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C.R.P (NPD). No.4251 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **02.11.2021**

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THE HONOURABLE MRS.JUSTICE **T.V.THAMILSELVI**

C.R.P (NPD). No.4251 of 2019
and C.M.P.No.27696 of 2019

Tamilselvi

.. Petitioner

Vs

1. S.Sathiyamoorthy
2. K.Balaji

..Respondents

Prayer : Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the order of dismissal dated 26.11.2019 in respect of the appeal in R.C.A.No.43 of 2019 on the file of the IX Judge, Small Causes Court, Chennai confirming E.A.No.86 of 2015 passed by the XII Small Causes Judge at Chennai in E.A.No.86 of 2015 in E.P.No.331 of 2014 in R.C.O.P.No.1816 of 2013 and to allow the civil revision petition filed by the petitioner.

For Petitioner : M/s.AL.Gandhimathi

For Respondents : Mr.BS.Jhothiraman

ORDER

The revision petition is directed against the order dated 26.11.2019 made in R.C.A.No.43 of 2018, dismissing to record the obstruction of the petitioner.

2. The revision petitioner herein is the wife of the first respondent.



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The first respondent/husband, who is the landlord, had filed a petition in R.C.O.P.No.1816 of 2013 for eviction against the tenant / second respondent herein on the ground of wilful default in payment of rent. On hearing both sides, the said eviction petition was allowed, against which, an appeal was filed by the tenant in R.C.A.No.43 of 2018. Thereafter, the first respondent filed an Execution Petition in E.P.No.331 of 2014 for implementing the eviction order. At that time, the revision petitioner/wife had filed an application in E.A.No.86 of 2015 under Order XXI Rule 97 and Section 101 of C.P.C, to record her obstructions for taking possession of the property and the said application was contested by the first respondent. The said application was dismissed as not maintainable, against which, the revision petitioner/wife has preferred this revision.

3. Heard both sides and perused the materials available on record.

4. As per the contentions of the revision petitioner, she married the first respondent and begot two female children and she has no other source of income. She is depending on her husband /first respondent, who was the teacher and now, he retired and he failed to maintain the wife and children. She is maintaining the family by receiving meagre rent derived from the



property, which is the subject matter of the R.C.O.P. proceedings. She also contended that in order to sell the property, her husband had taken all efforts to evict the tenant and if he succeeds, she would not get any maintenance in future. Further, she alone is maintaining the property, which is the subject of the rent control proceedings, but, without appreciating the said facts, the Execution Court erroneously dismissed the said application.

5. By way of reply, learned counsel for the first respondent submitted that he is a retired pensioner and he needs only one portion of the building, in order to look after his aged parents, but he has no objection for the revision petitioner to receive the rent in another portion of the ground floor of the building, which will have a monthly rent of Rs10,000/-. Further, the first respondent has also given an undertaking that he would not take any steps to sell the ground floor portion of the building and he needs only to look after his aged parents.

6. Considering the submissions made by the learned counsel on both sides and also taking into the fact that the revision petitioner and the first respondent are husband and wife, this Court suggested to go for an amicable settlement. Accordingly, the revision petitioner/wife agreed to hand over the



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ground floor of the building. She submits that she is residing in the first floor and with regard to two portions in the ground floor, she is willing to hand over one portion of the same, in which, Execution Proceedings are pending, subject to the condition that the first respondent/ husband shall pay a sum of Rs.10,000/- per month to the revision petitioner/wife, pending disposal of the maintenance case. To that effect, she filed a petition and notice was given to the first respondent. After receipt of the same, he filed his counter objections. In that counter, he stated that since he has to take care of his aged parents, he is able to pay only a sum of Rs.5,000/- as maintenance per month . He also informed the Court that her younger daughter is employed, who is now under the custody of his wife, and his wife is receiving the salary, thereby, contend that she is having sufficient income to maintain the family. But, all these years, the wife and children are living separately and the submission made by the first respondent/husband is not acceptable for the reason that he has to maintain his wife/revision petitioner. Therefore, this Court is not inclined to accept the said contention of the first respondent/husband.

7. Accordingly, the above said counter affidavit filed by the first respondent is recorded. The revision petitioner/wife is directed to hand over the possession of one portion of the ground floor building, bearing Door



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No.32/12, Ganga Street, Rajaji Nagar, Villivakkam, Chennai 600 049, which is the subject matter of the Execution Proceedings to the first respondent, within a period of four weeks from the date of receipt of a copy of this order. The first respondent herein/husband is directed to pay a sum of Rs.10,000/- (Rupees ten thousand only) as maintenance from November 2021 to the revision petitioner (wife), till the disposal of the maintenance case and other cases, if any filed and the said maintenance amount shall be deposited into the account of the revision petitioner on or before 10th of every English calender month without fail and he should not cause any interference in the enjoyment-1st floor of portion of the property where the wife / revision petitioner is residing.

8. With the above directions, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

02.11.2021

Speaking Order : Yes

Index : Yes/No

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T.V.THAMILSELVI, J.

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To

1. The IX Judge,
Small Causes Court, Chennai
2. The XII Small Causes Judge, Chennai.
3. The Section Officer,
V.R.Section, High Court, Madras

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