



A.Nos.6004 & 6007 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.03.2024

PRONOUNCED ON : 09.09.2024

CORAM:

THE HON'BLE MR.JUSTICE A.A.NAKKIRAN

**A. Nos. 6004 & 6007 of 2023
in
E.P. No.69 of 2022**

ORDER

A. No.6004 of 2023:

This application has been filed praying to stay all further proceedings in the above E.P.No.69 of 2022 in C.S. No.478 of 2002 pending disposal of the above appeal.

A. No.6007 of 2023:

This application has been filed praying to set aside the order dated 20/10/2023 passed by the learned master in Application No. 4913



2.The learned counsel for the applicant submits the applicant which is an independent trust and a separate legal entity, have been inducted as a tenant. A huge sum of Rs.54,50,000/- have been given to the 1st respondent for leasing the suit premises and also the monthly rent of Rs.25,000/- is also being given to the 1st respondent. To the utter shock and surprise the 1st respondent has filed the above EP as against the 2nd respondent who is no more there in possession and attempted to throw away this applicant in the guise of execution of the decree.

3.It has been further submitted by the learned counsel for the applicant that having come to know the EP proceedings, the applicant has filed the Application No. 4913 of 2022 under Order XXI Rule 97 of CPC to protect its independent right of tenancy on the principal of promissory estoppel. However, the Learned Master by order dated 20.10.2023, dismissed the aforesaid application with exemplary cost of Rs.50,000/- holding that the applicant is not entitled to file the claim petition as the obstructor in lawful possession of the property before the execution of



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the decree passed in C.S.No.478 of 2002. When an application is filed in order XXI rule 97 of CPC, Learned Master ought not to have dismissed the application at the threshold without giving an opportunity to the applicant to prove their claim. Hence, the order of the Learned Master is erroneous and opposed to principles of law. Thus, he seeks the relief as prayed for.

4.The learned counsel for the 1st respondent submits that the Obstructor, while asserting that he is a tenant and paid a huge amount to the Decree Holder, has not come forth with any documentary evidence to prove the tenancy between the Decree Holder and the Obstructor except for the invoices. Even the said invoices were raised only on instructions of the Judgement Debtor. Neither the Judgement Debtor vacated the suit premises, nor the decree holder had inducted the obstructor as a tenant in the suit premises at any point of time. Till the date of filing of the Execution Petition the judgement debtor had requested the decree holder for further time to vacate the premises. As the Judgement Debtor refused to hand over possession of the suit premises, the present Execution



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Petition was filed. The Judgement Debtor set up the Obstructor and is delaying execution of the decree, thereby frustrating the decree holder from enjoying the fruits of the decree.

5.In support of his argument, the learned counsel for the 1st respondent has relied on the various Judgments in (i) *Rajasthan in Prem Singh & Others Versus Amari Devi & Others* reported in CDJ 2019 Raj HC 412, (ii) *Smt. Tayamma @ Thippamma & others -Vs- K. Ramappa & others in Regular First Appeal No.100321/2019 (Dec)* (iii) *Rahul S. Shah Versus Jinendra Kumar Gandhi & Others* reported in CDJ 2021 SC 304. Hence, he prays to dismiss the application and thus render justice.

6. Heard both sides and perused the materials available on record.

7. On a perusal of the records, it is seen that the applicant/obstructor has filed the present application as a tenant in the 1st



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respondent's premises. However, the applicant has not produced any documentary evidence as to when they had been inducted as a tenant. It is seen from the various communication Letters to the Decree Holder, that the Judgment Debtor/2nd respondent herein has continuously requested the Decree Holder/1st respondent herein to extend the time for handing over the possession under one pretext and other. It reveals that till now, the Judgment Debtor has not handed over the suit premises. Further, on comparing the Letter dated 12.04.2022 issued by the Apostolic Fellowship Tabernacle and the Minutes of Meeting dated 26.10.2022 of M/s.Victory Christian Foundation Trust, it is seen that the applicant and the Judgement Debtor/2nd respondent are one and the same.

8. To substantiate his case, the applicant has failed to produce the documentary evidence to prove his tenancy. Hence, this Court is not inclined to interfere with the order dated 20.10.2023 passed by the Learned Master other than imposing the cost of Rs.50,000/- on the applicant. Hence, the Application No.6007 of 2023 is partly allowed by setting aside the costs of Rs.50,000/- imposed by the Master and further,



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the Application No.6004 of 2023 is liable to be dismissed.

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9. In the result, the A.No.6007 of 2023 is partly allowed and
A.No.6004 of 2023 is dismissed. No Costs.

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Index: Yes/No

Speaking/Non-speaking Order

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