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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.04.2019

CORAM :

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

CRP (MD) (NPD) No.2344 of 2017

and

C.M.P. (MD) No.11295 of 2017

Riyaz Basha. ... Petitioner/Respondent/Tenant/Judgement Debtor

vs.

AL Madharshathul Muhammadiya Aashoorkhana
represented by Hereditary Muthavalli,
S.Shabudeen,
70A, General Bazaar, Anna Nagar,
Main Road, Thennur,
Trichy - 620 017. ... Respondent/Petitioner/Landlord/Decree Holder

PRAYER:- Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the order of delivery dated 23.11.2017 passed in E.P.No.172 of 2017 in R.C.O.P.No.39 of 2015 by the learned I Additional District Munsif cum Rent Controller, Trichy.

For Petitioner : M/S.J.Maria Roseline
For Respondent : Mr.A.Prasanna Rajadurai

ORDER

This Civil Revision Petition has been filed to set aside the order dated 23.11.2017 passed in E.P.No.172 of 2017 in R.C.O.P.No.39 of 2015 by the learned I Additional District Munsif cum Rent Controller, Trichy.

2.The petitioner herein is the tenant and the respondent herein is the landlord.

3.E.P.No.172 of 2017 was filed by the landlord based on the decree passed in R.C.O.P.No.39 of 2015. After hearing the contentions raised by the tenant regarding the nature of property and also the right of the landlord over the property, the Executing Court dismissed the said E.P., by ordering eviction. The Executing Court has also observed the order passed in the said R.C.O.P., for depositing the rent and the sale was also not complied with by the tenant. In the order made in the said R.C.O.P., it is seen that the order passed in I.A.No.948 of 2015 has not been complied with and hence, an eviction order has been passed by granting two months time to the tenant and further, it is seen that the earlier order passed by the Rent Control Appellate Authority has not been complied with. Hence, the nature of property and the possession of the landlord were also very much assessed by the said authority and thereafter, the said authority had passed an order of delivery.

<https://hcservices.ecourts.gov.in/hcservices/>

4.Now, the tenant contended that the order of eviction passed by the said authority is not within the jurisdiction and it is a



nullity and there cannot be any execution based on the said decree. Further, the tenant contended that an ex parte order was passed in the said R.C.O.P., because of the lack of communication between the tenant and his counsel and hence, the tenant is an ex parte in the rent control proceedings.

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5. Further, the tenant contended that the respondent wakf, which is represented by one Sahabudeen, who had filed the rent control proceedings as well as the execution proceedings, which is the subject matter of the present Civil Revision Petition, has no locus standi to file either the eviction petition or the execution petition inasmuch as his tenure of service as Muthawalli of the Wakf had ended in September 2013 as per the terms of his appointment dated 25.09.2009. Hence, the suit property is a wakf property and therefore, the rent control proceedings will not lie in respect of wakf property and the suit for eviction of tenants occupying the wakf property could be filed only before the civil Court and the rent controller will not have jurisdiction to adjudicate the eviction proceedings in respect of wakf property.

6. On the other hand, the landlord vehemently contended that the said facts, which are raised before this Court by the tenant, were already discussed in the execution petition and in the rent control petition and thereafter, a detailed order was passed and also sufficient time was given to the tenant to prefer any proceedings against the said order and the tenant has not preferred any proceedings as against the said order. Hence, the grievance raised by the tenant that the rent controller has no jurisdiction, is not tenable one. Further, it is observed that as per the calculation memo filed by the tenant, Rs.1,00,000/- was paid to the landlord. Hence, the order dated 23.11.2017 is very much reasonable and the present Civil Revision Petition is liable to be dismissed.

7. On perusal of the records regarding the status of the property and the right of the landlord over the property, this Court finds that the order dated 23.11.2017 passed in E.P.No.172 of 2017 in R.C.O.P.No.39 of 2015 by the learned I Additional District Munsif cum Rent Controller, Trichy does not require any interference of this Court.

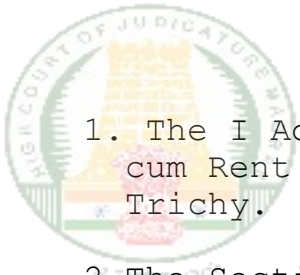
8. This Civil Revision Petition is dismissed accordingly. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)



1. The I Additional District Munsif
cum Rent Controller,
Trichy.

2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai (2 copies)

+1cc to M/S.J.Maria Roseline, Advocate, SR.No.59024
+1cc to Mr.Na.Palaniyandi, Advocate, SR.No.58873

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SP/22.04.2019/ 3P/6C