



Crl.O.P.No.17090 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2024

CORAM:

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

Crl.O.P.No.17090 of 2022

and

Crl.M.P.No.10326 of 2022

Priya Krishna Murthy

... Petitioner

Vs.

Manikandan

.. Respondent

PRAYER : Criminal Original Petition filed under Sec.482 of Criminal Procedure Code, to quash the proceedings in E.A.No.3 of 2020 in E.P.No.317 of 2017 pending on the file of XI Small Causes Court at Chennai.

For Petitioner : Mr.C.Umashankar

For Respondent : No appearance



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ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in E.A.No.3 of 2020 in E.P.No. 317 of 2017 on the file of XI Small Causes Court, Chennai.

2. The petitioner herein is the decree holder in E.P.No. 317 of 2017 and the respondent in E.A.No.3 of 2020. The respondent herein is the Judgment debtor, against whom, the petitioner obtained an order of delivery by executing the order passed by the Rent Controller in RCOP.No.405 of 2010.

3. Brief facts of the case is as follows :-

Originally, the petitioner, who is a landlord had filed a petition against the respondent/tenant for eviction under Sec.10 (2)(i), 10 3(a-i) and 10(2)(v) of the Tamil Nadu Building (Lease and Rent Control) Act on the ground of willful default, nuisance and owner's occupation before the Small Causes Court, Chennai. The respondent though appeared through his counsel, subsequently he was called absent. Hence, he remained exparte. Thereafter, the Rent Controller passed an order of eviction on 01.08.2011. To execute the said order, the petitioner/landlord filed a petition in E.P.



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No.14 of 2012, wherein the respondent/tenant was served on with notice and subsequently, he filed his counter and also filed a set aside petition before the Rent Controller and the same was allowed. Accordingly, the Execution Petition in E.P.No.14 of 2012 was closed. Thereafter, he again remained exparte and hence, exparte order was passed on 29.11.2016. To execute the said order, the landlord filed an execution petition in E.P.No.317 of 2017, in which notice was also served on the respondent/judgment debtor/tenant and in that petition, he appeared, but not filed any counter. Thereafter, the delivery was ordered by the Executing Court on 13.11.2018, but the same was recalled suo motu on 15.11.2018. In the meanwhile, the respondent/tenant also filed a set aside petition and the same is pending for enquiry. At this juncture, the respondent/tenant filed a complaint under Sec.340 of Cr.P.C. pleaded to conduct a preliminary enquiry as mandated under Sec.340 of Cr.P.C. against three persons named as 3 accused viz., (1) Selvam, Advocate for decree holder, (2) Amar D.Pandia, Advocate for the Decree holder and third one viz., Priya Krishna Murthy, who is a landlord and lodge a complaint before the learned Judicial Magistrate for prosecution of the accused for the offences under Sec.193, 196, 199, 200 and 209 I.P.C.



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Inspite of objection, the Magistrate taken the case on file and assigned a number as E.A.No. 3 of 2020. Challenging the said proceedings, the petitioner/decreed holder alone approached this court praying to quash the proceedings as if the cognizance made out by the Rent Controller is totally erroneous.

4. Notice was served on the respondent and his name was also printed in the cause list. The respondent is an advocate by profession and at the earlier occasion, he had stated that copies were not furnished to him and again this court directed the petitioner to serve copies. Accordingly, the same was complied. Today, when the matter taken up for hearing, none appeared on the side of the respondent even at afternoon session, however, from known sources reveals that he was standing outside court hall and keep on watching proceedings.

5. The learned counsel for petitioner would submit that the Rent Controller ought not to have entertained the petition in E.A.No.3 of 2020, since the Rent Control Authority is the Tribunal and not the court as defined by law. He also argues that before entertaining the petition under Sec.340



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Cr.P.C., the Rent Controller ought to have verified the documents, which is available in the court, but without proper verification, the application was taken on file as such is illegal and liable to be set aside. The Rent Controller also failed to take into consideration of the fact that the respondent/tenant is a chronic defaulter in payment of rent, which comes around more than Rs.25 lakhs and when he committed default in payment of rent, the respondent/tenant has no locus standi to proceed with the case before the Rent Controller. But inspite of objection raised by the petitioner, the petition was taken on file, as such is unjust and liable to be set aside. To support his contentions, he relied the ratio laid down in the authority reported in ***CDJ 2011 SC 1225*** in the case of ***Iqbal Singh Narang and others vs. Veeran Narang***, wherein the Apex Court held in para 14 as follows :-

“14. The aforesaid decisions of this court establish that though the Rent Controller discharges quasi-judicial functions, he is not a court, as understood in the conventional sense and he cannot, therefore, make a complaint under Sec.340 Cr.P.C. Consequently, as held by the High Court, a complaint could be



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made by a private party in the proceedings.”

By relying the aforesaid authority, the learned counsel prayed to quash the proceedings initiated against the petitioner.

6. Considering the submissions on the side of petitioner and on perusal of records, it reveals that the respondent/judgment debtor filed a complaint under Sec.340 Cr.P.C. against the petitioner/deGREE holder as if the learned counsel appearing for petitioner had made a false endorsement in the execution application, but the Rent Controller taken case on file. For that, he produced the verbatim of endorsement made on the back side of execution petition as follows :-

“24/7/17

Order XXI Rule 22

1) The E.P. has been filed within 2 years from the date of decree.

2) The E.P. is filed against JD/Respondent not against the LR's.

Cont.

24/7/17

3) The E.P. is not filed against assignee or receiver in insolvency where party to the decree has been adjudged against



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him.

4) *There is no stay order passed against the decree passed by this Hon'ble Court till date.*

sd/-24.7.17

Counsel for decree holder”

He would also content that by concealing 3rd clause qua “ex parte” and by dividing the 1st clause of Order 21 Rule 22 published in the notice board into 2 parts, the accused deceived this court into believing that the endorsement was made as per the Notice Board (viz., O21R22). By such deceptive fraud, the accused managed to obtain a judicial order waiving the notice to the complainant. Order XXI Rule 22 is defined as follows :-

“Order XXI Rule 22. Notice to show cause against execution in certain cases :-

(1) Where an application for execution is made ----

(a) More than two years after the date of decree, or

(b) against the legal representative of a party to the decree [or where an application is made for execution of a decree filed under the provisions of Sec.44-A) (or)



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[(c) against the assignee or receiver in insolvency, where the party to the decree has been adjudged to be an insolvent] the court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him.

Provided that no such notice shall be necessary in consequence of more than two years having elapsed between the date of the decree and the application for execution if the application is made within two years from the date of the last order against the party against whom is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment debtor; if upon a previous application for execution against the same person the Court has ordered execution to issue against him.

(2) Nothing in the foregoing sub-rule shall be deemed to preclude the court from issuing any process in execution of a



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decree without issuing the notice, thereby prescribed if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice.....”

Therefore, if the execution petition is filed within two years from the date of the decree, the executing court is empowered to take the case on file by dispensing the notice. For that, the petitioner/decreed holder is bound to make endorsement that whether he filed the execution petition within 2 years or not. For that purpose only, the petitioner/decreed holder made an endorsement in the execution application. Accordingly, he prayed to quash the proceedings initiated against the petitioner.

7. Records perused. On seeing entire facts, it reveals the fact that an order of eviction was passed on 01.08.2011 and thereafter, though he appeared through a counsel, subsequently he remained absent on 29.11.2016 and within 8 months, the execution application was filed before two years from the date of decree. Therefore, he made an endorsement as required under Order 21 Rule 22 of C.P.C. Accordingly, the executing court taken the case on file and there is no false endorsement made by the



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petitioner/decreed holder as alleged by the respondent/tenant. Therefore, there is no iota of truth in the application filed by the respondent/tenant/judgment debtor, but the rent controller without application of his mind has taken the complaint on file as such is totally erroneous one and the same is liable to be set aside. Furthermore, as per the proposition laid down in the above referred authority reported in **CDJ 2011 SC 1225** in the case of ***Iqba Singh Narang and others vs. Veeran Narang***, Rent Controller has no jurisdiction to take the case on file. Therefore, the entire proceedings followed by the rent controller as well as application filed by the respondent/tenant is vexatious one and the same is liable to be quashed. Accordingly, this Criminal Original Petition is allowed and the proceedings initiated in E.A.No.3 of 2020 in E.P.No.317 of 2017 on the file of XI Small Causes Court at Chennai is quashed.

8. Moreover, on seeing the entire facts, it reveals that the tenant is an advocate by profession and he used to do all sort of annoyance by writing number of vexatious application, because of that, the trial judges are embarrassed and forced to take the petition on file. But the Presiding Officer of the courts are empowered to act without fear and favour. Furthermore,



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from 2011 onwards, the respondent dragged the proceedings by filing set aside petitions though he was aware of the entire proceedings. Therefore, the trial judge is directed to proceed with the E.P. as per manner known to law and dispose the same within a period of three months from the date of the receipt of copy of this order. Consequently, the connected Criminal Miscellaneous Petition is closed.

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Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
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T.V.THAMILSELVI, J.

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