

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD).No.2955 of 2017
and C.M.P.No.13971 of 2017

S.Rajiam

.. Petitioner

Vs.

1.N.Sivasakthi

2.N.Sivaprakash

.. Respondents

Prayer: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings Lease and Rent Control) Act, to set aside the fair and decretal order dated 27.06.2017 made in M.P.No.125 of 2017 in R.C.A.No.544 of 2016 on the file of the IX Court of Small Causes (Appellate Authority) at Chennai.

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For Petitioner : Mr.N.Manokaran

For Respondents : No appearance

ORDER

(The matter is heard through 'video conferencing/hybrid mode')

The petitioner is tenant and respondents are the landlords in R.C.O.P.No.479 of 2013 on the file of the Rent Controller/XV Small Causes Court, Chennai, filed by the respondents for eviction of the petitioner. The said R.C.O.P. was allowed by the order dated 22.09.2016. Against the said order of eviction, the petitioner filed R.C.A.No.544 of 2016 along with M.P.No.310 of 2016, seeking to stay the order of eviction dated 22.09.2016. The Appellate Court, pending R.C.A., granted stay of order of the learned Rent Controller in R.C.O.P.No.479 of 2013. While R.C.A. was pending, the respondents filed M.P.No.125 of 2017, seeking permission to file documents. The petitioner filed counter affidavit and resisted the petition. The learned Judge, by the impugned order dated 27.06.2017, allowed M.P.No.125 of 2017.

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2.Against the said order dated 27.06.2017, made in M.P.No.125 of 2017 in R.C.A.No.544 of 2016, the present Civil Revision Petition has

been filed.

3.The learned counsel appearing for the petitioner contended that the petition for receiving additional documents, additional evidence at the appellate stage can be considered only when the appeal is taken up for hearing and only after appreciating the evidence already on record, the Appellate Court must decide whether the petition is to be allowed or not. In support of his contentions, the learned counsel appearing for the petitioner relied on the following judgments:

(i) **2017 (4) CTC 32 [G.Venkatachalam Vs. A.P.Kuppuraj S.Sundaram (died) and others]:**

“25. Thus, the Appellate Court must come to a conclusion that the documents sought to be adduced as additional evidence will enable the Court to pronounce judgment. These documents will be useful to resolve the controversy in issue. The documents are needed for taking a decision in the appeal. Of course, the petitioner has to explain to the Court, what prevented the appellant from filing the said document in the trial Court. But if the Appellate court feels that these documents are necessary, such objection will become technical objection.

26. But whether these documents are required to decide the issue involved in the appeal could be known only when the main appeal is heard and only when the evidence already on record is read.

27. In this connection, in [Union of India vs. Ibrahim Uddin and another](#) (2012)8 SCC 148), the Hon'ble Supreme Court has held as under:

"52. Thus, from the above, it is crystal clear that application for taking additional evidence on record at an appellate stage, even if filed during the pendency of the appeal, is to be heard at the time of final hearing of the appeal at a stage when after appreciating the evidence on record, the court reaches the conclusion that additional evidence was required to be taken on record in order to pronounce the judgment or for any other substantial cause. In case, application for taking additional evidence on record has been considered and allowed prior to the hearing of the appeal, the order being a product of total and complete non-application of mind, as to whether such evidence is required to be taken on record to pronounce the judgment or not, remains inconsequential/inexecutable and is liable to be ignored."

(ii) (2012) 8 SCC 148 [Union of India Vs. Ibrahim Uddin and another]:

"52. Thus, from the above, it is crystal clear that application for taking additional evidence on record at an

appellate stage, even if filed during the pendency of the appeal, is to be heard at the time of final hearing of the appeal at a stage when after appreciating the evidence on record, the court reaches the conclusion that additional evidence was required to be taken on record in order to pronounce the judgment or for any other substantial cause. In case, application for taking additional evidence on record has been considered and allowed prior to the hearing of the appeal, the order being a product of total and complete non-application of mind, as to whether such evidence is required to be taken on record to pronounce the judgment or not, remains inconsequential/inexecutable and is liable to be ignored.”

4. Though the respondents entered appearance through counsel, on 18.08.2021, there was no representation for them. Today also there is no representation for them either in person or through counsel.

5. Heard the learned counsel appearing for the petitioner and perused the entire materials available on record.

6. The only point to be considered in the revision is whether the

petition filed by the respondents to let in additional evidence can be considered only when the appeal is taken up for hearing or whether the said petition can be considered even before the appeal is taken up for hearing. In the judgment reported in **(2012) 8 SCC 148** cited supra, relied on by the learned counsel for the petitioner, the Hon'ble Apex Court has categorically held that application for letting in additional evidence in appellate stage has to be considered only along with the appeal and only after appreciating the evidence already on record, it can be decided whether additional documents are necessary or not. The learned Judge erred in taking up the petition and allowing the said petition. The said procedure adopted by the learned Judge is contrary to the judgment of the Hon'ble Apex Court, cited supra. In view of the above, the impugned order of the learned Judge is set aside and M.P.No.125 of 2017 is remitted back to the IX Judge, Small Causes Court (Appellate Authority) at Chennai, with a direction to consider the said M.P. along with appeal and pass orders on merits and in accordance with law.

With the above direction, the Civil Revision Petition is allowed.

No costs. Consequently, connected Miscellaneous Petition is closed.

25.08.2021

Index :: Yes/No
gsa

To

The IX Judge,
Court of Small Causes,
(Appellate Authority) at Chennai.

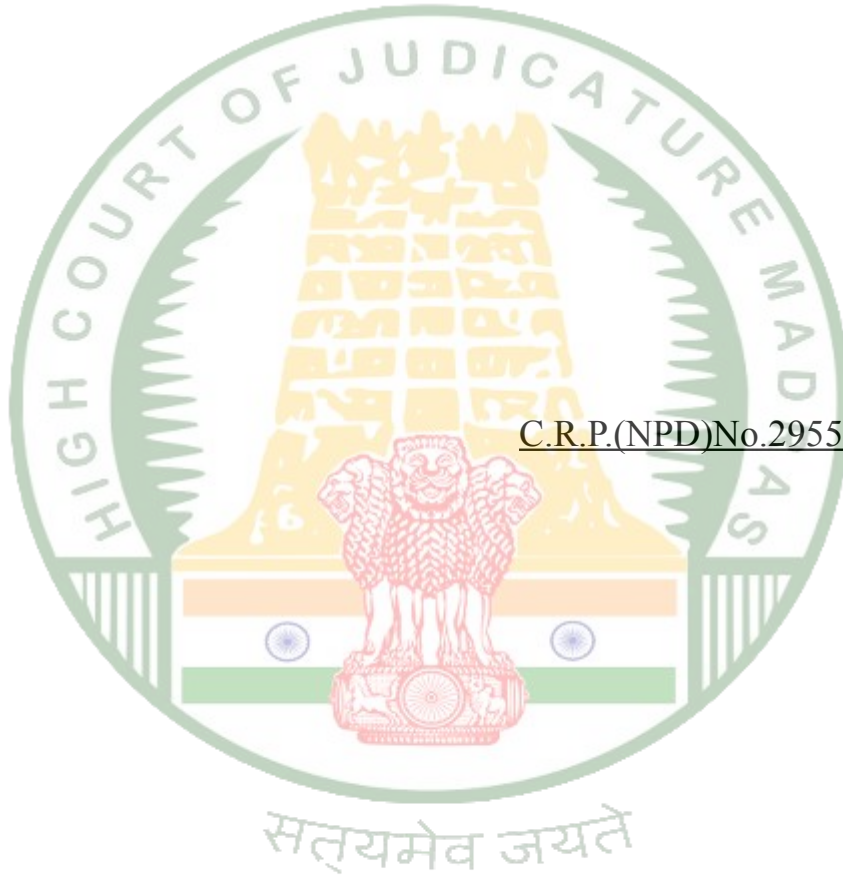


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C.R.P.(NPD).No.2955 of 2017

V.M.VELUMANI, J.

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25.08.2021