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C.R.P.[NPD].No.4276 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 11.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

C.R.P.[NPD].No.4276 of 2024

&

CMP.No.23805 of 2024

P.Helen Monica [deceased]

1. Ashok

2. Isabella

. . . Petitioners

Versus

1. Archbishop of Madras – Mylapore,
Most.Rev. Dr.George Antonysamy
Rep. by his duly appointed Power Agent,
Rev. Fr.S.Ignatius Thomas

2. Archdiocese of Madras
Rep. by its Chairman
Archbishop of Madras – Mylapore,
Most. Rev Dr.George Antonysamy,
Rep. by his duly appointed Power Agent
Rev. Fr. Ignatus Thomas
both are residing at Archbishop's House,
No.41, Santhome High Road, Chennai – 600 004.

. . . Respondents



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PRAYER : Petition filed under Article 227 of Constitution of India to set aside the Order passed by the learned IX Assistant City Civil Court at Chennai on 22.07.2024 in E.A.S.R.No.42757 of 2024 in E.P.No.4365 of 2021 in O.S.No.4056 of 2014.

For petitioner : Mr.P.T.Perumal

For Respondents : Mrs.Auxilia Peter

ORDER

Challenge has been made against the Order of dismissal of the application filed by the revision petitioner to dismiss the execution petition, the present Civil Revision Petition has been filed.

2. The suit in O.S.No.4056 of 2014 has been filed by the respondents for eviction of the revision petitioner. The said suit has been decreed as against the revision petitioner. Challenging the same, an appeal has been filed in A.S.No.179 of 2018 and the same has been dismissed on 13.08.2019 confirming the decree of eviction. The decree holder has filed an Execution Petition. At this stage, an application has been filed by the revision petitioner to dismiss the execution petition on the ground that since the execution petition has not been filed as per the



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Societies Registration Act and not represented by the person authorized under the

Registration of Societies Act, the Execution Petition is not maintainable. That apart, it is the contention of the revision petitioner that the Power of Attorney has not obtained prior permission before filing the application. Yet another contention of the revision petitioner is that the defects pointed out in the execution petition has not been set right. Therefore, it is his contention that the trial Court ought to have followed the procedure contemplated under Order XXI Rule 17 of Code of Civil Procedure. The above application has been opposed by the decree holder by filing a counter stating that the executing Court has found that the defects noted are only formal in nature and do not have any impact on the execution petition. Considering entire aspect, the Execution dismissed the application filed by the revision petition. Challenging the same, the present revision petition has been filed.

3. Mr.P.T.Perumal, learned counsel appearing for the petitioner pointed out that in the execution petition, the number of appeal has not been given and details of the previous execution petitions has also not been given, which are mandatory. Whereas, it is mentioned as if there is no appeal and no previous execution



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petitions. On the contrary, there are two execution petitions, which have not been disclosed. Similarly, the appeal number is also not provided, as if no appeal has been filed. That apart, as per Order 3 and Rule 16 and 17 of Civil Rules of Practice prior permission has not been obtained by the Power Agent before filing of the application. It is his further contention that the second petitioner is represented by the Power Agent and there cannot be second delegation as far as the society is concerned. Hence, submitted that this revision petition has to be allowed.

4. The learned counsel appearing for the respondents mainly contended that the defects pointed out by the petitioner are only formal in nature and it will not have any effect in the Execution Petition. The learned counsel further submitted that the execution petition is now pending for issuance of warrant and trial Court has gone into all these aspects and rightly dismissed the application and hence, submitted that the present application has been taken only to delay the execution proceedings.

5. I have perused entire materials. The main contention of the petitioner is



that in the execution petition, the previous execution petitions have not been disclosed. Similarly, appeal number has also not been disclosed in the execution proceedings. Merely because the previous execution petitions have not been disclosed and the appeal number has not been disclosed in the execution petition, the decree will not become inexecutable cannot be taken away. c Mere violation of procedures will not have any effect in deciding the substantive right of the parties. Merely because some mistakes have been crept in while filing the execution proceedings and non mentioning of previous execution proceedings and appeal number not mentioned in the execution proceedings will not take away the substantive rights of the parties, since procedures are hand maid of justice.

6. As far as non obtaining prior permission by the Power Agent before filing of the Execution Proceedings is concerned, the fact remains that the application under Order 3 Rule 2 has already been filed along with the Execution petition. However, the Court has not decided the issue first and granted permission for the Power Agent to conduct the Execution Proceedings. Whereas, the application is kept in the case bundle and it is a mistake purely committed by the Court, for which the substantive right of the parties cannot be taken away. In the execution



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proceedings, the application is very much available in the bundle and it is for the execution Court to grant necessary permission. In such view of the matter, this Court is of the view that the defects pointed out by the revision petitioner will not have any impact in the execution proceedings. Similarly, the contention that the first respondent cannot be represented by the second respondent as the Power Agent, even assuming that the subsequent delegation of power to the second respondent is not legally correct, the same will not affect the execution proceedings, since the first is properly represented. The revision petitioner, being a tenant, cannot take all the technical pleas only in order to delay the execution proceedings. Hence I do not find any merits to interfere with the Order of the Execution Court.

7. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Internet: Yes
Speaking/non speaking order

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