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C.R.P.PD.Nos.1860 and 1861 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.08.2022

PRONOUNCED ON : 08.11.2022

C O R A M :

The Hon'ble Mrs. Justice **J. NISHA BANU**

**C.R.P(PD).Nos.1860 and 1861 of 2019**  
**and**  
**CMP.Nos.12277 of 2019 and 12281 of 2019**

Sridevi

...Petitioner  
/Respondent/Decree Holder/Petitioner  
in both C.R.P's

Vs.

M/s.Real Nest  
A Partnership firm, rep by its  
Managing Partner,  
Mr.V.Jawahar @ Kalaimani  
15/7, Plot No.253,  
“S.N.R.Flats”, 2<sup>nd</sup> Floor  
4<sup>th</sup> Avenue, Ashok Nagar,  
Chennai – 600 083.

... Respondent/Petitioner  
/Judgment Debtor/Respondent in  
both C.R.P's

**PRAYER in C.R.P(PD).No.1860 of 2019:** Civil Revision Petition  
filed under Article 227 of the Constitution of India against the fair and

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decreetal order dated 21.01.2019, made in E.A.Nos.96 of 2018 in E.P.No.207 of 2018 in R.C.O.P.No.1285 of 2015 passed by the XVI Judge, Small Causes Court, Chennai.

**PRAYER in C.R.P(PD).No.1861 of 2019:** Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 21.01.2019, made in E.A.Nos.95 of 2018 in E.P.No.207 of 2018 in R.C.O.P.No.1285 of 2015 passed by the XVI Judge, Small Causes Court, Chennai.

For Petitioner : M/s.K.Sumathi  
(both C.R.P's)

For Respondent : Not available  
(both C.R.P's)

### **COMMON ORDER**

The above civil revision petitions are filed against the impugned order dated 21.01.2019 passed in E.A.Nos.95 and 96 of 2018 in E.P.No.207 of 2018 in RCOP.No.1285 of 2015 passed by XVI Judge, Small Causes Court, Chennai.



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2. The above said E.As are filed by the Judgment Debtor praying to reopen the case for adducing their side oral evidence and arguments.

3. The judgment debtor is a partnership firm carrying on real estate business and is a tenant under the revision petitioner/decreed holder. The averments made out in the EAs is that they settled the issue with the decree holder amicably and handed over the schedule mentioned portion to the decree holder, so, the E.P., filed by the decree holder is without any reason or locus standi. In order to prove their bona fide, they required to give oral evidence and to prove that the rented premises has been rented to some other person.

4. On the other hand, the decree holder put forth their contention that there was no settlement and she has not let out the schedule mentioned property to any other person for rent. According to the



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decree holder, in order to evade the payment of arrears of rent amounting to Rs.11,32,959/- as on 01.06.2018, he has chosen to file these petitions only when the E.P., was reserved for orders and at such stage, the EAs are filed to drag on the execution proceedings.

5. The learned Judge, after going through the arguments advanced by both sides and the entire case records, observed that E.P., is filed to execute the exparte order of eviction in RCOP.No.1285 of 2015 dated 05.12.2017. In the RCOP, notice was ordered to the respondent, who also filed counter, however failed to turn up for arguments. At the stage of EP., EAs have been filed to reopen the case to adduce oral evidence and for arguments. The contention of the judgment debtor is that he was unable to contact his counsel to argue the case and so seeking one more opportunity, to prove his bona fide, an opportunity to adduce evidence is sought. Even though decree holder represented that when the case was posted for arguments, the judgment debtor has not adduced his argument and no valid reason has



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been given for his absence on the day when the case was posted for arguments. The learned Judge, pointed out that considering the fact that the reason stated by the judgment debtor though not satisfactory, keeping the principles of natural justice in mind, the parties to the case has to be given a fair opportunity to contest their case, the court inclined to allow the petitions on cost of Rs.2000/- and also directed to adduce his side oral evidence on 30.01.2019.

6. The above referred to impugned order has been passed on 21.01.2019. On 29.09.2019, the judgment debtor filed an unnumbered EA stating that they have tried to pay the cost amount to respondent/decreed holder counsel but unfortunately not able to find out anywhere in the court campus and also not able to contact them, through phone, so with the bonafide intention, the petitioner tender the cost amount before the court. The counsel for judgment debtor also sought to extend the time for payment of cost amount to the other side or to receive the cost amount through court official.



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7. The adjudication before the court below would go to show that the matter was heard on 30.01.2019 and thereafter, the matter has been adjourned on 02.02.2019, 22.02.2019, 14.02.2019, 18.02.2019 and on 01.03.2019, an order has been passed directing the judgment debtor to deposit a cost of Rs.2000/- into the credit of above E.P., on or before 28.02.2019.

8. Before this court, the counsel for the revision petitioner produced the Adjudication proceedings dates and events in respect of E.P.No.207 of 2018. The same is perused.

9. It is seen that as per the conditional order dated 19.02.2019, the learned Judge, after going through the averments of the decree holder and judgment debtor, taking the plea of judgment debtor for extension of time, held that for the ends of justice, the application filed seeking extension of time within the time limit, is to be granted to pay



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the cost. In such view, the learned Judge allowed the E.A. Accordingly, on 01.03.2019 the matter has been taken up by the learned Judge on which date it is recorded that condition complied. Petition in EA.95/2018 and 11/2019 allowed. The second condition in the order that oral evidence of petitioner (judgment debtor) has also been complied. The adjudication also would go to show that the decree holder filed an adjournment petition stating that they intend to prefer appeal against the order in E.A.Nos.95 and 96 of 2018. Therefore, for cross of R.W.1 by 15.03.2019, the matter has been adjourned.

10. It is a matter of record that thereafter, the matter stood adjourned on the ground that the revision petitioner herein/decreed holder filed CRP before this court. This court on 14.06.2019, granted interim stay. Thereafter, due to National Lockdown due to Covid-19 and thereafter, citing the pendency of the civil revision petitions, the matter has been adjourned before the court below.



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11. The learned counsel for the revision petitioner also produced typed set of papers giving the tabular column of monthly rent amount from May 2011 and it is seen that the tenant/judgment debtor has not paid the monthly rent from August 2013 till June 2022 and the rental balance as on 1st July 2022, is Rs.28,11,863/- and deducting the security deposit amount of Rs.1,50,000/-, the revision petitioner/tenant have to pay Rs.26,61,863/-.

12. In the grounds of the present civil revision petitions, it is stated that the order of eviction has become final. The learned Judge, without appreciating the conduct of the respondent who is a chronic defaulter in payment of rent, ought not to have allowed the application of the respondent and that the Executing Court cannot go beyond the decree and should have ordered delivery to the petitioner instead of holding full-fledged enquiry into same.

13. I have gone through the entire typed set of papers and



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perused the records carefully.

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14. The learned Judge, held that in keeping the principles of natural justice, EA.Nos.95 and 96 of 2018 are allowed. Since it is the case of the respondent/judgment debtor that he was not heard, an opportunity was given by the learned Judge to adduce his oral evidence. The learned Judge allowed the EA petitions filed by the judgment debtors on imposing condition of payment of Rs.2000/- to the respondent/Decree holder. Subsequently, the condition also complied with by the counsel for the respondent herein and R.W.1 was examined in chief.

15 In the facts of the present case, there is no dispute that the revision petitioner/Judgment Debtor has defaulted in payment of rent and the rental balance amounts to Rs.26,61,863/-. Admittedly, by order dated 5.12.2017, eviction has been ordered in RCOP.No.1285 of 2015. Eviction order has not been challenged by the Judgment Debtor. In



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such circumstances, the Execution Court cannot go beyond the decree.

But only for the reason that it is an Exparte order, the learned Judge thought it fit to give one more opportunity to the respondent/tenant to put forth his case.

16. In the considered opinion of this court, since the revision petitioner/respondent/tenant is a chronic defaulter, the learned Judge ought to have directed the respondent/tenant to produce some evidence to show that he has paid monthly rent or otherwise ought to have directed the respondent/tenant to deposit the rent to the Decree holder/landlord instead of directing to pay Rs.2000/- as cost to the landlord. Further, the E.P. , and E.A., are pending since 2018 and till date, even before this court, in the pleadings, it has not been stated by the Revision petitioner and has not shown any evidence that he has paid rental balance due to landlord.

17. In order to grant one opportunity to the respondent side for



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adducing their side oral evidence, the matter has been reopened. Since the matter is pending for further evidence, in the interest of justice, suitable direction need to be issued for conclusion of the proceedings and for pass appropriate orders on merits. In such circumstances, taking note of the proceedings in E.As., which are pending before the Rent Control Authority, the revision petitioner/tenant is directed to deposit 50% of rental balance due to the landlord, to the credit of E.P.No.207 of 2018 in RCOP.No.1285 of 2015 on the file of XVI Judge, Small Causes Court, Chennai, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the court below shall proceed with the case and decide the matter on merits. In the event of failure of the revision petitioner/tenant to comply with the above direction, the learned Judge, shall take up the E.P., and pass orders within a period of four weeks thereafter.

18. In the result, the civil revision petitions are disposed of with the above direction. No costs. Consequently, connected miscellaneous petitions are closed. Stay stands vacated.



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Note:Issue order copy today. (08/11/2022)

To

1. The learned XVI Judge, Small Causes Court, Chennai.
2. The Section Officer,  
V.R.Section, High Court of Madras.

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**J.NISHA BANU, J.**

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