

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2021

C O R A M

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.(NPD) No.699 of 2021

1. Mrs.Malarvizhi,
2. Mrs. Pavai,
3. Mrs. Thamizarasi,
4. Mrs. Thenmozhi,
5. Mrs.Kalyani,
6. Mr. Mohan

... Petitioners

Vs.

Mrs. Selvam Ammal

... Respondent

Prayer: This Civil Revision Petition filed under Article 227 of the Constitution of India praying for to set aside the order dated 23.02.2021 passed in E.A. Sr. No.2686 of 2020 in E.P. No.125 of 2017 in R.C.O.P. No.33 of 2009 on the file of the Additional District Munsif, Vellore.

For Petitioners
For Respondent

... Mr.K. Mohanamurali
... Mr. Praveen Kumar

ORDER

This Civil Revision Petition has been filed under Article 227 of the Constitution of India praying for to set aside the order dated 23.02.2021

passed in E.A. Sr. No.2686 of 2020 in E.P. No.125 of 2017 in R.C.O.P. No.33 of 2009 on the file of the Additional District Munsif, Vellore.

2. The brief facts of the case are as follows:

The respondent being the landlady filed a RCOP No.33 of 2009 on the file of the Rent Controller, Vellore, against the tenants/petitioners herein. The learned Rent Controller, Vellore vide order dated 17.11.2017, directed the petitioners herein to vacate and handover the petition mentioned building and put the respondent herein into the possession of the petition mentioned building within 15 days from the date of order and the petitioners herein are liable to pay Rs.1,00,000/- as realistic costs to the respondent herein. In view of the aforesaid order, the respondent herein had filed E.P. No.125 of 2017 against the petitioners herein for the delivery of the possession. Against the aforesaid order dated 17.11.2017, the petitioners had filed a Rent Control Appeal in R.C.A. No.1 of 2018 on the file of the Principal Sub Court, Vellore, against the landlady/respondent herein. Pending the aforesaid RCA, the petitioners had filed I.A. No.1 of 2018 for staying all other proceedings in the order dated 17.11.2017 in RCOP No.33 of 2009. The

same was dismissed by order dated 16.07.2018 on the ground of irregular payment on rent made by the tenants/petitioners herein. Being aggrieved, the petitioners had filed CRP (NPD) No.2469 of 2019 before this Court praying for to dispose of the aforesaid RCA within a time frame to be fixed by this Court since the landlady/respondent herein had filed an E.P. No.125 of 2017 for delivery of possession against the petitioners herein. This Court by order dated 21.01.2020 directed the learned Sub-ordinate Judge, Vellore, to dispose of RCA No.1 of 2018 within a period of eight weeks from the date of receipt of copy of that order. According to the aforesaid order, when RCA No.1 of 2018 was listed before the Appellate Court, a memo was filed before it by the petitioners herein with regard to the direction of this Court. Recording the said memo, both parties were directed to appear before the Court below on 05.02.2020 and produce the aforesaid order copy passed by this Court in CRP (NPD) No.2469 of 2019. When the matter was taken up on 05.02.2020, there was no representation on the side of the tenants /petitioners herein. Hence, the matter was adjourned to 07.02.2020 for the appearance of the tenants/petitioners herein. On that day also, some of the tenants/petitioners were absent. As there was no representation on behalf

of the petitioners herein, the learned Rent Controller Appellate Authority has dismissed RCA NO.1 of 2018 by order dated 07.02.2020. Aggrieved by the above order, the tenants/petitioners have filed CRP No.1194 of 2020 before this Court. This Court, by order dated 18.03.2020, allowed the petition by directing the learned Rent Controller Appellate Authority to grant an opportunity to contest their case and dispose of RCA No.1 of 2018 within the time frame fixed by this Court as per order dated 21.01.2020 passed in C.R.P.(NPD) No.2469 of 2018. Subsequent to the filing of E.P. No.125 of 2017 in RCOP No.33 of 2009, for delivery of possession against the petitioners herein as per the order dated 17.11.2017 of the Rent Controller, Vellore, the petitioners have filed E.A.Sr. No.2686 of 2020 in E.P. No.125 of 2017 in RCOP No.33 of 2009 seeking for stay all further proceedings in the execution petition wherein the learned Additional District Munsif has dismissed the aforesaid application on the ground of the RCA No.1 of 2018 has not been restored on its file since the material records have not been received by it even sufficient time was granted to the parties and there is no appeal or stay pending as on date. Against the aforesaid order, the petitioners have filed the present Civil Revision Petition seeking for to set aside the same.

3. The learned counsel for the petitioners would submit that this Court by order dated 21.01.2020 disposed of the CRP (NPD) No.2469 of 2018 by directing the learned Sub-ordinate Judge, Vellore to dispose of R.C.A. No.1 of 2018 within a period of eight weeks from the date of receipt of copy of that order. According to the aforesaid order, the Appellate Authority posted the case for the appearance of the parties which does not warrant in R.C.A. In the absence of the parties on the date of posting for hearings, the Appellate Authority dismissed the said R.C.A. by order dated 07.02.2020. Against which, the petitioners have filed C.R.P. (NPD) No.1194 of 2020 before this Court and the same was allowed by order dated 18.03.2020 wherein it was ordered in para no. 5 as follows:

" Accordingly, this Civil Revision Petition is allowed and the order dated 07.02.2020 passed by the learned Rent Controller Appellate Authority, Vellore (Sub-Ordinate Court, Vellore) in R.C.A. No.1 of 2018 is set aside. The parties are directed to produce the order copy of C.R.P. No.2469 of 2018 before the Appellate Court as expeditiously as possible. On receipt of such order copy, the learned Rent Controller Appellate Authority, Vellore (Sub-Ordinate Court, Vellore), is directed to grant an opportunity to the petitioners to contest their case and dispose of R.C.A. No.1 of 2018 within the time frame fixed by this Court as per order dated 21.01.2020 passed in C.R.P.NO.2469 of 2018.

Thereafter, due to Covid 19 pandemic this Court and lower Court were closed. After re-opening the Courts, the R.C.A. No.1 of 2018 was listed

before the Rent Control Authority, Vellore (Rent Control Appellate Authority). During the hearing, it was pleaded that this Court has passed order dated 18.03.2020 in C.R.P. (NPD) No.1194 of 2020 to grant an opportunity to contest R.C.A. No.1 of 2018 on merits by setting aside the order dated 07.02.2020 passed by the learned Controller Appellate Authority. While being so, the E.P. No.125 of 2017 was listed for hearing wherein it was mentioned by the learned counsel for the petitioners herein that R.C.A. No.1 of 2018 is pending as the back bundles has not been returned by the Registry of this Court due to Corona Pandemic. Without considering the above, the Execution Court in E.P. No.125 of 2017 started proceedings. Hence, the petitioners have filed E.A. Sr.No.2686 of 2020 before the Court below seeking for stay of further proceedings in E.P. No.125 of 2017 pending disposal of R.C.A. No.1 of 2018 wherein the learned Judge by order dated 23.02.2021 dismissed the same holding in para No.4 as follows:

" 4. During the course of arguments, it is revealed that the said RCA No.1/2018 has not been restored on file stating the material records are not yet received. This Court has granted sufficient time for the petitioners of production of stay order from the appellate Court. It is well settled principle that a trial Court can proceed with the execution unless there is any stay granted by the appellate Courts. In the present case, there is no appeal or stay pending as on date. It seems the petitioners are not interested to

prosecute their case with due diligence. Hence this Court find no sufficient reasons to stay the execution as contemplated in Order 21 rule 26 CPC. Accordingly, this petition is dismissed”.

In the aforesaid order, the learned Judge has dismissed the E.A. petition in S.R. stage without numbering the case and considering the order dated 18.03.2020 passed by this Court to giving an opportunity to the petitioners to contest their case in R.C.A. No.1 of 2008 by setting aside the earlier order dated 07.02.2020 passed by the Appellate Court. While pending the appeal in R.C.A. No.1 of 2018 before the Appellate Court, as this Court set aside the earlier order dated 07.02.2020 in R.C.A. No.1 of 2018 passed by the Appellate Court, the learned Judge ought to have considered the prayer of the petitioners herein instead of dismissing the same. Since the material records have not been returned to the Court below due to pandemic of Covid19, R.C.A. No.1 of 2018 is pending before the Appellate Court awaiting the records from this Court for further proceedings. Under these circumstance, without considering the aforesaid scenario, the learned Judge has dismissed the E.A.Sr.No.2686 of 2020 in E.P. No.125 of 2017 in R.C.O.P. No.33 of 2009. Hence, the dismissal order dated 23.02.2021 passed by the learned Judge is untenable and the same is liable to be set aside.

4. The learned Counsel for the respondent would submit that

despite the order dated 18.03.2020 of this Court, R.C.A. No.1 of 2018 is yet to be restored on the file of the Court below for hearing since the material records have not been received by it. At this juncture, this Court may direct the Registry to return the material records the Court below enabling to proceed with the the case in R.C.A.No.1 of 2018 pending before the Appellate Court as per the order dated 18.03.2020 passed by this Court.

5. Heard, the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent as well as perused the material available on record.

6. On a perusal of the record, it is admitted fact that the material records have not been returned to the Court below even though this Court directed the Court below and parties concerned by order dated 18.03.2020. In the absence of the material records, the Court below could not proceed the R.C.A. proceedings and the same is pending awaiting the records sent by the Court below.

7. Having considered the aforesaid facts and circumstances of the

case, this Court directs the Assistant Registrar, (Vernacular Section) to return the entire material records pertaining to the R.C.A. No.1 of 2018 in R.C.O.P. No.33 of 2009 and related documents received from the Court below on or before 31.03.2021 without any further delay. On receipt of the entire case bundles pertaining to it, the Court below shall proceed with the case further on 19.04.2021. The parties concerned are directed to appear before the Appellate Court when the matter is listed for hearing enabling to dispose of the case as expeditiously as possible. As it is not a fault on the side of the parties in not returning the entire bundles of the Court below, Status Quo shall be maintained in respect of Execution Proceedings till the disposal of the R.C.A. No.1 of 2018.

8. With the aforesaid direction, this Civil Revision Petition is disposed of. Consequently, connected miscellaneous petition is closed.

No Costs.

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26.03.2021

Lbm

Index: Yes/No.

Speaking/Non-Speaking order

Internet: Yes/No. (Note: Registry is directed to issue Order copy on 30.03.2021)

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V.BHAVANI SUBBAROYAN, J.,

lbm

To:

- 1.The Additional District Munsif, Vellore.
2. The Asst. Registrar, (V.R. Section)

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