

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.04.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.196 of 2021 and
C.M.P. No.1801 of 2021

Vallisan Pillai

... Petitioner/ Petitioner/1st defendant

Vs.

Thiruvaduthurai Adheenam
Thiruvaduthurai by Adheena Karthar
Sri-la-Sri Ambalavana
Pandara Sannathi

... Respondent/ Respondent/Plaintiff/Decree Holder

Civil Revision Petition is filed under Section 115 of Civil Procedure Code to set aside the fair and decreetal order dated 21.12.2020 passed in un-numbered petition ---/2020 in E.P.No.65 of 2006 in O.S.No.89 of 1989 on the file of learned Subordinate Judge, Chidambaram and prays for setting aside the same.

For Petitioner : Mr.S.Sadasharam

O R D E R

Aggrieved by the rejection of the unnumbered petition, viz., E.A.---/2020 filed under Section 47 of CPC in E.P.No.65 of 2006 in O.S.No.59 / 1989 by the learned Subordinate Judge, Chidambaram with cost, the present Civil Revision Petition has been filed under Section 115 of Civil Procedure Code.

2. The case of the respondent before the court below in the suit in O.S.No.89 of 1989 is that he had filed a suit directing the petitioner and others to deliver the possession of the property and to pay a sum of Rs.16,791.40/- being the arrears of rent. In the said suit, before the court below, the respondent had stated that he is the owner of the property and had leased out the property to the petitioner herein and the petitioner had not paid the rent properly. As there was a willful default, arrears of rent and the petitioner has also sublet the property, on the ground of sublease, the respondent has preferred the said suit. Thereafter, a Written Statement was filed by the

petitioner herein / 1st defendant. The said suit was decreed as early as on 17.02.1995. As against which, E.P.No.65 of 2006 was filed by the respondent herein and pending adjudication in the present Execution petition, Unnumbered Execution Appeal was filed by the petitioner herein under Section 47 r/w Section 151 of CPC stating that the respondent / decree holder is not the real owner of the suit property and that he has got no locustandi to file the suit and further stated that the respondent -trust being a private trust and the Tamilnadu City Tenants and Protection Act is applicable, the decree passed by the court is not executable. Moreover, it is the case of the respondent before the court below that the said E.A. was rejected as not maintainable at the threshold itself. As against the same, the petitioner / 1st defendant is before this Court.

3. The learned counsel for the petitioner submits that the court below ought not to have rejected the application filed under Section 47 CPC, instead would have ordered notice, so that the application can be disposed of, on merits, after recording evidence, if necessary. Further, the petitioner is prohibited under the provisions of Section 47 CPC to file a separate suit relating to the executability of the decree. The only remedy available for the petitioner is to file an application under Section 47 CPC and in such a case, the court below had failed to consider the application on merits after notice to the respondent and in failing to do so and in rejecting the application without numbering the case, the court below has committed a serious error and therefore, the order passed by the court below is liable to be set aside. Further, the learned counsel for the petitioner also contends that since the notice has to be served and heard, there shall be a time frame to be fixed by this Court, he pleaded.

4. Heard the learned counsel for the petitioner and perused the documents placed on record carefully.

5. On perusing the order passed by the learned Subordinate Judge, Chidambaram, it is seen that the said petition was rejected without being numbered. Unless the petition is posted "for maintainability" before numbering the petition filed by the party, the question of deciding such application, on merits, is not correct. Even when a petition is filed and posted "for maintainability" before the stage of numbering the petition, the court can only decide on the maintainability issue. Though the petition is posted for maintainability before numbering the same, if the said petition is not maintainable, sufficient reasons have to be recorded therein.

6. At this juncture, it is pertinent to point out that the learned Subordinate Judge, Chidambaram in an unnumbered

E.A.No.---- of 2020, has gone extensively on merits and recorded the circumstances under which, the petition has to be rejected. Without going into the merits of the order passed, it is clear that the learned Judge, even before the petition could be numbered and notice being ordered, has rejected the same. Even though the order passed by the learned Subordinate Judge, Chidambaram, on merits, holds good and as far as the conduct of the petitioner / Judgment debtor, the unnumbered E.A. can be dismissed, but even for such dismissal, the procedures have to be followed. Merely because the petitioner / Judgment debtor is trying to protract the issue, that does not mean that the main proceedings can be compromised. However, the procedures established under the Law has to be followed scrupulously.

7. That apart, a petition was filed under Section 47 of CPC by the petitioner / Judgment debtor, the said petition was not posted for maintainability, but, on the other hand, the same was rejected on merits without being numbered and objections being heard from the decree holder. Under these circumstances, this Court is of the view that the present revision has to be allowed only for the reason that the petition filed under Section 47 CPC has to be decided only after ordering notice and thereafter, an order can be passed on merits and due to the said erroneous approach on the part of the said Judge, who had not followed the procedures contemplated under the Law, the present Revision has to be allowed.

In view of the above, order passed in Unnumbered E.A...../2020 in E.P.No.65 of 2006 in O.S.No.89 of 1989 dated 21.12.2020 is set aside and the matter is remanded to the learned Subordinate Judge, Chidambaram and the said Judge is directed to number the petition filed under Section 47 of CPC by the petitioner / Judgment Debtor and decide the same after issuing notice to the other side, the decree holder. Acceding to the request of the learned counsel for the petitioner that since the notice has to be served and heard, three months time is hereby fixed for completing the said exercise, from the date of copy of the receipt of the said order and the Revision petitioner herein shall not seek any adjournment and has to co-operate with the court below for disposing the same.

In view of the above, the present Civil Revision Petition is disposed of. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge,
Chidambaram,

2. The Section Officer,
V.R.Section,
High Court, Madras.

+lcc to Mr.S.Sadasharam , Advocate SR.No. 22992

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NR (CO)
A.SK(23.06.2021)



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