

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	22.02.2019
Pronounced On	04.03.2019

CORAM
THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

**C.R.P.(NPD).Nos.588 & 589 of 2014
and
M.P.Nos.1,1 & 2 of 2014**

Friend-In-Need Society
Rep.by its Hon. President,
No.29, Poonamallee High Road,
Periamet, Chennai – 600 003.

... Petitioner

Vs.

M/s.Blue Bell Florist,
Rep. by prop.S.Kalyani,
No.29, Poonamallee High Road,
Periamet, Chennai – 600 003.

... Respondent

COMMON PRAYER: Civil Revision petitions are filed under Section 25 of the TamilNadu Buildings (Lease & Rent Control) Act, to set aside the order and decretal order dated 25.10.2013 passed in R.C.A.No.1218 of 2005 preferred against M.P.No.431 of 2005 in M.P.No.204 of 2005 in E.P.No.128 of 2005 in R.C.O.P.No.2051 of 1992 by the VIII Judge, Court of Small Causes, Chennai.

For Petitioner : Mr.N.D.Bahety

For Respondent : Mr.J.Saravana

ORDER

By this common order both the Civil Revision Petition are being disposed.

2.C.R.P(PD)No.588 of 2014 has been filed against order in R.C.A.No.1218 of 2005. The said RCA was filed by the respondent herein in M.P.No.431 of 2005 in M.P.No.204 of 2005 in E.P.No.128of 2005 in R.C.O.P No.2051 of 1992.

3.M.P.No.204 of 2005 was filed by the petitioner herein for removal of obstruction in the E.P.No.128 2005 in R.C.O.P.No.2051 of 1992.

4.M.P.No.431 of 2005 in M.P.No.204 of 2005 was filed by the respondent to permit amendment to the cause title in M.P.No.204 of 2005 filed by the petitioner for removal of obstruction.

5.C.R.P(PD)No.589 of 2014 against order in R.C.A.No.16 of

2006. The said R.C.A was filed by the respondent herein against fair and decretal order in M.P.No.430 of 2005 in M.P.No.393 of 2005 in E.P. No.128 of 2005 in R.C.O.P.No.2051 of 1992.

6.M.P.No.393 of 2005 was originally filed by the respondent's husband Mr. Sunder Rajan under section 47 of the Civil Procedure Code in the E.P.No. 128 2005 in R.C.O.P.No.2051 of 1992.

7.M.P.No.430 of 2005 was filed by the respondent to substitute the name of the respondent's husband with her name in M.P.No.393 of 2005.

8.By impugned common judgement and separate decrees, the respective appeals filed by the respondent herein were allowed by the appellate authority under the provisions of the Tamil Nadu Buildings (Lease and Rent-Control) Act, 1973.

9.The respondent herein had initiated R.C.O.P.No.2051 of 1992 for evicting one RDS Pandian, proprietor of M/s. Murugan traders. The said proceeding was allowed in favour of the respondent by an order

10.The said tenant had contested the said order in R.C.O.P. unsuccessfully and filed R.C.A.No.266 of 94 and C.R.P.No.2001/98. R.C.A.No.266 of 94 was dismissed on 21.3.1998. C.R.P.No.2001/98 was dismissed on 15.3.2002 by this Court.

11.The petitioner thereafter filed E.P.No.128 of 2005 which came to be allowed on 23.2.2005 exparte. When the court appointed bailiff proceeded to execute the order passed in R.C.O.P.No.2051 of 1992, the bailiff was confronted by the respondent herein stating that she was in possession of the property and was carrying on business under the name and style of Blue Bell Florist (also typed as Floorist/Flourist in the orders and applications before the Lower Court). The respondent Kalyani had produced a copy of the telephone bill stating that she was in possession of the property since 2000 and that the telephone had been installed as early as 10.11.2001 to establish her status as a tenant having possession over the suit property.

12.It was under these circumstances, M.P.No.204 of 2005 was filed by the petitioner under section 18 (1) of the Act for removal of

obstruction at shop No.3 and 4 against the respondent's husband Sunder Rajan and one I.Mathivanan Issac, proprietor of Creative Links who were said to be in occupation of the two shops rented out to the said R.D.S Pandian, Proprietor M/S.Murugan Traders and others against whom the petitioner had obtained an eviction order.

13.The respondent's husband filed M.P.No. 393 of 2005 under Section 47 of the claiming to have occupied one of the shop from 2000 as a tenant pursuant to the agreement executed by Dr.Francis of the petitioner on payment of advance of Rs.10,000/- and at a rent of Rs.750./- Per month. In the petition, Mr.Sunder Rajan also stated that he had paid a sum of Rs.50,000/- to the said R.D.S.Pandian for delivering vacant possession as per the directions of the said Dr.Francis of the petitioner.

14.It is stated that after Mr.Sunder Rajan husband passed away, his wife Kalyani filed M.P.No.430 of 2005 to amend cause title in M.P.No.393 of 2005 filed under Section 47 of C.P.C.

15.Respondent also filed M.P.No 431 of 2005 in M.P.No. 204 of

2005 to amend the cause title in M.P.No. 204 of 2005 in the removal of obstruction proceeding filed petitioner.

16.Both the MPs came to be dismissed by a common judgement/order dated 23.9.2005 and by two separate decrees.

17.The court below had refused to allow the respective miscellaneous petitions' on the ground that amendment sought for cannot be allowed after the trial had commenced, unless the court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial. The court held that a 3rd party like Kalyani cannot seek amendment.

18.Aggrieved by the respective fair and decretal order in M.P.Nos.430 and 431 of 2005 the respective appeals were filed which were filed before the Rent Control Appellant Authority. It came be allowed in favour of the respondent even though the earlier attempt of the respondent to deposit the rent was disallowed by the said Court vide order dated 08.1.2008 in M.P.No.584 of 2007 in R.C.A.No.1218 of 2005.

19.The respondent was also unsuccessful in her attempt to set aside the said order as Civil Revision Petition (PD) No.1418 of 2008 was dismissed on 19.01.2009.

20.This court while dismissing the said Civil Revision Petition observed as follows:-

"13.A perusal of the order passed by the court below in M.P.No.584 of 2002 husband is arrayed as Obstructor in E.P.No.128 of 2002 were filed in M.P.No.430 of 2002 by a common order. R.C.A.No.1218 of 2002 arrears.

14.The Court below has found that she has not filed any document to prove her claim in the Court. The Court below has also adverted to the fact that if she was a statutory tenant, as contended by her, she should have very well invoked Section 8 of the Act. The Court further pointed out that the rental agreement referred to by the revision petitioner was not marked as an exhibit. He has asked her to file any petition to pay the rent earlier as the present petition was filed only on 04.09.2001.

01.02.2002

31.07.2002

2002

"

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21.Special Leave Petition filed by the respondent was also dismissed by the Honourable Supreme Court by its order dated 12.12.2011. Despite the above observations, the appellate court has

allowed the respective RCA's in favour of the respondent seeking

amendment.

22. Aggrieved by the same the respective C.R.P(NPD) have been filed by the petitioner herein.

23. The present CRP is opposed by the respondent on the ground that admittedly the respondent has been put to possession of the property from 2000 and therefore cannot be evicted without due process of law.

24. The learned counsel for the respondent further submitted that had the petitioner not filed the present CRP's , the respective petitions filed under section 47 by the respondent and the obstruction petition filed by the petitioner would have been decided one way or the other. Further, the respondent was entitled to be evicted only after due process of law.

25. It is evident from the records before the court that the respondent Kalyani and her husband came in possession of the property from the original tenant RDS Pandian, proprietor

1992 had been initiated and an order was passed for evicting him.

26. In the counter to M.P.No. 204 of 2005 in the removal of obstruction proceeding filed by the petitioner, the respondent's husband Mr.Sunder Rajan had admitted that he had paid Rs.50,000/- to the said R.D.S Pandian to have vacant possession of the property pursuant to a rental agreement with the respondent represented by one Dr Francis. The petitioner has denied authority of Dr.Francis to sign the agreement. In any event, that agreement is not available before this Court or before the lower Court.

27. Even otherwise the said Pandian had filed R.C.A.No. 266 of 94 which came to be dismissed by an order dated 21.3.1998 who thereafter filed Civil Revision Petition vide C.R.P.No. 2001 of 1998 which also ultimately came to be dismissed by this court in its order dated 15.3.2002. Thus, it is clear that the respondent or her husband could not have entered into an agreement with the petitioner allegedly represented by Dr.Francis when R.D.S.Pandian was still in occupation of the shops and was pursuing the remedy before this Court. The respondent was thus squatting on the property without any authority of law and was obstructing the lawful execution proceeding based on alleged agreement signed by Dr.Francis of the petitioner.

28. Respondent has unlawfully over stayed in the property without any legal basis. Even if the respondent was in possession as was claimed there is no justification in allowing the respondent to continue in possession as admittedly the period of lease would have expired within eleven months even if there was prior agreement as was claimed. Further the observation of this Court in C.R.P(PD)No.1418 of 2018 an extrated above makes it clear that the respondent had no legal right to continue in possession over the property.

29. Further, argument that the respondent can be removed only under a due process of law and not by mere dismissal of application filed for amending the cause title filed to substitute the name Sunder Rajan with Kalyani, cannot be countenanced as the application were themselves filed in abuse of legal proceedings. Kalyani had not filed application to substitute her name as legal representative of Sunder Rajan but claiming of independent rights arising out of alleged rental agreement signed by Francis of the petitioner.

30. The removal of obstruction proceedings under Section 18 (1)

of the TamilNadu Buildings (Lease & Rent Control) Act 18 of 1960 itself is the proceeding in compliance with due process of law. In this case is not as if the respondent was put to possession of the property immediately after the R.C.O.P was allowed on 14.02.1994. After the R.C.O.P was allowed, the application under Section 18 (1) of the TamilNadu Buildings (Lease & Rent Control) Act 18 of 1960 was filed for execution and thereafter other proceedings were initiated before the Court. The fact that the respondent was not allowed to deposit rent and the C.R.P.No.1418 of 2008 was dismissed with the observation in para 14 as extracted above in para 20 makes it clear that the respondent has no further right to be heard in the eviction proceedings. Therefore, it cannot be said that the respondent was being removed from the property without due process of law.

31.Further, it would be unfair to ask the petitioner to initiate fresh eviction proceedings against obstructor who has come into possession of the property illegally even though of R.C.O.P.No.2051 of 1992 was decreed as early as 14.2.1994. There is basis to uphold the impugned order allowing the relief in M.P.No.430 and 431 of 2005 filed by the respondent. They were filed only to delay the eviction proceedings. The respondent has successfully managed to squat on the property for last 19 years illegally even though the petitioner had

secured an eviction order as early as 14.02.1994 in the said R.C.O.P against the tenant from whom the respondent's husband admitted got vacant possession on payment of Rs.50,000/-

32.The lower Court is directed to complete the Execution Proceedings within six months from the date of receipt of a copy of this order.

33.The respective Civil Revision Petitions are allowed with above observations and consequential relief to the petitioner. No costs. Connected Miscellaneous Petitions are closed.

04.03.2019

Index :Yes/No

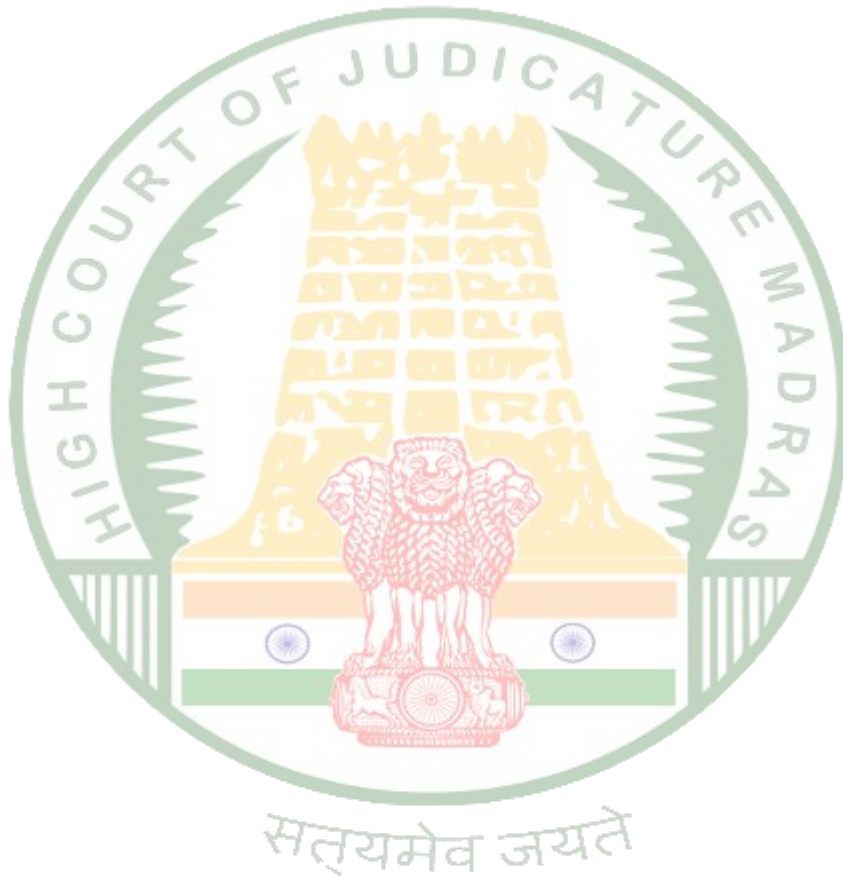
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To

The VIII Judge,
Court of Small Causes,
Chennai.



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C.SARAVANAN, J.

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Pre-delivery order in
C.R.P.(NPD).Nos.588
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