

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

T.R.C.M.P.No.942 of 2019
and C.M.P.No.25642 of 2019

V.K.Kumaresan

... Petitioner

-vs-

1.P.Jayaseelan

2.Bar Council of Tamil Nadu and Puducherry,
Chennai

Rep. by Mr.C.K.Chandrasekar

... Respondents

(R2 suo motu impleaded by this Court on 03.01.2020)

PRAYER: Petition is filed under Section 24 of Code of Civil Procedure to withdraw the R.C.A.No.11 of 2018 from the file of the Principal Sub-Ordinate Court, Vellore and transfer the same to the Subordinate Court of Ranipet.

For Petitioner : No Appearance

For R1 : Mr.Venkaesh Mahadevan

For R2 : Mr.C.K.Chandrasekar

O R D E R

The present petition has been filed to transfer the case in R.C.A.No.11 of 2018 pending on the file of the Principal Sub-Ordinate Court, Vellore to the Subordinate Court, Ranipet.

Brief Facts of the case:

2. The building of the respondent / landlord, a Doctor was rented to the petitioner / tenant (hereafter referred to as the landlord and tenant), who is an Advocate by profession on a monthly rent of Rs.1800/- and the schedule property is measured to an extent of 1113 sq.ft. Since the tenant was irregular in payment of rent and the tenant has been using the property like a dumping yard, the landlord requested the tenant to vacate the premises and pursuant to his refusal, the landlord was forced to file RCOP No.24 of 2010 in addition to filing an interim application in I.A.No.23 of 2015 for recovery of arrears;

2.1. The said RCOP was allowed on 09.09.2015 in favour of the landlord and the landlord was also directed to deposit the rental arrears of Rs.1,94,000/- before the Court. Subsequent thereto, the landlord filed E.P.No.95 of 2015 for eviction of the tenant from the tenancy premises, against which, the tenant filed E.A.No.183 of 2017 on the ground that he had filed an appeal against the order passed in RCOP;

2.2. In the meanwhile, the landlord preferred I.A.No.67 of 2017 for recovery of arrears of rent of Rs.2,44,800/-, which was allowed on 26.07.2017 with a direction to the tenant to pay the arrears. Aggrieved by the said order, the tenant filed CRP No.2792 of 2017, in which an interim stay was granted with a condition to deposit 50% of the rental arrears and thereafter, the main CRP itself was disposed of by this Court on 11.01.2018. This Court, while disposing of the CRP, had directed the Lower Court to dispose of I.A.No.137 of 2015 filed by the tenant against the RCOP order;

2.3. The Principal Sub Court, Vellore subsequently condoned the delay in filing RCA and RCA was numbered as RCA No.11 of 2018 and as a last resort to drag on the proceedings, the tenant has filed the present petition to transfer the case from the file of the Principal Sub-Ordinate Court, Vellore to the Subordinate Court, Ranipet by levelling certain complaints against the Principal Subordinate Judge.

3. In the previous hearing dated 12.02.2020, though this was inclined to fix the next date of hearing as 18.02.2020, on the request of Mr.R.Sankarasubbu, learned counsel for the petitioner / tenant, the date was altered and specifically posted today for orders. Surprisingly, learned counsel has not chosen to represent the case today, despite several adjournments being granted at his request on earlier occasions. Therefore, this Court has decided to pass orders on merits.

4. Initially, one Mr.R.Chandrasekaran, Advocate had filed vakalath on behalf of the petitioner and an elaborate argument was advanced by him. After hearing the extensive argument, this Court expressed its dissatisfaction over the conduct of the petitioner and granted time to the petitioner to vacate the premises and hand over the vacant possession to the respondent. On the next date of hearing, the Advocate has informed this Court that the petitioner did not listen to his advice in respect of vacation of premises and therefore, he withdrew his vakalath and in his place, Mr.R.Sankarasubbu, learned counsel has entered appearance.

5. In the affidavit filed by the petitioner in support of this petition, it is averred that there was a tenancy agreement between him and the landlord and he had cleared the entire dues due to the landlord. It is further averred that when there is no default on his part, he cannot be evicted. The petitioner seeks transfer of the case on the ground of purported bias shown by the Principal Sub-Ordinate Court, Vellore.

6. Per contra, the respondent / landlord has filed a counter affidavit, wherein it has been stated as follows:

i) There was a default on the part tenant between 2006 and 2010 and the tenant was committing the acts of waste in the scheduled property;

ii) When the landlord requested the tenant to hand over the vacant possession of the property for setting up a clinic, being a Doctor, he had refused to evict the premises, which compelled the landlord to file RCOP No.24 of 2010 on the ground of a) wilful default from February 2006 to March 2010, b) acts of waste and c) own use and occupation to establish a clinic and though the landlord obtained a favourable order, he is not allowed to enjoy the fruits of that order. The tenant had filed RCA against the order made in RCOP with a delay and subsequently, the delay was condoned and the order made in RCOP was stayed by the Principal Sub Court, Vellore.

iii) In the counter, the trajectory of adjudication in RCA No.11 of 2018 and the dilatory tactics of the tenant has been narrated, which reads as under:

Sl.No.	Date	Adjudication
1.	05.09.2019	IA.73/2017-Appellant not ready for arguments in main RCA . Hence Stay order not extended. For arguments (nfa)
2.	12.09.2019	Both sides absent. For Enquiry Adjourned
3.	20.09.2019	Both sides absent. For Enquiry Adjourned
4.	26.09.2019	R.Mahadev Singh Filed Change of Vakalath for the Appellant
5.	21.10.2019	Respondent Arguments heard. Arguments of Appellant.
6.	04.11.2019	Declared holiday for the Court.

Sl.No.	Date	Adjudication
7.	05.11.2019	V.Ashok Kumar filed change of vakalth for the appellant
8.	07.11.2019	Appellant and his counsel both absent. For arguments NFA
9.	12.11.2019	Appellant and his counsel both absent. For arguments NFA
10.	14.11.2019	IA.73/2017-Petitioner & Counsel both absent. Hence IA dismissed. Respondent side arguments heard. Orders by.
11.	29.11.2019	On representation that transfer CMP is pending adjourned
12.	05.12.2019	On representation that transfer CMP is pending adjourned

iv) Since the order in RCOP is a well reasoned order and admittedly, the tenant had committed the wilful default, the tenant has no merits in the RCA, the tenant has come up with the present petition only to drag on the proceedings in RCA. The landlord has no other property in Vellore and he has been restrained from enjoying his own property and is not allowed to establish a clinic in his own premises. Stating that the transfer of the case will further delay the progress, it is prayed that the present petition is liable to be dismissed.

7. Mr.Venkatesh Mahadevan, learned counsel for the respondent / landlord has strenuously contended that the tenant has been adopting the dilatory tactics in one way or the other and he is not interested either in evicting the premises or in the disposal of the RCA. From the trajectory of adjudication, it could be seen that there were several change of vakalaths so as to abstain the Principal Sub Court, Vellore from proceeding further. Since the tenant did not appear before the Principal Sub Court, Vellore consecutively, the stay order granted was not extended. Infuriated by the said order, the tenant, besides sending a complaint to the District Judge against the Principal Sub Court, Vellore, as an afterthought has approached this Court by way of this transfer petition.

8. Heard the learned counsel for the respondent. Since this Court felt that the conduct of the tenant is inhuman, considering the fact that the tenant / petitioner is an Advocate, the Bar Council of Tamil Nadu and Puducherry was suo motu impleaded by this Court and Mr.C.K.Chandrasekar, learned counsel has entered appearance for R2.

9. From the above, it could be seen that the petitioner / tenant has changed the counsel twice before the Sub Court and once before this Court, apart from getting several adjournments on his behalf, the details of which are as follows:

Sl.No.	Date	Adjudication
1.	20.01.2020	At the request of Mr.R.Sankarasubbu, learned counsel for the petitioner, adjourned to 29.01.2020.
2.	29.01.2020	Post on 10.02.2020
3.	10.02.2020	At the request of a Representing Counsel by name Mr.S.Jeevanantham (E.No.399 of 2015), adjourned to 12.02.2020
4.	12.02.2020	Post for orders on 19.02.2020

Thus, it is clear that the tenant has been adopting the dilly-dallying practice to prolong the proceedings in RCA as well as this case. When the owner of a building requires it for his own use, it is the duty of a tenant to hand over the same and the tenant cannot squat on the property, by stating himself that there was no default, much less wilful default, especially after introduction of the new Act, namely, The Tamil Nadu Regulation of Rights and Responsibilities of Landlord and Tenants Act, 2017, by which, the Tenant has no right whatsoever to refuse handing over of the vacant possession of the property to its owner.

10. The averments made in the petition that there was no default at all, cannot be accepted, as the petitioner had paid the arrears pursuant to the orders of this Court in CRP and the attempt of the petitioner to project himself that he is a law abiding citizen and that he is prompt in payment of rent, is nothing, but tying a flower on the ear and the conduct of the petitioner is unbecoming of a lawyer. It is saddening to note that owing to intrusion of black sheep into the noble profession of advocacy, like the petitioner, the reputation of good lawyers in the society is at the verge of fall. The petitioner is a venom and if he is allowed to be mingled with other members of the Bar freely, the entire profession would be ruined, like a single drop of poison in a pot of milk turning the whole milk into poison.

11. The Hon'ble Supreme Court in the case of R.Muthukrishnan vs. The Registrar General of the High Court of Judicature at Madras [W.P.(C) No.612 of 2016] decided on 28.01.2019, while

describing the role of an Advocate, observed as follows:

"40..... A lawyer is supposed to be governed by professional ethics, professional etiquette and professional ethos which are a habitual mode of conduct. He has to perform himself with elegance, dignity, and decency. He has to bear himself at all times and observe himself in a manner befitting as an officer of the Court. He is a privileged member of the community and a gentleman. He has to mainsail with honesty and sail with the oar of hard work, then his boat is bound to reach to the bank. He has to be honest, courageous, eloquent, industrious, witty and judgmental."

12. If the conduct of the petitioner / Advocate is assessed in the light of the aforesaid judgment, he is not fit to practise advocacy, as he can no longer be called as gentleman on account of his inhuman attitude.

13. An Advocate is a representative, but not a delegate and he gives to his client the benefit of his learning and his talents. Lawyers are globally recognised as Officers of the Court and agents of the administration of justice and they are imposed with the social duty to promote rule of law in the society and fight for protecting the fundamental rights and freedoms of the citizens as guaranteed in the Constitution. In this case, the petitioner, being an Advocate, instead of playing the role of a promoter of rule of law, has been teaching a lesson to the society as to how to break law and the profession is being squeezed by the hands of such person. The Legal Ethics and the Profession of Law requires that an Advocate shall use his best efforts to restrain and prevent his client from resorting to sharp or unfair practices or from doing anything in relation to the Court, opposing counsel or parties which the Advocate himself ought not to do and in that event, he shall refuse to represent the client, who persists in such improper conduct. When the petitioner / Advocate himself indulges in such improper conduct, he is making mockery of not only the profession, but also the Court.

14. At this juncture, Mr.C.K.Chandrasekar, learned counsel appearing for R2, by drawing the attention of this Court to Section 35 of The Advocates Act, 1961, has stated that the said section prescribes certain procedures to be followed to take action against an Advocate for his misconduct. For the sake of convenience, Section 35 is extracted hereunder:

"35. Punishment of advocates for misconduct.—

(1) Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or

other misconduct, it shall refer the case for disposal to its disciplinary committee. 1[(1A) The State Bar Council may, either of its own motion or on application made to it by any person interested, withdraw a proceeding pending before its disciplinary committee and direct the inquiry to be made by any other disciplinary committee of that State Bar Council.]

(2) The disciplinary committee of a State Bar Council shall fix a date for the hearing of the case and shall cause a notice thereof to be given to the advocate concerned and to the Advocate-General of the State.

(3) The disciplinary committee of a State Bar Council after giving the advocate concerned and the Advocate-General an opportunity of being heard, may make any of the following orders, namely:

(a) dismiss the complaint or, where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed;

(b) reprimand the advocate;

(c) suspend the advocate from practice for such period as it may deem fit;

(d) remove the name of the advocate from the State roll of advocates.

(4) Where an advocate is suspended from practice under clause (c) of sub-section (3), he shall, during the period of suspension, be debarred from practising in any court or before any authority or person in India.

(5) Where any notice is issued to the Advocate-General under sub-section (2), the Advocate-General may appear before the disciplinary committee of the State Bar Council either in person or through any advocate appearing on his behalf....."

A lawyer's profession is meant to be a divine or sacred profession by all means. In every profession, there are certain professional ethics that need to be followed by every person who is into such a profession. But there is the fact that professional misconduct is a common aspect, not only in other professions but also in advocacy also. Misconduct means any acts, which are unlawful in nature even though they are not inherently wrongful. Before the Advocates Act, 1961, there was an Act called Legal Practitioners Act, 1879. Even though there

is no definition given for the term 'misconduct' in the Act, the term 'unprofessional conduct' is being used in the Act. Some of the instances of professional misconduct are, Dereliction of duty, Professional negligence, Misappropriation, Changing sides, Contempt of court and improper behaviour before a Magistrate, Furnishing false information, Giving improper advice, Misleading the clients in court, Not speaking the truth, Disowning allegiance to the court, Moving application without informing that a similar application has been rejected by another authority, Suggesting to bribe the court officials, Forcing the prosecution witness not to say the truth, etc. It is left to the choice of the petitioner / Advocate under which misconduct he can be branded?

15. It is apposite to state that law profession is already under severe criticism and due to the activities of lawyers in this State, it further started diminishing its reputation among public. If the tenant, like petitioner / Advocate is allowed to occupy the premises, a situation may arise, when no owner will rent out his building to an Advocate and in that event, people will definitely lose their faith in the justice delivery system. In olden days, respect extended to lawyers were inexplicable and that they were given utmost regards in the society. At this point of time, it is appropriate for me to recollect an incident described by my father that when my father was travelling in a Tram in Madras, a young chap got into it and was standing near to an old man. The old man asked the chap as to what he was doing and upon hearing that the young chap was a Lawyer, he immediately stood up and requested that chap to sit in his seat. Lawyer gained that kind of respect in those days and it is a million dollar question as to whether those days will come back. Even many of our great leaders, like Mahatma Gandhi, Jawaharlal Nehru and Dr.B.R.Ambedkar are lawyers, who sacrificed their lives for the noble cause of justice besides fighting for freedom and several unknown lawyers had also lost their lives in the freedom struggle.

16. A house is usually built or bought with the hard earned money of an individual or the family makes, which is considered to be the most expensive single purchase and the conduct of the petitioner in attempting to squat on such property is condemnable. Though this Court, as already observed above, had given him an ample of opportunity to correct himself, he has not shown any respect or indulgence to this Court and is remorseless. Therefore, this Court has no other option, but to issue the following directions against him taking note of the serious misconduct committed by the petitioner by wearing the mask of an Advocate:

i) The Petitioner is directed to vacate the premises within a period of two weeks from the date of receipt of a copy of this order, failing which, it is open to the respondent to seek the assistance of the Police for taking possession of his property in the light of the judgment of the Hon'ble Division Bench of this Court in the case of Radhika Sri Hari .vs. The Commissioner of Police, Coimbatore, reported in 2014(2)CTC 695;

ii) It is made clear that pendency of R.C.A.No.11 of 2018 is not a bar for the Police to enter the premises by using its Force;

iii) The respondent is at liberty to prefer complaint against the petitioner before the Bar Council of Tamil Nadu and Puducherry and on receipt of any such complaint from the respondent, the Bar Council of Tamil Nadu and Puducherry shall act upon the same in the light of the provisions of The Advocates Act, 1961, more particularly Section 35, referred to supra.

17. Though the directions issued by this Court may appear beyond the purview of a Transfer Petition, this Court is empowered to mould the relief by invoking the inherent powers of this Court as provided under Section 151 of CPC to pass orders to meet the ends of justice or to prevent abuse of the process of the Court. Unless such person with unprofessional conduct is dealt with an iron hand, the noble profession cannot be safeguarded and if this kind of Advocate is not taught a lesson, it will definitely set a bad precedent to the Public and create a bad image about Lawyers in the society, as the person like the petitioner ought to be nipped at the bud itself and it is for the Bar Council to decide on the same.

18. With the above directions, this Transfer Civil Miscellaneous Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar(CS VII)

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Sub-Assistant Registrar

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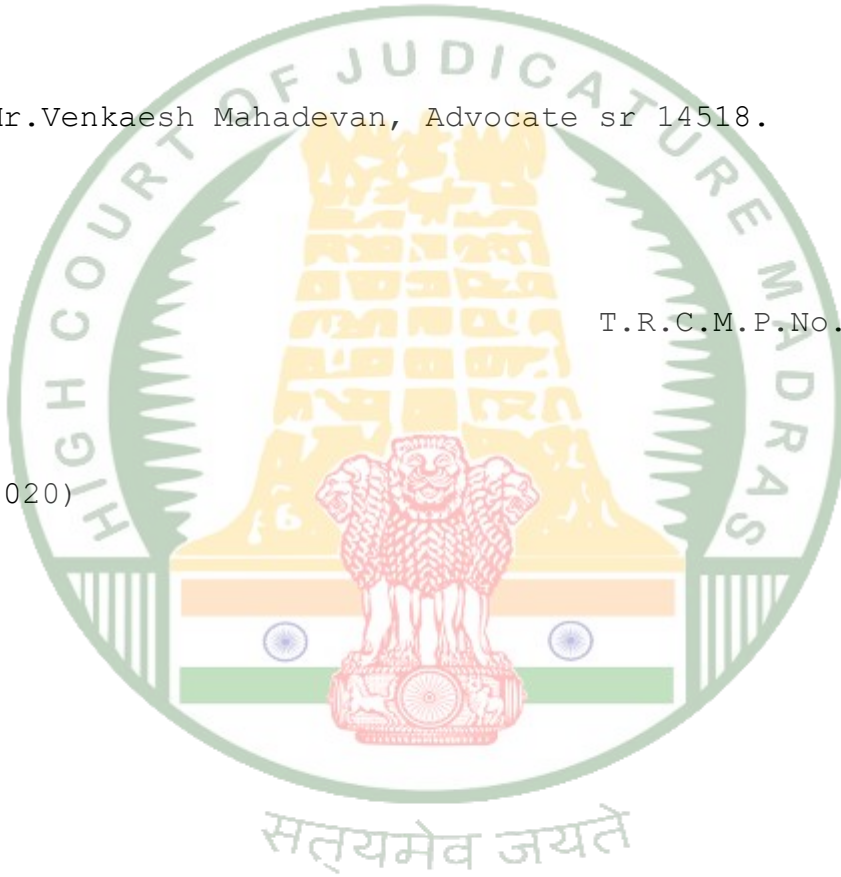
To:

- 1.The Principal Sub-Ordinate Judge,
Vellore.
- 2.The Subordinate Court, Ranipet
- 3.The Principal District Munsif, Vellore
- 4.The President,
Bar Council of Tamil Nadu and Puducherry,
Chennai.

+1 CC to Mr.Venkaesh Mahadevan, Advocate sr 14518.

T.R.C.M.P.No.942 of 2019

NM(CO)
SP(26/02/2020)



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