



C.R.P.(PD)No.2795 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.2795 of 2023
and C.M.P.No.17266 of 2023

B.Dhanapal

.. Petitioner

Vs.

M.Sivalingam
Represented by his son and Power Agent
S.Balasubramani

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 05.07.2023 made in E.A.No.4 of 2023 in E.P.No.187 of 2023 in R.L.T.O.P.No.283 of 2021 on the file of the XIV Small Causes Court, Chennai.

For Petitioner : Mr.K.Mahalingam



C.R.P.(PD)No.2795 of 2023

WEB COPY

ORDER

This revision challenges the order passed in E.A.No.4 of 2023 in E.P.No.187 of 2023 in R.L.T.O.P.No.283 of 2021, dated 05.07.2023.

2. Eviction was ordered in R.L.T.O.P.No.283 of 2021 on 05.12.2022. The ground on which the eviction was ordered was that there was no agreement between the landlord and the tenant with respect to the demised premises. In this particular case, there is no dispute of relationship between the landlord and tenant. Following the judgment of this Court in *S.Muruganandam vs. J.Joseph, (2022) 2 CTC 291*, eviction was ordered.

3. Against R.L.T.O.P.No.283 of 2021, R.L.T.A.No.24 of 2023 was presented. However, the petitioner/tenant did not obtain stay of the eviction. Consequently, the respondent/landlord filed E.P.No.187 of 2023 on the file of the learned XIV Judge, Small Causes Court, Chennai and obtained an order of delivery of possession.



C.R.P.(PD)No.2795 of 2023

WEB COPY

4. The record of the Court also shows that the bailiff went to the suit premises and he was obstructed by the servants of the tenants. Even then the tenant did not move an application for stay. Thereafter, delivery was effected on 27.04.2023.

5. After delivery was effected on 27.04.2023, on 28.04.2023, the learned counsel for the petitioner moved an application under Order IX Rule 7 of C.P.C. I pointed out that Order IX Rule 7 of C.P.C. does not apply to execution proceedings.

6. Mr.K.Mahalingam, learned counsel for the petitioner pointed out that Order XXI Rule 106 of C.P.C. enables him to file a petition to set aside the exparte order in execution. He would rely upon Section 39(3) of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017. This states that in execution proceedings, notice has to be issued to the tenant and the execution petition has to be disposed of within 30 days from the date of the order. His plea is that he



C.R.P.(PD)No.2795 of 2023

was never put on notice, on account of that fact, Section 39 of RLT Act has been violated and hence, the order of the trial Court has to be set aside.

7. Under Order XXI of CPC, a landlord is entitled to put the decree into execution. At the time of putting the decree into execution, the Court would have to see whether the decree has been passed within a period of two years. If it has been passed within a period of two years under Order XXI Rule 22 (1) proviso, a Court can order delivery without notice to the judgment debtor. Therefore, the learned Judge exercised the power under Order XXI Rule 22 (1) proviso and had dispensed with notice to the judgment debtor.

8. Now coming to the point raised by Mr.K.Mahalingam under Section 39 of RLT Act, notice has to be issued to the judgment debtor in execution. An harmonious reading of Order XXI Rule 22 read with Section 39 of R.L.T. Act makes it clear that the notice to the judgment debtor would be necessary, if and only if, the decree has not been put into



C.R.P.(PD)No.2795 of 2023

execution for a period of two years. This is clear from the fact the RLT Act gives a further direction that on receipt of notice, the tenant must co-operate for execution of the decree and the EP itself should be disposed off within a period of 30 days from the date on filing of petition. The Court below had complied with the provisions of Order XXI Rule 22 of C.P.C. and therefore, I do not find any mistake on the part of the trial Court.

9. Apart from this fact, it is pertinent to point out that the tenant himself had moved I.A.No.1 of 2023 in R.L.T.A.No.24 of 2023 before the XVII Additional Judge, City Civil Court, Chennai. The learned Judge has granted interim injunction restraining the Executing Court not to record delivery. The very fact that such an order had been granted shows that delivery had been taken on 27.04.2023 and therefore, nothing remains to be adjudicated after 27.04.2023. The purpose of Order XXI Rule 106 of C.P.C. is to enable a party to continue his participation in execution proceedings.



C.R.P.(PD)No.2795 of 2023

WEB COPY

10. Mr.K.Mahalingam, the learned counsel for the petitioner would submit that he has filed a comprehensive suit in O.S.No.6202 of 2021 claiming several reliefs. Therefore, this proceeding should have been deferred till the disposal of the suit. This is an argument, which he can effectively make before the Rent Control Appellate Authority. If his appeal is allowed, he is entitled to take redelivery. As on today, all the proceedings are over before the Executing Court, if not, for the order of injunction granted by the Appellate Authority. Therefore, I am not convinced with the submissions and the revision is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

14.08.2023

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

kj

To

XIV Judge

Small Causes Court, Chennai.

6/7



WEB COPY



C.R.P.(PD)No.2795 of 2023

V.LAKSHMINARAYANAN,J.

Kj

C.R.P.(PD)No.2795 of 2023
and C.M.P.No.17266 of 2023

14.08.2023