



C.R.P.(MD).No.323 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 09.02.2023

DELIVERED ON: 13 .02.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).No.323 of 2023

and

CMP(MD).No.1537 of 2023

K.Jeyakumar

....Petitioner

Vs

L.Arunachalam

...Respondent

PRAYER: Civil Revision Case is filed under Section 115 of C.P.C, to allow this civil revision petition setting aside the order dated 11.11.2022 made in E.A.No.160 of 2022 in E.P.No.123 of 2018 on the file of the Additional District Munsif Court, Madurai.

For Petitioner : Mr.R.G.Shankarganesh

ORDER

This civil revision petition has been filed challenging an order under which the request of the judgment debtor to grant stay of the



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execution proceedings as contemplated under Order 21 Rule 26 C.P.C was rejected.

2.The tenant/petitioner has suffered an order of eviction in RCOP.No.23 of 2017. The tenant suffered an order of eviction due to default in payment of the amount as per order under Section 11(4) of the Rent Control Act. A consequential order of eviction was passed in RCOP.No.23 of 2017. According to the tenant, he has filed an appeal before the Appellate Authority with delay and it is yet to be numbered.

3.Based upon the eviction order, the landlord had filed E.P.No. 123 of 2018 and delivery was ordered. However, when an attempt was made to take delivery, it was found that the petition premises was under lock and key. Therefore, an application was filed by the Ameen to take police protection and for break open.

4.The tenant has filed E.A.No.160 of 2022 seeking stay of the execution proceedings as contemplated under Order 21 Rule 26 of C.P.C on the ground that the rent control appeal is pending at the condone delay stage. The tenant has further contended that he had filed a suit for specific



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performance in O.S.No.124 of 2012 before the Additional District Court, Madurai for the relief of specific performance. Since the tenant has become an agreement holder, there is no landlord and tenant relationship. On the said ground, the tenant has sought for stay of the execution proceedings. However, the landlord had contended that all the attempts made by the tenant to get stay of the execution proceedings have already been unsuccessful and the present application should be dismissed. The Rent Controller, has arrived at a finding that Order 21 Rule 26 C.P.C is not applicable to the present proceedings and proceeded to dismiss the said application. Challenging the same, the tenant has filed the present Civil Revision Petition.

5.The petitioner/tenant had contended that the landlord having obtained the break open and police protection order, the eviction is imminent. The Rent Controller ought to have considered the fact that the appeal has already been filed and the same is pending as against the order of eviction. The Rent Controller should also consider the fact that the tenant is an agreement holder and the suit for specific performance is pending. Unless the execution proceedings are stayed, he will not be in a position to exercise his rights in the specific performance suit.



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6.I have considered the submissions made by the learned counsel appearing for the petitioner.

7.Admittedly, the petitioner has suffered an order of eviction in the rent control proceedings. There is no stay by the Appellate or Revisional Forum. The petitioner cites the pendency of the rent control appeal at the condone delay stage. The rent control appeal is said to be in the condone delay stage for more than two years and the tenant has not taken any steps either to get the delay condoned or number the appeal.

8.It is settled position of law that an agreement holder who is the tenant of the property should continue to pay the rent, unless there is a specific clause in the sale agreement that the tenant need not pay the rent from the date of sale agreement. Hence, the contention of the learned counsel for the petitioner that the jural relationship of the landlord and tenant had got terminated due to the sale agreement is not legally sustainable.



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9.Considering the fact that the order of delivery was passed on 22.04.2022 and for the past 9 months, the landlord is not able to get delivery of the property, this Court is of the view that the question of granting stay of the execution proceedings does not arise. When the petitioner is not able to number the rent control appeal and get an order of stay, the question of invoking jurisdiction of this Court under Section 115 of C.P.C. to stay the execution proceedings is only an attempt to protract the execution proceedings.

10.In view of the above said facts, I do not find any merit in the Civil Revision Petition. This Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

13.02.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
msa



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To

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- 1.The Additional District Munsif
Madurai
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

msa

Pre-delivery order made in
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and
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