



C.R.P.No.3883 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2023

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.3883 of 2023
and
C.M.P.No.23940 of 2023

G.Shanthi

... Petitioner

-Vs-

G.Uma Thirumurugu

... Respondent

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside order and decreetal order dated 05.09.2023 passed by the learned II Asst. City Civil Judge, Chennai passed in I.A.No.1 of 2022 in O.S.No.453 of 2021.

For Petitioner

: Mr.G.Vigneshwar for
Mr. K.Elangovan

ORDER



C.R.P.No.3883 of 2023

WEB COPY

Challenging the impugned order passed in I.A.No.1 of 2022 in O.S.No.453 of 2021 by the learned II Asst. City Civil Judge, Chennai, the Revision Petitioner/plaintiff preferred this Civil Revision Petition.

2. Since the relief is claimed challenging the order passed by the trial judge, notice to the respondent is dispensed with.

3. Before the trial court, the Revision Petitioner filed a suit in O.S.No. 453 of 2021 against the defendant for the relief of recovery of possession and damages. In that suit, notice was served on the defendant. Though she appeared and engaged the counsel, due to non-filing of written statement owing to her illness, she was set exparte and exparte decree was passed on 28.03.2022. Immediately after coming to know about the same, she filed an Interlocutory Application to set aside the exparte decree under Order IX Rule 13 read with Sec.151 of C.P.C. The said application was contested by the plaintiff stating that inspite of several opportunities given to her, she has not filed written statement. Hence, she was set exparte. However, she is an advocate by profession and having knowledge about the legal consequence, wantonly she remained exparte and failed to file written statement. After passing of the preliminary decree, she filed the said application, as such is not maintainable. Furthermore, in pare 7 of her



C.R.P.No.3883 of 2023

counter, she has submitted that on 22.09.2022, the defendant vacated the premises and handed over the key to the Revision Petitioner. Thereafter, the Revision Petitioner is using the same for her personal occupation. So, as on date, she is not in occupation of the property. On hearing both side submissions, the trial judge allowed the said application by directing the defendant to deposit an amount of Rs.2,88,000/- towards damages in fixed deposit in the name of “The Registrar, City Civil Court, Chennai”, thereby the said order was complied and accordingly, the decree was set aside. Challenging the said findings, the plaintiff preferred this Civil Revision Petition.

4. The learned counsel for Revision Petitioner would submit that the interlocutory application filed under Order IX Rule 13 is not applicable to the present case, which was not properly appreciated by the trial judge. Hence, he prayed to set aside the findings of the trial judge.

5. On seeing the entire facts, it reveals that the Revision Petitioner/Plaintiff filed a suit seeking to vacate and hand over vacant possession against the defendant. After passing the decree, as pointed out by the Revision Petitioner, the defendant vacated the premises and handed over the key. Furthermore, she had also deposited the damages as per the



C.R.P.No.3883 of 2023

conditional order passed by the trial court in court deposit, but the Revision Petitioner has not stated the said defence before the trial court that the petition as such is not maintainable. Therefore, considering the fact that the defendant already vacated the premises and without prejudice to the objections raised by the Revision Petitioner, the trial judge is directed to record the same by giving opportunity to the defendant, otherwise, it will lead to multiplicity of proceedings. Accordingly, this Civil Revision Petition is ordered. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

19.10.2023

Index : Yes/No
Speaking Order : Yes/No
rpp

To

II Asst. Judge,
City Civil Court, Chennai.



WEB COPY



C.R.P.No.3883 of 2023

T.V.THAMILSELVI, J.

rpp

C.R.P.No.3883 of 2023

19.10.2023