

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2021

C O R A M

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.(PD) No.201 of 2021

C.K. Matheswaran Petitioner

Vs.

1. V.K. Duraisamy

2. S. Padma

3. S. Amirthavalli @ S. Amutha Respondents

Prayer: This Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order made in I.A. No.1 of 2019 in R.C.O.P. No.3 of 2019 dated 07.02.2020 on the file of (Lease and Rent Control Authority), The Principal District Munsif Court, Erode.

For Petitioner ... Mr.K. Varadhakamaraj

For Respondents ... No Appearance

ORDER

The Civil Revision Petition has been filed praying to set aside the order made in I.A. No.1 of 2019 in R.C.O.P. No.3 of 2019 dated 07.02.2020 on the file of the Lease and Rent Control Authority, the Principal District Munsif Court, Erode.

2. The case of the petitioner is that the petitioner herein is the husband of the original tenant in the petition mentioned property and the 1st respondent herein is the landlord therein. As the tenant failed to pay the rent regularly, the 1st respondent/landlord filed R.C.O.P. No.3 of 2019 on the file of the District Munsif (Lease and Rent Control), Erode against the tenant seeking for to vacate and deliver the vacant possession to him. Pending the case, the petitioner has filed I. A. No.1 of 2019 on its file for appointment of Advocate Commissioner to inspect the petition mentioned property. The same was dismissed by order dated 07.02.2020. Hence, the petitioner has filed the present Civil Revision Petition against the aforesaid order.

3. The learned counsel for the petitioner submitted that the learned Judge dismissed the petition on the ground of no reasons explained by the petitioner herein for the appointment of the Advocate Commissioner. Even though the petitioner has clearly stated in his affidavit that the appointment of the advocate commissioner is necessary to file a report as to fixation of fair rent and the facilities available in the said property after inspection the same as the 1st respondent/landlord has fixed the huge rent in the above petition property and the petition property was constructed deviating the rules made by the Town Planning Authority, the learned Judge did not consider the same and dismissed the petitioner. Hence, it is liable to be set aside.

4. On perusal of the record, it is seen that the petitioner herein is not the original tenant and initially, lease deed dated 20.10.1999 has been executed between the petitioner's wife and the 1st respondent/landlord for the monthly rent of Rs.2000/-. The same was extended periodically. Finally, the lease period was extended by the parties for 3 years commencing from 1.11.2014 to 31.10.2017 for the monthly rent of Rs.3475/- and the another portion belonged to brother of the 1st

respondent/landlord was also leased out to her by a separate lease deed. During the said lease period, the tenant was irregular in paying the rent. Hence, the 1st respondent/landlord has filed RCOP No.3 of 2019 before the Court below to vacate and delivery the petition mentioned property for not paying the rent regularly by the tenant. While being so, the petitioner has filed the I.A. No.1 of 2019 seeking for to appoint the advocate commissioner for inspection of the petition mentioned property to file a report as to facilities available therein and fixation of fair rent thereon since the rent fixed by landlord is high and the petition mentioned property was constructed without following the rules made by the Town Planning Authority. The same was dismissed as there was no proper reasons mentioned in his affidavit and evidences were not produced as stated by the petitioner. Under these circumstances, this Court is of the considered view that despite the petitioner's wife is only original tenant in the petition mentioned property as per lease deed, since there is matrimonial dispute between the wife of the petitioner and the petitioner, the petitioner is running the business therein. It is the bound duty of the petitioner to produce the rent receipts for having paid the rents up-to-date before the Court below to prove on his side since the

RCOP No.3 of 2019 has been filed by the landlord/1st respondent to vacate the tenant on the ground of default in paying the rent. Without producing the rent receipts, the petitioner has moved the court below by way of I.A.No.1 of 2019 in RCOP No.3 of 2019 to appoint the advocate commissioner for other reasons which is not related to the case. The same was not proved by the petitioner before the Court below by way of evidence. Hence, the Court below has rightly come to the conclusion in dismissing the aforesaid I.A. No. 1 of 2019 by order dated 07.02.2020. Hence, this Court is not inclined to interfere with the order passed in I.A No.1 of 2019 in RCOP No.3 of 2019 on the file of the Principal District Court, Erode, (Lease and Rent Control Authority.)

5. In the result, the Civil Revision petition is dismissed. Consequently connected miscellaneous petition is closed if any. No costs.

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Index: Yes/No.

Speaking/Non-Speaking order

Internet: Yes/No.

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V.BHAVANI SUBBAROYAN, J.,
lbm

To:

The Principal District Munsif Court, Erode.
(Lease and Rent Control Authority),



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