

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2021

CORAM:

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(PD)Nos.1639 & 1641 of 2021

and C.M.P.No.12738 of 2021

(Through Video Conference)

N.Anbazhagan

.. Petitioner in both
C.R.P.'s

Versus

1) A.K.Mohammed Yunus

2) A.K.Mohammed Ashfaq

3) A.K.Rizwanur Rahman

.. Respondents in both
C.R.P.'s

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India against the order passed in M.P.Nos.3 of 2021 & and 4 of 2021 respectively in R.C.O.P.No.744 of 2017 dated 25.02.2021 by the X Small Causes Court, Chennai.

For Petitioner : Mr.K.Venkadeswaran
For Mr.M.Sankar

For RR 1 to 3 : Mr.Anand Venkadesh
For Mr.K.Manikandan

COMMON ORDER

Since the issue involved in both these Civil Revision Petitions are one and the same, they are disposed of by this common order.

2. This Civil Revision Petition in C.R.P.No.1639 of 2021 is filed to set aside the order passed in M.P.No.3 of 2021 in R.C.O.P.No.744 of 2017 and the C.R.P.No.1641 of 2021 is filed to set aside the order passed in M.P.No.4 of 2021 in R.C.O.P.No.744 of 2017.

3. M.P.No.3 of 2021 was filed to reopen the evidence of P.W.2 and M.P.No.4 of 2021 was filed to recall the evidence of P.W.2. The main R.C.O.P was filed under Section 4 of the Tamil Nadu Building (Lease and Rent Control Act) to fix the fair rent to the tenanted premises. P.W.2 is the Engineer, who inspected the properties and prepared the report. P.W.2 was chief examined on 31.01.2018 and Ex.P1 to Ex.P4 were marked through him. He was partly cross examined on 19.03.2018. On 24.10.2019, P.W.2 was recalled and examined and exhibits Ex.P5 & Ex.P6 were marked and posted for cross examination on 07.11.2019. In spite of several opportunities given, the petitioner has not chosen to cross examine P.W.2. M.P.No.1 of 2020 was filed for recalling P.W.2 for

cross examination and the petition was allowed on 11.01.2021. P.W.2 was present on 11.01.2021. But the petitioner has not chosen to cross examine P.W.2 and therefore, the evidence was closed and the matter was posted for respondents' evidence. When the case is pending for respondent's evidence , the present case is filed for reopening the evidence of P.W.2 for cross examination.

4. The learned Tenth Judge of Small Causes Court, considered the rival submissions and finding that the petitioner has not availed two opportunities given for cross examining P.W.2 and dismissed both the petitions. Against the said orders of dismissal, the present Civil Revision Petitions have been filed.

5. Learned counsel for the petitioner submitted that there was no willful or wanton act on the part of the petitioner in omitting to cross examine P.W.2. Due to some unavoidable circumstances, P.W.2 could not be cross examined. Therefore, he prays for setting aside the order of X Small Causes Court, Chennai.

6. Learned counsel for the respondents opposed the petition.

7. Considered the rival submissions.

8. The main R.C.O.P. was filed for fixing fair rent. The evidence of P.W.2 is vital and important evidence to help the Court in arriving at a fair end. If the petitioner is not permitted to cross examine P.W.2, that would seriously prejudice the petitioner. Even if the fair rent order is passed without cross examining P.W.2 and that may be challenged by way of an appeal and there is a possibility of even setting aside the order passed in the fair rent petition for the reason that P.W.2 was not cross examined, possibility of giving an opportunity to the petitioner to cross examine P.W.2 cannot be ruled out. It will lead to multiplicity of proceedings and protraction of the proceedings.

9. To avoid all these contingencies, this Court is of the considered view that both these petitions may be allowed by setting aside the order of Court below, subject to certain conditions:-

1. The petitioner should pay cost of Rs.5,000/- (Rupees Five Thousand only) to the respondents; and on such payment
2. The petitioner should cross examine P.W.2 on the date fixed by the learned X Judge, Small Causes Court, Chennai.

10. Accordingly, these Civil Revision Petitions are Allowed. No costs, Consequently, connected miscellaneous petition is closed.

11. Since the R.C.O.P. was filed in the year 2017, learned X Judge, Small Causes Court, Chennai is directed to dispose R.C.O.P.No.744 of 2017 as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order.

16.08.2021

Note: Issue Order copy on 19.08.2021

Index: Yes/ No

Speaking Order / Non-Speaking Order

sts

To:

The II Additional District Munsif,
Puducherry.

WEB COPY

G.CHANDRASEKHARAN, J.,

sts



Common Order made in
C.R.P.(PD)Nos.1639 & 1641 of 2021

WEB COPY

Dated:
16.08.2021