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CRP No.3629 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition No.3629 of 2023

and

C.M.P. No. 22714 of 2023

L.Goutham Raj

... Petitioner

Versus

Gan Shyamji Bhatji

...Respondent

Civil Revision Petition filed Under Article 227 of Civil Procedure Code, praying to set aside the order and decretal order in I.A.No.2 of 2023 in R.L.T.A.156 of 2023 dated 05.09.2023 passed by learned IVth Additional City Civil Judge, Chennai.

For Petitioner : Mrs. R. Gouri

ORDER

The petitioner has filed this revision petition to set aside the order and decretal order passed by the learned IV Additional City Civil Judge, Chennai, in I.A.No.2 of 2023 in RLTA. No.156 of 2023 dated 05.09.2023.



CRP No.3629 of 2023

WEB COPY 2. Heard, Mrs. R. Gouri, learned counsel for the petitioner and perused the materials available on record.

3. Challenging the impugned order passed by the Appellate Judge in I.A.No.2 of 2023 in RLTA. No.156 of 2023, the landlord has preferred this revision.

4. Originally, RLTOP.No.16 of 2022 was filed by the land lord for eviction under Section 4(2), 21(2)(a) & 21(2)(b) of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act 2017 read with Rule 7, Rule 8, Rule 9 and Rule 10 of TNRRRLT Rules 2019 (herein after called as Act), before the X Court of Small Causes, Chennai. On hearing both sides the said O.P. was allowed on 25.04.2023 on the ground of failure to enter into agreement as per Sec 4(2) of the Act alone and dismissed the petition on the ground of Sec.21(2)(b)-non-payment of rental arrears. The respondents were therefore ordered to vacate and handover the vacant possession of the petition mentioned premises within a period of one month from the date of this order. Thereafter, he filed E.P to execute the said order on 07.06.2023. The counsel on record entered appearance and based on the



CRP No.3629 of 2023

decree the Executing Court ordered for delivery of possession. Accordingly, Amin went to the property with the help of break open order. He broke open the property in the presence of the witnesses. The Amin took possession of the property and the same was handed over to the Decree holder. Amin report was enclosed at Pg.No.79, clear copy at Pg.No.80. On perusal of the said Amin report on 16.08.2023, the Court Amin executed the delivery warrant and the property was handed over to the landlord / revision petitioner. Thereafter, the tenant filed memorandum of appeal on 20.06.2023. In the mean while appeal filed by the tenant was taken on 20.06.2023, but there was no stay, at that time, with regard to the execution of proceedings.

5. After recording the delivery of possession, tenant filed an I.A. to stay the operation of the order in I.A.No.2 of 2023. In that application, the landlord submitted that, the petitioner already vacated the premises voluntarily.

6. Moreover, the learned counsel appearing for the petitioner has fairly admitted that they have not filed any memo before the Execution Court to record that the respondent / tenant already vacated premises. But, he has produced some letter of correspondence sent by him to the tenant in the



petition schedule premises, which was returned with an endorsement 'left', but it is not sufficient to prove the eviction, of the tenant / respondent from the premises. If really the tenant has voluntarily vacated the premises and surrendered the vacant possession of the business tenanted premises to the landlord, he would have definitely reported the same before the Execution Court and need not proceed with the Execution petition. But no such documentary evidence was produced to prove his contention.

7. According to the petitioner / landlord that the execution proceedings also intimated to the Appellate Court, but the learned counsel for the tenant sought stay of operation of the decree by stating that if any order of eviction is passed in the execution application, filed by the landlord during the pendency of the appeal it would affect his right, thereby appellate Court granted stay of operation of the decree. But admittedly as per the records, on 16.08.2023 itself the said property was taken delivery by the landlord through Court Amin and the same was recorded. Therefore, on the date of passing of said stay order by the appellate Authority, the tenant was not an occupant of the premises. Therefore, on the face of record, the order itself is nullity, passed by the learned Appellate Judge is liable to be set aside for the reason that on the date of passing of the said stay order the Tenant has already been



CRP No.3629 of 2023

evicted through Court of law and suppressed those facts respondent obtained order and the learned appellate Judge also failed to consider the execution proceedings and passed such stay is totally erroneous and unjust liable to be set aside.

8. Accordingly, the Civil Revision Petition is allowed and the findings given by the learned trial Judge is nullity and set aside. No costs.

06.10.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation: Yes/No
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To

1. The IVth Additional City Civil Judge, Chennai.

2. The Section Officer,
VR-Section, High Court of Madras.



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CRP No.3629 of 2023

T.V.THAMILSELVI, J.

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