

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:05.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(PD) No.2530 Of 2019
and
C.M.P.No.16704 of 2019

Rathika Devi

... Petitioner

Vs.

S.Thangavel

... Respondent

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960, against the decree and judgment dated 14.03.2019 passed in R.C.A.No. 745 of 2014 on the file of the VII Small Causes Court at Chennai, confirming the decree and judgment dated 09.10.2014 passed in R.C.O.P.No.258 of 2009 on the file of the XI Small Causes Court at Chennai.

For petitioner : Mr.L.Gavaskar

For Respondent : Mr.A.Abdul Ravoof for CAV

ORDER

The petitioner is the tenant and the respondent is the landlord. The respondent/ landlord filed a petition under Section 14(1)(b) of Tamil Nadu Buildings (Lease and Rent Control) Act 1960 for eviction of the petitioner/tenant on the ground that the respondent/ landlord requires the building for demolition and reconstruction.

2. The petitioner/ tenant filed a counter statement before the Rent Controller to the effect that the building is strong and it is not in dilapidated condition and does not require demolition and reconstruction and also that the land owner is the temple. It was also contended that the respondent had not filed any sanctioned plan for demolition / re-construction of the building. Therefore, the plea of the respondent is not bonafide.

3. The learned Rent Controller held that in as much as the tenancy is admitted, there is no necessity to go into the question of ownership. The learned Rent Controller finding that the building is 70 years old and that the respondent intends to construct a multi-storied building which would be much more profitable by referring to various decisions has decided the matter in favour of the respondent/ landlord.

4. The petitioner / tenant has preferred an appeal before the learned Rent Control Appellate Authority wherein a petition was filed to examine the Executive Officer of the temple, which was allowed and the Executive Officer was examined. He would claim that temple is the owner, but they do not have records to prove the same. The petition filed by the petitioner/ tenant again to reopen and recall the witness

was rejected by the Rent Control Appellate Authority, against which, he preferred a revision petition, which was dismissed on 21.02.2019. In the meanwhile, the learned Rent Control Appellate Authority reserved the matter for judgment on 13.04.2018, giving time and liberty to the petitioner/ tenant to submit his arguments. After disposal of the Civil Revision Petition on 21.02.2019, the matter was adjourned for records. After 21.02.2019, the matter was adjourned to 14.03.2019 under the caption "for records". However, the learned Rent Control Appellate Authority confirmed the order passed by the learned Rent Controller and dismissed the appeals. Against the present Revision has been preferred.

5. The learned counsel for the Revision Petitioner would contend that as per Order 41 Rule 17(1) of the Civil Procedure code, when appellant does not appear for hearing in the appeal, the appeal has to be dismissed for default and the Appellate Court cannot decide the case on merits. In support of his submission, he relied on the judgment of the Hon'ble Supreme Court in the case of **Abdul Rahman and others Vs. Athifa Begum and others**, reported in **(1996) 6 SCC 62**. However, the said judgment of the Hon'ble Supreme Court does not apply to the present case. The present revision petitioner is the appellant and she has effectively prosecuted the appeal upto the stage of arguments. She also filed Civil Revision

Petition in between. She also filed a petition to examine the temple authority, which she has successfully done. After the examination of the parties was over, the respondent/ landlord had made his arguments in the appeal, but the revision petitioner did not submit her arguments on the given date and thereafter when it was posted for final hearing. Therefore, when the petitioner appeared and effectively prosecuted an appeal and participated in the proceedings till the stage of the arguments, she cannot claim that the appeal should be dismissed for default in the absence of her argument. Having effectively participated in the appeal proceedings, filing petitions to implead parties, summoning witnesses and filing Civil Revision Petitions against the interim order, the petitioner cannot expect restraint on the court from going into the merits of the matter.

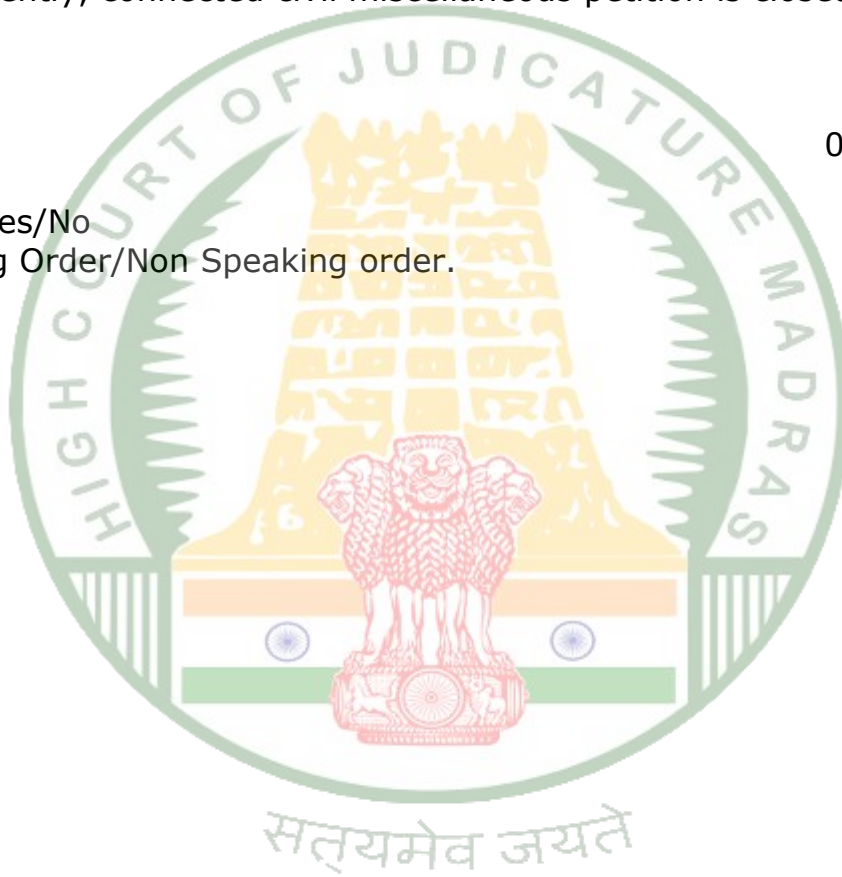
6. As discussed above, on the points of bonafide the respondent/ landlord has come out with sanctioned plan to demolish and reconstruct the building and it is more than 70 years old and he wants to improve his income by constructing a multi-storied building. With regard to the title of the landlord, separate proceedings are pending by way of writ petition and there is no stay granted by this Court. That apart, it is recorded in the order passed by the learned Rent Control Appellate Authority that there is no document as on date in the name of the temple. Once a tenant accepts the tenancy, he is not entitled to

question the title of the landlord. Hence, in the considered opinion of this Court, the finding of the Courts below does not warrant interference. I do not find any merits in the revision. The Civil Revision filed by the petitioner is, accordingly, dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

05.08.2019

Index: Yes/No
Speaking Order/Non Speaking order.

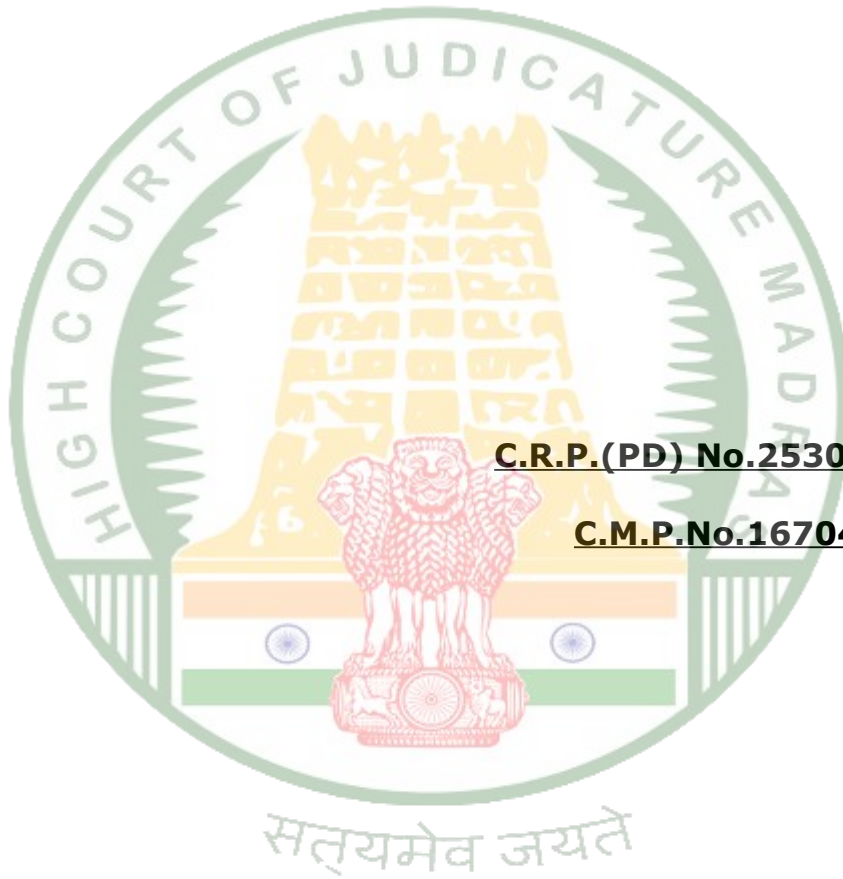
vkr



WEB COPY

M.GOVINDARAJ, J.

vkrr



C.R.P.(PD) No.2530 OF 2019
and
C.M.P.No.16704 of 2019

WEB COPY

05.08.2019