



Review Application No.97 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2023

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Review Application No.97 of 2023

1. Prashanth Kumar J. Jain
2. Kalpesh Kumar A. Jain

... Petitioners

Vs.

Aziz Snack Bar

... Respondent

Prayer : The Petition is filed under Order XLVII Rule-1 r/w Section 114 of Code of Civil Procedure, to review the order dated 02.02.2023, made in C.R.P.No.4597 of 2017 on the file of this Court.

For Petitioners : Mr.T.R.Rajagopalan
Senior Counsel
Ms.P.Veena Suresh

For Respondent : Mr.R.Sundaramurthy

ORDER

This petition has been filed to review the order dated 02.02.2023, passed by this Court in C.R.P.No.4597 of 2017, thereby allowed the Civil Revision Petition and directed the Execution Court to number the application filed by the respondent under Section 47 of C.P.C., and pass orders on merits and in accordance with law.



2. The respondent filed Civil Revision Petition challenging the order dated 27.10.2017 passed by the learned XVI Judge, Small Causes Court, Chennai, in E.A.SR.No.36736 of 2017 in E.P.No.23 of 2017 in R.C.O.P.No.2232 of 2006, thereby rejecting the application filed by him under Section 47 of C.P.C., as not maintainable. This Court was under impression that the application filed by the respondent under Section 47 of C.P.C., was rejected without even numbering the said application. Therefore, this Court remitted the matter back to the execution Court for fresh consideration.

3. The learned Senior Counsel appearing for the petitioner rightly pointed out that the respondent already suffered with an order of eviction on the ground of owners occupation. The specific ground raised by the respondent before the Rent Controller/Execution Court is that the petition premises consists of ground floor, first floor and second floor and in all floors there are about 13 shops. In the ground floor, in the front side of the petition premises, there are two shops situated next to the entrance of the building. The respondent is occupying the second shop in the front side of the building. The tenant who was in occupation of the shop portion next to the entrance of the petition premises vacated and handed over the vacant possession to the landlord immediately after filing the rent control proceeding. Similarly the other 11 shop portion tenants



have also vacated their shops after filing the rent control proceeding and handed over the vacant possession, as such from the year 2006, itself the petitioners are in possession of the entire ground floor, first floor and second floor of the petition premises, which is approximately measuring to an extent of 8000 sq.ft. The petitioners by making plea that they bonafide requires the petition premises for their godown purpose, but from 2007 to 2017 till date the petitioners are in possession of the entire premises except the respondent shop.

4. The above grounds were duly considered by the learned Rent Contorller and ordered eviction. Aggrieved by the order of eviction, the respondent filed appeal in R.C.A.No.815 of 2007 on the file of the learned Rent Control Appellate Authority viz., VII Small Causes Court, Chennai. In the appeal also, the respondent raised the very same ground and the same was also dismissed. On the strength of the judgment and decree passed by the learned Rent Controller, the petitioners filed execution petition in E.P.No.23 of 2017. While pending the exeuction petition, the respondent once again filed petition under Section 47 of C.P.C. After considering all the facts and circumstances and also noted the entire background of the case, the execution Court rejected the application filed under Section 47 of C.P.C., as not maintainable.



5. Aggrieved by the same, the respondent filed Civil Revision Petition before this Court. This Court while allowing the civil revision petition was under impression that the application filed under Section 47 of C.P.C., was rejected *in limine* without hearing the respondent. As stated supra, the execution Court passed detailed order dated 27.10.2017, after considering all the grounds raised by the respondent.

6. The learned counsel appearing for the respondent filed counter and submitted that the respondent may be given one more opportunity to put forth his case before the execution Court. The respondent also paying rent continuously without any default. Therefore, there is no error apparent on the face of record to entertain this review application.

7. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

8. Admittedly, whatever the grounds raised by the respondent in the application filed under Section 47 of C.P.C., was already raised before the learned Rent Controller and the Rent Control Appellate Authority. Both the Courts held as against the respondent and rejected the grounds raised by the



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respondent. Therefore, the application filed under Section 47 of C.P.C., is nothing but clear abuse of process of law and the learned Rent Controller/ Execution Court rightly rejected the application as not maintainable.

9. In view of the above, the order dated 02.02.2023 passed by this Court in C.R.P.No.4597 of 2017, is hereby recalled and the Civil Revision Petition filed by the respondent stands dismissed. The order dated 27.10.2017 passed by the learned XVI Judge, Small Causes Court, Chennai, in E.A.SR.No.36736 of 2017 in E.P.No.23 of 2017 in R.C.O.P.No.2232 of 2006, is hereby confirmed. The execution Court is directed to dispose the execution petition filed by the petitioners within a period of twelve weeks from the date of receipt of a copy of this Order.

10. Accordingly, the Review Application stands allowed.

08.11.2023

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

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G.K.ILANTHIRAIYAN, J.

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To

1. XVI Judge,
Small Causes Court,
Chennai.

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