



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :04.12.2019
CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI
C.R.P. (MD) Nos.2119 and 2120 of 2019

WEB COPY

M.Karthikeyan
represented thro his power agent,
S.Murugesan
.. Petitioner in both C.R.Ps./Petitioner/Respondent/Respondent

Vs.

N.Venkatesan
..Respondent in both C.R.Ps./Respondent/Petitioner/Petitioner

Common Prayer: These Civil Revision Petitions filed under Article 227 of Constitution of India, to call for the records of the learned District Munsif, Melur made in Return endorsement dated 30.08.2019 in E.A.No. Of 2019 in E.P.No.27 of 2018 in R.C.O.P.No.5 of 2012 and set aside the same and further directing to number and dispose of the same on merits.

For Petitioner(in both C.R.Ps.) : Mr.P.Kalaiyarasi Bharathi

COMMON ORDER

Heard the learned counsel appearing on either side.

2.These Civil Revision Petitions have been filed to set aside the return endorsement made in E.A.No. Of 2019 in E.P.No.27 of 2018 in R.C.O.P.No.5 of 2012 dated 30.08.2019 on the file of the learned District Munsif, Melur.

3.The revision petitioner herein is the respondent and the respondent herein is the petitioner in R.C.O.P.No.5 of 2012 wherein, the respondent herein is the landlord and the petitioner herein is the tenant. The petitioner herein has filed a suit in O.S.No.69 of 2011 for a prayer of permanent injunction. The respondent herein has filed R.C.O.P.No.5 of 2012 against the petitioner herein. On 13.11.2017, an exparte decree was passed in R.C.O.P.No.5 of 2012. Against the order, the petitioner herein has filed an appeal in R.C.A.No.38 of 2018 before the Rent Appellate Authority/Sub Judge, Madurai (Melur Camp).

4.During the pendency of the appeal, the respondent herein has filed an execution petition in E.P.No.27 of 2018 suppressing the filing of appeal in R.C.A.No.38 of 2018. Since summons was not



served upon the revision petitioner, he was set exparte on 23.04.2019 and delivery was subsequently ordered on 23.07.2019. Aggrieved by the same, the petitioner herein has filed two unnumbered applications. The first application is to condone the delay of 83 days in filing a petition to set aside the exparte order passed in E.P.No.27 of 2018 in R.C.O.P.No.5 of 2012 dated 30.08.2019 on the file of the learned District Munsif, Melur and another application is to set aside the exparte order passed in E.P.No.27 of 2018 in R.C.O.P.No.5 of 2012 dated 30.08.2019 on the file of the learned District Munsif, Melur were filed. The two unnumbered applications were returned stating that E.P.No.27 of 2018 was terminated on the ground that delivery of property was over and these petitions are infructuous and that long cause title was not mentioned in the petitions. Against which, the petitioner herein has come forward with the present civil revision petitions.

5.On the side of the petitioner, it is stated that the petitioner was represented through the power agent in all the proceedings, but in the decree, the name of the power agent was not mentioned. Without carrying out the correction, the respondent has filed the execution petition, which is unlawful. In the execution petition, notice was sent to the revision petitioner to his earlier address and that the revision petitioner was residing in the present address for the past two years and paper publication was given. Thereafter, the revision petitioner was set exparte by the trial Court. On the basis of the delivery order, the Court Ameen dispossess the revision petitioner by evicting the staffs and the employees from the bakery shop. There is a delay in filing a petition to set aside the exparte order passed in E.P.No.27 of 2018. If the delay is not condoned, the revision petitioner will be put in to irreparable loss and hardship. To set aside the exparte order, the delay excuse petition is to be numbered. The petitioner came to know the delivery order, only on the date of eviction. The revision petitioner consulted the principal, who was out of station at that time and then he has to consult the counsel. Hence, there was a delay of 83 days in filing the set aside petition. Instead of numbering the E.A. Petition, the trial Court has returned the file with an endorsement that E.P. Was terminated on the ground of delivery of properties and the petition become infructuous. It is further stated that the petitioner is having a right to file an execution application even after the termination of the E.P. Proceedings.

6.On the side of the petitioner, it is stated that under Section 144(1) of CPC, the Court can set aside or modify the order on application.

7.The learned counsel for the petitioner has placed reliance on the order passed by this Court in the case of **Hema and others v. Kaveriammal (Died)** reported in **2015 (5) CTC 892**, wherein this Court



has held as follows:

"Court has jurisdiction to order Restitution in Execution proceedings - order of Court below declining to order Restitution is bad in law."

8.In the above cited judgment, after the passing of delivery order, the order of delivery was set aside by this Court in C.R.P. (MD)No.1742 of 2013. The execution Court by dismissing the application under Section 144 of CPC, held that the application under Section 144 of CPC is not maintainable in execution proceedings. Here in this present cases, the petitioner has not come forward with the Civil Revision Petition against the order of delivery. The facts of the case cited in the above judgment is different from the facts of the present cases. The petitioner has approached this Court only against the endorsement made by the trial Court. Hence, this citation is not applicable to the present facts of the case.

9.At the present stage, delivery was ordered and the petitioner was already evicted and the execution petition was terminated.

10.In the above circumstances, there is nothing sufficient enough to interfere in the order passed by the trial Court. These Civil Revision Petitions are dismissed and the return endorsement made in E.A.No. Of 2019 in E.P.No.27 of 2018 in R.C.O.P.No.5 of 2012 dated 30.08.2019 on the file of the learned District Munsif, Melur is confirmed. No Costs.

Sd/-

Assistant Registrar (crl.side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MRN

To

The District Munsif, Melur.

+1 CC to Mr.P.KALAIYARASI BHARATHI, Advocate (SR-103486[F] dated 05/12/2019)

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MK (20.02.2020) 3P 3C

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