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C.R.P. (PD) No.1916 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.12.2021

Delivered on : 14.02.2022

CORAM :

THE HONOURABLE MRS. JUSTICE S. KANNAMMAL

C.R.P. (PD) No.1916 of 2017

B.Sukumar (alias) B.Kumar
Prop. M/s.Kumar Auto Works,
Officed at No.1, Thatha Muthaiappan St.,
Chennai – 600 108.

... Revision Petitioner

Vs.

The Arcot Lutheran Church, represented
by the Secretary of the Church Board,
Having Office at No.9, ALC Complex,
Cuddalore.

... Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order, dated 18.04.2017, in I.A.No.276 of 2017 in O.S.No.2441 of 2008 on the file of the XVIII Assistant City Civil Court, Chennai.

For Petitioner : Mr.K.Ilamparithi

For Respondent : Mr.Srinath Sridevan



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ORDER

(Through Video Conferencing)

This Civil Revision Petition has been filed against the order, dated 18.04.2017, passed by the XVIII Assistant Judge, City Civil Court, Chennai, in I.A.No.276 of 2017 in O.S.No.2441 of 2008, eschewing certain portion in the evidence of D.W.1 from consideration.

2.For the sake of convenience, the revision petitioner and the respondent shall hereinafter be referred to as “defendant” and “plaintiff”, respectively.

3.The facts leading to the filing of the present Civil Revision Petition are as follows :

- The plaintiff is a Church which owns the suit property and the defendant took the suit property on lease from the plaintiff on rent at Rs.385/- per month.
- The plaintiff claims that the defendant has committed default in payment of rent and after exchange of legal notices, the plaintiff laid



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a suit in O.S.No.2441 of 2008 for delivery of vacant possession of suit property.

- The defendant took a categorical stand that he had paid the rental arrears of Rs.1,540/- on 05.08.2006 and Rs.1,155/- on 04.10.2006, well before the institution of the suit, hence, the suit is liable to be dismissed.
- After examination of plaintiff's side witnesses, the defendant filed I.A.No.16174 of 2010 for receiving Additional Written Statement, raising a plea that, after issuance of legal notice of termination, the rent was increased and fresh tenancy came into existence and therefore, the suit is not maintainable without issuance of another notice terminating the new tenancy. The said application was dismissed by the trial Court. C.R.P.No.1335 of 2010 filed against such dismissal was also dismissed by this Court.
- Thereafter, the defendant filed yet another application in I.A.No.17016 of 2013 for the same relief by way of amendment of written statement. The said application was also dismissed. C.R.P.No.2649 of 2014 filed against the said order was also dismissed by this Court.



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- While such being the position, the defendant filed his proof affidavit as D.W.1 and in that proof affidavit, he has included the portions, sought by him to be included in the written statement by way of amendment in I.A.No.17016 of 2013, i.e., with regard to enhanced rent and fresh tenancy.
- The plaintiff filed I.A.No.276 of 2016 praying to strike off the said irrelevant portion from the proof affidavit of D.W.1.
- The trial Court has ordered to eschew the said portion from the proof affidavit of D.W.1 from consideration.
- Challenging the said order, the defendant has filed the present Civil Revision Petition.

4.The learned counsel for the defendant/revision petitioner submitted that a portion of the proof affidavit/evidence cannot struck off under Order VI Rule 16 of Code of Civil Procedure. The learned counsel further submitted that, after issuance of the termination notice, the rent was enhanced and the defendant has been paying the enhanced rent and hence, a fresh tenancy has come into force and therefore, the suit which is based on the earlier termination notice is not maintainable. He further submitted that



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the plaintiff is entitled to cross-examine the defendant on the said aspect of enhanced rent and fresh tenancy, but not to pray for striking off the said portion from the evidence of D.W.1. The learned counsel submitted that the trial Court ought to have dismissed the impugned application and hence, prayed for setting aside the impugned order.

5.The learned counsel for the plaintiff/respondent submitted that the defendant filed I.A.No.16174 of 2010 for filing Additional Written Statement by raising the plea of enhanced rent and fresh tenancy, but the same was dismissed and the revision preferred by the defendant also failed. The learned counsel further submitted that the defendant filed yet another application in I.A.No.17016 of 2013 for the very same relief by way of amendment of written statement, but the said application was also dismissed and the revision against the said order also ended in dismissal. Therefore, the learned counsel submitted that the defendant has mischievously added the said portion in his (D.W.1's) proof affidavit to bring on record his inconsistent plea. The learned counsel submitted that the evidence, which is irrelevant and not supported by pleadings, has to be struck off. In support of his contention, the learned counsel relied upon the



following judgments :

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i. *Rajendra Singh Chhatrasal Singh Kushwaha v. Jitendra Singh*

Rajendra Singh Kushwah and others [2013 (6) Mh.L.J. Pg.802]

ii. *Paramasiva Chettiar v. Venugopal Naidu [1991 (101) MLJ 1]*

The learned counsel concluded his arguments by praying for dismissal of the Civil Revision Petition.

6.Heard the learned counsel on either side and perused the entire materials available on record.

7.From the facts of the case as narrated above, it is clear that the defendant has failed in his two attempts to bring on record his plea of enhanced rent and fresh tenancy, both by way of additional written statement and by way of amendment to the written statement. Therefore, the fact remains that there is no pleading to that effect on the side of the defendant, as of now. While such being the position, the defendant has tried to incorporate his plea in his proof affidavit as D.W.1 by way of evidence, though already hit by *res judicata*. Therefore, now, the plaintiff prays for striking off the same. It is settled proposition of law that Courts



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cannot allow evidence without pleading to that effect. The above proposition has been reiterated in the judgments cited *supra*, relied upon by the learned counsel for the respondent. However, striking off the portion from the evidence would not be a proper remedy for that, as it goes against the legislative mandate.

8.Bearing this in mind, on a perusal of the impugned order, it is seen that the trial Court has observed that the defendant has mischievously tried to let in certain evidence that were disallowed by the trial Court earlier on two occasions and also by the High Court, which is an abuse of process of Court. The trial Court has further observed that, only pleadings can be struck off under Order VI Rule 16 of CPC, but not an evidence, and hence, striking off a portion of the evidence cannot be done, as it would be against the statutory provisions, but in the interests of justice, the said portion can be eschewed from consideration.

9.The observations made by the trial Court, in the opinion of this Court, are completely justified and there is no need to interfere with the same. This Court finds no infirmity or perversity in the impugned order



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passed by the trial Court.

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10. Therefore, this Civil Revision Petition stands dismissed. No costs.

14.02.2022

Internet : Yes
Index : Yes / No
Speaking order / Nonspeaking order

To

The XVIII Assistant Judge,
City Civil Court,
Chennai.



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S. KANNAMMAL, J.

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