

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.03.2021

CORAM

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

CRP (PD) No.710 of 2021

1. S.Umayal
2. S.Ramanarayanan
3. S.Alagappan

... Petitioners

- Vs -

M/s.South Indian Athletic Association
Rep. by its Honorary Joint Secretary
Jabir Ali Currimbhoy,
Ground Floor, V.P.Hall,
Poonamallee High Road,
Chennai-600 003.

... Respondent

Civil Revision Petition has been filed under Article 227 of the Constitution of India, praying to direct the Hon'ble XIV Asst. City Civil Court to dispose of I.A.No.3 of 2020 in O.S.No.4682 of 2020 at an early date.

For Petitioners : Mr.P.L.Narayanan

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ORDER

The Civil Revision Petition has been filed to direct the XIV Asst. City Civil Court to dispose of I.A.No.3 of 2020 in O.S.No.4682 of 2020 at an early date within such time as this Court deems fit.

2. The revision petitioners herein filed a suit on 01.12.2020 seeking for issuance of mandatory injunction directing the defendant to restore the suit property to the original inhabitable state by making necessary alteration caused during the occupation of the suit property morefully described in the schedule hereunder by the defendant i.e., (i) Flat No.B/D1, Lakshmi Bhawan, Door No.609, Anna Salai, Chennai-600 006 measuring to an extent of 550 sq.ft, (ii) Flat No.B/D2, Lakshmi Bhawan, Door No.609, Anna Salai, Chennai-600 006 measuring to an extent of 550 sq.ft and (iii) Flat No.B/C, Lakshmi Bhawan, Door No.609, Anna Salai, Chennai-600 006 measuring to an extent of 560 sq. ft.

3. The case of the revision petitioner is that the alleged lease agreement between the plaintiffs and the defendants was entered on 26.06.2013 for a monthly rent of Rs.20,000/- and an advance of Rs.1,20,000/- has been received as Security Deposit. The defendant Association has not paid the rent after the month of July 2016 and the plaintiffs continuously demanding payment of arrear rent dues, for which the defendant failed to respond, due to which the petitioners filed the suit. As the defendant has not paid the rent from July 2016, the petitioners sent an eviction notice in the month of October

2020 seeking for eviction proceedings to be initiated against the said Association.

4. It is the further case of the revision petitioners that the said premises has been kept in lock for more than two years due to the Nivar Cyclone, which caused heavy rainfall in various parts of Tamil Nadu. Due to the cyclone, there was rise in water levels caused floods in the Chennai City where the suit schedule property is located. They have filed I.A.No.3 of 2020 on 01.12.2020 along with the suit seeking to appoint an advocate commissioner to evaluate the suit schedule property stating that there was water logging, which may cause damage to the superstructure of the suit schedule property.

5. The learned counsel for the petitioners submits that due to water stagnation, the suit schedule property might be damaged and hence, it is just and reasonable to appoint an advocate commissioner to visit the property by breaking open the lock, which has been kept under lock for more than two years, to evaluate the status of the suit property. It is further stated that the petitioners have not filed any other proceedings before any other forum. The learned counsel has stated that the respondent and his sister occupied the suit property for more than two years and the said statement is made up only to

mislead the suit. Hence, appointment of Advocate Commissioner is just and necessary.

6. On going through the entire materials, it is seen that the suit was filed by the petitioners along with I.A.No.3 of 2020. On 29.01.2021, the said application was adjourned to 19.02.2021 for taking steps to amend the address of the defendant. When the matter was taken up for hearing on 19.02.2021, the learned counsel for the petitioners was not aware of any other address given to him other than the address in Jabir Ali Currimbhoy, Ground Floor, V.P.Hall, Poonamallee High Road, Chennai-600 003. It is evident that in the first hearing itself, the Court has asked the petitioners to find out any other address to serve on the respondent and the petitioners have not taken steps to search the alternate address of the defendant. The Court below seeking for effective service which has been prescribed in the Code of Civil Procedure. Without exhausting his alternative remedy, the petitioners herein come forward to file this application that too by filing of application after two months and when proper address is not known to them. Hence, this petition seeking invoking the external jurisdiction of this Court under Article 227 of The Constitution of India, is nearly an abuse of process of law. When the remedy is available to the petitioners to take steps, the petitioners cannot come

before this Court without exhausting the remedy available before the Court below. Further, if no rent is paid, it is for them to choose their remedy under the Rent Control Act proceedings and they have not chosen to do so.

7. In view of above, the Civil Revision Petition is dismissed. There shall be no order as to costs.

30.03.2021

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Index : yes/no

Speaking/Non Speaking Order

To

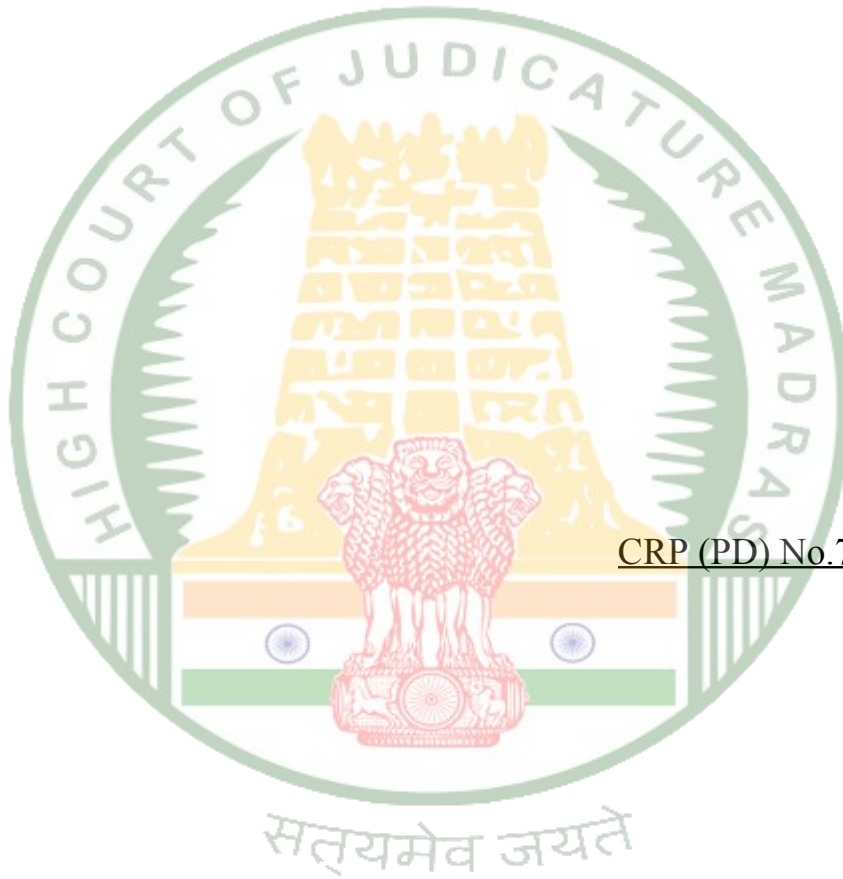
1. The Judge,
XIV Assistant City Civil Court,
Chennai.

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

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V.BHAVANI SUBBAROYAN.J.,

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