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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2022

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P.PD.No.2255 of 2017
and
C.M.P.No.10639 of 2017

Shek Lathif ... Petitioner/Petitioner/3rd Party

Vs.

1.Marie Aroquiaime Vanady
...Respondent / Respondent / Decree Holder
2.Samshad Beg
3.Ajmal ...Respondents/Respondents/Judgment Debtors

Civil Revision Petition filed under Section 115 of CPC, to set aside the order dated 15.06.2017 in E.A.No.1998 of 2016 in RCEP No.11 of 2013 in HRCOP No.70 of 2010 passed by the Principal District Munsif (Rent Controller – I), Puducherry.

For Petitioner .. Mr.R.Thiagarajan

For R1 .. Mr.T.P.Manoharan, Senior Counsel
for Mr.K.P.Jotheeswaran

For R2 and R3 .. No appearance

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ORDER

A third party to the entire proceedings which commenced with filing of HRCOP No.70 of 2010 to the Principal District Munsif / Rent Controller-I, Puducherry by the 1st respondent herein / Landlady / Marie Aroquiaime Vanady, seeking eviction of the shop premises at Door No.14, Shop No.3, Vallalar Salai, 45 Feet Road, Rajarajeswari Nagar, Rainbow Nagar Corner, Pondicherry – 605 001 is the Revision Petitioner herein.

2.The said eviction petition was filed against the 2nd and the 3rd respondents herein / Samshad Beg and Ajmal. The HRCOP went through its normal process and finally, it was decreed and eviction was directed. Thereafter, the 1st respondent / landlady filed RCEP No.11 of 2013 to put in execution the decree was dated 19.04.2013. The Execution Petition again meandered around and finally delivery was directed on 23.09.2016. The bailiff visited the premises on 23.09.2016 to put into effect the order of delivery of possession.

3.At that particular point of time, the revision petitioner herein / third party to the entire proceedings was found to be in occupation of the said shop. It was the contentions of the petitioner that he has been in possession for nine months prior to that particular date and that he was in

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possession after the 2nd and 3rd respondent / tenants had vacated and with the consent of the 1st respondent / landlady. These are aspects and issues which are known exclusively only to the revision petitioner herein.

4.The revision petitioner then filed EA.No 1998 of 2016 taking advantage of Rule 143 of the Civil Rules of Practice, seeking to record his objection for grant of delivery of possession. The Civil Rules of Practice are only guidelines to Code of Civil Procedure, 1908. The sections in the Code of Civil Procedure, 1908 are the substantial provisions. The Orders and Rules therein are framed as to how the Sections are to be implemented and followed. The Rules of Practice are again only guidelines given to put those procedures in practice.

5.The Execution Petition in RCEP No.11 of 2013 came up for consideration before the learned Rent Controller, on 15.06.2017, wherein after observing the facts of the case, it was specifically observed that the Revision Petitioner herein was a stranger / third party and had also failed to prove that he had been running the business for past nine months prior to the filing of the petition. It was the contention of the revision petitioner that he had obtained Registered Certificate on 13.09.2016.

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The learned Rent Controller had observed that the Revision Petitioner / third party had filed E.A.No.1998 of 2016 to drag on the proceedings and to delay the execution proceedings. It was also observed that this was an abuse of process of law. It was stated that the revision petitioner was protracting and delaying the landlady from enjoying the fruits of the decree and that the revision petitioner had no independent right.

6.I hold that the revision petitioner was factually a stranger to the Rent Control Proceedings and if at all, he had any document to establish or facts to be stated it would have been only appropriate that he grazes the witness box and subjects himself for cross-examination and having not done so, I hold that no presumption can be drawn in favour of the Revision Petitioner that he was in bonafide occupation of the shop.

7.Mr.T.P.Manoharan, learned Senior Counsel appearing on behalf of the 1st respondent had taken this Court through the judgment of the Hon'ble Supreme Court on that particular aspect namely, the failure of a particular party to graze the witness box to speak about the facts which are to their exclusive knowledge and failure to subject themselves to be cross-examined. That was in the judgment reported in ***AIR 1999 SCC***

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1441(1), Vidhyadhar v. Mankikrao and another. In paragraph 17 of the said judgment, the Hon'ble Supreme Court had an occasion to speak about the reluctance or failure of a party not to appear in the witness box and to state the case on oath. The Hon'ble Supreme Court had observed as follows:

> *"**17.** Where a party to the suit does not appear in the witness-box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the Privy Council beginning from the decision in Sardar Gurbakhsh Singh v. Gurdial Singh [AIR 1927 PC 230 : 32 CWN 119] . This was followed by the Lahore High Court in Kirpa Singh v. Ajaipal Singh [AIR 1930 Lah 1 : ILR 11 Lah 142] and the Bombay High Court in Martand Pandharinath Chaudhari v. Radhabai Krishnarao Deshmukh [AIR 1931 Bom 97 : 32 Bom LR 924] . The Madhya Pradesh High Court in Gulla Kharagjit Carpenter v. Narsingh Nandkishore Rawat [AIR 1970 MP 225 : 1970 MPLJ 586] also followed the Privy Council decision in Sardar Gurbakhsh Singh case [AIR 1927 PC 230 : 32 CWN 119] . The Allahabad High Court in Arjun Singh v. Virendra Nath [AIR 1971 All 29] held that if*

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a party abstains from entering the witness-box, it would give rise to an adverse inference against him. Similarly, a Division Bench of the Punjab and Haryana High Court in Bhagwan Dass v. Bhishan Chand [AIR 1974 P&H 7] drew a presumption under Section 114 of the Evidence Act, 1872 against a party who did not enter the witness-box."

8.That particular dictum laid down applies to the Revision Petitioner herein who also failed to graze the witness box. The statements made in the affidavit cannot be taken as being either factually correct or being proved. They stand disproved. I find no merits in the Revision Petition warranting interference with the order passed. Therefore, the Civil Revision Petition stands dismissed. No order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Internet:Yes/No
Index:Yes/No
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To
The Principal District Munsif, Puducherry.

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C.V.KARTHIKEYAN,J.

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