



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.08.2021

Pronounced on : 23.08.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P. (MD).No.58 of 2021 and
CMP(MD).No. 485 of 2021

The Karnan : Petitioner/ 2nd Respondent / Tenant

Vs.

1.R. Selvi

2.Minor R. Madhumathi

3.Minor R. Kamal : Respondents 1 to 3 / Landlords
(Respondents 2 and 3 rep.
through their mother 1st respondent)

4.R. Navaneetha Krishnan : 4th Respondent / tenant

PRAYER: Civil Revision Petition filed under Section 115 CPC challenging the petition and order dated 23.11.2020, order in delivery passed in E.P.No.17 of 2017 in RCOP.No.6 of 2014 on the file of the Principal District Munsif Court, Srivilliputur.

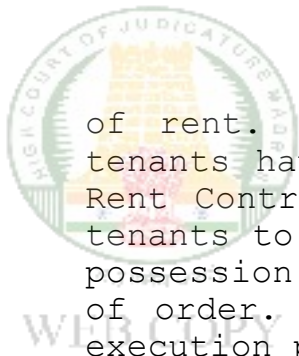
For petitioner : Mr.V. Meenakshi Sundaram
for Mr. R. Nireesh Kumar

For respondents 1 to 3 : Mr.R. Balakrishnan

O R D E R

This Civil Revision is directed against the order passed in E.P.No.17 of 2017 in RCOP.No.6 of 2014 on the file of the Rent Controller / Principal District Munsif Court, Srivilliputur, directing the delivery.

2. The revision petitioner is the 2nd respondent / tenant. The respondents 1 to 3 / petitioners / landlords have filed the petition in RCOP.No.6 of 2014 against the revision petitioner and the 4th respondent claiming eviction on the ground of wilful default in payment of rent, sub lease and for demolition and reconstruction, on the file of the Rent Controller / Principal District Munsif, Srivilliputur. Pending eviction petition, the respondents / landlords have filed a petition under Section 11(3) and (4) of the Tamil Nadu Buildings (Lease and Rent Control) Act in I.A.No.66 of 2015 and that the learned Rent Controller, after enquiry, has passed an order on 17.03.2016, directing the tenants to deposit the arrears



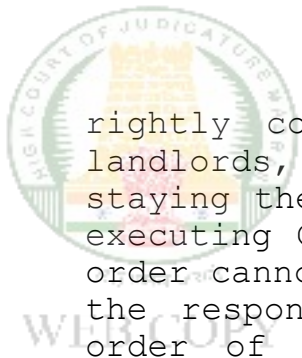
of rent. It is further evident from the records that since the tenants have not complied with the order of the Court, the learned Rent Controller has passed an order dated 19.10.2016 directing the tenants to vacate the petition mentioned properties and handover the possession of the same within a period of two months from the date of order. It is not in dispute that the landlords have laid the execution petition in E.P.No.17 of 2017 seeking orders for delivery.

3. Despite the receipt of Court notice, the 4th respondent herein has not chosen to enter into appearance and hence, he was set ex parte. The revision petitioner has entered into appearance and filed his counter statement. It is further evident that after pending for long time, the learned Rent Controller has then passed an order for delivery on 09.04.2020. It is further evident that thereafter, the landlords have filed applications seeking orders for break open the lock, for seeking the help of Village Administrative Officer and for Police Aid and that the Executing Court after allowing the three applications, has passed the impugned order for delivery on 23.11.2020. Aggrieved by the said order, the second respondent in RCOP has come forward with the present revision.

4. The main contention of the revision petitioner is that he has already filed the Rent Control Appeal in RCA.No.3 of 2017, challenging the order passed in RCOP.No.6 of 2014 and the appeal is pending on the file of the learned Rent Control Appellate Authority / Subordinate Court, Srivilliputur, that the revision petitioner also filed an application seeking stay order in I.A.No.97 of 2017 and the same is also pending on the file of the Sub Court, Srivilliputur, that the executing Court has committed serious error in ordering delivery when statutory appeal is very much pending before the Appellate Authority, that the eviction order in RCOP.No.6 of 2014 is not an order on merits and it is only the order passed consequent to the orders passed in the petition filed under Section 11 of the Tamil Nadu Buildings (Lease and Rent Control) Act and that therefore, the impugned order of delivery is liable to be set aside.

5. As rightly contended by the learned counsel for the respondents / landlords, the learned Rent Controller has passed an order directing the tenants to vacate the suit property, since they have not complied with the orders passed in I.A.No.66 of 2015 filed under Section 11(3) and (4) of the Tamil Nadu Buildings (Lease and Rent Control) Act and as such, the contention of the revision petitioner that the order passed in RCOP.No.6 of 2014 is not an order on merits is incorrect and is liable for instant rejection.

6. It is not in dispute that the Rent Control Appeal in RCA.No.3 of 2017 challenging the order passed in RCOP.No.6 of 2014 and that the stay application in I.A.No.97 of 2017 are pending before the Rent Control Appellate Authority, Srivilliputur. As



rightly contended by the learned counsel for the respondents / landlords, the revision petitioner has not obtained any orders staying the execution proceedings and as such, the action of the executing Court in proceeding with enquiry and passing the impugned order cannot be found fault with. Moreover, the learned counsel for the respondents / landlords would submit that subsequent to the order of delivery, the Court Amin has taken possession of the petition mentioned property and handed over the same to the landlords and that the delivery warrant issued by the executing Court was executed. The learned counsel has produced the typed set of papers containing the copies of delivery warrant and return submitted by the Senior Bailiff and whereunder it is clearly evident that delivery was effected.

7. The learned counsel for the respondents / landlords would submit that since the Civil Revision Petition is pending, the executing Court has not recorded the delivery and hence, the execution petition is kept pending.

8. It is pertinent to note that recording of delivery is only a consequential Administrative Order and as such, there is no bar or prohibition for the executing Court to record the delivery and close the Execution Petition. Whatever it is, since the delivery was already taken, as rightly contended by the learned counsel for the respondents / landlords nothing survives for adjudication in the present revision.

9. As already pointed out, the Rent Control Appeal is pending. In case, if the revision petitioner is interested to proceed with the Rent Control Appeal, he is at liberty to proceed with the same and in case, if he succeeds in the appeal and the eviction order passed by the Rent Controller is set aside, he is certainly entitled to take necessary steps for restitution.

10. Considering the above, this Court has no other option to hold that the Civil Revision has become infructuous and the same is liable to be dismissed.

11. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CSII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



To

The Principal District Munsif Court, Srivilliputur.

+1 CC to M/s.R.BALAKRISHNAN, Advocate (SR-27339[F] dated 25/08/2021)

WEB COPY

C.R.P. (MD).No.58 of 2021 and
CMP (MD) .No. 485 of 2021
23.08.2021

DJ(CO)

KB(31.08.2021) 4P 3C