



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Date : 09.01.2020

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P.(PD)(MD)No.28 of 2020

and

C.M.P(MD)No.181 of 2020

Kesava Pandiammal ... Petitioner/Respondent/Tenant

Vs.

R.Balaji ... Respondent/Petitioner/Landowner

Prayer : This Civil revision petition is filed under Article 227 of the Constitution of India, to strike off the petition in E.P.No.447 of 2017 in R.C.O.P.No.193 of 2015 pending on the file of the learned Additional District Munsif, Madurai, and allow this Civil Revision Petition.

For Petitioner : M/s.S.A.Ajmal Khan
For Respondent : M/s.A.Saravana Kumar

ORDER

This petition has been filed against the E.P proceedings in E.P.No.447 of 2017 in R.C.O.P.No.193 of 2015 pending on the file of the learned Additional District Munsif, Madurai.

2.The petitioner is the tenant and the respondent is the land lord. The respondent filed an Execution Petition in E.P.No.447 of 2017 for recovery of possession. But, in that Execution petition it is mentioned that sum of Rs.98,000/- has to be recovered. In the Trial Court, a Demand Draft for Rs.98,000/- was handed over to the respondent and the memo has been filed to terminate the Execution Petition.

3. The Trial Court passed a conditional order on 09.08.2017, directing the petitioner to deposit a sum of Rs.91,000/- towards arrears and Rs.7,000/- per month as a conditional order and allowed the petition in I.A.No.119 of 2015. Due to the miscommunication, the petitioner was not able to deposit the amount. Hence, the Trial Court allowed the above said petition and main R.C.O.P petition on 05.09.2017. Thereafter, the petitioner paid the arrears amount to the respondent through Demand Draft dated 09.01.2018. Though the memo was filed before the Trial Court, the Trial Court failed to

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5. It is seen that the Revision Petitioner produced a Demand Draft before the Rent Controller on 09.01.2018. The prayer in the Execution Petition is eviction. Hence, the respondent cannot claim payment of arrears of rent. It is seen that no schedule of property is mentioned in the Execution Petition. Hence, if necessary, the respondent can file a fresh Execution Petition within the limitation period or the respondent can make necessary amendments in the Execution Petition. Anyway since the Execution Petition is not for recovery of arrear of rent, the petitioner cannot claim termination of the Execution Petition just because she paid the rent. There is nothing sufficient enough to strike off the Execution Petition.

Sd/-

Assistant Registrar (records)

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Sub Assistant Registrar (CS)

To

+1 CC to Mr.A.SARAVANAKUMAR, Advocate (SR-1643[F] dated
13/01/2020)

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