

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2021

CORAM

THE HON'BLE MR. JUSTICE C.V. KARTHIKEYAN

**C.R.P. (PD) No. 784 of 2021
and
C.M.P. No. 6564 of 2021**

M/s. Thirupathy Poly Packs,
Represented by its Partner,
P.Lakshmi aged about 55 years,
Wife of Periasamy,
No. 3/88, KR-8, Teleflo Mini Industrial Estate,
Ramapuram Village,
Chennai - 600 089.

... Petitioner

-VS-

Tmt. K.Radhalakshmi

... Respondent

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, 1950, praying to set aside the order and decretal order in C.M.A. No. 20 of 2015 on the file of the Principal District and Sessions Court, Thiruvallur, dated 23.10.2019 confirming the fair and decretal order in I.A. 1048 of 2014 in O.S. No. 227 of 2008 on the file of the Subordinate Judge, Poonamallee, dated 27.04.2015, is even otherwise illegal, unjustified and unconstitutional and in any event liable to be set aside.

For Petitioner : M/s. V.Raghavachari
V.Srimathy
V.Lakshminarayanan

For Respondent : Mr. P.Subba Reddy

ORDER

When a straight question was asked to the Learned Counsel for the Petitioner as to whether any amount was due and payable by the Petitioner as a Tenant to the Respondent/Landlord, the answer did not come forth.

2. Let me examine the grounds on which the Civil Revision Petition has been filed.

3. The Revision Petition has been preferred by the Defendant in O.S. No. 227 of 2008, which is pending on the file of the Sub Court, Poonamallee. It is seen from the records that the suit is pending for the past 13 years. The suit had been filed by the Respondent in the Revision Petition, in her capacity as Landlord against the Revision Petitioner in their capacity as Tenant seeking recovery of vacant possession of the suit property and also for recovery of damages of Rs.36,000/- (Rupees Thirty Six Thousand only) for unlawful occupation of the property for the month of July and August 2008 and also for recovery of damages of Rs.18,000/- (Rupees Eighteen Thousand only) for

unlawful occupation of the property from the month of September 2008 and also for payment of rent of Rs.8,281 (Rupees Eight Thousand Two Hundred and Eighty One only) for the month of June 2008 and for costs.

4. The suit had thus been filed seeking delivery of vacant possession of the suit property and also for a direction to pay the rent for the month of June 2008 and damages of Rs. 36,000/- (Rupees Thirty Six Thousand only) for unlawful occupation from July and August 2008 until the date of delivery of the suit premises. Written Statement had been filed by the Defendant.

5. Thereafter, the Petitioner herein had filed an application in I.A. No. 1048 of 2014 under Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908. The order passed therein is the subject matter of the present Civil Revision Petition.

6. The order is assailed by the Learned Counsel for the Petitioner by pointing out that in the affidavit filed in support of the said application, viz., I.A. No. 1048 of 2014, the minimum requirements as required to satisfy the conditions under Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908, has not been completely stated. It is also pointed out that the actual amount due

and payable has not been mentioned. It is wondered by the Learned Counsel that the Petitioner in the application had thought that it is the work of the Learned Judge to calculate the amount due and payable.

7. A perusal of the order, however, shows that this is not the position. In the order, the Learned Judge with respect to the amount due and payable has clearly referred to Calculation No. 1 which had been given by the Plaintiff and Calculation No. 2 which had also been given by the Plaintiff. The Learned Judge by order dated 27.04.2015 had calculated the rents which are in arrears in accordance with the quantum of rent, viz., Rs. 8,281/- (Rupees Eight Thousand Two Hundred and Eighty One only) per month, and thereafter, had given a detailed calculation with respect to the amount due and had directed the present Revision Petitioner to furnish security to the arrears of rent which amounted to Rs.6,23,760/- (Rupees Six Lakh Twenty Three Thousand Seven Hundred and Sixty only). The Learned Judge had also given substantial time and as a matter of fact, the time has been quite an extended period for furnishing security.

8. Questioning that order, the present Civil Revision Petition has been filed.

9. It has to be noted at this juncture that the Learned Counsel for the Petitioner for the reasons best known to him interfered with the course of dictation of the order.

10. Be that as it may, an earlier round of litigation between the Petitioner and the Respondent herein had traveled up to the Hon'ble Supreme Court. One of the litigations was in C.R.P. 1283 of 2012 wherein a specific finding has been given by the High Court with respect to the juridical relationship between the Petitioner and the Respondent. Paragraph No. 9 of the said order had been extracted by the Learned Judge. It would be fruitful on my part also to extract the said order:-

“9. In my considered opinion, this argument is not tenable. The petitioner entered into possession of the property as a tenant only by entering into a lease agreement with the respondent herein. He is in occupation of the property in question only as tenant. Therefore, he is liable to pay the rent. Whether the rent is to be ultimately paid to the respondent or it should go to the government is a matter to be decided after the to the disposal of the special leave petition. But simply by quoting the pendency of the special leave petition, the petitioner cannot omit to pay the rent. Since she is in continuous

occupation of the building, the trial court has rightly directed her to deposit the rent before the court for the occupation of the property as tenant. The petitioner is, therefore, liable to deposit the rent as directed by the trial court. It is not her botheration as to whether ultimately the amount is going to be withdrawn by the respondent or the government as the case may be. Thus, in my considered opinion, I do not find infirmity in the order passed by the courts below directing the petitioner to deposit the arrears of rent into the court. In such view of the matter, I do not find any merit in the revision."

11. It is therefore seen that a specific finding has been given that the Revision Petitioner had entered into the possession of the property only as a Tenant by entering into a lease agreement with the Respondent herein. It had also been observed that they are in occupation of the property in question only as a Tenant. It had been finally stated that the Petitioner is liable to pay rent.

12. Therefore, the contention of the Learned Counsel for the Petitioner going backwards and forward and circulating around and still questioning the title of the Landlord would be of no use and would not serve any useful purpose. If the Petitioner has an identity crisis, it is for the Petitioner to resolve the same.

13. So far the contention that the conditions in Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908, have not been satisfied, a perusal of the affidavit filed in support of the Petition shows that it had been very clearly stated that the Petitioner has been taking steps to vacate from the suit property without paying the dues to the Respondent. An averment has therefore been made. If that statement in the affidavit is not correct according to the Revision Petitioner then, nothing prevented the Petitioner to proceed under Order XIX of the Code of Civil Procedure by calling upon the deponent of the said affidavit to subject herself for cross examination. That step was not taken. The deponent of the affidavit had a reasonable apprehension that the Petitioner would vacate the premises without paying the arrears of rent or the damages due. That gave a necessity to file an application seeking to furnish security to the value of the suit claim and in default to seek attachment of the property which has been mentioned in the plaint.

WEB COPY

14. I find no reason to interfere with the order passed.

15. The Civil Revision Petition is dismissed. In view of the fact that the Learned Counsel for the Petitioner had unnecessarily interfered during the

course of dictating order, costs of Rs.25,000/- is also imposed payable to the Chief Justice Relief Fund of the Madras high Court. Consequently, the connected Miscellaneous Petition is closed.

16.04.2021

vjt

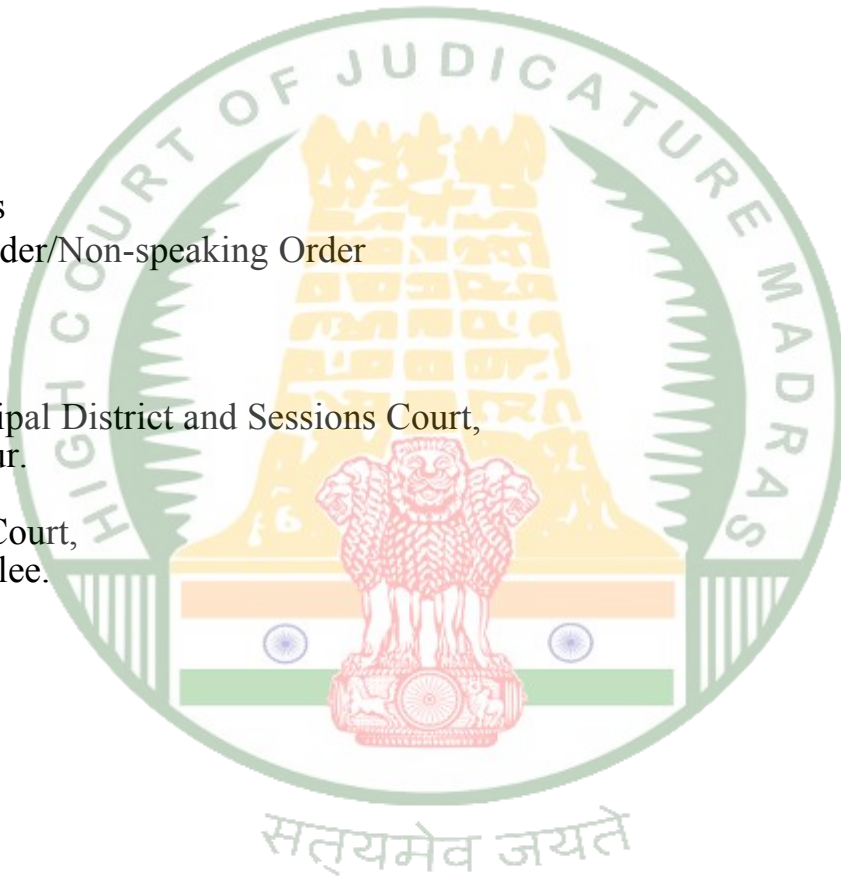
Index: Yes

Internet: Yes

Speaking Order/Non-speaking Order

To

1. The Principal District and Sessions Court,
Thiruvallur.
2. The Sub Court,
Poonamallee.



WEB COPY

C.R.P. (PD) No. 784 of 2021

C.V. KARTHIKEYAN, J.

vjt



C.R.P. (PD) No. 784 of 2021

WEB COPY

16.04.2021