.PONNIAH, Advocate, SR.No. 54642

C.R.P. (MD) No.408 of 2018
and
C.M.P. (MD) No.1802 of 2018
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GK
KK/KKR/11.04.2018/SAR-2/3P-4C