



C.M.A.(MD).No.370 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.04.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD).No.370 of 2023

K.S.Vadivukkarasi

... Appellant

Vs.

1.R.M.Krishnan Chettiyar
2.M.Meyyammal Achi
3.S.Soundararajan
4.S.Chandrasekaran
5.Vishnu Enterprises,
represented by its Partner,
No.B-6/3, 1st Cross,
Sastri Road,
Trichy 17.
(Non existing company)

... Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Order 43 Rule 1(a) of C.P.C., against the fair and decreetal order dated 11.11.2022 passed by the I Additional District Court, Trichy in E.A.No.1 of 2021 in E.P.No.156 of 2017 in R.C.O.P.No.111 of 1994.

For Appellant : Mr.T.Lenin Kumar

For Respondents : No appearance



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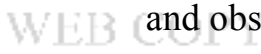
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The Civil Miscellaneous Appeal has been filed against the order of the Execution Court, rejecting the petition filed under Order 21 Rule 97 of the Civil Procedure Code.

2. The brief facts leading to the filing of this appeal are as follows:

The respondents 1 and 2 / landlords have initiated proceedings under Tamil Nadu Buildings Lease and Rent Control Act, for eviction of respondents 3 to 5 from the premises in R.C.O.P.No.111 of 1994, on the ground of wilful default. The said application has been allowed by the Rent Controller. Challenging the same, the respondents 3 to 5 have filed an appeal in R.C.A.No. 52 of 2017 before the Principal Subordinate Judge, Tiruchirapalli. The said appeal was dismissed. Against which, a Revision Petition has been filed before this Court. After dismissal of the revision petition, an Execution Petition has been filed to execute the order passed in R.C.O.P.No.111 of 2014, dated 20.04.2017 and when the stay is ordered, the present application has been filed by the appellant claiming that she was inducted as a tenant by the landlords in the year 2012. According to her, she was inducted as a tenant directly by the landlords in the year 2012, on monthly rent of Rs.1,000/-. Thereafter, she continued to pay the rent from 2012 to 2021 by way of money order. Therefore,



3. The trial Court, after giving an opportunity to the parties, tried the said petition as a suit and evidence also let in and on behalf of the appellant, she was examined as P.W.1 and Exs.P1 to P7 were marked. The trial Court, after analysing the entire evidence, has found that the appellant has not established the stand that she was inducted as a tenant by the landlords and rejected the application filed by the appellant. Challenging the same, the present appeal came to be filed.

4. The learned counsel appearing for the appellant would contend that she was running a Xerox shop in the name of Vishnu Debit Recoveries and Laser Printers in the petition mentioned property. Besides, the money orders were sent in the name of Vishnu Debit Recoveries and Vishnu Laser Printers from the year 2012 onwards and the same was also received by the respondents/landlords. This fact has not been considered by the trial Court.

5. On perusal of the entire records, particularly the judgment of the trial Court, this Court is of the view that the application is filed only to obstruct the



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delivery. Admittedly, R.C.O.P.No.111 of 1994 has been filed against the original tenant / the respondents 3 to 5 in the year 1994 and the revision filed against the concurrent finding of the Rent Controller and the appellate Court is dismissed by this Court, dated 15.06.2021. Therefore, the contention of the appellant is that she was inducted as a tenant on monthly rent of Rs.1,000/- and she was carrying on business in the same premises from the year 2012, which is highly improbable. Even assuming that she was inducted as a tenant in the petition mentioned premises, sending the rents from 2012 to 2021 by way of money order is against the normal human conduct. The trial Court has gone through all the money orders, which has been sent in the name of Vishnu Debit Recoveries and Laser Printers. It is relevant to note that the original tenant is also running the affairs in the name of Vishnu Debit Recoveries and Laser Printers. Therefore, it could be easily presumed that the money orders have been sent only in the name of Vishnu Debit Recoveries and Laser Printers, particularly when the dispute is already pending before the Court. Normally, the rent will be sent by way of money order only when the landlord refused to receive the same directly. Admittedly, the eviction proceedings have been initiated for the wilful default in the year 1992. The appellant, now, taking note of the money orders has tried to set out an independent right in the said petition mentioned properties.



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6. In such a view of the matter, this Court is of the view that the entire judgment of the trial Court is well considered and rightly rejected the obstruction petition and the claim of the petitioner that she is inducted as a tenant, when the erstwhile tenants are already in occupation, which is highly improbable and as such, I do not find any merit in this appeal.

7. In the result, the Civil Miscellaneous Appeal is dismissed. No costs.

12.04.2023

akv

To

The I Additional District Court,
Trichy.



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