



C.R.P.No.2237 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.2237 of 2024

and

C.M.P.No.11782 of 2024

P.M.Arivu

... Petitioner/Judgment Debtor

Vs

Bava Shara Shatriya Seva Samaj
Represented by its President
G.G.Giri Rao,
No.56, Alangayam Road,
Tirupattur Town and Taluk,
Tirupattur District.

... Respondent/Decree Holder

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 30.04.2024 passed in E.A.No.(un numbered) of 2024 in E.P.No.1 of 2024 in R.L.T.O.P.No.1 of 2021, on the file of the Additional District Munsif, Tirupattur.

For Petitioner : Mr.S.Subbiah Sr., Counsel for
M/s.Elizabeth Ravi

Page No: 1/10



C.R.P.No.2237 of 2024

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For Respondent : M/s.V.V.Sathya

ORDER

The petitioner filed this Civil Revision Petition challenging the order dated 30.04.2024 made in E.A.No.(un numbered) of 2024 in E.P.No.1 of 2024, in RLTOP.No.1 of 2021 on the file of the Additional District Munsif, Tirupattur .

2. The brief facts of this case is that the petitioner/judgment debtor is the tenant and the respondent/decreed holder is the landlord. The respondent/landlord let out their shop to petitioner's father. After the demise of his father, the shop was let out to petitioner, who is the tenant. From June 2014 to December 2020, the petitioner/tenant was default in payment of rent, hence the respondent/landlord filed RLTOP No.1 of 2021. The Rent Controller after hearing both parties, found that the petitioner/tenant defaulted in paying the rent from June 2014 to December 2020, directed the petitioner/tenant to vacate and hand over possession of the scheduled mentioned property to the respondent/decreed holder within a period of two months from the date

Page No: 2/10



C.R.P.No.2237 of 2024

WEB COPY

of receipt of copy of the order. Aggrieved against the same, the petitioner/tenant preferred an appeal before the Sub-Court, Tirupattur under a wrong impression that Sub-Court is the Appellate Authority along with condonation petition for a delay of 9 days in I.A.No.1 of 2023. Thereafter, the petitioner/tenant filed a memo before the Sub-Court stating that the appeal papers should be presented before the District Court and the District Court alone has jurisdiction to entertain the appeal and hence the Sub-Court returned the memo of grounds and thereafter, the appeal filed before the District Judge/Appellate Authority with condonation petition for a delay in filing the Appeal. In the said Application, notice ordered and the respondent present. The Appellate Authority found that the condonation petition yet to be condoned, hence, no stay could be granted against the order in RLTOP No.1 of 2021.

3.In the mean while, the respondent/landlord filed E.P.No.1 of 2024 and the petitioner/tenant also filed E.A.No.(un numbered) of 2024 under Order 21 Rule 26(i) CPC and Section 151 CPC to stay E.P.No.1

Page No: 3/10



C.R.P.No.2237 of 2024

of 2024. The said Application came to be dismissed on 30.04.2024.

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Against which the present Civil Revision Petition .

4. The learned counsel appearing for the petitioner/tenant submitted that by referring that the petition itself is not maintainable and dismissed the un-numbered E.A., is not proper. Further he submitted the petitioner filed un-numbered E.A., under Order 21, Rule 26 CPC instead of Order 41, Rule 5(1) and though the mistake pointed out and arguments advanced, the Trial Court failed to accept the contention.

5. Further, the learned counsel for the petitioner by referring to Section 36 & 37 of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, (hereinafter referred to as 'Act') submitted that as per the Act, the Rent Controller has got enormous powers as same as Civil Court, but such powers shall be guided by the principles of natural justice and the Rent Control

Page No: 4/10



C.R.P.No.2237 of 2024

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Tribunal can regulate their own procedure in execution of orders passed in the rent control matters. In this case, the petitioner is a tenant which is not disputed and filed an appeal, which is now pending before the District Court with condonation of delay of 9 days which are condoned in normal course, now respondent appeared. Only after condonation of delay is allowed, thereafter petitioner shall seek stay of the order before Rent control Appellate Authority. In view of the same, it is necessary for the petitioner to approach the Executing Court, file E.A., against the E.P.No.1 of 2024, filed by the respondent otherwise, the petitioner's right would get extinguished and he would suffer irreparable loss. Further, he submitted that this Court under Article 227 and under the principles of natural justice, and established *prima facie* on the facts of the case, may grant two months protection and also direct the District Court to consider the petitioner's petition and to dispose of the appeal within the stipulated period till then the Execution Petition can be kept in abeyance.

Page No: 5/10



C.R.P.No.2237 of 2024

WEB COPY

6. The learned counsel appearing for the respondent submitted that the property belongs to Pavasara Shatriya Seva Samaji and they let out the shop to one BST.Madhavan and after his demise, the petitioner had become a tenant and the tenancy was recognised on 01.02.2022. Tenancy for a period of two years with a monthly rent of Rs.500/- and an advance of Rs.50,000/-. The two years tenancy period was further extended for three years. The petitioner had failed to pay the rent amount from June 2014 to 31.12.2020 and there was a dispute with regard to 10% raise of the rental amount. The rental amount received from the tenant are used for religious activities and deprived of the rental amount constrained the respondent's religious activities and finding that the petitioner is a defaulter in payment of rent, rent controller proceedings filed. The Rent Control Tribunal by order 24.08.2023, ordered eviction of the petitioner and directed the petitioner to vacate and hand over the possession of the property within a period of two months. Against which, the petitioner preferred an appeal before the Sub Court, Tirupattur, which is a wrong forum. Thereafter, appeal

Page No: 6/10



C.R.P.No.2237 of 2024

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filed before the District Court along with condonation of delay petition in I.A.No.1 of 2023 is pending. In the mean while, Execution Petition filed and the petitioners filed un-numbered EA which is dismissed by the Executing Court.

7. The learned counsel appearing for the respondent submitted that the Trial Court, which passed the Execution Order, cannot stay its own order under Order 21, Rule 26 and further, if at all, the petitioner preferred an appeal within the statutory period and at that time, any stay of the order can be considered. In this case admittedly the petitioner filed the appeal with a delay of 9 days and now the petitioner quoting Order 41 Rule 25 of CPC can be considered only after the appellate Court considered the appeal. In support of his contention, the learned counsel for the respondent placed reliance on the judgment of this Court in the case of **G.Suresh Mohan vs. S.Lilly & Ors.**, reported in **2010-4-L.W.512**. It is submitted that the petitioner is a defaulter from the year 2014 to 2020. He further submitted that Sections 36 &

Page No: 7/10



C.R.P.No.2237 of 2024

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37 of the Act to apply in consonance with the CPC, when there is a provision and procedures, contemplated going beyond the procedure does not arise. He further submitted that the appeal itself can be disposed of within a period of two months.

8.Heard the learned counsels appearing on either side and perused the materials placed on record.

9.Admittedly, the relationship between the petitioner and the respondent as a tenant and landlord is not in dispute. The petitioner had suffered an eviction by the Rent Controller, the appeal is pending. Since, there is a delay of 9 days, condonation petition filed in I.A.No.1 of 2023, in which the learned counsel for the respondent already entered appearance. Now the learned counsel appearing for the petitioner submitted that he would complete the appeal within a period of two months.

Page No: 8/10



C.R.P.No.2237 of 2024

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10.Hence, it is appropriate that this Court directs E.P.No.1 of 2024, to be kept in abeyance for a period of two months, in the mean while, the petitioner can get appropriate orders from the Appellate Court.

11.With the above directions, the Civil Revision Petition is disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous petition is closed.

11.06.2024

pbn
Index : Yes/No
Speaking order : Yes/No
Neutral Citations : Yes/No

Note: Issue order copy on 28.06.2024

Page No: 9/10



C.R.P.No.2237 of 2024

M.NIRMAL KUMAR,J.

PBN

To

Additional District Munsif, Tirupattur.

C.R.P.No.2237 of 2024
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C.M.P.No.11782 of 2024

11.06.2024

Page No: 10/10