

K. Venkatesan and Others Vs. E. Hemantharaj

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Court : Chennai

Decided On : Oct-20-2016

Judge : M. Duraiswamy

Appeal No. : C.R.P.(NPD).No. 1388 of 2016 & C.M.P.No. 2898 of 2016

Appellant : K. Venkatesan and Others

Respondent : E. Hemantharaj

Judgement :

(Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decreetal order dated 29.01.2016 in un-numbered E.A.SR.No.10378 of 2015 in E.P.No.112 of 2015 in O.S.No.2985 of 1997 on the file of the Principal District Munsif Court, Alandur.)

1. Challenging the order passed in un-numbered E.A.SR.No.10378 of 2015 in E.P.No.112 of 2015 in O.S.No.2985 of 1997 on the file of the Principal District Munsif Court, Alandur, the Judgment Debtors 3 and 4 have filed the above Civil Revision Petition.

2. Pursuant to the decree passed in O.S.No.2985 of 1997, the plaintiff filed the Execution Petition in E.P.No.112 of 2015. In the said Execution Petition, the Judgment Debtors filed an un-numbered E.A.SR.No.10378 of 2015 under Section 47 of the Civil Procedure Code. The Executing Court, going into the merits of the matter, rejected the petition filed by the Judgment Debtors. Against this order, the

Judgment Debtors 3 and 4 have filed the above Civil Revision Petition.

3. The learned counsel appearing for the petitioners submitted that the Executing Court had dismissed the application even without numbering the application filed under Section 47 and therefore, the order passed by the Executing Court in the un-numbered application in E.A.SR.No.10378 of 2015 may be set aside and the Executing Court may be directed to number the application and dispose of the same on merits.

4. The learned counsel appearing for the respondent submitted that as against the decree passed in O.S.No.2985 of 1997, the defendants preferred an appeal in A.S.No.47 of 2005 and the Lower Appellate Court, Subordinate Court, Chengalpattu, by its judgment and decree dated 27.04.2016, dismissed the appeal and against the judgments and decrees passed by the Courts below, the defendants preferred a Second Appeal in S.A.No.868 of 2006 and this Court, by its judgment dated 26.06.2014, confirmed the decree in A.S.No.47 of 2005. Further, the learned counsel submitted that the judgment passed by this Court in the Second Appeal has become final since the defendants have not challenged the same.

5. The learned counsel appearing for the respondent/plaintiff submitted that in the application filed by the Judgment Debtors under Section 47, the Judgment Debtors have stated that the judgment passed by this Court in S.A.No.868 of 2006 and the judgment passed by the Lower Appellate Court in A.S.No.47 of 2005 also suffers from illegality. The learned counsel submitted that raising such a contention in the petition would amount to contempt in view of the judgment of this Court reported in 2014 (4) CTC 836 [M.Maniannan Vs. B.Chandrika] wherein this Court held as follows:

...

19. The Eviction Order passed by the Rent Controller, as already observed, was approved by the Appellate Court and also by this Court in C.R.P. No. 2419 of 2010 and C.R.P. No. 961 of 2010 on 5.3.2012. Paragraph 8 and 9 are extracted as follows:

8. Nevertheless having regard to the conduct of the Petitioner during the pendency of the proceedings, in my opinion, the Petitioner does not deserve any sympathy and the Order of the Eviction passed by the Court below should not be interfered with.

9. The learned Counsel appearing for the Respondent submitted the statement of accounts stating the manner in which rents are being paid by the Tenant during the proceedings. It is seen from the details of payment that on 29.8.2008, the Tenant presented six Demand Drafts purchased on various dates representing the arrears for six months from February 2008 to July 2008 and three Demand Drafts were presented on 29.6.2009 representing the arrears for three months' rent for the month of May 2009 and on 27.7.2009, two months rent were paid by two Demand Drafts and on 28.1.2010 three Demand Drafts were presented and on 19.7.2010, five Demand Drafts were presented purchased on various dates representing five months rent and on 1.12.2010, three Demand Drafts were presented purchased of various dates for three months rent. Therefore, he submitted that having regard to the conduct of the Revision Petitioner in committing default in the payment of rent and paying the rent in lumpsum for three or four months at a time it only proves that the Tenant is a regular defaulter in the payment of the rent and subsequent events can be taken into consideration to arrive at a decision and having regard to subsequent conduct of the Tenant, the Revision has to be dismissed.

10 .. This conduct of the Tenant in purchasing the Demand Drafts at an earlier point of time and presented Demand Drafts later, will only reflect that the Tenant is a chronic defaulter and he is not interested in paying rent regularly and his conduct is nothing but wilful. Therefore, according to me, the Tenant does not deserve any sympathy and the Hon'ble Supreme Court held in *Maragathammal v. Kamalammal*, (2006) 8 SCC 152, that when the Tenant has committed default in presentation of Lodgment Schedule by one day, Tenant is liable to be vacated and in this case, Tenant has committed default for six months in the payment of rent even during the pendency of the proceedings, he did not pay the rents regularly and therefore, the conduct of the Revision Petitioner is wilful and on that ground, these Revisions are liable to be dismissed.

From the above, one can understand that this Court has taken a very strong view about the conduct of the Petitioner that the Petitioner does not deserve any sympathy and the Order of Eviction passed by the Court below should not be interfered with. When this, Court confirmed the Order of Eviction by dismissing the CRP filed by the Petitioner. There is nothing to be decided by way of Section 47-Petition before the Rent Controller. The procedure adopted by the Petitioner is something unknown in law. The Order passed by this Court has sought to be nullified by way of Section 47-Petition before the learned Rent Controller. If this is accepted, it would amount to destroying the very hierarchy of the institution itself. Every party, who gets adverse order which is confirmed by the highest Court of the State or Country, would casually challenge the same by approaching the lowest forum. It is a clear case of misuse and abuse process of law and an attempt to damage the image of the Court and this Court cannot be a spectator to an attempt to interfere with the administration of justice.

20. If the Petitioner is aggrieved over the Order passed by this Court, the proper course is to approach the highest Court namely the Hon'ble Supreme Court. He did not approach the Court and allowed the Orders passed by this Court to reach finality. When such is the position, it is not open to the Petitioner to file a Section 47-Petition and indirectly challenging the Order passed by this Court and that itself is violation of this Court order. Even the Judgment relied upon by the learned Counsel for the Petitioner in *Abdul Razack Sahib v. Azizunnissa Begum*, AIR 1970 Mad. 14, would go against him. The said Judgment declares that contempt of jurisdiction is reserved and excised for what essentially brings the administration of justice into contempt, or unduly weakens it, as distinguished from a wrong that might be inflicted on a private party by infringing a Decretal Order of the Court. Para 2 of the Order reads as follows:

2. It is submitted that there was only non-compliance with a simple order, no doubt of this Court, for payment of money claimed by the Landlord as due for rents and such non-compliance does not carry with it penal sanctions as contempt of Court. From the record it does not appear that the Appellant before us, who had succeeded in the final Court and, who was only the Respondent here had even bargained to deposit these arrears of rent and continue to deposit the future rent

pending the Civil Revision Petition, as a condition of his being allowed to continue in possession of the lands undisturbed till the disposal of the Civil Revision Petition. His answer to that Petition for deposit was that he was not in possession of the lands. We do not find recorded any undertaking by him to the Court at any stage of the proceeding to deposit the moneys into Court. The Petitioners in the Civil Revision Petition moved for committal of the Appellant for contempt only for disobedience of the Order dated 28.1.1966 in C.M.P. No. 5345 of 1965. The learned Judge appears to be of the view that the failure to deposit the amount as directed by this Court is itself contempt of Court, for the learned Judge observes:

Till now, it does not appear that the Respondent has deposited any amount as directed by this Court. The Respondent is, therefore, guilty of contempt of Court.

We fail to see how mere failure to deposit into Court moneys claimed by the opposite party and ordered to be deposited can amount to contempt of Court. Counsel for the Petitioners cannot place a single decision before us: nor do we recollect a single instance where default of an order for payment of money has been held to constitute contempt of Court and the defaulting party sent to prison. While it is difficult to rigidly define contempt, in a general way contempt of Court may be said to be constituted by any conduct that tends to bring the Authority and administration of law into disrespect or disregard or to interfere with or prejudice parties to the action or their witnesses during the litigation. For an act to amount to contempt punishable under the summary jurisdiction of this Court, it must fall within the principle of those cases in which the power to punish has been decided to exist, the unfailing criterion being whether or not there has been an interference or a tendency to interfere with the administration of justice. Contempt jurisdiction is reserved and exercised for what essentially brings the administration of justice into contempt, or unduly weakens it, as distinguished from a wrong that might be inflicted on a private party by infringing a Decretal Order of Court.

21. A perusal of the Petition filed under Section 47, would reveal that the Petitioner deliberately intended to case aspersion on this Court and it is evident from Para 5 of the Petition, which is usefully extracted as follows:

The Petitioner submit that the C.R.P. No. 961 of 2010 and C.R.P.(NPD) No.2419 of 2010 were taken up together for final disposal on 5.3.2012 by His Lordship Justice R.S. Ramanathan. Even though, His Lordship has held it cannot be stated that the Petitioner should not be heard on merits referring to the Orders of Dismissal passed by the Lower Courts erred in confirming the Orders passed by the Courts below without gleaning into the Judgment rendered in *Aswudeen v.G.S. Sundaram and Brothers*, 1978 (1) MLJ 79, which is squarely applicable to the Petitioner's case now questioning the legality of the Order of Eviction passed,the High Court entirely on an irrelevant factor which was not the grounds before it and completely overlooking the actual issue as well settled by several decided cases by confirming the Order of Eviction passed by the Lower Courts without due application of Scope under Section 25 of TN Act 18 of 1960 as amended by Act 23 of 1973.

[Emphasis supplied]

From the above, it is clear that before the Rent Controller, the Petitioner contended that this Court erred in confirming the Orders passed by the Lower Courts. The use of words erred is nothing but the contempt of Court and it lowers the Authority of the Court. This Court is not only competent to take cognizance of contempt of its own order, but also has got power under Section 10 of the Contempt of Courts Act, 1971 to punish for violation of Subordinate Courts order also. Therefore, Judgment in *Abdul Razack Sahib v. Azizunnissa Begum*, AIR 1970 Mad 14 (DB), squarely applies against the Petitioner.

6. Though the said contention cannot be raised by the Judgment Debtors in the Section 47 application in view of the above referred judgment, the Executing Court had rejected the petition going into the merits without numbering the application. The Executing Court could have disposed of the application after numbering the application filed under Section 47 of the Civil Procedure Code. If an application filed under Section 47 is rejected on the question of maintainability, then there is no necessity for going into the merits of the matter. If the Court goes into the merits of the matter, then the application has to be numbered.

7. In these circumstances, without expressing any opinion with regard to the merits of the matter, I am inclined to set aside the order passed in the un-numbered application in E.A.SR.No.10378 of 2015 only on the ground that it was not numbered. Accordingly, the order passed in the un-numbered application is set aside. The matter is remitted back to the Principal District Munsif Court, Alandur for fresh consideration. The Principal District Munsif , Alandur is directed to number the application and decide the matter afresh, on merits and in accordance with law, within a period of four weeks from the date of numbering the application. Further, since the suit was filed in the year 1997, I direct the Principal District Munsif, Alandur to dispose of the Execution Petition in E.P.No.112 of 2015, on merits and in accordance with law, within a period of four weeks from the date of disposal of the Section 47 application.

8. With these observations, the Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

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