



C.R.P.No.2642 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.2642 of 2024 and
C.M.P.No.13850 of 2024

Ganesan

... Petitioner

Vs.

1.Hashmath Jabeen
2.Farooq Ahmed
3.Faseeha Farhteen
4.Zaibunisa

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the order dated 05.04.2024 in E.A.No.9 of 2024 in E.A.No.5 of 2024 in E.P.No.27 of 2022 passed by the learned District Munsif cum Judicial Magistrate at Thirukazhukundram by allowing the revision petition.

For Petitioner : Mr.B.Sudhakar

For Respondents : Mr.S.A.Mahisha Krithiga



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ORDER

This civil revision petition has been filed to set aside the impugned order, dated 05.04.2024 passed in E.A.No.9 of 2024 in E.A.No.5 of 2024 in E.P.No.27 of 2022 in R.L.T.O.P.No.1 of 2019 by the learned District Munsif cum Judicial Magistrate, Thirukazhukundram.

2.The learned counsel for the petitioner/judgment debtor submitted that one Mohammed Mustafa was the land owner and the petitioner was a tenant under him. A lease agreement, dated 06.11.2014 in respect of suit property entered between the petitioner and Mohammed Mustafa for the lease amount of Rs.2,50,000/-. According to terms of lease agreement, at the time of termination of lease, the said amount to be returned to the petitioner. But on the contrary, the said Mohammed Mustafa made claim that lease was terminated, the petitioner is in possession of suit property on monthly rent and the entire lease amount is detected for monthly rent and filed the petition in R.L.T.O.P.No.1 of 2019 before the learned District Munsif cum Judicial Magistrate, Thirukazhukundram. The said Mohammed Mustafa by playing fraud, forged the signature of petitioner in acknowledgment of service of summon and made believe the Rent Court that



even after receipt of notice, the petitioner failed to appear and obtained exparte order, dated 13.03.2020 in R.L.T.O.P.No.1 of 2019. Using the exparte order, Mohammed Mustafa filed execution petition in E.P.No.27 of 2022. When E.P.No.27 of 2022 is pending, Mohammed Mustafa died. Thereafter, E.A.No.4 of 2023 filed by the legal heirs of Mohammed Mustafa, the respondents 1 to 3 herein. At this stage, another impleading petition filed by all the respondents herein for same cause of action in E.A.No.5 of 2024. Thus, the respondents for the same cause of action filed two impleading petitions in E.A.Nos.4 of 2023 and 5 of 2024 which is barred by *res judicata*. Later the respondents not pressed the petition in E.A.No.4 of 2023 without obtaining the leave of the Court to entertain second impleading petition in E.A.No.5 of 2024. Thereafter, the Lower Court passed exparte impleading order in E.A.No.5 of 2024 on 26.03.2024 without notice of hearing to the petitioner. Thereafter, the petitioner filed E.A.No.9 of 2024 to set aside the exparte order, dated 26.03.2024 in E.A.No.5 of 2024 and the same was dismissed on 05.04.2024. Challenging the same, the present civil revision petition filed.

3.The learned counsel for the respondents submitted that E.A.No.5 of



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2024 filed to implead the legal heirs of the original decree holder Mohammed Mustafa. On 01.11.2014, the petitioner approached the landlord Mohammed Mustafa seeking lease of schedule property, based on his request, a lease agreement between landlord and tenant *i.e.*, Mohammed Mustafa and petitioner entered on 06.11.2014 for the period from 06.11.2014 to 05.11.2017 for payment of Rs.2,50,000/-. Three months prior to completion of lease, on 05.08.2017 the landlord Mohammed Mustafa approached the petitioner to vacate schedule property within a month after the lease maturity period. The tenant/petitioner accepted the same and requested to accept Rs.10,000/- for carrying out repair of damage works in the last three years. On 05.11.2017, at the last day of lease period, Mohammed Mustafa approached the petitioner and reminded him to vacate the premises. Again the petitioner requested that he would vacate within a month of December 2017. In January, 2018, again the petitioner was reminded to vacate the premises. At that time, citing his child studying in the school, he dragged on. On 05.12.2017, the petitioner sent legal notice stating that Mohammed Mustafa is threatening the petitioner through Police and Goondas which is a false allegation. In the rent control proceedings,



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Mohammed Mustafa examined as PW1 and marked the lease agreement, legal notice, reply notice and copy of the postal acknowledgment as Exs.P1 to P4. Despite expiry of lease period the petitioner not vacated the premises, the Rent Control Court directed the petitioner to vacate and deliver the vacant possession on 13.03.2020. Thereafter, Execution Petition filed for executing the judgment and decree, dated 13.03.2020. During pendency of the execution petition, Mohammed Mustafa passed away. Thereafter, his legal heirs, the respondents herein stepped in by filing E.A.No.4 of 2023. Since mistakenly Zaibunisa, mother of Mohammed Mustafa not arrayed in E.A.No.4 of 2023, again another impleading petition filed in E.A.No.5 of 2024 arraying the said Zaibunisa and thereafter sought permission to withdraw I.A.No.4 of 2023 and the same was allowed. E.A.No.4 of 2023 was never adjudicated and no order on merits passed. Hence, filing of E.A.No.5 of 2024 is proper.

4.The learned counsel further submitted that in E.A.No.5 of 2024, the petitioner remained exparte and to set aside the same, the petitioner filed E.A.No.9 of 2024. The Lower Court dismissed E.A.No.9 of 2024 holding



that the petitioner's contention that there was compromise talk and he sought time for alternate rental premises, are without any supporting materials. The petitioner giving reason for delay that on 19.03.2024 he was suffering from viral fever due to which he could not attend and thereafter on 26.03.2024 without giving notice of hearing E.A.No.5 of 2024 filed, numbered and the petitioner was set exparte is not proper and the same are clearly recorded in adjudication. Thus, the contention of the petitioner questioning filing of E.A.No.5 of 2024 negatived. Hence, he prays for dismissal of the revision.

5.Considering the submissions and on perusal of the materials, it is seen that the impugned order, dated 05.04.2024 in E.No.9 of 2024 is a detailed one with all particulars. Admittedly, the petitioner is a tenant under Mohammed Mustafa who obtained order to vacate the petitioner in R.L.T.O.P.No.1 of 2019 on 13.03.2020 and thereafter Mohammed Mustafa filed E.P.No.27 of 2022. During the pendency of execution petition, Mohammed Mustafa passed away and the legal heirs of Mohammed Mustafa initially not included Mohammed Mustafa's mother, filed impleading petition in E.A.No.4 of 2024 and later on coming to know about



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the mistake well, before adjudication or any order passed, they filed another impleading petition in E.A.No.5 of 2024 and thereafter withdrew E.A.No.4 of 2023, which is proper.

6.In this case, filing of E.A.No.5 of 2024 would not hit by *res judicata* as claimed by the petitioner. E.A.No.5 of 2024 listed on 19.03.2024 along with E.P.No.27 of 2022. Thereafter, in advance hearing petition in E.A.No.5 of 2024, notice served to the petitioner. The petitioner failed to appear for subsequent hearing, hence, on 26.03.2024 he was set *exparte*. Thus, in allowing E.A.No.5 of 2024, no prejudice is caused to the petitioner. It is to be noted that in E.A.No.5 of 2024 alone, petitioner is set *exparte*, but he is still contesting E.P.No.27 of 2022.

7.In view of the above, no prejudice is caused to the petitioner in allowing E.A.No.5 of 2024 and there is no necessity to interfere with the *exparte* order, dated 26.03.2024 in E.A.No.5 of 2024.

8.Hence, the impugned order, dated 05.04.2024 passed in E.A.No.9



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of 2024 in E.A.No.5 of 2024 in E.P.No.27 of 2022 in R.L.T.O.P.No.1 of 2019 by the learned District Munsif cum Judicial Magistrate, Thirukazhukundram is hereby confirmed. Accordingly, this civil revision petition stands dismissed. Consequently, connected civil miscellaneous petition is closed. No costs.

31.07.2024

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

Index: Yes/No

Internet: Yes

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To

The District Munsif cum Judicial Magistrate,
Thirukazhukundram.



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M.NIRMAL KUMAR, J.

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