



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :25.06.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.502 of 2021 and  
C.M.P. No.4359 of 2021

1. R.Kumari  
2. S.Shanthi

... Petitioners/Defendants 5 & 6

Vs.

C.Jayaraman

... Respondent/Plaintiff

Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the docket order dated 01.03.2021 in I.A.No.1 of 2021 in E.S.No.6 of 1999 on merits and in accordance with law.

For Petitioner : Mr.S.Raveekumar

#### O R D E R

The present Civil Revision Petition has been filed under Article 227 of Constitution of India seeking to set aside the Docket Order dated 01.03.2021 in I.A.No.1 of 2021 in E.S.No.6 of 1999 and consequently, direct the learned IV Small Causes Judge, Small Causes Court, Chennai to decide the I.A.No.1 of 2021 on merits in accordance with law.

2. The facts leading to the present case is that an Ejectment Suit in E.S.No.6 of 1999 was filed by the respondent under Section 41 of the Presidency Small Causes Court Act, 1882 seeking a prayer for Ejectment of the defendants therein from the respondent / plaintiff's land in Survey No.37/20, new T.S.No.27, Block No.1, Kodambakkam Village, bearing Door No.25, Alagarperumal Koil Street, Vadapalani, Chennai - 26 admeasuring about 4,815 square feet, as described in the schedule to the petition. The written pleas were initially filed by the petitioners / defendants 5 and 6 therein. The Small Causes Court initially dismissed the suit for non-prosecution by order dated 16.06.2003, which was later on restored to file on petition filed by the respondent/plaintiff herein. However, finally by Judgment and Decreetal order dated 06.01.2018, the IV Small Causes Court, Chennai, had ordered the issues framed therein in favour of the respondent/ plaintiff. After the suit being decreed in his favour, the respondent / plaintiff, decree holder had filed Execution Petition before the Registrar of Small Causes Court, Chennai seeking execution of the decree



dated 06.10.2018 as against the defendants therein. Meanwhile, I.A.No.1 of 2021 in Ejectment Suit No.6 of 1999 has been filed by the petitioners / 5<sup>th</sup> and 6<sup>th</sup> defendants in the Ejectment Suit to stay all further proceedings in Execution Petition No.132 of 2019 along with the petition for condoning the delay of 786 days in filing the petition to set aside the exparte decree in Ejectment Suit in E.J.S.No.6 of 1999 dated 06.01.2018

3. From the perusal of the documents placed on record and on hearing the learned counsel for the petitioners it could be seen that the notice to the respondent/plaintiff was ordered by the IV Small Causes Court, Chennai and thereafter, the said court has returned the papers filed by the revision petitioners herein on the ground that "This petition is wrongly taken by this court, as E.P., is pending before the Registrar of Small Causes Court, hence this petition is returned to be presented before the Registrar of Small Causes Court, Chennai. As against the said return, the present Revision Petition is filed by the Revision Petitioners herein. Further, the learned counsel for the petitioners also contended that the Small Causes Court ought not to have returned the I.A., filed by the Revision Petitioners on the ground that since the E.P., is pending before the Registrar, the petition is also to be presented before the Registrar, which is incorrect and it is the court, which has got jurisdiction to try the I.A., and pressed upon this Court to set aside the docket order.

4. Heard the learned counsel for the petitioners and perused the materials placed on record.

5. At this juncture, it is pertinent to point out that the following provisions of the Presidency of Small Cause Courts Act, 1882 are relevant to decide the issue:

" Section 14: Registrar may be invested with powers of a Judge in suits not exceeding twenty rupees- The State Government may invest the Registrar with the powers of a Judge under this Act for the trial of suits in which the amount or value of the subject-matter does not exceed twenty rupees. And subject to the orders of the Chief Judge, any Judge of the Small Cause Court may, whenever he thinks fit, transfer from his own file to file of the Registrar any suit which the latter is competent to try.

Section 35: Registrar may execute all decrees with the same powers as a Judge - The Registrar may receive applications for the execution of decrees of any value passed by the Court, and may commit and discharge Judgment - debtors, and make any order in respect



thereof which a Judge of the Court might make under this Act

Section 41: Summons against person occupying property without leave- When any person has had possession of any immovable property situate within the local limits, of the Small Cause Court's jurisdiction and of which the annual value at a rack-rent does not exceed [two] thousand rupees, as the tenant, or by permission, of another person, or of some person through whom such other person claims,

and such tenancy or permission has determined or been withdrawn,

and such tenant or occupier or any person holding under or by assignment from him (hereinafter called the occupant) refuses to deliver up such property in compliance with a request made to him in this behalf by such other person,

such other person (hereinafter called the applicant) may apply to the Small Cause Court for a summons against the occupant, calling upon him to show cause, on a day therein appointed, why he should not be compelled to deliver up the property."

6. On going through the abovesaid provisions, especially, Sections 14 and 35 of the Presidency Small Cause Courts Act, 1882, the Registrar is empowered and invested with the powers of a Judge in a suit not exceeding Rs.20/- as declared by the respondent / plaintiff before the Small Causes Court. As far as Section 35 of the said Act speaks that the Registrar is vested with the power to receive the application for the execution of the decree of any value passed by the court and may commit and discharge judgment-debtors and thereafter, make any order in respect thereof, which a Judge of the Court may make under this Act.

7. On a careful perusal of Section 35 of the said Act, it is clear that the Registrar is only empowered to receive any application in connection with for execution of the decree of any value passed by the court and make any order in respect thereof, would mean that the Registrar is empowered to pass any order in respect of the execution proceedings or execution application taken by the parties in connection with the execution of the decree of any value passed by the small Causes Court, which originally decreed the suit.

8. In so far as I.A.No.1 of 2021, which is an interlocutory



application taken by the petitioners / 5<sup>th</sup> and 6<sup>th</sup> defendants in Ejectment Suit No.6 of 1999 is concerned, on a conjoint reading of the application filed by the revision petitioners herein with the above provision, viz., Section 35 of the Presidency Small Causes Court Act, 1982, the stay petition can only be decided by the original court, which had passed the decree. Further, Section 35 of the said Act gives the limited power to the Registrar of the Small Causes Court to execute such decree passed by the small causes court of any value and while executing the decree, the Registrar is vested with the power to pass any order in connection to the execution of proceedings. Whereas, the application filed in I.A.No.1 of 2021 is to stay the original exparte decree dated 06.01.2018, which can be decided only by the concerned court and not by the Registrar. As far as deciding the stay application is concerned, the same is not incidental to the Registrar's power to pass orders in connection with the execution proceedings. The power to decide the application is only vested to the Courts and not with the Registrar.

9. Under these circumstances, this Court has no hesitation in setting aside the docket order dated 01.03.2021 in I.A.No.1 of 2021 in E.S.No.6 of 1999 and the same is set aside. Accordingly, the Present Civil Revision Petition is allowed with a direction to the IV Small Causes Court, Chennai to decide the I.A.No. 1 of 2021 in E.S.No.6 of 1999 on merits and in accordance with law. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The IV Judge,  
IV Small Causes Court,  
Chennai

Copy to:

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

+1CC to Mr.S.Raveekumar, Advocate, Sr.No.29427

C.R.P.No.502 of 2021 and  
C.M.P. No.4359 of 2021

NMI (CO)  
K.RK. (23.07.2021)