



CRP No.245 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRP No.245 of 2024 and

CMP No.1144 of 2024

M/s Sonali,
rep. by its Partner Mr.Amit K.Saiya and
Mrs.Sheela K.Saiya, New No.58/2, Old No.94/2,
Theagaraya Road, Pondy Bazar,
T.Nagar, Chennai 600 017.

... Petitioner

Vs.

C.Balaji
...Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure to set aside the order passed by the learned XI Judge, Court of Small Causes, Chennai in E.P.No.391/2023 in RCOP No.1930/2010, dated 04.01.2024 with respect to the closing of the chance of the petitioner to consider its submissions in E.P.No.391/2023 and to direct the learned XI Judge, Court of Small Causes, Chennai to consider the counter and submissions of the petitioner in E.P.No.391/2023 and thereafter pass orders in E.P.No.391/2023.

For Petitioner : Mr.S.Parthasarathy, Senior Counsel
for Ms.Vinithra Srinivasan

For Respondent/ : Mr.V.Kuberan
Caveator for M/s Rank Associates



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ORDER

This Civil Revision Petition has been filed to set aside the order passed by the learned XI Judge, Court of Small Causes, Chennai in E.P.No.391/2023 in RCOP No.1930/2010, dated 04.01.2024.

2. The brief facts leading to the filing of Civil Revision petition is as follows:

The petitioner herein is the respondent/tenant in RCOP 95/2008 and the respondent herein/landlord has filed the above petition for eviction and it was allowed, by the learned XII Judge, Court of Small Causes, Chennai, vide order dated 7.11.2008. As against the above order, the petitioner has filed an appeal in RCA No.754/2008, which was also ended against her, vide order dated 12.10.2009 passed by the learned VIII Judge, Court of Small Causes, Chennai. The petitioner herein has filed Civil Revision Petition in CRP No.3776/2009 before this court, challenging the order passed in the above RCA No.754/2008 and it was allowed, vide order dated 18.08.2010, by holding that the RCOP No.95/2008 filed by the landlord is dismissed as



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premature and otiose one. However, the respondent herein was not precluded to file a fresh petition, raising all factual and legal pleas against the petitioner herein/tenant seeking appropriate remedy thereto before the competent forum in the manner known to law and in accordance with law. Again, the respondent herein had filed C.A.Nos.2819 and 2820/2016 before the Hon'ble Supreme Court, in which, the judgment and decree of the first court, affirmed by the Appellate forum stand restored, vide order dated 16.02.2023.

2.1. In pursuant to the order passed by the Hon'ble Supreme Court, the respondent herein had filed E.P.No.No.391/2023, to execute the order passed in RCOP No.95/2008. in which, the petitioner herein had filed counter affidavit. Further, in the execution petition, the petitioner herein had filed an application in SR No.20332/2023 under Section 47 of the CPC, which was later numbered as E.A.No.2/2023, as per the direction of this Court in CRP No.1857/2023, dated 03.06.2023. In the above CRP.1857/2023, it was specifically ordered as



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" .. Therefore, the executing Court is directed to reopen the main EP and give opportunity to the judgement debtor to file their objections, if any. after disposal of the application filed under Section 47 of CPC, after passing orders thereon, executing Court shall hear the main EP. No orders shall be passed in the main execution petition until the disposal of the application filed under Section 47 of CPC."

In the E.A.2/2023, it was prayed by the petitioner to dismiss the E.P.No.391/2023, as the eviction order obtained by the respondent cannot be enforced, as he is not the true owner of the demised property. For the above application, counter, rejoinder, counter to rejoinder were filed by both the parties. Subsequently, the Execution Court has dismissed the E.A.2/2023 on 04.01.2024 and also on the same day, ordered in the execution petition for delivery by 31.01.2024. Challenging the above order, this civil revision petition has been filed.

3. The learned counsel for the petitioner submitted that, the learned Judge has not complied with the order passed by this Court in CRP No.1857/2023, dated 08.06.2023, because, without hearing the petitioner in



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the main E.P and without considering the counter affidavit filed by her, has directly ordered delivery of the property and hence, the order passed by the Execution Court is against the principles of natural justice.

4. The learned counsel for the respondent submitted that the case is pending from the year 2008. He further submitted that the Hon'ble Supreme Court, vide order dated, 16.02.2023 in Civil Appeal Nos.2819, 2820/2016, has restored the order passed the first court (Eviction order passed in RCOP No.95/2008), affirmed by the Appellate forum (Eviction order confirmed in RCA No.754/2008). Since the eviction order was confirmed, the respondent herein has filed the execution petition, in which the petitioner herein has filed E.A.No.2/2023, under Section 47 of CPC. The learned Judge, after hearing both sides and by giving sufficient opportunity, has dismissed the E.A.No.2/2023 and also ordered for delivery in the main execution petition. Therefore, there is no illegality in the order passed by the Execution Court and as such, the civil revision petition is liable to be dismissed.



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5. Heard the learned counsel for the petitioners and I have perused the materials on record.

6. The petitioner herein is the tenant and the respondent herein is the owner of the property. The material facts on record is as follows.

i) The eviction petition filed by the respondent herein in RCOP No.95/2008 was allowed on 07.11.2008; and the Appeal against the eviction order, filed by the petitioner herein in RCA No.754/2008 was dismissed on 12.10.2009.

ii) The CRP No.3776/2009, filed by the petitioner against the above RCA No.754/2008 and RCOP No.95/2008 were allowed by this Court on 18.08.2010.

iii) Against the order in CRP No.3776/2009, the respondent herein had filed appeals before the Hon'ble Supreme Court in Civil Appeal Nos.2819, 2820/2016 and the same were allowed by restoring the eviction order passed in RCOP No.95/2008, affirmed in RCA No.754/2008, vide order dated 16.02.2023.



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iv) Execution petition in E.P.No.391/2023 was filed by the respondent to execute the eviction order.

v) E.A.No.2/2023 (which was numbered as per the order of this Court in CRP No.1857/2023, dated 3.6.2023) was filed under Section 47 of CPC to dismiss the E.P.No.391/2023.

vi) E.A.No.2/2023 dismissed on 04.01.2024 and also on the same day, as per the order of the Hon'ble Supreme Court in Civil Appeal Nos.2819,2820/2016, dated 16.02.2023, delivery was ordered.

7. The main contention of the petitioner is that, since the respondent herein is not the true owner of the property, the order passed in RCOP No.95/2008 cannot be enforced and hence, to dismiss the Execution petition, she had filed the above E.A.No.2/2023 under Section 47 of CPC. The above E.A. was heard by the learned judge, after filing counter, re-joinder to counter and after making discussion and considering all the aspects, the learned Judge has dismissed the petition. The observation made for dismissal of E.A No.2/2023 is extracted hereunder.



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" In the case law in **India Umbrella Manufacturing and others Vs. Bhagabander Asaiwalla Dead by LRs reported in 2004 1 CTC 353 S.C.**, the Hon'ble Supreme Court categorically held that one co-owner can file eviction petition to evict a tenant in respect of property generally owned by co-owners. In the case Law in **Mohinder Prasad Jain Vs. Manoharlal Jain reported in 2006 3 LW 199, the Hon'ble Supreme Court** held that a co-owner is entitled to maintain an application for eviction, that he need not show that he had taken the consent of other co-owner and that, in the event a co-owner objects to the same, it may be a relevant fact. But the co-owner or co-owners of the petition premises did not raise any objection before the rent court. Hence, the point put forth with regard to the rights of the respondent in the premises is not even a relevant fact for consideration.

5. While this being the legal position, one cannot state that the respondent defrauded the Court to obtain the decree as his entitlement to obtain the decree stands good. Hence, the arguments of the counsel for the petitioner cannot be taken into consideration. The exhibits P1 to P44 are irrelevant for consideration, as they have only been filed to establish this point. Moreover, the Hon'ble Supreme Court also admittedly dealt with this point and restored the order of eviction. In the case law in **M.Maniannan Vs. B.Chandrika , reported in (2014) 4 CTC 836**, the **Honourable Madras High Court** slapped costs of Rs.25,000/- on the tenant, who invoked Section 47 of CPC stating that the High Court erred in confirming the order passed by the Lower Courts. By way of this petition, the petitioner is also indirectly or directly trying to point fingers as against the order of the Hon'ble Supreme Court. Entertaining this plea would result in grave injustice.



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Hence, considering the above discussion, this Court is of the firm opinion that the present petition does not hold any merit and that it deserve to be dismissed. No costs.

E.A.SR.653: Records perused. The petitioner admittedly waived submission of oral evidence before the Honorable Madras High Court. According to the petitioner, the present petition has been filed to examine the engineer, who prepared the line sketch, as the other side raised objection that the line sketch cannot looked into or marked without the witness being examined. This Court had already dismissed EA.SR No.43398 of 2023 in EA.2/2023 filed by the petitioner to lead evidence. Documents were only permitted to be marked by the Hon'ble Madras High Court in its order in CRP No.4128/2023 also. Hence, the objections of the decree holder's counsel is rejected.

EP: Judgment debtor counsel present. No representation for decree holder. EA SR.653/2024 rejected. E.A.2/2023 dismissed. On perusal of records, it is seen that the stage to file counter was already closed on 03.06.2023. In an execution petition, there is no impediment to order delivery, when there is no stay pending, as this Court cannot go beyond the decree. As the stage to file counter was also closed, as there is no stay pending as SLP decided already, delivery ordered hereby. For delivery 31.01.2024. Batta in 3 days. C/o 31.01.2024.

8. Further, in the main E.P. also, the petitioner herein has filed counter affidavit. The contention of the petitioner is that, without considering the counter filed by the petitioner in E.P., and without hearing the petitioner, the learned judge, has observed that " the stage to counter is



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closed" and has directly ordered eviction in the main execution petition. But, a perusal of the counter affidavit filed in E.P. shows that, the petitioner herein had reiterated her contentions as raised in E.A.No.2/2023. Further, the reasons for the prayer in E.A.No.2/2023 and the reasons in the counter affidavit for dismissal of E.P.No.391/2023 are one and the same, viz., " the respondent herein is not the true owner of the property and hence, the order passed in the RCOP No.95/2008, cannot be enforced". All the aspects raised by the petitioner in E.A.No.2/2023 was considered and after hearing both sides, the learned Judge has rightly dismissed the above application. Further, it is to be noted that the Eviction order passed in RCOP No.95/2008, confirmed in RCA No.754/2008, was already restored by the Hon'ble Supreme Court, in Civil Appeal Nos.2819, 2820/2016, vide order dated 16.02.2023. Considering all the above, the learned judge, after dismissing the E.A.No.2/2023, has rightly ordered for delivery in the main execution petition and I find no reason to interfere over the same. As such, this court is of the view that the grounds raised by the petitioner in the civil revision petition is liable to be dismissed, as it has no merits.



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9. In fine, this Civil Revision Petition is dismissed and the impugned order passed by the Trial Court is confirmed. Consequently, connected miscellaneous petition is closed. No costs.

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Index: Yes/No
Internet: Yes/No
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To

The XI Judge, Court of Small Causes,
Chennai.



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V.SIVAGNANAM, J.,

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