IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.04.2019

Delivered on: 16.07.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(NPD).No.2261 of 2018
and
CMP.No.14162 of 2018

Mr. John Prabakar
...Petitioner

Vs

Mrs. Uma Maheswari
...Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the order and decreetal order dated 11.07.2018, passed in M.P.No.350 of 2018 in R.C.A.No.418 of 2018, on the file of the IX Judge, Court of Small Causes, Chennai and allow this Revision Petition.

For Petitioner : Mr. Gnanasambandan for
Mr. R. Vivekananthan
For Respondent : Mr. A. E. Ravichandar

ORDER

This Civil Revision Petition is yet an another example of how the legal system is used by unscrupulous litigants to stall the proceedings in a court of law.

2. The facts which are being narrated herein below would demonstrate the above facts:

The parties are referred to as land lady and the tenant.

The revision petitioner is the land lady who had filed RCOP.No.1324 of 2014 under Sections 10(2) (i) of the Tamil Nadu Building (Lease and Rent Control) Act, 1960 on the file of the Rent Controller (XIV Small Causes Court) Chennai alleging that the tenant was in arrears from May 2010 to March 2014. The landlady would submit that she had inducted the tenant into the demised property which is a two storied house in Justice Sundaram Iyer Road, Mylapore, Chennai-600 004.

3. Though the tenant was inducted on 01.09.2001, the tenancy agreement was entered into 21.01.2002. Initially the lease was for a period of eleven months renewable at the option of the parties. A

separate agreement for the amenities was also entered into on the very same day. The rent for the building was fixed at Rs.13,000/- per month and that for the amenities at a sum of Rs.8,000/-. The said rent was increased to a sum of Rs.23,000/- (including amenity charges) thereafter. The landlady would contend that from 04.03.2009, the tenant had arrears of rent to the tune of Rs.92,000/- constituting the rents for the month of March 2009 to June 2009. Thereafter he stopped paying the rents altogether with effect from May 2010. From the month of May 2010 till March 2014, the arrears was a sum of Rs.10,81,000/- and the landlady would submit that she had issued a legal notice dated 21.04.2014 to which a reply was sent on 10.06.2014 in which the tenant would contend that he has paid a sum of Rs.17,52,657/- to save the property from public auction that was conducted by a financial institution invoking the provisions of the SARFAESI Act. The landlady sent a rejoinder dated 23.06.2014 in which she had contended that she had not borrowed any amounts from anyone. She further contended that the tenant would claim that he had paid a sum of Rs.17,52,657/- to the bank in the year 2008 and paid a sum of Rs.2.30,000/- on 26.12.2009. This amount constituted the rents for the period July 2009 to April 2010.

4. The tenant had countered the above action by filing a counter interalia contending that the Rent Control Petition was per se not maintainable since proceedings under the SARFAESI Act had been initiated and the bank had issued a Section 13(4) notice. He had also taken out a defence that the power agent who had filed the Petition on behalf of the landlady had no personal knowledge, therefore the petition which was filed by the power agent was not maintainable on this ground as well. The tenant further contended that he had already initiated the proceedings in W.P.No.29554 of 2013 before this Court and, S.A.No.28 of 2014 before the Debt Recovery Tribunal, Chennai and also contested Crl.M.P.No.766 of 2014 before the learned Chief Metropolitan Magistrate Court, Egmore, Chennai and the landlady was not taking any efforts to save the property. The tenant further went on to contend that in order to protect his possession he had consented to purchase the property from the financial institution under the SARFASI Proceedings. He would contend that he had paid a sum a Rs.75,00,000/- and the balance payment of Rs.1,75,00,000/- was still to be paid and the same could not be paid only on account of the landlady obtaining stay in W.P.No.10676 of 2014. The tenant would contend that he had in all paid a sum of Rs.92,52,657/- to the

Financial Institution. He would further contend that after deducting the sum of Rs.17,52,657/-, and adjusting the arrears of rent from May 2010 to February 2015 (58 months) it was a sum of Rs.6,28,657/- which was in excess to the credit of the landlady.

5. The learned Rent Controller (XIV Small Causes Court, Chennai) by order dated 02.04.2018 was pleased to allow the Rent Control Petition.

6. Challenging the same, the tenant had filed RCA.No.418 of 2018 on the file of the Appellate Authority (IX Small Causes Court, Chennai) along with the Appeal, the tenant had also filed M.P.No.350 of 2018 seeking stay of all further proceedings in RCOP.No.1324 of 2014 of the Rent Control Petion (XIV Small Causes Court, Chennai).

7. The said petition was opposed vehemently by the landlady inter alia contending that the tenant had been working against the interest of the landlady and that he was colluding with the officials of the financial institution to usurp the property of the landlady and that arrears as on date was a sum a Rs.20,44,000/- after adjusting the

advance amount.

8. The learned Appellant Authority by his order dated 11.07.2018) was pleased to pass the following order:

" In the result, this M.P.No.350 of 2018 is allowed and there shall be an interim stay of all further proceedings in pursuance of the order and decreetal order passed in RCOP.No.1324 of 2014 dated 02.04.2018 on the file of the Hon'ble XIV Court of Small Causes, Chennai pending the disposal of the above appeal in R.C.A.No.418 of 2018, on condition that the petitioner/appellant deposits a sum of Rs.22,54,000/- being the arrears of rent from May 2010 till June 2018 less the advance already paid leaving one month rent alone as advance to the credit of RCOP No.1324 of 2014 on the file XIV Court of Small Causes, Chennai on or before 13.08.2018, failing which the interim stay granted herein automatically stand vacated."

9. It is challenging this order that the tenant is before this Court.

10. The order has not been challenged by the landlady. The order in M.P.No.350 of 2018 had been stayed by orders of this Court dated 13.08.2018 in CMP.No.14162 of 2018 and extended until further orders.

11. Mr. K.S. Gnanasambandan, learned counsel arguing on behalf of the petitioner would contend that the learned Judge has committed a grave error in passing a conditional order of stay particularly when the tenant had paid such a huge amount to the bank and further when the same had been done only to protect the possession. He would further submit that a huge sum of Rs.17,52,657/- had been paid by the tenant and only on account of the said payment, the property of the landlady have been saved. Even after adjusting the said amount, there was an excess amount to the credit of the landlady and therefore the conditional order of stay has to be set aside.

12. Per contra, Mr.A.E.Ravichandar, learned counsel arguing on behalf of the respondent would contend that the tenant in collusion with the officials of the financial institution had committed fraud and

their only intent is to somehow take over the property of the landlady. The tenant without the authorisation of the landlady had proceeded to make the payment, therefore he cannot turn around contending that this amount has to be adjusted towards the arrears of rent. The tenant admittedly had not informed the landlady in time when the notice had been issued by the Financial Institutions invoking the SARFAESI Act. He would contend that the conditional order of stay has been rightly ordered by the learned Appellate Authority and the same should not be varied. He had also referred the various proceedings that is pending between the parties and would contend that in order to safeguard the interest of the landlady who is the owner of the property, it is necessary that the tenant discharges the arrears of rent.

13. Heard the counsel on either sides and perused the papers.

14. Admittedly, the tenant has been in arrears in the payment of rent. However, the tenant would contend that he has paid the amounts to the financial institution to protect the property and if the said sum is adjusted towards the arrears, the tenant would be in

excess payment. The documents which have been produced further indicates that the landlady is contesting the claim of the financial institution by stating that the document under which she has been mulcted with the liability is a document which is not been executed by her and that it is a forged document. She has also claimed that the document has been created by impersonation. The proceedings Criminal as well as Civil have already been initiated as early as in 2013 prior to the filing of the Rent Control Petition. The landlady had filed a comprehensive suit CS.No.712 of 2013 on the file of this Court to declare the loan agreement, loan sanction letter, declaration form ad the equitable mortgage created as null and void and non-est in the eye of law and not binding on her. The tenant has been arrayed as the 5th defendant in the said proceedings. In fact even prior to the suit the tenant was aware of this. In the petition filed in support of the SA.No.28 of 2014 before the Debt Recover Tribunal would submit as follows:

> *" (7) The applicant submits that it was suggested by the respondent's official that if substantial payments are made to the loan account of the 4th respondent then the applicant would be allowed to live in the*

tenancy premise and that he could adjust the same from monthly rents payable to the 4th respondent herein. The applicant was unable to contact the 4th respondent immediately and on the faith of the representation made by the 1st respondent's official with a bonafide intention and to protect his possession arranged for subtantial amounts by getting loans from his friends and relatives and remitted a sum a Rs.15 Lakhs to the 1st respondent against the loan account of the 4th respondent ans the 1st respondent had issued receipt for the above said sum.

(8) The applicant was unable to communicate with the 4th respondent subsequently and informed the above said incident and requested her to return the sum of Rs.15 lakhs paid by him into the loan account of the 4th respondent herein and also requested the 4th respondent to sort out the issue with the 1st respondent to enable him to reside in the tenancy premise without any fear of eviction. The appellant submits that his landlord the 4th respondent informed that she never signed any loan documents and never created any mortgage in respect of the tenancy

> *premise in favour of the 1st respondent at any point of time since she is a resident of USA. The applicant further submit that then only he realised that the 1st respondent had misrepresented to him and squatted monies illegally. The applicants submit that the 4th respondent had promised that she would sort out the issue by reasoning to legal recourse"*

15. Therefore it is evident from the said petition that even as early as in the year 2009, the tenant was aware about the fraud that has been committed in the creation of the mortgage in favour of the financial institution. He was also aware that the criminal complaint had been lodged. Having knowledge about the same, it is seen that on 20.03.2014, he has entered into an arrangement with the very same financial institution, against whom allegation of fraud has been made by the landlady, to purchase the property for a sum of Rs.2,50,00,000/-. It is also evident that the payments have been made by the tenant without reference to the landlady. Being a tenant it is his duty to pay the rents without any default. Admittedly he is in default of the rents from May 2010 onwards. The payment of money to the financial institution without the specific instruction of the

landlady will not absolve from the obligation to pay the rents. The tenant is bound to pay the monthly rents as agreed upon. The Rent Controller has held that there is a default on the part of the tenant. The tenant would contend that there has been no arrears on the basis of payment made by him to financial institution. This is the issue to be decided by the Appellate Authority.

16. The Hon'ble Supreme Court in the Judgment ***[reported in 1975 SCC (2) page 159], Indira Nehru Gandhi(Smt.) Vs. Raj Narain & Another*** had observed that the right to appeal is statutory and the power to stay is discretionary. Therefore such discretion shall be exercised by taking into account the balance of convenience. This Court is of the view that interests of justice would be subserved if the tenant is directed to deposit the entire arrears to date within a period of one month from the date of receipt of this order. The said amount shall remain in deposit till the disposal of the appeal.

17. This Court is of the view that the order passed by the learned Judge does not require any interference. In the result Civil Revision Petition stands dismissed. No costs. Consequently,

connected Miscellaneous Petition is closed.

16.07.2019

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Index : Yes/No
Speaking order/non-speaking order

Note to Office:
Issue Order Copy on 19.07.2019

P.T.ASHA, J.,

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Pre-Delivery order in
C.R.P(NPD).No.2261 of 2018 &
CMP.No.14162 of 2018

16.07.2019