

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved : 20..01..2020
Orders Pronounced : 06..02..2020
CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Revision Petition Nos.4261 and 4262 of 2019
&
C.M.P.Nos.27810 of 2019 and 27807 of 2019

A.Mohandoss Petitioner
(in both CRPs)

-Versus-

1.Mrs.Manju Bai
2.Mr.P.Vikash Kumar
.... Respondents
(in both CRPs)

Prayer in C.R.P.No.4261 of 2019: Petition filed under Section 25 of The Tamil Nadu Buildings (Lease and Rent Control) Act, 1860 as amended by Act 23 of 1973 and Act 1 of 1980, praying to set aside the order and decree dated 14.11.2019 made in M.P.No.484 of 2019 in R.C.A.No.371 of 2019 by the learned VII Judge, Court of Small Causes, Chennai and grant interim stay of the proceedings in RCOP No.1318 of 2015 on the file of XIII Small Causes Court, Chennai.

Prayer in C.R.P.No.4262 of 2019: Petition filed under Section 25 of The Tamil Nadu Buildings (Lease and Rent Control) Act, 1860 as amended by Act 23 of 1973 and Act 1 of 1980, praying to set aside the order and decree dated 15.11.2019 made in M.P.No.485 of 2019 in R.C.A.No.372 of 2019 by the learned VII Judge, Court of Small Causes, Chennai and grant interim stay of the proceedings in RCOP No.1317 of 2015 on the file of XIII Small Causes Court, Chennai..

For Petitioner : Mr.K.Subramanian, Senior Counsel for
Mr.B.K.Sreenivasan for
petitioner in both CRPs

For Respondent(s) : Mr.Senchetty for
Mr.T.Saikrishnan for
respondents in both CRPs

COMMON ORDER

The revision petition in C.R.P.No. 4261 of 2019 has been directed against the order passed by the learned VII Judge, Court of Small Causes, Chennai, dismissing the stay petition in M.P.No.484 of 2019 in R.C.A.No.371 of 2019, while the other revision petition in C.R.P.No.4262 of 2019 has been directed against the order dismissing the stay petition in M.P.No.485 of 2019 in R.C.A.No.372 of 2019.

2. The facts leading to the filing of the revision petitions, in brief, are as follows:- The petitioner is a tenant in respect of two different premises in one building viz., ground floor and first floor, under the respondents. The respondents have filed two separate eviction petitions in R.C.O.P.No.1317 of 2015 and R.C.O.P.No.1318 of 2015 on the grounds of personal use and occupation, willful default in payment of rent and also act of waste.

3. The petitioner contested the above eviction petitions on the ground that the premises were originally leased out by one Parasanchand, the husband of the 1st respondent and during his life time, he had entered into a sale agreement agreeing to sell the suit premises to the petitioner. Suppressing the same, the eviction petitions have been filed and there is no bonafide in the petitions filed for eviction. Pending eviction petitions, the petitioner filed two miscellaneous petition in M.P.No.31 of 2016 in R.C.O.P.No.1317 of 2015 and M.P.No.32 of 2016 in R.C.O.P.No.1318 of 2015 questioning the very maintainability of the eviction petitions and seeking to decide the maintainability of the eviction petitions as preliminary issue as there is a serious dispute with regard to the jural relationship of landlord and tenant as the relationship of land lord and tenant between them got severed in view of the sale agreement entered into with the petitioner by the husband of the 1st respondent. Those applications were dismissed by the Rent Controller by orders dated 17.03.2016.

4. Challenging the dismissal of the miscellaneous petitions, the petitioner filed appeals in R.C.A.SR Nos.8521 and 8516 of 2016 respectively before the Appellate Authority (VII Court of Small Causes, Chennai). The Rent Control Appellate Authority, dismissed the appeals as not maintainable, by order dated 04.02.2017, even without numbering the same, on the ground that under The Tamil Nadu Buildings (Lease and Rent Control) Act, 1860 [in short, "the Act"] no appeal would lie as against the interlocutory order passed by the Rent Controller. Challenging the same, the petitioner filed two separate revision petitions in C.R.P.No.708 and 709 of 2017

before this court and this court, by common order dated 07.03.2017, dismissed both the revisions holding that trial in eviction petitions had already been commenced, however, with a direction that since the petitioner disputing the jural relationship of landlord and tenant, the issue raised by the petitioner could be decided by the Rent Controller while deciding the eviction petitions. This court further directed the Rent Controller to dispose of the eviction petitions on merits and in accordance with law within a period of three months from the date of receipt of copy of the order in the revision petitions.

5. Thereafter, the petitioner filed two separate miscellaneous petitions in MP SR 16011 of 2019 in R.C.O.P. No.1317 of 2015 and MP SR 16012 of 2019 in R.C.O.P.No.1318 of 2015 before the learned Rent Controller once again seeking to decide the question "whether the jural relationship of landlord and tenant is in existence between the respondents and petitioner" as a preliminary issue in both the eviction petitions. Those applications were filed by the petitioner on the ground that the husband of the 1st respondent had entered into an agreement with him agreeing to convey the premises in question and he had paid considerable amount as part of sale consideration, therefore, the jural relationship of landlord and tenant came to an end on the date when the petitioner and the husband of the 1st respondent entered into an agreement of sale in respect of the demised premises. That apart, according to the petitioner, he has also filed a suit for specific performance of contract of agreement of sale and the same is pending before the High Court.

6. The learned Rent Controller dismissed the miscellaneous petitions as not maintainable holding that (i) the issue of jural relationship could not be decided as a preliminary issue, as the same plea raised in the earlier round of litigation was negated by the High Court; (ii) the High Court had directed the issue of jural relationship to be decided during trial based on the oral and documentary evidence let in by both parties and (iii) trial had already been commenced and the eviction petitions are posted for cross examination of P.W.1. Challenging the above orders, the petitioner filed appeals in RCA Nos.371 and 372 of 2019. Pending appeals, the petitioner filed applications in M.P.No.484 of 2019 in R.C.A.No.371 of 2019 and M.P.No.485 of 2019 in R.C.A.No.372 of 2019 seeking to stay all further proceedings in eviction petitions. The Appellate Authority dismissed the above applications by order dated 14.11.2019. Challenging the above said orders, the petitioner has come up with these revision petitions.

7. These civil revisions petitions have been listed for admission. I have heard the learned senior counsel appearing for the petitioner in both revision petitions and the learned counsel appearing for the respondents/caveators in both revision petitions.

8. I have considered the rival submissions and also perused the records carefully.

9. These revision petitions have been filed against the order of the Appellate Authority refusing to stay the eviction proceedings before the Rent Controller. Earlier the petitioner filed miscellaneous petitions in the eviction petitions seeking to decide the issue of maintainability of the eviction petitions as a preliminary issue. The above petitions were filed on the ground that the respondents failed to produce the documents relating to title of the premises in question to disclose her ownership and the petitioner has entered into an agreement of sale with the husband of the 1st respondent. Therefore, there is no jural relationship of landlord and tenant between the respondents and the petitioner and as such eviction petitions under the Tamil Nadu Buildings (Lease and Rent Control) Act are not maintainable. Thus, the question of jural relationship is to be decided as a preliminary issue in the eviction petitions. The Rent Controller by way of separate orders dated 17.03.2016 dismissed those petitions holding that the issue of maintainability could be decided in the eviction petitions. The appeals filed by the petitioner challenging the order of the Rent Controller were also dismissed holding that as against the interlocutory order, no appeal would lie under the Act. Challenging the above order, the petitioner filed two revisions before this court in CRP NO.708 and 709 of 2017 and this court by order dated 07.03.2017, dismissed the revision petitions holding that the trial had already commenced before the Rent Controller and issue of jural relationship could be decided at the time of final disposal of the eviction petitions. This court, however, directed the Rent Controller to dispose of the eviction petitions on merits and in accordance with law within a period of three months from the date of receipt of a copy of the order in the revision petitions.

10. Thereafter, the petitioner filed a civil suit in C.S.No.266 of 2017 before the Original Side of this Court for specific performance of contract and permanent injunction along with applications for interim injunction restraining the landlords from alienating the property in question and an application to stay all further proceedings in the eviction petitions. All those applications were dismissed by this court. As against the dismissal, the petitioner preferred Original

Side Appeals in O.S.A.No.127 to 129 of 2017 which were disposed of by a Division Bench of this Court on 10.07.2017 with a direction to the Rent Controller to proceed with the trial of the eviction petitions and the Division Bench had further observed that if any final order passed in the eviction petitions as against the interest of the petitioner, it will not be given effect or executed for a period of four weeks thereafter. The relevant portion of the order reads as follows:

1. After some arguments, learned counsels for the parties submit that the captioned appeals can be disposed of with the following directions :

(i).C.S.No.266 of 2017 pending on the file of the learned Single Judge, on the original side of this Court, will be disposed of, preferably, within a period of three (3) months from today.

(ii).The respondent/defendant will file his written statement within a period of three (3) weeks from today; a copy of which will be served on the appellant/plaintiff.

(iii).The appellant/plaintiff will be at liberty to file a replication within one (1) week of receipt of a copy of the written statement.

(iv).The matter will be placed before the learned Single Judge on 17.08.2017 for framing of issues. Counsels for the parties will exchange the draft issues two (2) days before the aforesaid date of hearing.

(v).The evidence in the matter will be recorded by the learned Master. The parties will file the affidavits of evidence of their respective witnesses along with documents within ten (10) days of the issues being framed. The affidavits of evidence will be exchanged, whereupon, oral evidence will be recorded by the learned Master in respect of the witnesses, who are to be cross-examined. The learned Master will complete the recording of evidence on or before 08.09.2017.

(vi).The matter will be placed before the learned Single Judge, on 14.09.2017, upon evidence being recorded by the learned Master.

(vii). R.C.O.P.Nos.1317 and 1318 of 2015 pending on the file of XIII Small Causes Court, Chennai, will proceed. In case, the final order is passed in those proceedings, which is against the interest of the appellant/plaintiff, the same shall not be given effect to and/or executed, for a period of four (4) weeks thereafter.

[Italic supplied]

(viii).Pending the aforementioned RCOP proceedings, the respondent/defendant shall not alienate and/or create any third party interest in the suit property.

(ix).The sum of Rs.3,00,000/- (Rupees three lakhs only), which has been received, during the pendency of the instant appeals, in the form of cheque, shall be encashed by the respondent/defendant, without prejudice to his rights and contentions. To be noted, it is the stand of the respondent/defendant that the said amount can only be adjusted towards arrears of rent; a stand, which is contested by the appellant/plaintiff.

2. The parties will file affidavits of undertaking, within a period of one (1) week, from today, setting out therein that the aforesaid terms of settlement will be scrupulously adhered to by them.

3. Counsels for the parties have appended their signatures hereafter, in affirmation of the terms of settlement.

4. The captioned appeals are disposed of, in terms of the aforementioned settlement. Resultantly, pending applications shall stand closed. There shall, however, be no order as to costs.

11. Challenging the same, the petitioner preferred special leave petitions before the Hon'ble Supreme Court in SLP (C) Nos.19748 - 19750 of 2017 and another SLP against the order passed in CRP Nos.708 and 709 of 2017 with delay in Diary No.22101 of 2017 and the Hon'ble Supreme court by order dated 11.08.2017 dismissed the special leave petition as withdrawn, however, the Hon'ble Supreme Court had given permission to the petitioner to approach this court. The relevant portions of the order read as follows:

"SLP(C) Nos. 19748 to 19750 of 2017

Learned counsel for the petitioner submits that the statement as recorded by the High Court, was not under proper instruction from the petitioner.

If that be so, it is for the petitioner to approach the High Court and point out the same.

With the liberty, as above, the special leave petitions are dismissed as withdrawn.

We make it clear that we have not expressed any opinion on the merits of the case.

Diary No.22101 / 2017

Delay condoned.

In view of the orders passed in SLP (C) Nos.19748 - 19750 of 2017 no orders are required to be passed in this petition at this stage.

The special leave petition is, accordingly, dismissed."

Thereafter, the petitioner filed Review Applications in Rev.A.SR Nos.67110, 67105, 67143 of 2015 seeking to review the judgement passed in original side appeals and a Division Bench of this Court, by order dated 01.08.2018,, dismissed all those review applications as not maintainable. Challenging the same, the petitioner once again approached the Hon'ble Supreme Court by way of special leave petitions in SLPs No.28696 - 28698 of 2018 which were disposed of on 31.10.2018 by a common order. The relevant portions of the order read as follows:-

"In the common judgement dated 10.07.2017, in O.S.A.Nos.127 to 129 of 2017, the High Court has made an arrangement for disposal of both, the Civil Suit No.266 of 2017 and RCOP Nos.1317 and

1318 of 2015. We are informed that there has been no progress as scheduled by the High Court in the Civil Suit. At the same time, some progress has been made in the Rent Control Petitions.

Learned senior counsel appearing for the petitioner apprehends that in case the Rent Control Petitions are decided and the decision goes against them they would only get four weeks in view of the stipulation made by the High Court in clause 1(vii) of the common judgement dated 10.07.2017.

We do not find any basis for such an apprehension. The Rent Control Petitions are yet to be decided. In the event of the order going against the petitioner, it will be certainly open to him to pursue the grievance in appropriate proceedings. Four weeks' time which was granted by the High Court is only to enable the petitioner to pursue the grievance in appropriate proceedings. In case no progress is made in the Civil Suit it will be open to the petitioner to take appropriate steps for expediting the suit.

[Italic supplied]

We make it clear that the civil suit and the rent control petitions will be decided on their own merits.

The special leave petitions are, accordingly, disposed of."

Thereafter the petitioner filed the new set of applications before the learned Rent Controller in MP SR No.16011 of 2015 in RCOP No.1317 of 2015 and M.P.SR No.16012 of 2015 in RCOP NO.1318 of 2015 seeking to decide the jural relationship of land lord and the tenant between the respondent and himself as preliminary issue. Those miscellaneous petitions came to be dismissed by the Rent Controller as against which the petitioner preferred appeals in RCA Nos.372 and 371 of 2019 respectively along with applications under revision seeking stay of all further proceedings in Rent Control Eviction Petitions. Upon hearing both the parties, the learned rent control Appellate Authority dismissed the stay applications in view of the earlier orders on the issue and as the eviction petitions are now pending for the cross examination of P.W.1, there is no necessity to order for stay of trial of the rent control eviction petitions.

12. From a careful perusal of the above proceedings, this court is of the considered view that the petitions under revision have been filed in gross abuse of process of law. This is the third attempt made by the petitioner to get the eviction proceedings stalled. In the first round, he had raised an issue of maintainability of rent control original petitions on the ground that in view of the sale agreement alleged to have been entered into by him with the landlord, there was no jural relationship of landlord and tenant between the respondent and himself and therefore, sought to decide the issue as a preliminary issue. However, this plea was rejected by both the Rent Controller as well as the Appellate Authority. the revision petitions filed by the petitioner were also dismissed by this court. While dismissing the revisions this court held that the issue raised by the petitioner could be decided by the Rent Controller while deciding the eviction petitions and also directed the Rent Controller to dispose of the eviction petitions within a period of three months from the date of receipt of a copy of the order in the revision petitions. In the mean time, petitioner filed a civil suit along with an application seeking to stay the proceedings in Rent Control Original Petitions. When a learned single Judge of this court had refused to grant an order of stay, the petitioner filed Original Side Appeals. Those appeals were disposed of by a Division Bench of this court with certain directions. However, aggrieved by the same, the petitioner preferred special leave petitions and the same were dismissed on 11.08.2017. Thereafter, the petitioner filed review applications which were dismissed by this court on 01.08.2018. Challenging the same, the petitioner filed another set of special leave petitions in SLP (C) No.28696 to 28698 of 2018 and the Hon'ble Supreme court had disposed of the special leave petitions wherein the Hon'ble Supreme Court had specifically held that in the event of any adverse order passed against the petitioner in eviction petitions, it is open to him to pursue his grievance in appropriate proceedings.

13. While so, the petitioner had made his third attempt, by raising the very same plea again in an attempt to prolong and protract the eviction proceedings. As already discussed supra, the the same issue was already directed to be decided at the time of final disposal of eviction petitions, by order of this court dated 07.03.2017 in CRP Nos.708 and 709 of 2017. The requests of the petitioner for grant of stay of the eviction proceedings in the applications filed in the suit was also turned down by this court, which were confirmed even by the Hon'ble Supreme Court by order dated 31.10.2018, wherein the Hon'ble Supreme Court had held that in the event of any adverse

order passed in the eviction petitions, it is always open to him to pursue his remedy in appropriate proceedings. In the above circumstances, the petitioner cannot maintain the petitions under revision for stay of the rent control proceedings and the Appellate Authority rightly dismissed the same and this court find no infirmity.

14. The learned senior counsel appearing for the petitioner would contend that the issue arising in the eviction proceedings is jurisdictional issue and it should necessarily be decided as a preliminary issue or otherwise, the object of filing the petitions would be redundant. The above contention of the learned senior counsel cannot be countenanced for the simple reason that earlier when the same issue was raised in the first round of litigation, it was rejected by the Rent Controller as well as the Appellate Authority which was ultimately confirmed by this court in revisional jurisdiction. Therefore, now, it is not open to the petitioner to raise the very same plea. As already directed by this court, the issue can be decided at the time of final disposal of the eviction petitions.

15. Nextly, the learned senior counsel contended that the earlier order passed by this court in the revision petitions got merged with the order passed by the Hon'ble Supreme Court in SLP Nos.19748 to 19750 and Diary No.22101 of 2017 dated 11.08.2017 giving liberty to the petitioner to approach the High Court, therefore, the petitioner is entitled to renew the plea. In my considered opinion, this contention is also cannot be countenanced as it is total misconception of the order passed by the Hon'ble Supreme Court. The Hon'ble Supreme Court had only given liberty to the petitioner to approach the High Court in respect of orders passed in the applications filed in the civil suit and the same got nothing to do with the dismissal of the special leave petitions filed against the order passed in civil revision petition arisen out of the rent control proceedings. Therefore, the doctrine of merger would not applicable to the present case.

16. For the foregoing discussions, this court is of the firm opinion that the Appellate Authority was absolutely right in refusing to grant an order of stay of the eviction petitions pending Rent Control Appeals and there is no illegality or irregularity in the same warranting interference at the hands of this court. The revision petitions fail and the same deserve only to be dismissed.

In the result, the civil revision petitions are dismissed and the orders passed by the Appellate Authority are confirmed with costs. Consequently, connected CMPs are closed.

MEMORANDUM OF COSTS

Appellants/Petitioners() Costs	Rs. P.
Stamp for Vakalatnama	10.00
Advocate's fee (FC not filed)	----
Translation and Printing/Typing charges	nil

	10.00

Sd/-
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

kmk

To

1.The VII Judge,
Court of Small Causes, Chennai.

2.The XIII Judge,
Court of Small Causes, Chennai.

+1cc to Mr.T.Saikrishnan, Advocate Sr.9681
+3cc to M/s.B.K.Sreenivasan, Advocate Sr.9183
+3cc to M/s.B.K.Sreenivasan, Advocate Sr.9182[13/03/2020]

C.R.P.No.4261 and 4262 of 2019

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