



WEB COPY



C.R.P. No. 3963 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2024

CORAM

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

C.R.P. No. 3963 of 2024
and
C.M.P. No. 21703 of 2024

G.Thiagarajan

... Petitioner / Petitioner /
Petitioner / Applicant

Vs.

G.Devaraj

... Respondent / Respondent /
Respondent / Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 29.08.2024 made in Petition in Sr. No. 32876 of 2024 in M.J.C. No. 5 of 2024 in D.A. No. 6 of 2023 on the file of Registrar, Small Causes Court, Chennai.

For Petitioner : Mr. P.M.Sivasubramanian
Assisted by Ms.N.K.Kanthimathi

ORDER

This civil revision petition arises against the order passed by the Registrar, Small Causes Court at Chennai in S.R. No. 32876 of 2024 in M.J.C. No. 5 of 2024 in D.A. No. 6 of 2023 dated 29.08.2024.



C.R.P. No. 3963 of 2024

2. There is no dispute in relationship between the parties. The civil revision petitioner is the landlord and the respondent is the tenant. The civil revision petitioner took out an application under Section 53 of the Presidency Small Cause Courts Act, 1882. He pleaded that the tenant is in arrears of rent from September 2022 to February 2023 amounting to Rs.1,14,000/- and hence sought for issuance of a distress warrant in terms of the said provision.

3. Notice was ordered in the said application and the respondent filed a counter accepting the relationship between the parties. However, he pleaded that the distress petition is not maintainable. He pleaded that he has presented O.S. No. 988 of 2023 as against the landlord seeking injunction and the landlord had initiated O.S. No. 3460 of 2023 on the file of the VII Assistant City Civil Court at Chennai seeking for his eviction. Though the Registrar, City Civil Court, Madras while dealing with an application under Section 53 is not required to record evidence as it is a summary proceeding, the learned Judge seems to have received exhibits on both sides. She has received Exs.P1 to P6 on the petitioner's side and Exs.R1 to R7 on the respondent's side. It is this receipt of records which has given the cause of action for this revision. The learned Judge, after receipt of the records, allowed the distress application in and by way of the order dated 24.01.2024.



C.R.P. No. 3963 of 2024

4. Mr. P.M.Sivasubramanian appearing for the civil revision petitioner

submits the amount of Rs. 1,14,000/- has also been paid by the tenant.

5. The cause for this revision is that the tenant had marked Exs. R3 and R5, which according to the landlord are fabricated and concocted records. Therefore, he took out an application to prosecute the tenant for having tendered false evidence before the Court. That petition was received as M.J.C. No. 5 of 2024. Thereafter, the landlord seems to have taken out an application under Order XVI Rule 5 of the CPC read with Section 94 of the BNSS, 2023 seeking for summons to be issued to the Public Information Officer cum Deputy Commissioner of Police, Koyambedu to produce the complaints dated 17.02.2023 and give evidence in that regard.

6. This application was dismissed. The learned Trial Judge, holding that she had allowed the distress application on 28.01.2024, seeking for oral evidence by witness in a case does not arise. Hence, this revision.

7. I heard Mr. P.M.Sivasubramanian, learned Senior Counsel appearing for Ms. Kanthimathi for the civil revision petitioner.



C.R.P. No. 3963 of 2024

8. The proceeding, under Section 53 of the Presidency Small Cause Courts Act, 1882, is a proceeding for distress. Such proceedings are initiated when any rents are due for more than a period of 12 months prior to the filing of the application under Section 53. The scope of application under Section 53 is to see the following:

- (i) Whether the person applying under Section 53 is the landlord,
- (ii) If the respondent is a tenant and
- (iii) Whether there are arrears of rent.

Beyond the scope of Section 53, the Registrar cannot be treated as a Court recording evidence. The entire proceeding has to be disposed of in a summary manner. In case the requirements of Section 53 are satisfied, the Registrar who attends to the proceedings, as the designated authority, under the Small Causes Court Act cannot go into any further aspects. In fact, if the Registrar also does not have the power to suspend or to discharge the warrant issue in terms of Section 53, that power is available only to a Judge of the Small Causes Court in terms of Section 60 of the said Act. When the main proceedings itself is a summary proceeding, I have my own doubts whether the procedure for under XVI Rule 5 can be invoked. Hence, I do not find any mistake with the order passed by the learned Registrar, Small Causes Court at Chennai on 29.08.2024. In fine, when the main proceeding itself is a summary in nature,



C.R.P. No. 3963 of 2024

the subsequent proceedings cannot be converted into a full blown trial.

WEB COPY

9. At this stage, Mr. P.M.Sivasubramanian would take me to the records in order to plead that there were no complaints as alleged by the tenant on 17.02.2023. He states that the complaint itself was lodged on 18.02.2023, the original of which he has been able to secure through the office of the Deputy Commissioner of Police cum Public Information Officer on 31.01.2024. A perusal of the said RTI reply would show that the complaint dated 17.02.2023 itself is a false and fabricated one. He points out that the tenant, taking advantage of the marking of the documents by the Registrar, has filed the very same documents before the City Civil Court in O.S. No. 3460 of 2023 as documents in support of the written statement.

10. The fact that the tenant has received the certified copy from the Small Causes Court, Madras in the distress proceedings and has filed them before the City Civil Court at Madras in the civil suit would not entitle the civil revision petitioner to convert a proceeding which is otherwise summary into a nature of trial. Suffice it to observe, in case the tenant relies upon the said documents during the course of trial in O.S. No. 3460 of 2023, it is always open to the landlord to initiate appropriate proceedings including those contemplated under Section 94 of the BNSS Act before the said Court. This is because the City Civil Court is dealing with the matter in detail as a Civil



C.R.P. No. 3963 of 2024

Court and it possesses the necessary jurisdiction to deal with the issue.

Obviously, the order passed in the Court of summary proceeding would not bind the City Civil Court, for the simple reason that in case such an attempt is made by the tenant, it would give a fresh cause of action for the landlord to initiate fresh proceedings.

11. I notice that the civil revision petitioner is a senior citizen and admittedly the landlord. He has been knocking on the Court for not only default in payment of rents but also for recovery of possession. The learned VII Assistant City Civil Court shall try O.S. No. 3460 of 2023 and O.S. No. 988 of 2023 as expeditiously as possible and dispose of the proceedings within a period of 9 months from the date of receipt of a copy of this order.

12. With the above observations, the civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

30.09.2024

Index : Yes / No
Speaking order : Yes / No
NCC : Yes / No
pal

To

1. The VII Assistant City Civil Court, Chennai.



C.R.P. No. 3963 of 2024

2. The Registrar Small Causes Court, Chennai.

WEB COPY



WEB COPY



C.R.P. No. 3963 of 2024

V.LAKSHMINARAYANAN, J.,

pal

C.R.P. No. 3963 of 2024

30.09.2024