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C.R.P.No.521 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.02.2025

Delivered on : 17.04.2025

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.521 of 2025

and

C.M.P.No.3007 of 2025

Balamurugan

Petitioner

Versus

Jagabar Nachiyar (Died)

1. Mumthaj Begum
2. Sheak Dawood
3. Hajamaideen
4. Vahidha Begam

Respondents

PRAYER : Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the Fair and Decreetal order passed by the District Munsif Court, Mannargudi in EA No UF of 2024 in EP No.48 of 2017 in RCOP No.17 of 2012 dated 20.12.2024 and to allow the Interlocutory Application as prayed for.

For Petitioner : Mr.A.Thinakaran

For Respondents: Mrs. Hema Sampath,
Senior Advocate
for M/s.R.Meenal



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ORDER

Challenging the order passed by the executing court in declining to grant a relief of re-opening the evidence of the landlords, the tenant has come up with the present civil revision.

2. Brief facts of the case culled out from the records are as under:-

i) The petitioner is a tenant and one Mrs.Jagabar Nachiyar (late) is the landlady being the successor in title to the demised premises being the wife of the original landlord Abdul Salam.

ii) The demised premises, being a shop, was originally let out to the father of petitioner for tenancy and after his demise, the revision petitioner continued the tenancy.

iii) Whiles, the aforesaid landlady, Mrs.Jagabar Nachiyar (late), had filed R.C.O.P.No.17 of 2012 under Section 4(1) of the Tamil Nadu Buildings Lease and Rent Control Act, 1960 (hereinafter referred to as "the Act"), contending that the petitioner became a defaulter, having failed to pay rent for a period of 44 months from 01.04.2010 to 30.11.2013, defaulting a sum of Rs.28,600/-.

iv) In the said R.C.O.P.No.17 of 2012, an interlocutory application in



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I.A.No.75 of 2014 was filed seeking time to deposit the arrears and sought for stay of the proceedings therein.

v) The learned Rent Controller, having found that the petitioner failed to deposit the amount, ordered him to vacate the premises within two months from 17.04.2015.

vi) In the meantime, the landlady passed away and thereafter, execution proceedings were initiated by her legal heirs, the respondents herein, in E.P.No.48 of 2017, in which, the petitioner had examined himself as DW1 and marked two documents. After considering the submissions made by both parties, the Execution Court, by order dated 21.03.2019, directed for delivery of vacant possession of the premises to the respondents/landlords by 16.04.2019.

vii) At that juncture, the revision petitioner came up with an Application in E.A.No.24 of 2019 under Section 47 of the Civil Procedure Code, inter alia, contending that the execution proceedings initiated by the respondents claiming themselves to be the legal heirs of the deceased landlady is not maintainable and also questioning the extent of title inherited by the landlady.

viii) In E.A.No. 24 of 2019, the revision petitioner had examined himself, marked certain documents and was cross examined by the



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respondents herein. Thereafter, when the Application was posted for evidence on the side of the respondents herein, they had not examined any oral or documentary evidence on their side and the case was posted for arguments on 12.12.2024.

ix) Whiles, on 12.12.2024, the revision petitioner/tenant had filed an Application under Order XVI Rules 1, 7, 7A, 17, 21 and Section 151 of C.P.C, seeking to summon the respondents herein to adduce evidence, in order to prove the case of the revision petitioner by cross examining them.

x) The Execution Court had dismissed the Application without numbering the same, by order dated 20.12.2024, against which, the present revision has been filed.

3. Learned counsel for the revision petitioner would submit that in the Application in E.A.No.24 of 2019, the petitioner had let in evidence and subsequently, the case stood posted for evidence on the side of the respondents herein, however, they did not come forward to examine themselves. He would further contend that the respondents herein had wantonly deprived him of his right to cross examine them and adduce evidence to substantiate his case, owing to which, the petitioner had filed an Application to summon the respondents herein to adduce oral evidence. The



learned counsel for the petitioner/tenant further submitted that the executing court, without even numbering the application, had dismissed the petition and thereby sought to set aside the order dated 20.12.2024, with necessary directions to the executing court to number the application and pass orders on merits.

4. Per contra, Mrs. Hema Sampath, learned Senior Advocate appearing for the respondents would submit that it is a classic case where a remedy, which is provided for preventing injustice under Section 47 of C.P.C. is in fact, being misused to cause injustice by preventing timely implementation of orders and execution of decrees. She would further submit that the following facts are necessary for deciding this revision petition:-

i) R.C.O.P.No.17 of 2012 was filed by Mrs. Jagabar Nachiyar (late) for willful default of rent for a period of 44 months from 01.04.2010 to 30.11.2013, adding up to a sum of Rs.28,600/-.

ii) In the said proceedings, the landlord filed an Application under Section 11(4) of the Act in I.A.No.75 of 2014, wherein, the Rent Controller, taking note of the fact that the tenant failed to pay the arrears of rent, directed him to vacate the shop within a period of two months from 17.04.2015.



iii) Meanwhile, the landlady Mrs.Jagabar Nachiyar passed away and the respondents, being the legal heirs, filed EP.No.48 of 2017, in which the revision petitioner examined himself as DW1 and marked 2 documents.

iv) In the execution proceedings, the tenant filed EA.No.24 of 2019 under Section 47 of C.P.C. and subsequently, an amendment application seeking to amend E.A.No.24 of 2019 was filed and the same was dismissed on 29.09.2021.

v) E.P.No. 48 of 2017 was allowed and delivery was ordered on 21.03.2019 and police protection was ordered on 24.04.2019.

vi) The revision petitioner, with an attempt to further delay the execution proceedings, filed a transfer petition making allegations against the Presiding Officer, which came to be dismissed for non-prosecution.

vii) The revision petitioner had also filed an appeal against the order passed in RCOP.No.17 of 2012, with a delay of 143 days, which came to be dismissed.

viii) Meanwhile, the landlords filed C.R.P.No.2349 of 2022, seeking to strike off the Application in E.A.No.24 of 2019 and this Court disposed of the same with a direction to dispose the Application within a period of four weeks from the date of receipt of copy of that order.

ix) Thereafter, several Applications were filed and in E.A.No. 24 of



2019, the revision petitioner had let in evidence and was cross examined by the respondents/landlords, who subsequently let the evidence to be closed by endorsing that they do not have any evidence to let in on their side. At that stage, the present petition was filed, seeking to reopen and issue summons to the respondents herein to let in evidence.

5. Placing the above facts before this Court, the learned Senior Counsel would contend that the petition seeking to reopen is nothing but an abuse of process of law and to protract the proceedings and thereby sought for dismissal of the above civil revision petition.

6. Having heard the learned counsel on either side and perused the materials available on record, this Court finds that the revision petitioner is merely attempting to squat over the property without paying rent to the respondents herein, the legal heirs of the deceased landlady and as such, the unnumbered Application filed by the revision petitioner is nothing but an abuse of process of law. The unscrupulous tenant has attempted to misuse the remedies, which are provided for preventing injustice, to prevent timely implementation of the order and execution of decrees. Such an act, though condemned by various Courts, still continues to rob the decree holders from

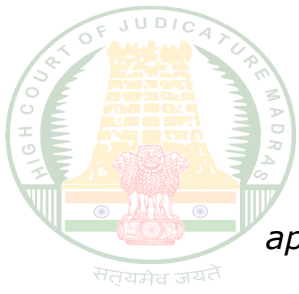


enjoying the fruits of their decrees. In **Rahul S Shah vs. Jinendra Kumar**

Gandhi & Ors (2021) 6 SCC 418, the Hon'ble Apex Court has held as

follows:-

"23. This Court has repeatedly observed that remedies provided for preventing injustice are actually being misused to cause injustice, by preventing a timely implementation of orders and execution of decrees. This was discussed even in the year 1872 by the Privy Council in General Manager of the Raj Durbhunga v. Coomar Ramaput Sing [General Manager of the Raj Durbhunga v. Coomar Ramaput Sing, 1872 SCC OnLine PC 16 : (1871-72) 14 Moo IA 605] which observed that the actual difficulties of a litigant in India begin when he has obtained a decree. This Court made a similar observation in Shub Karan Bubna v. Sita Saran Bubna [Shub Karan Bubna v. Sita Saran Bubna, (2009) 9 SCC 689 : (2009) 3 SCC (Civ) 820], wherein it recommended that the Law Commission and Parliament should bestow their attention to provisions that enable frustrating successful execution. The Court opined that the Law Commission or Parliament must give effect to



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appropriate recommendations to ensure such amendments in the Code of Civil Procedure, 1908, governing the adjudication of a suit, so as to ensure that the process of adjudication of a suit be continuous from the stage of initiation to the stage of securing relief after execution proceedings. The execution proceedings which are supposed to be a handmaid of justice and subserve the cause of justice are, in effect, becoming tools which are being easily misused to obstruct justice."

7. The primary contention put forth by the revision petitioner/tenant in the affidavit filed in support of the unnumbered application in EA.No. UF of 2024 in E.P.No. 48 of 2017 is that the landlords have wantonly deprived him of his right to prove his case, by not letting in any evidence. If at all the revision petitioner has any case, it is open to him to prove his case by letting in oral or documentary evidence on his own and his attempt to reopen the evidence of the respondents when they themselves have waived their right to let in evidence appears to be a delaying tactics on his part to prevent the respondents from enjoying the fruits of the decree and thereby the Executing Court has rightly dismissed the Application filed by the revision



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petitioner.

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8. Incidentally, the learned Senior Counsel for the respondents has brought to the notice of this court, an order dated 22.7.2024 passed by this court in C.M.P.No.29098 of 2023 in C.R.P.SR.No.121163 of 2023. The said order strengthens the view of this court on the attitude of the revision petitioner. The said order discloses that earlier, the revision petitioner had filed an Application in E.A.No.64 of 2022 seeking to condone the delay of 7 days in filing an Application to review the order passed in E.A.48 of 2021, which is an Application filed by him under Section 47 CPC and this court, having observed about the intention of the revision petitioner in protracting the proceedings, dismissed the same. The said order goes to show the dilatory tactics of the revision petitioner by filing petitions one after another in order to prevent the respondents from seeing the colour of the coin.

9. In view of the above, this Court does not find any merit in the present Civil Revision Petition. Taking into consideration the conduct of the revision petitioner/tenant in filing frivolous petition by abuse of legal protection provided to prevent injustice, this court feels that it is appropriate to impose a cost of Rs.25,000/- payable to the respondents herein.



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Accordingly, the above Civil Revision Petition stands dismissed with cost of Rs.25,000/- to be paid to the respondents herein within two weeks from the date of receipt of a copy of this order. Consequently, the connected Civil Miscellaneous Petition is closed.

17.04.2025

Index : Yes / No
Neutral Citation : Yes / No
ssk.

To

The District Munsif Court,
Mannargudi.



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A.D.JAGADISH CHANDIRA, J.

ssk.

**P.D. ORDER IN
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**Delivered on
17.04.2025**