

(2009) 12 MAD CK 0184

In the Madras High Court

Case No : C.R.P. (NPD) No. 4042 of 2009 and M.P. No. 1 of 2009

Dr. C. Mohan Reddy

APPELLANT

Vs

Dr. S. Floret

RESPONDENT

Date of Decision : 30-12-2009

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2010) 1 CTC 666

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : R. Thiagarajan, for the Appellant; S. Packiaraj, for the Respondent

Judgement

M. Venugopal, J.—The Petitioner/Appellant/Tenant has filed this Civil Revision Petition as against the order dated 07.10.2009 made in R.C.A No. 565 of 2008 passed by the Learned VIII Judge, Court of Small Causes (Appellate Authority), Chennai in confirming the order made in R.C.O.P. No. 2146 of 2007 dated 15.07.2008 passed by the Learned XV Judge, Court of Small Causes, Chennai.

2. The Learned Appellate Authority viz., VIII Judge, Court of Small Causes, Chennai in the order dated 07.10.2009 in R.C.A. No. 565 of 2008 in R.C.O.P. No. 2146 of 2007 has among other things opined that "the Learned Rent Controller has addressed all the issues in its proper perspective and has come to a right conclusion that the respondent has to be evicted u/s 10(3)(a)(iii) of the Act which does not suffer from any serious factual or legal infirmity that warrants interference from this Court" and resultantly dismissed the Rent Control Appeal without cost and further directed the Revision Petitioner/Appellant/Tenant to put the Respondent/Landlord in vacant possession of the petition premises on or before 07.12.2009.

3. At the outset, the Learned Counsel for the Revision Petitioner/Appellant/Tenant urges before this Court that the Learned Appellate Authority viz., VIII Judge, Court of Small Causes, Chennai has totally ignored the directions issued

by this Court in the common order passed in CRP (NPD) Nos. 2224 to 2226 of 2009 dated 04.08.2009, wherein this Court has set aside the order dated 10.07.2009 passed in M.P. Nos. 48, 49 and 50 of 2009 respectively in R.C.A. No. 565 of 2008 and further this Court has directed the Appellate Court to dispose of all the petitions filed by the petitioner herein along with the main appeal after hearing both sides within a period of two months from the date of receipt of a copy of the order and accordingly disposed of the Civil Revision Petitions, but unfortunately the Appellate Authority has disposed of R.C.A. No. 565 of 2008 on 07.10.2009 by not adhering to the directions issued by this Court in the common order passed in CRP(NPD) Nos. 2224 to 2226 of 2009 dated 04.08.2009 and therefore, the order so delivered in R.C.A. No. 565 of 2008 dated 07.10.2009 by the Learned Appellate Authority i.e., VIII Judge, Court of Small Causes, Chennai is not valid in law and the same is also an illegal one which resultantly renders the said order as a vitiated one in the eye of law on account of patent illegality and on this simple ground alone, the Civil Revision Petition needs to be allowed by this Court to prevent an aberration of justice and to promote substantial cause of justice.

4. The revision petitioner/appellant/tenant has filed M.P. No. 48 of 2009 in R.C.A. No. 565 of 2008 praying permission of the learned Appellate Authority to let in additional evidence in RCOP No. 2146 of 2007. Likewise, the revision petitioner/appellant/tenant has projected M.P. Nos. 49 and 50 of 2009 in R.C.A. No. 565 of 2008 seeking permission of the learned Appellate Authority to file additional counter statement in RCOP No. 2146 of 2007 and to file additional grounds in R.C.A. No. 565 of 2008 on the file of the learned VIII Judge, Court of Small Causes, Chennai.

5. When an application is filed for letting in additional evidence by any of the parties to the proceedings at the appellate stage, it is the duty of the Appellate Authority to deal with the application along with the main appeal and dispose of the same. It is not open to the Appellate Authority to take up the application independently as per the decision in *Santhana Selvaraj S v. Jaffar Khan and two Ors.* 1998 (3) CTNC. Also, in a given case, there is no irregularity committed by the learned Appellate Authority in admitting the additional evidence in an appeal as per the decision in *Palanivel Mudaliar V.P. v. Meenakshi Ammal* 2007 TLNJ 325.

6. In this connection, this Court has passed an order on 14.12.2009 in CRP(NPD) No. 4042 of 2009 directing the Registrar (Judicial) to obtain a complete and comprehensive report as to the present status of M.P. Nos. 48, 49 and 50 of 2009 in R.C. No. 565 of 2008 on the file Learned VIII Judge, Small Causes Court, Chennai through fax and Special Messenger by 15.12.2009 and when the matter has been listed on 15.12.2009, the registry has placed the report dated 15.12.2009 of the Learned VIII Judge, Small Causes Court, Chennai which runs to the following effect:

I humbly submit the following report as regards to M.P. Nos. 48/08, 49/08 and 50/08 for your being consideration:

M.P. No. 48 of 2008 10.07.2009

Order pronounced. Petition is dismissed with cost.

M.P. No. 49 of 2008 10.07.2009

Order pronounced. Petition is dismissed with cost.

M.P. No. 50 of 2008 10.07.2009

Order pronounced. Petition is dismissed with cost.

I humbly submit that the above miscellaneous petitions were disposed off my predecessor.

7. As a matter of fact, the year of miscellaneous petitions mentioned supra has been given wrongly as 08 instead of the correct year 09.

8. Significantly in the aforesaid report of the Learned VIII Judge, Small Causes Court, Chennai there is no whisper or any reference as to whether the M.P. Nos. 48, 49 and 50 of 2009 have been disposed of subsequent to the common order passed by this Court in CRP(NPD) Nos. 2224 to 2226 of 2009 dated 04.08.2009.

9. Inasmuch as the the report of the Learned Appellate Authority viz., VIII Judge, Small Causes Court, Chennai is bereft and devoid of material qualitative and quantitative particulars as required by this Court, this Court on 16.12.2009 has been perforce to direct the learned Chief Judge, Small Causes Court, Chennai to submit a report as to whether M.P. Nos. 48, 49 and 50 of 2009 have been disposed of by the learned Appellate Authority viz., VIII Judge, Small Causes Court, Chennai after the common order passed in CRP(NPD) Nos. 2224 to 2226 of 2009 dated 04.08.2009 within a period of two days here from and the registry has been directed to obtain the said report through fax and also by Special Messenger and to post the same on 18.12.2009.

10. The present learned Appellate Authority viz., VIII Judge, Small Causes Court, Chennai in her letter dated 17.12.2009 has stated among other things as follows:

In obedience to the communication received dated 16.12.2009 in M.F. No. 166/2009/Judicial. I humbly submit the report as called for, for your benign consideration in which orders pronounced by my predecessor, Thiru N. Palani swamy, formerly VIII JUDGE and now VII Judge of this unit.

As regards to M.P. No. 48/2009 this petition is filed on 12.1.2009 by Dr. C. Mohan Reddy with prayer to permit the petitioner/appellant to let additional evidence in RCOP 2146/2007 and after filing the counter of other side and after hearing for enquiry by both sides, this petition was also pronounced order dismissing the application on 10.07.2009, before the order passed in CRP. Nos. 2224 to 2226/2009 dated 04.08.2009 for the inordinate delay in filing the application.

The M.P. No. 49/09 is filed on 12.1.2009 by Dr. C. Mohan Reddy Petitioner/

Appellant praying to file additional counter statement in RCOP2146/07 on 12.1.2009 and after filing counter and hearing both side arguments order as pronounced on 10.07.09, before the order passed in CRP. Nos. 2224 to 2226/2009 dated 04.08.2009 by dismissing the M.P. for the reasons that inordinate delay in filing the application at the stage of appeal.

As regards to M.P.50/2009 it is filed by Dr. C. Mohan Reddy Petitioner/Appellant on 12.1.2009 and after receiving the counter and hearing both sides order was pronounced on 9.7.09, before the order passed in CRP. Nos. 2224 to 2226/2009 dated 04.08.2009 by dismissing the petition praying to permit the petitioner/appellant for filing additional grounds for the reasons at the time of hearing the petitioner/appellant during the course of trial and does not required for filing additional grounds.

Further I submit that the main RCA No. 565/08 was disposed after hearing both sides on 7.10.09 by confirming the trial court order in RCOP 2146/07.

I hereby humbly submit that the above RCA and MP. Nos. 48/09, 49/09 and 50/09 were disposed during the time of my previous predecessor Thiru N.Palani swamy, formerly VIII JUDGE and now VII Judge of this unit.

I hereby humbly submit my report for your kind perusal and to consider the same.

y/f sd/- (N. GUNAVATHI)

11. The Chief Judge (in-charge), Court of Small Causes, Chennai - 600 104 in his report Dis No. 2508/2009 dated 17.12.2009 addressed to the Registrar (Judicial), High Court, Madras has submitted the following:

Sub: CRP.NPD.4042/2009 on the file of this Hon"ble High Court, Madras - RCA No. 565/2008 on the file of the

VIII Judge, Court of Small Causes, Chennai - Calling
for Report - submitted - Regarding.

Ref:1.The Hon"ble High Court"s Order dated 14.12.2009
made in CRP. NPD. No. 4042/2009.

2.The Hon"ble High Court"s Order communicated vide
MF. No. 165/2009 dated 14.12.2009 addressed to the
VIII Judge, Court of Small Causes, Chennai.

3.The Report submitted by the VIII Judge, Court of
Small Causes, Chennai, Chennai dated 15.12.2009.

4.The Hon"ble High Court"s Order dated 16.12.2009

made in CRP. NPD. No. 4042/2009.

5.The Hon"ble High Court"s communication MF. No. 166/

2009/Judl. dated 16.12.2009.

With reference to the letter cited above I submit that, as per the report submitted by the present VIII Judge of this office it is found that, M.P. No. 48/2009 in RCA 565/2008 on the file of VIII Court of Small Causes, Chennai was filed on 12.01.2009 by Dr. C. Mohan Reddy with prayer to permit the petitioner/ appellant to let additional evidence in RCOP 2146/2007 and after filing the counter of other side and after hearing for enquiry by both sides, this petition was dismissed on 10.07.2009, before the order passed in CRP Nos. 2224 to 2226/2009 dated 04.08.2009 for the inordinate delay in filing the application.

The M.P. No. 49/09 in RCA 565/2008 on the file of VIII Court of Small Causes, Chennai was filed on 12.01.2009 by Dr. C. Mohan Reddy Petitioner/Appellant praying to file additional counter statement in RCOP 2146/07 on 12.01.2009 and after filing counter and hearing both side arguments order as pronounced on 10.07.2009, before the order passed in CRP Nos. 2224 to 2226/2009 dated 04.08.2009 by dismissing the M.P. for the reasons that inordinate delay in filing the application at the stage of appeal.

As regards to M.P.50/2009 in RCA 565/2008 on the file of VIII Court of Small Causes, Chennai was filed by Dr. C. Mohan Reddy Petitioner/Appellant on 12.01.2009 and after receiving the counter and hearing both sides order was pronounced on 09.07.09, before the order passed in CRP Nos. 2224 to 2226/2009 dated 04.08.2009 by dismissing the petition praying to permit the petitioner/ appellant for filing additional grounds for the reasons at the time of hearing the petitioner/appellant during the course of trial and does not required for filing additional grounds.

Further I submit that the main RCA No. 565/08 was disposed after hearing both sides on 7.10.09 by confirming the trial court order in RCOP 2146/07.

Further I submit that the above MP. Nos. 48/09, 49/09 and 50/09 in RCA 565/2008 on the file of VIII Court of Small Causes, Chennai were disposed by Thiru N. Palaniswamy, formerly VIII JUDGE and now VII Judge of this unit.

Yours faithfully, sd/- CHIEF JUDGE I/C.,

12. Also, while reserving orders on 18.12.2009, this Court has directed the Registrar (Judicial) "to call for the entire records in R.C.O.P. No. 2146 of 2007 on the file of XV Court of Small Causes, Chennai (both material and immaterial papers) as well as the entire records in R.C.A. No. 565 of 2008 on the file of the VIII Judge, Small Causes Court, Chennai including the M.P. Nos. 48, 49 and 50 of 2009 through fax and special messenger within a period of two days here from" and the records have come to this Court.

13. It is to be noted that this Court has the power of superintendence over the

subordinate Courts in the State under Article 227 of the Constitution of India to test the legality or the correctness of the orders so passed. Moreover, this Court has jurisdiction to entertain petition under Article 227 of the Constitution of India within whose jurisdiction the order of the appropriate authority (subordinate to High Court) has been passed.

14. A scrutiny of the M.P. No. 48 of 2009 in R.C.A. No. 565 of 2008 by this Court indicates that arguments of both sides have been heard on 17.04.2009 and the matter has been posted for orders and directed to be called on 28.04.2009 and on 28.04.2009 orders have not been passed and for orders the matter has been posted to 03.06.2009 and on 03.06.2009, the matter has been posted for orders by 17.06.2009 and on 17.06.2009 it has been posted for orders by 19.06.2009 and again on 19.06.2009, the matter has been posted for orders by 24.06.2009 and on 24.06.2009 it is mentioned as "J.O.O.D" R-posted to 29.06.2009 and again on 29.06.2009 it is mentioned as J.O.O.D R-posted to 09.07.2009 and on 09.07.2009 it is posted for orders to 10.07.2009 and on 10.07.2009, the orders have been pronounced as "petition is dismissed with costs".

15. Added further, a perusal of the notes paper in M.P. No. 48 of 2009 shows that after the High Court's order in CRP(NPD) Nos. 2224 to 2226 of 2009 dated 04.08.2009 (where under the order passed in M.P. No. 48 of 2009 has been set aside by this Court), the same has not been restored to file by the Learned Appellate Authority viz., VIII Judge, Small Causes Court, Chennai. Similarly, in M.P. No. 49 of 2009 in R.C.A. No. 565 of 2009 both sides arguments have been heard on 17.04.2009 and only on 10.07.2009 finally the orders have been passed resulting in the dismissal of the said petition with costs. Likewise, in M.P. No. 50 of 2009 in R.C.A. No. 565 of 2008 arguments have been heard on 17.04.2009 and though, the same has been posted for orders on 28.04.2009, the orders have passed ultimately on 09.07.2009 culminating in dismissal of the petition with costs. As such, it is quite evident that the Learned Appellate Authority viz., VIII Judge, Small Causes Court, Chennai has passed an order in R.C.A. No. 565 of 2008 on 07.10.2009 without restoring the M.P. Nos. 48, 49 and 50 of 2009 to file (after the common order passed in CRP(NPD) Nos. 2224 to 2226 of 2009 dated 04.08.2009). The comity of discipline requires that the learned Appellate Authority is to follow the directions issued by this Court in CRP (NPD) Nos. 2224 to 2226 of 2009 dated 04.08.2009 scrupulously. Any failure in this regard may amount to causing an affront to the MAJESTY and DIGNITY of JUSTICE, culminating in insubordination/Judicial indiscipline. However, the costly omission in this regard by the learned Appellate Authority viz., VIII Judge, Court of Small Causes, Chennai has caused substantial and material prejudice to the Revision Petitioner/Appellant/Tenant resulting in miscarriage of justice and in this regard, the Learned Appellate Authority viz., VIII Judge, Small Causes Court, Chennai has not followed the common order passed by this Court in CRP(NPD) Nos. 2224 to 2226 of 2009 dated 04.08.2009 in true letter and spirit, in the considered opinion of this Court and viewed in that perspective, this Court comes to an inevitable conclusion that the Civil Revision Petition needs to be allowed in

furtherance of substantial cause of justice and consequently, the Civil Revision Petition is allowed by this Court without going into the merits of the matter in issues between the parties.

16. In the result, the Civil Revision Petition is allowed, leaving the parties to bear their own costs. Resultantly, the order dated 07.10.2009 passed in R.C.A. No. 565 of 2008 by the learned Appellate Authority viz., VIII Judge, Small Causes Court, Chennai is hereby set aside. The matter is remitted back to the Learned Appellate Authority viz., VIII Judge, Small Causes Court, Chennai who is directed to hear the R.C.A. No. 565 of 2008 afresh after restoring the M.P. Nos. 48, 49 and 50 of 2009 to file and to dispose of the said miscellaneous petitions along with the main Rent Control Appeal within a period of three months from the date of receipt of a copy of this order. The Learned Appellate Authority viz., VIII Judge, Small Causes Court, Chennai is also directed to provide adequate opportunities to respective parties and the parties are directed to lend a helping hand to the Appellate Authority in regard to the completion of proceedings within the time limit prescribed by this Court. Consequently, the connected miscellaneous petition is closed.