



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.11.2021

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

WEB COPY

C.R.P(PD) (MD)Nos.1029 and 1784 of 2021

and

C.M.P(MD) No.9537 of 2021

C.R.P(MD)Nos.1029 of 2021

T.Pushpam

... Petitioner/Respondent

Vs.

S.Murugeswari

... Respondent/Appellant/Tenant

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, to direct the Principal Subordinate Judge, Madurai, to dispose R.C.A.No.26 of 2020 within a stipulated time fixed by this Court.

For Petitioner : Mr.V.Panneer Selvam

For Respondent : Mr.P.Banuprasath

C.R.P(MD)Nos.1784 of 2021

S.Murugeswari

... Petitioner/Respondent/Respondent

Vs.

T.Pushpam

... Respondent/Petitioner/Petitioner

PRAYER:- Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order dated 04.10.2021 made in E.P.No.85 of 2020 in R.C.O.P.No.185 of 2018 on the file of the Additional District Munsif, Madurai and allow the above civil revision petition.

For Petitioner : Mr.P.Banuprasath

For Respondent : Mr.V.Panneer Selvam

COMMON ORDER

C.R.P(MD) No.1784 of 2021

The tenant is the revision petitioner before this Court in C.R.P(MD) No.1784 of 2021. This revision petition is filed <https://hcservices.ecourts.gov.in/hcservices/>



challenging the order dated 04.10.2021 passed in E.P.No.85 of 2020 by the learned Rent Controller (Additional District Munsif) Madurai.

2.The grievance of the tenant is as follows:-

(i) The landlord had filed R.C.O.P.No.185 of 2018 seeking eviction of the tenant under the grounds of wilful default and own use and occupation. It is the case of the landlord that the rent for 18 months i.e., from April 2017 had not been paid and further the property was required for the landlord son's own use and occupation.

(ii) The petitioner/tenant had filed counter *inter alia* contenting that he had paid the rents and there was no default and that he had paid the rents upto date. The landlord however never issued a receipt for the rents received and taking advantage of the same, the present petition was filed. Further the landlord had forcefully locked the portion in the occupation of the tenant, for which, a police complaint was lodged and the tenant was constrained to move the suit in O.S.No.66 of 2017 on the file of the Additional District Munsif, Madurai Town, for permanent injunction.

(iii)The petitioner would submit that the respondent/landlord was deliberately refusing to receive the rents and his only intention was to somehow evict the tenant from the premises. The Rent Controller on perusing the pleadings had stated that though the petitioner had come forward with the contention that the landlord was refusing to receive the rent or issue the receipts, he has not taken steps to invoke the provision of Section 8 of the Tamil Nadu Buildings (Lease and Rent Control) Act, to deposit the said sum. Further, even according to the tenant, the rent for the period from November 2018 to November 2019 was paid as a lump sum, which clearly indicates the default.

(iv)The learned Additional District Munsif had allowed the petition on both the grounds of wilful default as well as on the ground of own use and occupation. The said order was taken up on challenge by the tenant in R.C.A.No.26 of 2020 on the file of the Rent Control Appellate Authority (Principal Subordinate Judge), Madurai. Meanwhile, the landlord had initiated the execution proceedings for evicting the petitioner/tenant from the property and the learned Judge, despite the tenant bringing to his notice that Rent Control Appeal had been filed, had proceeded to allow the execution proceedings by its order dated 04.10.2021 by stating that the tenant had not produced any document to show that the order in RCOP No.185 of 2018 had been set aside / reversed/ stayed by the Appellate Court and on this ground, had allowed the execution proceedings.



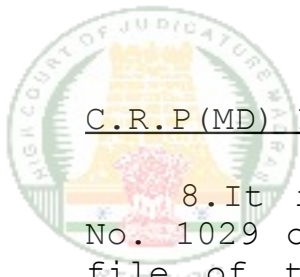
3.Mr.P.Banuprasath, learned counsel appearing on behalf of the petitioner/tenant would submit that the observation of the learned Judge that there was no appeal filed is totally wrong especially when in the counter filed by the petitioner he had clearly stated that an appeal had been filed and therefore, the execution proceedings is premature, appears to be hastily ordered.

4.Mr.V.Panner Selvam, learned counsel appearing on behalf of the respondent/landlord would submit that the petitioner has not obtained any interim order from the appellate authority. That apart he has been defaulted in the payment of the rents from the year 2017 onwards. The Rent Controller has extensively considered the evidence and come to the conclusion that there was a wilful default on the side of the petitioner and also that the premises was required by the respondent for her own use and occupation. He would further submit that the Executing Court is bound by the decree and unless it is stayed or set aside, the Executing Court has to necessarily proceed with the matter and pass orders. The learned Judge has proceeded only as per the settled principles of law and no exception has been taken to the same.

5.Heard the learned counsel appearing on either side and perused the materials on record.

6.The argument advanced by the learned counsel for the petitioner was that the Executing Court had committed a grave error in stating that no appeal was filed by the respondent, when there was an appeal filed and numbered as R.C.A.No.26 of 2020 and that the Executing Court has overlooked the counter filed by the petitioner.

7.On a perusal of the counter filed in April 2021 by the tenant which is enclosed in the typed set of papers, it does not contain any reference to the appeal filed by the petitioner/tenant. Further, the learned Additional District Munsif has not ordered the Execution Petition on the ground that no appeal was filed. On the contrary, the Execution Petition has been ordered only on the ground that the tenant has not produced any document to show that the order in RCOP No.185 of 2018 had been set aside/ reversed / stayed. The Executing Court is bound by the decree and unless the decree is stayed, the Executing Court has to proceed to pass orders. In the instant case, the learned Additional District Munsif. Madurai, has proceeded only in this fashion. Therefore, I do not find any reason to interfere with order passed therein. Accordingly, C.R.P(MD) No.1784 of 2021 is dismissed.



C.R.P (MD) No.1029 of 2021

8.It is also informed that the landlord had filed C.R.P(MD) No. 1029 of 2021 for speedy disposal of RCA No.26 of 2020 on the file of the Principal Subordinate Judge(Rent Control Appellate Authority), Madurai.

9.Both the counsel have no objection to the same being allowed.

10.Accordingly, C.R.P(MD)No.1029 of 2021 is allowed with a direction to the learned Principal Subordinate Judge, Madurai, to dispose of R.C.A.No.26 of 2020 within a period of one month from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

cp

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:-

1.The Principal Subordinate Judge, Madurai.

2.The Additional District Munsif, Madurai

+2 CC to M/s.V. PANNER SELVAM, Advocate (SR-35558[F] dated 23/11/2021)

+2 CC to M/s.P. BANU PRASATH, Advocate (SR-35594[F] dated 24/11/2021)

**C.R.P (PD) (MD) Nos.1029 and 1784 of 2021
and**

**C.M.P (MD) No.9537 of 2021
22.11.2021**

NSN (CO) /SB (13.12.2021) 4P 7C

<https://hcservices.ecourts.gov.in/hcservices/>