

(2007) 11 MAD CK 0005

In the Madras High Court

Case No : Civil Revision Petition (PD) No. 2990 of 2007 and M.P. No's. 1 and 2 of 2007

B. Krishnakumari and R. Bakthavatsalam

APPELLANT

Vs

R. Sundaram

RESPONDENT

Date of Decision : 06-11-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 9
Constitution of India, 1950 — Article 227

Citation : (2007) 11 MAD CK 0005

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : R. Subramanian, for M.K. Subramanian, for the Appellant; R. Thiagarajan and K. Kalyanasundaram, for the Respondent

Final Decision : Dismissed

Judgement

P. Jyothimani, J.—The first and second defendants in the suit are the revision petitioners. The revision petition is filed under Article 227 of

the Constitution of India for direction against the learned District Munsif, Coimbatore to pass orders in I.A.No.2044 of 2007 in O.S.No.1913 of

2007 before passing orders in I.A.No.2005 of 2007 in O.S.No.1913 of 2007.

2. The revision petitioners are the landlords of the shop facing north in the ground floor of the building, having Door No.280, Cross Cut Road,

Coimbatore and measuring 400 sq.ft. and the respondent is the tenant on monthly rental basis, in occupation of the building under a lease deed

dated 1.4.2003 from the first petitioner. The petitioners have filed a suit in O.S.No.1891 of 2007 praying for an order of injunction against the

respondent from subletting or inducting third parties into possession of the suit property. The respondent/tenant has filed O.S.No.1913 of 2007 on

3.9.2007 praying for a decree of injunction restraining the revision petitioners/ landlords from interfering with the possession of the suit property

except under due process of law. It is the case of the respondent/ tenant in the abovesaid suit that he is running a textile cloth business under the

name and style of Shree Vasundra Textiles, apart from doing finance business. In respect of certain deposits collected from various third parties,

the respondent was unable to repay and there was a complaint given by deposit holders to Economic Offences Wing-II, Coimbatore pursuant to

which he was arrested and immovable properties worth several crores were attached. The demised portion under his possession was also kept

under lock and key by E.O.W.II, Coimbatore.

2(a). It is his case in the said suit that he moved the Special Judge under the Tamil Nadu Protection of Interests of Depositors (in Financial

Establishments) Act, 1997 (in short TNPID Act), Chennai by filing a petition in O.A.No.26 of 2007. Along with that, he also filed I.A.No.86 of

2007 for appointment of a Commissioner to take inventory of the stock from the petition mentioned property and sell the same in public auction.

The learned Special Judge, Chennai has appointed a Commissioner for the said purpose and the Commissioner also executed the warrant and

handed over the key of the suit property to the respondent on 1.9.2007. However, it is the case of the revision petitioners/landlords that the

Commissioner who has taken inventory on 11.8.2007 and stated to have handed over the key of the shop to the respondent's counsel, has put a

new lock on the shop keeping the key with him. Therefore, according to the revision petitioners, the respondent/tenant is not having possession of

the shop. While the respondent has stated that along with the suit in O.S.No.1913 of 2007 he also filed I.A.No.2005 of 2007 on 3.9.2007 for

temporary injunction restraining the landlords from interfering with his peaceful possession over the shop on the basis that the advocate

Commissioner has handed over the key to him on 1.9.2007 as stated above, the revision petitioners, contradicting the said averment of the

respondent, have stated in their suit that the possession is not with the respondent/tenant, based on the other aspect of the Commissioner's report.

It is, under those circumstances, the petitioners who are the defendants in O.S.No.1913 of 2007 have filed the application in I.A.No.2044 of

2007 under Order 26 Rule 9 C.P.C. for appointment of a Commissioner to note down the existing stock and articles lying in the petition

mentioned premises and to take photographs, and to file a detailed report.

2(b). In the said application, the respondent herein was heard and it was adjourned for hearing the counsel for the petitioners. According to the

petitioners, in the meanwhile, the application filed by the respondent in I.A.No.2005 of 2007 in O.S.No.1913 of 2007 for interim injunction was

heard and posted for orders on 12.10.2007. The case of the petitioners is that the injunction application cannot be ordered unless orders are

passed in the application filed by the petitioners for appointment of advocate Commissioner in I.A.No.2044 of 2007 in O.S.No.1913 of 2007. It

is in this view of the matter, the present revision is filed under Article 227 of the Constitution of India.

3. Mr.R.Subramanian, learned Counsel for the petitioners would submit that inasmuch as the advocate Commissioner's report filed by the

Commissioner appointed by the Special Judge under TNPID Act, Chennai is interpreted by the petitioners and the respondent in different way and

while the petitioners have stated that the respondent is not in possession, the respondent claims to be in possession of the building on the basis that

the key was handed over to him by the advocate Commissioner, in fairness, the Court below should have heard the application filed by the

petitioners for appointment of an advocate Commissioner in I.A.No.2044 of 2007 before passing any order in the injunction application filed by

the respondent herein in I.A.No.2005 of 2007.

4. On the other hand, Mr.R.Thiagarajan, learned senior counsel appearing for the respondent/tenant would submit that in I.A.No.2005 of 2007

filed by the respondent for interim injunction the petitioners who are the landlords have entered appearance on 3.9.2007 and on the adjourned

day, viz., 6.9.2007, the petitioners have filed a counter and the respondent being the petitioner in the I.A. has argued the application and the

application was adjourned to 7.9.2007 and again reposted to 13.9.2007 for the argument on the petitioners' side who are the respondents in the

said I.A. for injunction.

5. It was the petitioners who have filed I.A.No.2044 of 2007 for appointment of an advocate Commissioner and also I.A.No.2065 of 2007 to

reopen I.A.No.2005 of 2007 and both I.As. were heard together and posted for orders on 17.9.2007. Ultimately, the reopen-petition was

allowed and I.A.No.2005 of 2007 filed by the respondent for injunction was posted for enquiry on 20.9.2007 and on 21.9.2007 during which

time, the respondents therein filed documents and sought for time for filing some more documents. It was at that time, the respondents in the said

I.A. approached this Court and filed this civil revision petition and this Court granted interim stay on 25.9.2007 and the petitioner in the said I.A.

filed vacate-stay petition in M.P.No.2 of 2007 and on 8.10.2007, and this Court has vacated the stay already granted. Therefore, according to the

learned senior counsel for the respondent, after the stay already granted was vacated by this Court, both the applications were heard by the

learned trial Judge and even though order was dictated, it was not pronounced and it was, in those circumstances, on 12.10.2007 this Court in the

civil revision petition has ordered that "if orders are not passed, the stay is extended till 23.10.2007". Therefore, according to the learned senior

counsel, both the applications were heard together and absolutely, there is no basis for the apprehension of the petitioners that the court below will

pass orders in I.A.No.2005 of 2007 before passing any order in I.A.No.2044 of 2007. According to the learned senior counsel for the

respondent, though arguments in both the I.As. were heard together, orders were not pronounced due to the stay order granted by this Court.

6. Learned senior counsel while referring to the scope of jurisdiction of this Court in exercising its power under Article 227 of the Constitution of

India, relied upon the judgment of the Supreme Court in Yeshwant Sakhalkar and Another Vs. Hirabat Kamat Mhamai and Another, . The

Supreme Court in the said case, while dealing with the jurisdiction and powers of the High Court under Article 227 of the Constitution of India, has

laid down some of the paramount points as follows:

(4). Supervisory jurisdiction under Article 227 of the Constitution is exercising or keeping the subordinate courts within the bounds of their

jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have

or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has

occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

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(7). The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the

judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and

circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or

proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings

in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would

obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as,

if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice

or where such refusal itself would result in prolonging of the lis.

7. On the facts and circumstances of the case, I do not think that this is a fit case coming within the above parameters laid down by the Supreme

Court warranting exercise of powers by the High Court under Article 227 of the Constitution of India. The petitioners cannot file the civil revision

petition on surmises and apprehensions which are not based on sound principles. In view of the same, I do not see that any direction can be given

to the lower Court. There is one another circumstance, as it is submitted by the learned senior counsel, that the trial Court has heard both the

applications, and it is not known as to what is the nature of order going to be passed in the applications or in which petition the order is going to be

passed by the trial Court and it is too early to apprehend anything now.

In view of the same, I do not see any reason to interfere with the order impugned in this civil revision petition. Accordingly, the C.R.P. fails and the

same is dismissed. It is always open to the parties to work out their remedies based on the orders to be passed by the trial Court. No costs.

Connected miscellaneous petitions are closed.