

G.Abubucker ...R Vs. M.Murthy.

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Court : Chennai

Decided On : Mar-28-2013

Judge : C.S.Karnan

Appellant : G.Abubucker ...R

Respondent : M.Murthy.

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

28. 03/2013 CORAM THE HONOURABLE MR.JUSTICE C.S.KARNAN REVIEW APPLICATION (MD) No.4 of 2012 & M.P.(MD)No.1 of 2012 G.Abubucker ... Review Petitioner Vs. M.Murthy ... Respondent PRAYER Review Application is filed under Section 114 r/w under order 47 Rule 1 of C.P.C. against the judgment and decree dated 20.09.2011 passed in C.R.P.No.143 of 2004 and to set-aside the Degree and judgment. !For Review Petitioner ... Mr.M.Chinna Pidari ^For Respondent ... Mr.S.Ramu - - - :ORDER The short facts of the case are as follows:- The review petitioner herein / tenant has filed C.R.P.(NPD)(MD)No.143 of 2004, against the judgment and decree passed in R.C.A.No.1 of 2002, dated 09.08.2004, on the file of Subordinate Judge, Ramanathapuram, confirming the judgment and decree passed in R.C.O.P.No.1 of 1999, on the file of the Rent Controller-cum-District Munsif, Ramanathapuram, dated 10.12.2001. The said Civil Revision Petition came up for final hearing on 20.09.2011 before this Court. After hearing the learned counsels on both sides and on perusing the impugned order of the Courts below, this Court dismissed the above revision petition on

20.09.2011. This Court further directed the revision petitioner / tenant to deliver the vacant possession of the tenancy premises on or before 31.03.2012.

2. Subsequently, the review petitioner herein has filed the above Review Application in Rev.Appln.No.4 of 2012, and prayed this Court to review the judgment and decree dated 20.09.2011 in C.R.P.(NPD)(MD)No.143 of 2004, and set-aside the same.

3. The learned counsel for the review petitioner has argued that the tenant had paid a lump sum amount towards rent on 24.07.1995 for a period of four months. Therefore, the tenant has not committed wilful default, but this Court, without considering this fact, had passed orders erroneously. The learned counsel has further submitted that the tenant had filed a petition under Section 8, Sub-section 5 of the Act, in view of the refusal by the landlord to receive rents and as such, the amount was deposited only after the orders passed by the Court and as such, there is no wilful default for paying the monthly rent. The learned counsel has further submitted that the learned Rent Controller had passed the order to deposit the arrears of rent for the month of March, April, May and June on 18.02.1998, whereas, even before that order, the tenant had already deposited the rents for the month of March, April, May and June even as early as on 24.07.1995 and that being so, there is no default and hence, there cannot be wilful default. Therefore, the learned counsel entreats the Court to allow the review application and set-aside the earlier order passed in C.R.P.(NPD)(MD)No.143 of 2004, dated 20.09.2011.

4. The learned counsel for the respondent / landlord has submitted that the respondent had initiated R.C.O.P.No.1 of 1999, on the file of learned Rent Controller, Ramanathapuram, against the review petitioner herein for wilful default. The tenancy premises was let out to the tenant on 12.02.1987 for running an optical shop. The monthly rent was fixed as Rs.375/- and it was agreed that the advance to be paid was Rs.20,000/-. Subsequently, the rent has been increased from Rs.375/- to Rs.800/- with effect from January 1991. The same rent has been paid by the tenant for a few months. Thereafter, the tenant, with mala-fide intentions, had initiated R.C.O.P.No.10 of 1995, and stated that he was paying

Rs.700/- as enhanced rent and the landlord had refused to receive the rent. Hence, he had initiated the said case. Actually, the agreed enhanced rent was Rs.800/- per month. However, the learned Rent Controller accepted the tenant's view and passed an order on 18.02.1998 to remit the arrears of rent, at the rate of Rs.700/- per month. Further, the learned Rent Controller had directed the tenant to deposit the rent on or before 5th of every succeeding English calendar month.

5. The learned counsel has further submitted that after passing the said order, the tenant had not paid the monthly rent regularly. As per the rent Controller order, the rent for the month February 1998 is to be paid on or before 5th of March 1998. But, the tenant had remitted the said amount on 14.05.1998. The learned counsel for the landlord has further submitted that the tenant had not paid monthly rent as per oral agreement and as per the Rent Controller order. The learned counsel has further submitted that the learned Rent Controller had framed three charges and had come to a conclusion that the tenant had committed wilful default in paying the rent to the landlord. Hence, the eviction order was passed.

6. Against the said eviction order, the tenant had filed an appeal in R.C.A.No.1 of 2002. The same was dismissed. The learned Rent Control Appellate Authority had observed that as per the Rent Controller order passed in R.C.O.P.No.10 of 1995, the tenant has to remit the arrears of rent for the month of March, April and May 1995 as well as the monthly rents in the intervening period from the date of filing the petition till the date of the their order within a period of one month from the date of receipt of its order, but the tenant had paid the said amount only after 70 days and as such, he had committed wilful default and committed breach of conditions of the rent controller order.

7. Against the said eviction order, the revision in C.R.P.(NPD)(MD)No.143 of 2004, has been filed by the tenant. This Court, after hearing the arguments of both parties and well considering the orders passed by both the Courts below, dismissed the revision and directed the tenant to vacate the petition premises and to hand over the vacant portion to the landlord. This Court, further observed that the tenant had remitted monthly rent for the month of March, April May and June on 24.07.1995 through State Bank of India. It clearly proves that the tenant had

committed wilful default in payment of rent for more than three consecutive months. Therefore, the learned counsel for the landlord has submitted that there is no lacuna in the eviction order passed by the rent controller, which was confirmed by the learned Rent Controller Authority and this Court's order passed in the revision. In order to evade well- considered judgments of the three Courts, the above review has been filed.

8. The learned counsel had made a profound request to this Court stating that the landlord is aged about 75 years and the petition premises has been let out in the year 1987. As such, the tenant has been enjoying the said property without paying rent regularly. This review application is to create multiple proceedings and his intention is to prolong the case till the life time of the landlord and then proceed further in some other ways.

9. After hearing the review application, this Court is of the view that:- (i) The tenancy premises had been let out on 12.12.1987 for non- residential purpose. Due to wilful default, the landlord had filed R.C.O.P.No.1 of 1999, on the file of Rent Controller, Ramanathapuram, for eviction. The same was ordered on 10.12.2001, on the ground of wilful default. Subsequently, the tenant has filed an appeal in R.C.A.No.1 of 2002, on the file of Sub Court, Ramanathapuram. The same was dismissed on 09.08.2004, and the eviction order was confirmed. Thereafter, the tenant has filed the Civil Revision Petition before this Court in C.R.P.(NPD)(MD)No.143 of 2004. The said case was pending for about seven years. Thereafter, this Court passed final order on 20.09.2011 and the revision was dismissed on merits, after hearing both sides and perusing the impugned orders of the Courts below. This Court, on perusal of the facts of the case and on considering the material evidence is of the view that the tenant had remitted the rent for the month of March, April, May and June 1995 only on 24.07.1995. Therefore, it is evident that he had defaulted in making payments of rent for four consecutive months. Therefore, it is obvious that the tenant had committed wilful default. (ii) This Court is of the further view that the tenant had filed R.C.O.P.No.10 of 1995, on the file of Rent Controller, Ramanathapuram for depositing monthly rents. The learned Rent Controller had passed orders on merits on 18.02.1998 and directed the tenant to deposit the arrears of rent within a month from the date

of receipt of their order, but the tenant had not complied with the same. As such, the tenant committed breach of the conditions of the order passed by the learned Rent Controller. Therefore, he has no rights to challenge the eviction order, any further, before any Court, since he has disrespected the Rent Controller's judicial order. (iii) In the current method adopted in the execution of eviction orders there is a long drawn process which is tantamount to the Amoeba animal the most tiniest of creatures which is difficult to eradicate or destroy because of its proliferation. Hence, this Court permits the landlord to execute the eviction order and decree in order to avoid a vicious circle. (iv) The landlord is aged about 75 years. Therefore, this Court permits the landlord to evict the tenant after intimating the tenant in advance and after the appeal period is over against this order. If necessary, the landlord may seek police protection for such eviction, after making a request by a written representation to the nearest police station. For availing police assistance, the landlord shall remit a sum of Rs.5,000/- to any of the Sub-treasury of this State in the State Government account. The receipt showing proof of payment should be enclosed with the said representation. The landlord and the police officials shall inform the tenant three days prior to the eviction date. The police officials and the landlord should proceed to carry out the eviction in a peaceful and methodical manner and ensure smooth eviction of the tenant from the tenancy premises. The eviction should be carried out after sunrise and before sunset. This Court has taken the above view considering that the cause of action in the instant case arose around 25 years ago and the fruitful order which had been obtained by the landlord has still not been reaped. This observation has been made considering the circumstances of the case. (v) After eviction, the landlord has to file memo before the Rent Controller, Ramanathapuram, to show that the order and decree passed by the Courts has been carried out. This order has been passed by this Court, after invoking the discretionary power vested with it. (vi) The alternate mode of eviction as ordered by this Court, instead of the normal execution proceedings for eviction followed usually will not be prejudicial to the interests of the tenant as he will not be put into any undue hardship.

10. After hearing the arguments of both parties and on rechecking this Court's order passed in the above revision and this Court's view listed as (i) to (vi), this Court does not find any valid grounds in the above review application. This Court

is of the further view that the contentions made in the review application has posed a direct challenge to the earlier order passed by this Court and it is violating the conditions of order of the judgment passed by this Court. Therefore, this Court is not inclined to allow the above review application. This Court permits the landlord to carry out the execution proceedings for eviction in a peaceful manner as per the eviction order, ordered by this Court in the review application mentioned above.

11. In the result, the above review application No.4 of 2012 is dismissed. Consequently, the order passed by this Court in C.R.P.(NPD)(MD)No.143 of 2004, dated 20.09.2011, remains in force and would be operated. Further, this Court directs the Registry not to entertain any further review application on this order, as it would create multiplicity of proceedings. Accordingly ordered. There is no order as to costs. Connected miscellaneous petition is closed. r n s

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