

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CRP (PD) Nos.716 & 717 of 2021
and
CMP.Nos.5971 & 5972 of 2021

Mr.A.Mohandoss ...Petitioner / Respondent in
both CRPs

Vs.

1.Mrs.Manju Bai

2.Mr.P.Vikash kumar

... Respondents / Petitioners
in both CRPs

COMMON PRAYER: Civil Revision Petition filed under section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960 as amended by Act 23 of 1973 and Act 1 of 1980 seeking to allow the Civil Revision Petition, setting aside the order dated 18.11.2020 passed by the learned Rent Control Appellate Authority (VII Judge, Small Causes Court, Chennai) in RCA SR Nos.1739 & 1740 of 2020 and direct the learned Appellate Authority to take the above appeal on file and dispose the same on merits.

For Petitioner in both CRPs : Mr.B.K.Sreenivasan

For Respondents in both CRPs : Mr.T.K.Saikrishnan

COMMON ORDER

(These cases have been heard through video conference)

There two Civil Revision Petitions, have been filed by the tenant who is an advocate.

2. There have been several rounds of litigation between the petitioner and the respondents herein. This Court on earlier occasions had dismissed various applications filed by the revision petitioner herein and had directed both the Rent Controller and the Rent Control Appellate Authority to dispose of the respective petitions wherever they are pending within a stipulated period of time.

3. It is very unfortunate that by taking advantage of his position as an advocate, the petitioner appears to be bullying both the Courts below. Now, claiming himself as innocent and ignorant, he has again come before this Court seeking indulgence.

4. An advocate as a litigant, has two options. Either he can uphold the dignity of his profession and participate in the judicial proceedings, thereby earning respect and also giving due respect to the judicial proceedings. The

Advocate as a litigant also has another option, which option the present petitioner appears to have whole heartedly taken to and that is to coerce the Courts and prevent them from proceeding further and protracting the normal progress of the case.

5.Two Rent Control Petitions in RCOP Nos.1317 of 2015 and 1318 of 2015 were filed against the petitioner herein under Sections 10 (3) (a) (iii) and 10 (2) (iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 with respect to the first floor portion and the ground floor portion of the property at Choolaimedu, Chennai.

6.The Revision Petitioner herein has protracted the case without coming forward to cross examine P.W.1 the witness of the petitioner / landlord whose chief examination was conducted in the year 2016. The only reason given is that the revision petitioner claims that he has an agreement to purchase the property. An agreement holder has no existing right over the property. Such an agreement does not create a charge over the property. The said agreement has to be tested in a Court of Law. In this case, it is an inadequately stamped and unregistered agreement.

7.The Revision Petitioner has also not come forward to pursue the litigation filed by him for specific performance which has also been dragging on for past several years.

8.The Revision Petitioner is obviously squatting on the property without giving any respect to the very legal process, the sanctity of which, he had taken an oath to uphold at the time of his enrolment.

9.In so far as the present revision petitions are concerned, CRP.No.716 of 2021 had been filed by the revision petitioner A.Mohandoss, advocate, No.71, Law Chambers, New Additional Buildings, High Court Buildings, Chennai 104, against two respondents, questioning the order in RCA (SR) No.1739 of 2020 which RCA SR No. had been filed against the order in MP (SR) No.78515 of 2019 which MP (SR) No. had been filed in RCOP No.1317 of 2015 which is now pending on the file of the XIII Small Causes Court, Chennai. CRP No.717 of 2021, has been filed questioning the order in RCA (SR) No.1740 of 2020 which had been filed against the order in MP (SR) No.78514 of 2019 in RCOP No.1318 of 2015.

10.The Revision Petitioner herein became a tenant originally under the husband of the 1st respondent and the father of the 2nd respondent with respect to the suit property. He claims that an agreement of sale had been entered into on 05.09.2007 but as on date, the said agreement has not been tested by any Court of Law. It remains only a piece of paper. It is also inadequately stamped and unregistered. It gives no right to the present revision petitioner or even any additional right to the present petitioner. It is highly doubtful whether it also gives any further privilege. He still continues to be a tenant with all the duties attached to a tenant to pay the monthly rents, to submit to any decree of eviction in case such orders passed. He also has a duty to participate in the Rent Control Proceedings which are initiated against him. The agreement of sale is independent of the right of the landlord to initiate even execution proceedings pursuant to any order of eviction. The revision petitioner cannot take a shelter under the said agreement of sale which, as aforesaid is admittedly inadequately stamped and unregistered and an unregistered agreement of sale creates no rights or grants any right to any of the parties.

11.Originally, the revision petitioner herein had filed MP (SR) No.16011 of 2019 to decide as a preliminary issue whether there was relationship of landlord and tenant between the parties. That had been dismissed as not

maintainable. As against that, the revision petitioner herein had filed an appeal. That appeal was also dismissed. Thereafter, the RCOP was posted for cross examination on 08.11.2019.

12.It is to be stated that P.W.1 was examined in chief on 14.11.2016 and from 28.11.2016 onwards till this date, the witness has not been cross examined.

13.After several adjournments spanning three years, it was posted for cross examination of P.W.1 on 08.11.2019. Mr.B.K.Sreenivasan, learned counsel for the revision petitioner stated that on 07.11.2019, he had filed a memo and an adjournment petition in MP (SR) No.77032 of 2019 requesting adjournment of the RCOP. But, however, it must be kept in mind that adjournment was sought in a matter which had been posted for cross examination for a continuous period of three years. The revision petitioner had been granted more than ample opportunity to cross examine the witness. On one day, finally, when the matter was closed, he claims innocence complaining about the attitude of the Rent Controller and the Rent Control Appellate Authority.

14.I sincerely wish that both the Authorities before whom the petitions were filed and who rejected the case of the petitioner, seeking time for cross examination from the year 2016, had closed the matter years before, rather than permitting the petitioner to grow in confidence and over confidence that he can get any order which he seeks from the Courts of law. It must be kept in mind that he has no rights to dictate how the Court proceedings should be conducted. As an advocate, an additional duty is cast on the petitioner to be a responsible litigant and also be an example to other litigants. The attitude of the revision petitioner in bullying the Court proceedings would only lead other litigants to believe that by such bullying tactics, adjournments can be obtained. That was the conduct which the petitioner had been exhibiting for the past nearly 5 years from the date when cross examination was originally posted on 28.11.2016.

15.Coming to the facts, the Rent Controller had dismissed both the petitions seeking adjournments and the memo. As against that, Rent Control Appeals had been filed which again were at SR stage. A perusal of the records shows that the Rent Controller and the Rent Control Appellate Authority have been pressed into passing orders on the whims and fancies of the petitioner.

16.It is seen that originally, counter was not filed in the RCOPs. The petitioner herein was set exparte for not filing of counter on 02.09.2016. Thereafter, he filed MP. No.651 of 2016 seeking to set aside the exparte orders. That petition came to be allowed on 17.10.2016. P.W.1 was then examined in chief on 14.11.2016. It was posted for cross examination on 28.11.2016. The revision petitioner did not come forward to cross examine P.W.1. He was set exparte on 12.04.2017 for not cross examining P.W.1 and the evidence was closed. He filed another application on 27.04.2017 to set aside the said order and to reopen the evidence and recall P.W.1. All these applications were allowed on 22.09.2017 and the matter was posted for cross examination of P.W.1 again. Since P.W.1 was not cross examined, evidence was again closed on 28.02.2018. It was posted for further evidence on the side of the petitioner in the RCOPs.

17.A statement was made by Mr.B.K.Sreenivasan, that the learned Rent Controller made an error after closing the evidence on the side of the petitioner by posting the matter straightaway for arguments on the side of the petitioner and was not posted for evidence on the side of the respondent. That statement made by Mr.B.K.Sreenivasan, is false and is misleading the Court. The learned counsel should have examined the records and should have found that the

learned Rent Controller had given opportunity for the present petitioner to lead evidence. Thereafter, even though this opportunity was granted from 26.03.2018 till 25.06.2018 for three full months, the petitioner did not even have the courtesy to lead evidence before the Rent Controller. He did not lead evidence. Thereafter, the evidence on the side of the revision petitioner was closed and the matter was posted for arguments on 25.06.2018.

18.Once again, on 06.08.2018, the learned Rent Controller again granted opportunity to the present petitioner to lead the evidence. At that stage, the petitioner herein had filed MP.Nos.324 & 326 of 2018 to reopen the evidence and recall P.W.1. Both the applications were allowed on 27.08.2018 and the evidence was reopened for cross examination of P.W.1. As is the practice of the present revision petitioner, he again did not cross examine P.W.1. This Court is really ashamed of the conduct of the present revision petitioner who claims to be a honourable member of the Bar. As a matter of fact, this is an attitude for which the entire judiciary has to be ashamed of. He did not cross examine P.W.1. On 30.11.2018, he was again set exparte.

19.The present revision petitioner again filed MP.No.8 of 2019 to set aside the said order. That application was allowed on 06.02.2019 and the

matter was posted again for cross examination of P.W.1. Once again, at that stage, the petitioner filed MP (SR) No.16011 of 2019 to decide as a preliminary issue the relationship of landlord and tenant. That application was dismissed by the Rent Controller on 14.10.2019. As against that RCA No.372 of 2019 was filed. That was dismissed on 11.11.2020 by the Rent Control Appellate Authority. The petitioner has now come to this court with a claim that opportunity was not granted for cross examination of P.W.1 on 08.11.2019.

20.I do not find any justification in that representation at all. If there had been any iota of intention to cross examine the witness, he would have done so very immediately after the chief examination. That is the nature in which any trial is to be conducted by any Court. Dragging on the matter for three full years and thereafter, stating that opportunity was not granted is shameful on the part of the petitioner and I am also deeply concerned that such an attitude is supported by Mr.B.K.Sreenivasan. The learned counsel as an advocate has a responsibility of advising his client who is also an advocate about the necessity to maintain the decorum in a Court proceedings and not to drag the matter year after year for more than nearly five years just for conducting cross examination of one witness, P.W.1. Either the counsel has no confidence to conduct cross examination or the petitioner has no defence to advance in the Rent Control

Petition. These can be the only two reasons.

21.This application was rejected by the Rent Controller namely the application seeking adjournment. As against that RCA (SR) No.1739 of 2020 was filed. That came up for consideration on 18.11.2019. The learned Rent Control Appellate Authority had examined the entire issue and noted down the dates on which the petitioner herein had sought adjournments. It had been stated that there was no necessity to recall the order dated 08.11.2019 and it had been stated that the Rent Controller had correctly rejected the said request for adjournment. It was also pointed out that the petitioner in RCOP had argued the main RCOP on 06.08.2019 itself and it had been posted for arguments on the side of the present revision petitioner on 13.08.2018. Once again he had taken time.

22.The entire dates when adjournments were sought had been stated in the order. It is also seen that on 08.11.2019, the present petitioner came to the Court at 5.25 p.m. It is also seen that the Rent Controller had held up the matter till 5.15 p.m. The Rent Controller cannot be expected to stay in the Court the whole night waiting and hoping that the counsel for the present petitioner or the petitioner would come to the Court to cross examine the

witness, only because the tenant is an advocate, who evidently is misusing his position as an advocate. Least to say this attitude is very distressing and very disgusting.

23.I find no reason to interfere with the order of the Rent Control Appellate Authority in so far as both the Revision Petitions are concerned.

24.Even before the arguments could be advanced, today, common written arguments had been submitted in the Registry on behalf of the petitioner, wherein reference has been made to ***A.Murugesan v. Jamuna Rani*** reported in ***(2019) 20 SCC 803***. In that case, a suit seeking substantive relief namely grant of specific performance had been filed, and the appellant had shown sufficient cause for non appearance, when the matter was called on 16.03.2019. It had been held that it was a fit case to allow the application to set aside the impugned order and that the application to adjourn the matter should have been favorably considered and not rejected.

25.The facts in the present case have been stated above. It is seen that on a number of occasions the Courts below had shown indulgence to the present revision petitioner. It is seen that petitions after petitions had been filed seeking

to reopen the evidence, again the petitions after petitions had been allowed, but after obtaining favorable orders, the petitioner did not take advantage of such orders which had been passed with the hope that he would abide by the orders. It is also seen that in the order passed in a Civil Revision Petition by a learned Single Judge of this Court, a direction had been issued that the Rent Control Petition should be disposed of within a specific time. Such a direction is binding not only on the Rent Controller but also on the petitioner and the respondent in the Rent Control Petition. Further the learned counsel for the petitioner and the learned counsel for the respondent are also bound by such an order which had been passed to dispose of the matter in a time bound period. But however, the petitioner herein, as an advocate under the able guidance of another advocate, seems to be under the impression that he is not bound by any order and that he can drag on the matter forever. He must realise that the time has come for him to face reality and the strong arms of justice.

26.For the reasons stated,

- (i) CRP No.716 of 2021 is dismissed with costs of Rs.50,000/- [Rupees Fifty Thousand only] payable by 30.05.2021 to the respondents;
- (ii) CRP No.717 of 2021 is also dismissed with costs of Rs.50,000/- [Rupees Fifty Thousand only] payable by 30.05.2021 to the respondents.

27.Atleast, the petitioner who is an Advocate should give respect to this particular order and should not hesitate to pay the costs. If costs are not paid as directed, the defence of the revision petitioner shall be struck off.

28.I fervently hope that Mr.B.K.Sreenivasan, learned counsel will advise the petitioner regarding his responsibility as a litigant and as an Advocate. I hope that sense and sensibility would prevail.

29.With these observations, both the Civil Revision Petitions are dismissed with costs of Rs.50,000/- [Rupees Fifty Thousand Only] each payable to the respondents by 30.05.2021. Consequently, the connected miscellaneous petitions are also dismissed.

सत्यमेव जयते

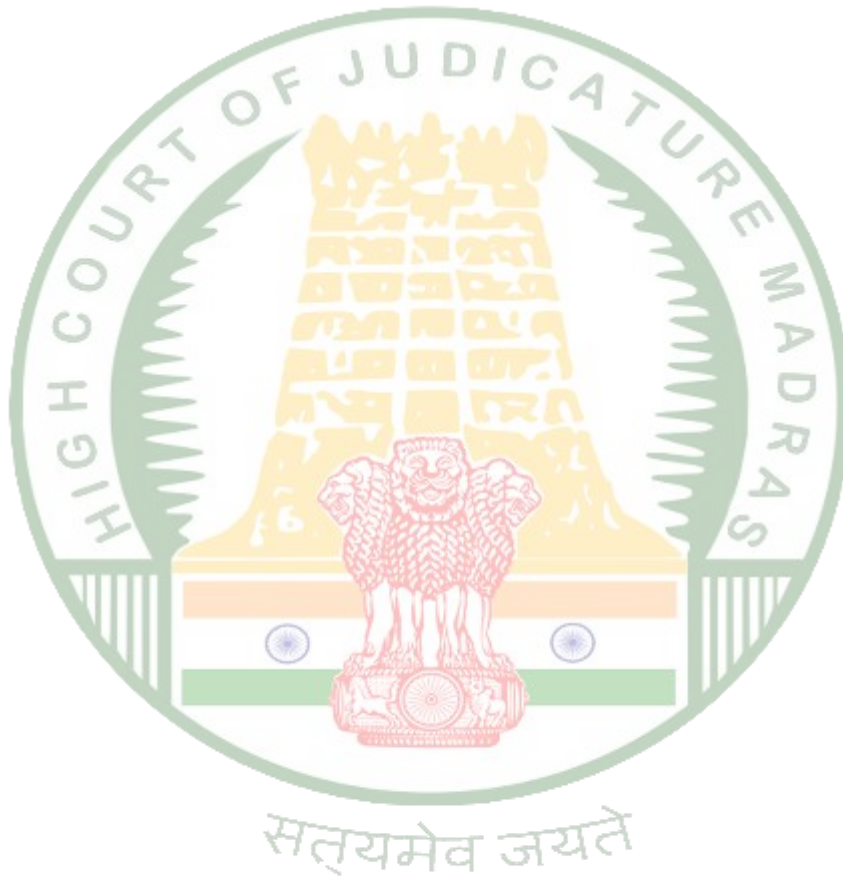
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To

1. The Rent Control Appellate Authority (VII Judge, Small Causes Court, Chennai).
2. The Rent Control Authority (XIII Judge, Small Causes Court), Chennai.



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and CMP.Nos.5971 & 5972 of 2021

C.V.KARTHIKEYAN, J.,

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