

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.No. 2367 of 2016

and

CMP.No.12225 of 2016

M.M.Shahul Hameed ... Petitioner

Vs.

Zubaitha Gani Kader ... Respondent

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair order and decretal order dated 15.06.2016 passed in M.P.No.176 of 2016 in RCOP No.1598 of 2015 on the file of the XIII Court of Small Causes-cum-Rent Controller, Madras.

For Petitioner : Mr.T.M.Mano for
Mr.Govind Chandrasekhar

For Respondent : Mr.S.Umapathy

ORDER

This Civil Revision Petition is directed as against the fair and decretal order passed in M.P.No.176 of 2016 in RCOP No.1598 of 2015 dated 15.06.2016 on the file of the XIII Court of Small Causes-cum-Rent Controller, Madras, thereby, dismissing the petition to eschew the evidence of P.W.1.

2. The learned counsel for the petitioner submitted that the petitioner is the tenant of the petition premises. The respondent filed a petition through her power agent for eviction, on the ground of willful default in payment of contractual rent for the period from 01.10.2014 to July 2015. In the course of trial, the power of attorney filed his proof affidavit as P.W.1. At that juncture, the petitioner herein filed a petition to eschew the evidence of P.W.1, for the reason that the power of attorney holder of a party can appear only as witness in his personal capacity and whatever knowledge he has about the case, he can state on oath and he cannot appear as a witness on behalf of the party in the capacity of that party. In support of his contention, he relied upon the judgment reported in 2019 (9) CTC 358 (*Mohinder Kaur -vs- Sant Paul Singh*).

3. The learned counsel for the respondent submitted that the power holder also filed another RCOP for fixation of fair rent and after fixing the fair rent, the petitioner herein failed to comply the said order and as such, the eviction was ordered in RCOP.No.720 of 2017. Therefore, nothing survives in this Civil Revision Petition.

4. Heard the learned counsel for the petitioner as well as the learned counsel for the respondent.

5. Though the eviction was ordered as against the petitioner herein in RCOP.No.720 of 2017 on the file of the XIII Small Causes Court, Chennai, the legal issue raised by the petitioner herein has to be dealt with in accordance with law. The only ground raised by the petitioner is that the Power of Attorney does not have personal knowledge of the matter as that of the principal and therefore, he can neither depose on his personal knowledge nor can he be cross-examined on those facts which are to the personal knowledge of the principal. In support of his contention, the learned counsel for the petitioner relied upon the judgment reported in 2005 (2) SCC 217 (*Janaki Vashdeo Bhojwani vs. Indus Ind Bank Limited*), in which, this Court held as follows:-

“The power of attorney holder does not have the personal knowledge of the matter of the appellants and

therefore he can neither depose on his personal knowledge nor can he be cross-examined on those facts which are to the personal knowledge of the principal. Order III, Rules 1 and 2 CPC, empowers the holder of power of attorney to “act” on behalf of the principal. In our view the word “acts” employed in Order III, Rules 1 and 2 CPC, confines only in respect of “acts” done by the power of attorney holder in exercise of power granted by the instrument. The term “acts” would not include deposing in place and instead of the principal. In other words, if the power of attorney holder has rendered some “acts” in pursuance to power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined.”

6. The dictum is also followed the Hon'ble Supreme Court of India in

2019 (9) CTC 358 (***Mohinder Kaur vs.Sant Paul Singh***), in which, the case cited as follows:-

“7. In Janki Vashdeo, it was held that a power-of-attorney holder, who has acted in pursuance of the said power, may depose on behalf of the principal in respect of such acts but cannot depose for the principal for the acts done by the principal and not by the power-of-attorney holder. Likewise, the power-of-attorney holder cannot depose for the principal in respect of matters of which the principal alone can have personal knowledge and in respect of which the principal is entitled to be cross-examined. In our opinion, the failure of the respondent to appear in the witness box can well be considered to raise an adverse presumption against him as further observed therein as follows:-

“15. Apart from what has been stated, this Court in Vidhyadhar v.Manikarao observed at SCC 583-84, para 17 that:

'17. Where a party to the suit does not appear in the witness box and states his own case on oath and does not

offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct....' ”

7. In the case on hand, the power of agent of the principal filed the petition for eviction on the ground of willful default. Admittedly, the power agent is the collection agent and he is regularly collecting rents from the tenants, in respect of the petition premises. Therefore, he had knowledge about the collection of rents for the petition premises. Therefore, the above cases cited by the learned counsel for the petitioner are not applicable to the case on hand. Therefore, this Court finds no irregularity or infirmity in the order passed by the Court below.

8. Accordingly, this Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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To

The XIII Court of Small Causes-cum-Rent Controller, Madras.

G.K.ILANTHIRAIYAN,J.

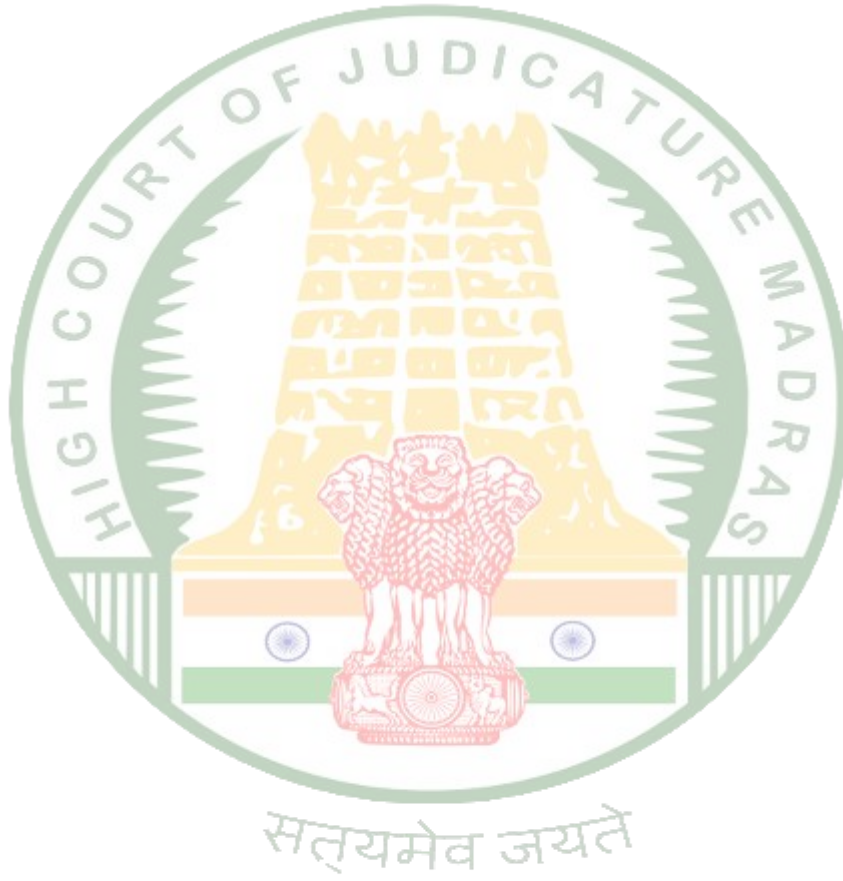
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