



C.R.P. Nos. 535 & 536 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2023

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THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.Nos. 535 & 536 of 2023
and
C.M.P. Nos.5450 & 5454 of 2023

Lakshmi,
W/o. Late Sankaran

... Petitioner in
both C.R.P.s

Vs

Mariam Ferozuddin
W/o. C.A.Ferozuddin Ahmed

... Respondent in
both C.R.P.s

PRAYER in C.R.P. No. 535 of 2023 : Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the docket order dated 22.02.2023 passed in E.A.No.3 of 2023 in E.P. No. 1187 of 2022 in R.L.T.O.P. No. 76 of 2020 on the file of XI Small Causes Court, Chennai allowing the Revision.



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PRAYER in C.R.P. No. 536 of 2023 : Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the docket order dated 22.02.2023 passed in E.A.No.2 of 2023 in E.P. No. 1187 of 2022 in R.L.T.O.P. No. 76 of 2020 on the file of XI Small Causes Court, Chennai allowing the Revision.

For Petitioner in
both C.R.P.s : Mr.S.Panneer Selvam

For Respondent in
both C.R.P.s : Mr.S.Sahul Hameed

ORDER

Originally, challenging the docket order dated 22.02.2023 passed in E.A.Nos. 2 and 3 of 2023 in E.P. No. 1187 of 2022 in RLTOP No.76 of 2020, on the file of XI Small causes Court, Chennai respectively, the Revision Petitioner filed the Civil Revision Petitions and this court by an order dated 27.02.2023 stayed the impugned orders passed in E.A.Nos.2 and



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3 of 2023.

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2. The Revision Petitioner herein is the tenant and the respondent herein is a landlord, who has filed RLTOP No. 76 of 2020 on the file of XI Small Causes Court, Chennai seeking a direction directing the tenant to quit and deliver vacant possession under her occupation. On hearing both sides, the learned Rent Controller has ordered to vacate the premises on 15.11.2022. To execute the said order, the landlord filed an Execution Petition E.P.No.1187 of 2022 and the same was taken on file on 19.12.2022. In that E.P., notice was served on the respondent and she also appeared through her counsel. Thereafter, the tenant preferred an appeal before the III Addl. City Civil Court, Chennai in R.L.T.A.No. 02 of 2023. Before that, caveat was filed and the learned counsel appearing for landlord also subsequently appeared before the court, but no stay was granted by the appellate court in favour of tenant as on date. In the meanwhile, the Execution Court taken up the Execution Petition on file and on hearing both sides, delivery was ordered by the Execution Court on 22.02.2023. To execute the delivery, she has filed two applications in E.A.Nos. 2 and 3 of



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2023 to break open as well as to give police protection on 15.02.2023, which were ordered by the trial court. Challenging the said orders, the present Civil Revision Petitions have been filed and also obtained stay in C.M.P. Nos.4389 and 4390 of 2023 on 27.02.2023 by lunch motion after 02.15 p.m..

3. Now, to vacate the stay order, the landlord preferred these Civil Miscellaneous Petitions in C.M.P.Nos.5450 and 5454 of 2023. Today, when the matters taken up for hearing, learned counsel for Revision Petitioner would submit that the tenant has vacated the premises and the landlord took possession of the same through Court Aamine on 27.02.2023 at the afternoon around 01.00 p.m. Thereafter only, she has preferred Civil Revision Petitions and obtained stay. Hence, the relief claimed in the said applications became infructuous and prayed to vacate the stay.



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4. By way of reply, the learned counsel for respondent argues that after obtaining the stay order, she informed the same to the Court Aamine and having come to know the court proceedings, the landlord/decreed holder had forcibly taken possession of the property. Hence, she has taken steps to initiate contempt proceedings. Further, he has also argued that during the pendency of the appeal, the landlord has no right to take possession of the property, for which, he has relied on the judgment of this Court in C.R.P. (PD) Nos.1715 and 1716 of 2022, dated 13.06.2022, wherein this court has held in para 4 as follows :-

“4. It is seen from the E-court diary that the appeal is being adjourned from time to time 'for awaiting records' from the lower court. Before disposal of appeal, if the execution proceeding is completed, the appeal filed by the revision petitioner would become infructuous. To ensure that the appeal suit is disposed of on merits, I feel that the orders passed by the executing court to break open and for police protection should be set aside and the executing court should be directed to send the suit records immediately to the first



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appellate court for disposing the appeal.”

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5. By way of reply, the learned counsel for respondent landlord would submit that even though on 26.02.2023, the tenant has partly started to vacate the premises, on 27.02.2023 before 01.00 p.m, she vacated the entire premises and Court Aamine took possession of the property and handed over the same to the landlord. To that effect, he has produced the endorsement made by Court Aamine at page No.10 in the typed set of papers and also produced the photographs to show that the premises was vacated by the tenant.

6 Heard and considered rival submissions of both learned counsel for Revision Petitioner as well as Respondent and perused the records.

7. On perusal of endorsement made by Court Aamine, it would reveals that on 27.02.2023 when he entered the premises, the tenant has vacated the premises in the presence of police officials and both ground and first floors were vacant without any material objects and possession was



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handed over to landlord. To that effect, he has made endorsement. So, Court

Aamine endorsement would clearly reveals that on 27.02.2023 before 1'o clock, entire premises was vacated. Further, the photographs enclosed in the typed set of papers also reveals that at 01.06 p.m. entire premises was vacated in the presence of police officials as well as court aamine. Accordingly, the landlord took possession of the premises as per manner known to law. As on date, there is no stay with regard to the execution proceedings. So, the Execution Court has rightly passed an order along with police protection, as such is maintainable in law. Though there is an appeal is pending, the Execution Court has ordered to execute the impugned order and furthermore, the tenant has also vacated the premises. The learned counsel for Revision Petitioner/tenant would submit that the respondent landlord had forcibly taken possession. It is an admitted fact that the tenant has vacated the premises on 27.02.2023 and till date, no complaint was filed by the tenant against the landlord for vacating the premises forcibly. So, the submissions made by the tenant is not acceptable one. Hence, the possession taken by the landlord is valid under law. Accordingly, the stay orders passed in C.M.P. Nos.4389 and 4290 of 2023 are vacated and the



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Civil Miscellaneous Petitions in C.M.P. Nos. 5450 and 5454 of 2023 are allowed. As the tenant has vacated the premises and the landlord took possession of the premises through Court of law, no further adjudication is required in these Civil Revision Petitions. Accordingly, the Civil Revision Petitions are dismissed as infructuous. No costs.

13.03.2023

Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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N.B. : Issue order copy today

To

XI Judge,
Court of Small Causes,
Chennai.



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T.V.THAMILSELVI, J.

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