

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.03.2021

CORAM

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

CRP (PD) No.713 of 2021

and

CMP.No.5965 of 2021

M/s.Soltech Equipments,
by its Proprietor Sri Raman,
S/o.Thirumalachari,
No.27/12 Cresent Park Street,
1st Floor, T.Nagar,
Chennai-600 017.

... Petitioner

- Vs -

K.Rajagopalan

... Respondent

Civil Revision Petition has been filed under Article 227 of the Constitution of India, praying to set aside the order and decretal order dated 30.12.2020 in I.A.No.2 of 2020 in O.S.No.1835 of 2019 on the file of V Additional Judge, City Civil Court, Chennai and allow this revision.

For Petitioner : Ms.B.Sharmila
for Mr.V.R.Karthikeyan

ORDER

The Civil Revision Petition has been filed against the order dated 30.12.2020 passed in I.A.No.2 of 2020 in O.S.No.1835 of 2019 by the learned V Additional Judge, City Civil Court, Chennai.

2. The case of the revision petitioner is that he filed a suit in OS.No.1835 of 2019 under Order VII Rule 1 of The Code of Civil Procedure, 1908 seeking for a prayer to compel the defendant to deliver the vacant possession of the property at Door No.27/12 (First Floor), Crescent Park, T.Nagar, Chennai-600 017 morefully described in the Schedule and restraining the defendant from disposing or injuring or concealing the said premises to any third party.

3. The case of the plaintiff is that he was running a business in the name of M/s.Soltech Equipments in the said premises selling Solar Power Projects implementer for monthly rent of Rs.27,000/- and an advance amount of Rs.1,50,000/- was paid for the same. Originally the basic rent was Rs.4,000/- in which, it was gradually increased and at present the rent is Rs.27,000/-. Due to acute financial crisis, the petitioner could not be paid the rent to the

landlord for the suit property. The petitioner has improved the suit property by making interior decorations and kept the other electronic equipments such as personal computers, designing computers, printers etc., worth about Rs.28,00,000/- and cash of Rs.36,000/- and also valuable documents pertaining to lands given by various customers for installation of solar power projects in their sites, worth about more than several crores of rupees, which were kept in the office room. The landlord, who is a law graduate, broke open the office premises on 07.07.2018 (Saturday) and 08.07.2018 (Sunday), with the help of henchmen and removed all the valuable materials and documents and also disconnected the telephone lines. The petitioner calculated the arrears of rent as Rs.1,08,000/- only, but the respondent demanded Rs.1,40,000/- and taken the suit property.

4. He also further stated that the petitioner/plaintiff preferred police complaint to the Commissioner of Police, Deputy Commissioner of Police and Inspector of Police, Mambalam Police Station, on 14.07.2018, a detailed legal notice was also addressed to the respondent/defendant and he also filed a suit to compel the respondent/defendant seeking for delivering the vacant possession, but, he has never stated anything regarding damages in the suit. The petitioner has also stated that he has got rights to file separate proceedings

for recovery of the value of goods taken by the respondent/defendant inside from the premises and damages for loss of reputation, mental agony and loss in business.

5. The respondent/defendant filed a Written statement denying all the averments stated in the plaint. I.A.No.2 of 2019 was taken out by the petitioner herein seeking to appoint an advocate commissioner to inspect the premises to note down the physical feature and file a report. The counter statement was filed by the respondent/defendant in the aforesaid I.A. The Court below, after hearing both sides, dismissed the said application filed by the petitioner and observed that there is a dispute between the parties and that earlier, the respondent had agreed to return all the materials, which were removed from the suit premises to the petitioner on proper inventory, but later, he has changed his stand and reported that the petitioner voluntarily vacated the premises and removed all the materials. The Court below has also come to the conclusion that when the respondent is not willing to return the removed materials and when the premises was already let-out to another tenant, who is now in occupation, it will not serve any purpose even if an advocate commissioner is appointed and dismissed the petitioner on 30.12.2020.

Aggrieved by the said order, the petitioner filed the present Civil Revision Petition.

6. The learned counsel for the petitioner submits that the trial Court has not considered the grievances of the petitioner in proper manner. If an advocate commissioner is not appointed to inspect the premises, it is highly impossible for the petitioner to get back his valuable materials from the respondent. He would further submit that though the trial Court has observed the intention of the respondent and his illegal activities, erroneously dismissed the application, which is liable to be set aside. Hence, he prays for allowing the present Civil Revision Petition.

7. Heard the learned counsel for the petitioner and also perused the entire materials available on record.

8. It is seen that the petitioner claimed that he is a tenant and he had all valuable materials available in the said premises, which has been used for his Solar Power projects. The petitioner has admitted that he has not paid the rent for four months. The respondent/defendant has broke open the said premises and removed all the valuable materials. The petitioner also stated that the materials available in the said premises have already been removed and kept under the custody of the respondent/defendant. That being the case, the

petitioner has to file a petition seeking for damages, but the prayer in the suit is only to compel the defendant to deliver the re-possession of the property and to restrain the defendant from letting the suit property to some other third party. In this case, it is the admitted fact that the property has already been let out to third party and also the materials were already removed from the said premises. It is also seen that the petitioner has already given police complaints to the Commissioner of Police, Deputy Commissioner of Police and the Inspector of Police, Mambalam Police Station on 14.07.2018 itself and he has not stated about the stage of the complaints filed against the defendant.

9. This Court is wondering that how an advocate commissioner will inspect the property when already the said premises was let out to some other third party. The prayer sought is not at all possible to be granted as already the premises was let out to third party and at this stage, the appointment of advocate commissioner will not serve any purpose in this case. It is for the petitioner to prove the case by letting in oral and documentary evidence and he cannot insist the court to appoint an advocate commissioner.

10. In view of the above, this Court is of the view that the Trial Court after hearing both sides, has rightly dismissed the said application and this Court is not inclined to interfere with the order passed by the Court below. Accordingly, this Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

30.03.2021

Index : yes/no

Speaking/Non Speaking Order
kmi

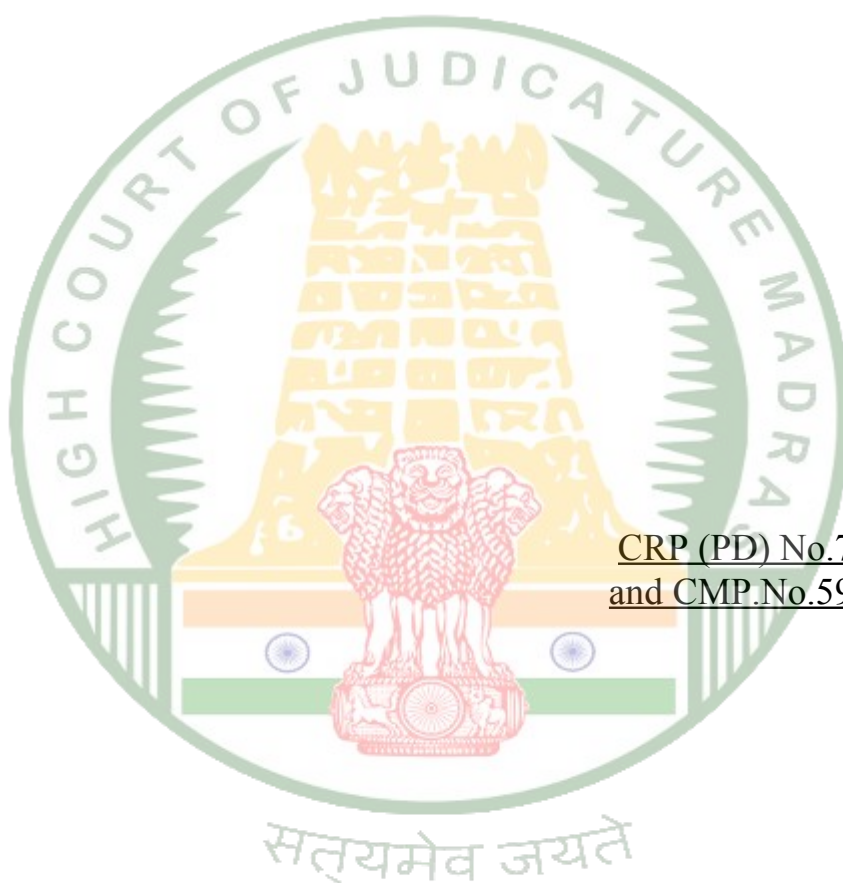
To

1. The V Additional Judge, 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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