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C.R.P.(PD).No.3191 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.3191 of 2024
and C.M.P.No.17062 of 2024

1. Sarfaraz Ahmed
2. Khalid Seraj

.. Petitioners

Versus

Zeenat Banu

.. Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to call for the record and strike of the E.P.No.55 of 2024 in R.L.T.O.P.No.130 of 2020 on the file of the learned Judge, XIII Small Causes Court, Chennai.

For Petitioner : Mr.A.Al Arfeen Ahamed

ORDER

This Civil Revision Petition arises at the instance of the judgment debtors. There is no dispute about the relationship between the civil revision petitioners/tenants and the respondent/landlord.



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2. The respondent, being the landlord, initiated proceedings under Sections 21(2)(a), 21(2)(b), 21(2)(e) and 21(2)(g) of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017. After a notice to the civil revision petitioners/tenants, the Trial Court passed an order of eviction only under Section 21(2)(a). It also directed the civil revision petitioners/tenants to hand over possession within two months from the date of the order. In order to execute the decree, the respondent/landlord preferred E.P.No.55 of 2024. Challenging the delivery order passed in the Execution Petition, the present Civil Revision Petition arises before this Court.

3. Heard Mr.A.Al Arfeen Ahamed, learned Counsel for the petitioners/tenants and Ms.R.Supraja, learned Counsel for Mr.Prahlad Bhat, learned Counsel for the respondent/landlord.

4. Mr.A.Al Arfeen Ahamed would submit that even before the R.L.T.O.P came to be filed, the civil revision petitioners/tenants had vacated the premises and handed over the possession of the property to the respondent/landlord. He would therefore state that the Execution Petition is



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not maintainable since the possession is not with the petitioners/tenants.

Apart from that, he would plead that the respondent/landlord had issued a notice through his lawyer on 22.05.2023 claiming not only the handing over of keys for the petition mentioned property, but, also for the payment of arrears of rent to a tune of Rs.12,93,675/- together with interest at the rate of 12% per annum. He would state that since possession has been handed over, the question of payment of Rs.12,93,675/- with or without interest does not arise. Hence, he pleads for the revision to be allowed and the Execution Petition to be dismissed.

5. Per *contra*, Ms.Supraja would plead that, the decree holder is putting the decree into execution to take delivery of the property and therefore, no exception can be taken to the course of action resorted to by her.

6. I have carefully considered the arguments on either side.

7. The plea raised by Mr.A.Al Arfeen Ahamed that possession has been handed over to the respondent/landlord as early as in December, 2020



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was pleaded in R.L.T.O.P.No.130 of 2020. In fact, a memo had been filed by the civil revision petitioners/tenants on 27.09.2022 pleading that the possession had been handed over. Despite of the same, in paragraph No.6 of the order in R.L.T.O.P.No.130 of 2020, dated 02.02.2023, the Court, on its original side, had specifically found that the tenant had not given any proof for the handing over of possession. This finding had attained finality, because no appeal was preferred as against the said order of eviction.

8. Here, I have to recollect the principle that *res judicata* not only applies between two separate proceedings, but, also between two stages of the same proceeding. The plea raised by Mr.A.Al Arfeen Ahamed has been specifically raised before the Court during the trial. It had been rejected. Therefore, the civil revision petitioners/judgment debtors cannot raise the very same plea before the executing Court and seek the executing Court to decide the said issue. The said plea is obviously barred by the principles of *res judicata* and therefore, it stands rejected.

9. Insofar as the plea of Mr.A.Al Arfeen Ahamed that the Counsel for the decree holder had made a demand for Rs.12,93,675/- together with



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interest is concerned, it is not the subject matter of the execution. In case a suit for recovery of the said amount is filed, it is always open to the civil revision petitioners to take a defence if it is open to them and get the suit dismissed on its own merits. Suffice it to say, for the purpose of disposal of this revision, the said plea is not germane at all.

10. In the light of the above discussion, I do not find any reason to interfere with the execution proceedings. This Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

09.08.2024

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
grs

To

The XIII Small Causes Court,
Chennai.



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V.LAKSHMINARAYANAN, J.

grs

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