

**K.Sakthivel Vs. Angala Thavy**

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**Court :** Chennai

**Decided On :** Jan-29-2014

**Judge :** P.R. Shivakumar

**Appellant :** K.Sakthivel

**Respondent :** Angala Thavy

**Judgement :**

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

29. 01.2014 CORAM THE HONOURABLE MR. JUSTICE P.R. SHIVAKUMAR  
C.R.P.[NPD]. No.4904 of 2012 and M.P.Nos.1/2012, 1/2013 and 1/2014  
K.Sakthivel ... Petitioner/Tenant/Judgment Debtor .. Vs .. Angala Thavy @  
Mumthaj Begum Thavy ... Respondent/Landlord/Decree Holder Prayer:- Civil  
Revision Petition preferred under Section 115 of Civil Procedure Code, against the  
Order dated 21.12.2012 passed by the XI Court of Small Causes, Chennai, in  
E.P.No.258 of 2011 in R.C.O.P.No.1218 of 2006. For Petitioner : Mr.G.Saravana  
Kumar For Respondent : Mr.P.Chandrasekar - - - - -

**ORDER**

The tenant, who suffered an order of eviction on the ground of commission of willful default in payment of rent in R.C.O.P.No.1218 of 2006 on the file of the learned XI Judge, Court of Small Causes, Chennai, is the petitioner in the present civil revision petition.

2. The revision is directed against the order of the Executing Court dated 21.12.2012 made in E.P.No.258 of 2011 directing delivery of vacant possession of the property to the respondent herein/landlord in accordance with the order of eviction passed by the Rent Controller.

3. While admitting the Civil Revision Petition, this Court granted an order of interim stay in M.P.No.1 of 2012. The respondent in the Civil Revision Petition/landlord has come forward with M.P.No.1 of 2013 for vacating the order of interim stay. This matter stands listed today for considering the miscellaneous petitions for stay and vacating stay. Yet another petition in M.P.No.1 of 2014 also has been filed by the landlord for permission to withdraw the arrears of rent deposited by the revision petitioner/tenant. So far as M.P.No.1 of 2014 is concerned, the learned counsel for the revision petitioner would submit that the revision petitioner/tenant cannot have and does not have any objection for granting the permission sought for. Hence, M.P.No.1 of 2014 is allowed and the petitioner therein, who is the respondent in the Civil Revision Petition, is permitted to withdraw the arrears of rent deposited by the revision petitioner/tenant to the credit of R.C.O.P.No.1218 of 2006 on the file of the XI Court of Small Causes, Chennai.

4. Regarding M.P.Nos.1 of 2012 and 1 of 2013, instead of passing orders disposing of the said miscellaneous petitions, this Court expressed a view that the Civil Revision Petition itself could be disposed of as the issue involved in the Civil Revision Petition is a technical issue. The learned counsel appearing for both parties consented for taking up the Civil Revision Petition itself. Accordingly, by consent, the Civil Revision Petition itself is taken up for disposal.

5. The arguments advanced by Mr.G.Saravana Kumar, learned counsel for the petitioner and by Mr.P.Chandrasekar, learned counsel for the respondent in the revision petition are heard. The materials available on record are also perused.

6. R.C.O.P.No.1218 of 2006 was filed by the respondent herein for eviction of the revision petitioner on the ground of willful default. The jural relationship of landlord and tenant between them is not in dispute. Pending disposal of the R.C.O.P., the respondent herein/landlord filed an application under Section 11(4) of the Tamil Nadu Buildings Lease and Rent Control Act, 1960 as M.P.No.112 of 2007 for

quantifying the arrears of rent, for a direction to the tenant to pay the arrears of rent and in case of default, to strike off the defence and pass an order of eviction. The learned Rent Controller quantified the arrears of rent and issued a direction by order dated 11.06.2007. The revision petitioner/tenant failed to comply with the order, resultantly, the defence in the R.C.O.P. was struck off and an order of eviction came to be passed on 28.06.2007.

7. As against the order passed in M.P.No.112 of 2007 and the consequential eviction order passed in R.C.O.P., the revision petitioner preferred R.C.A.Nos.706 and 707 of 2008 respectively. During the pendency of the said R.C.As., the respondent herein/landlord filed a memo informing the Rent Control Appellate Authority that the lis had come to an end because the tenant had vacated the premises and handed over vacant possession of the same to the respondent herein/landlord. Though the learned Rent Control Appellate Authority wanted to verify the correctness of the said representation, the revision petitioner failed to appear in the R.C.As., pursuant to which, the learned Rent Control Appellate Authority dismissed the appeals based on the memo filed by the respondent herein holding that nothing remains to be adjudicated upon, as the tenant had vacated and handed over vacant possession to the landlord. Suppose the learned Rent Control Appellate Authority had dismissed the R.C.As. for non-prosecution, the same will have the effect of not acting on the memo filed by the respondent herein and keeping open the option for the landlord to execute the eviction order. Unfortunately, the learned Rent Control Appellate Authority did not adopt that method and on the other hand, chose to dismiss the appeals holding that the landlord had secured possession and there remained nothing to be adjudicated upon. If it could be true, the landlord would not have come forward with a petition for execution of the order of eviction.

8. Though the Rent Control Appeals came to be dismissed on 05.02.2010, the respondent herein chose to file an Execution Petition in 2011 in E.P.No.258 of 2011 as if the tenant had not vacated and the order of eviction remained unexecuted. The said stand taken by the respondent herein/landlord was quite contradictory to the stand taken by the landlord in her memo filed before the learned Rent Control Appellate Authority. Without considering such a contradictory

stand taken by the landlord and without properly appreciating the fact that the disposal of the R.C.As. as infructuous would no longer keep the eviction order executable, the Executing Court simply passed an order directing delivery of possession.

9. As rightly pointed out by the learned counsel for the revision petitioner, the said order is not only erroneous, but it can also be stated to be an order passed in exercise of jurisdiction not conferred on the Executing Court. In any event, even assuming that such a jurisdiction is available to the Executing Court, the exercise of such jurisdiction can be termed illegal and it is tainted with material irregularities warranting interference by this Court. Accordingly, this Court comes to the conclusion that the revision deserves to be allowed.

10. In the result, the Civil Revision Petition is allowed. The order dated 21.12.2012 made in E.P.No.258 of 2011 is set aside with the result that the E.P. stands dismissed. Since it is admitted on both sides that the memo leading to the dismissal of the R.C.As. came to be filed on misconception based on the promise made by the tenant, the respondent herein is given liberty to move the learned Rent Control Appellate Authority with necessary petition. However, there shall be no order as to costs. Consequently, connected M.P.Nos.1/2012 and 1/2013 are closed. 29.01.2014 Index :Yes Internet :Yes jrl To The XI Judge, Court of Small Causes, Chennai. P.R. SHIVAKUMAR, J.

Jrl C.R.P.[NPD]. No.4904/2012 29.01.2014

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