

CASE NO.:
Special Leave Petition (civil) 20220-20221 of 2000

PETITIONER:
N. VELMURUGAN

Vs.

RESPONDENT:
K. N. GOVINDARAJAN

DATE OF JUDGMENT: 01/02/2002

BENCH:
Syed Shah Mohammed Quadri & S.N. Variava

JUDGMENT:

S. N. VARIAVA, J.

Leave granted.

These Appeals are against the Judgement dated 18th February, 2000 in C.R.P. No. 2255 of 1998 and an Order dated 28th August, 2000 in Review Application No. 49 of 2000 of the High Court of Madras.

The facts leading to these Appeals are as follows:-

The mother of the Appellant was a tenant of the Respondent. She entered into an Agreement to Sell dated 24th January, 1994 with the Respondent in respect of the same property. The agreement provided that the mother of the Appellant could collect rent from the other tenants in the property. The mother of the Appellant expired on 9th September, 1996. The Appellant issued a notice dated 16th August, 1996 calling upon the Respondent to complete the sale.

After receipt of the notice the Respondent filed an Eviction Petition on the ground of willful default and arrears of rent. It was claimed that the Appellant's mother was in arrears of rent from 31st May, 1989 to 31st December, 1994 of the monthly rent of Rs. 350/- and from March, 1995 till her death on 9th September, 1996 of the monthly rent of Rs. 500/-. It was claimed that after the death of the mother the Appellant was in arrears of rent till the date of filing of the eviction petition. The Appellant contested the eviction petition and averred that pursuant to the Agreement to Sell there was no relationship of landlord and tenant. The Appellant then filed a suit for specific performance of Agreement to Sell dated 24th January, 1994. That Suit is still pending.

By an Order dated 7th July, 1997 the eviction petition was dismissed. However, an Appeal against the order of dismissal was allowed by the Rent Control Appellate Authority by its Order dated 29th April, 1996. The Rent Control Appellate Authority directed the Appellant to deposit a sum of Rs. 40,000/- on or before 30th June, 1998.

The Appellant filed a Civil Revision Petition No. 2255 of 1998 in the High Court of Madras. The Appellant also filed a Miscellaneous Petition seeking stay of the order of deposit. The Appellant then

deposited the sum of Rs. 40,000/- on 11th September, 1998. As deposit was made the High Court by Order dated 14th September, 1998 (passed in the Miscellaneous Petition) extended time to deposit upto 11th September, 1998. This Order has not been challenged by the Respondent. The Civil Revision Petition was dismissed by the impugned order dated 18th February, 2000. The High Court held that there was nothing wrong in the order of the deposit.

It appears that in spite of the fact that the Civil Review Petition and the stay application were pending before the High Court, the Respondent applied to the Trial Court for striking out the defence of the Appellant and for passing of a decree of eviction. On 1st July, 1998 the Trial Court passed a very cryptic Order, which reads as follows:

"1. Petition allowed.

2. The respondent is ordered to evict the building. Time limit is one month."

When the Appellant learnt of the Order, he applied for a review of Order dated 18th February, 2000 to point out the fact that in spite of the High Court extending time to make the deposit the trial Court had ordered eviction. The High Court did not deal with this aspect and dismissed the Review Petition by Order dated 28th August, 2000.

We have heard the parties.

In our view, the order of eviction passed by the Trial Court cannot be sustained. As stated above, the Trial Court has passed a very cryptic Order. As the High Court has extended time to deposit the amount there cannot be said to any default much less a willful default. Instead of dismissing the Review Petition the High Court should have considered this aspect. Once the High Court had extended time it should have set aside Order dated 1st July, 1998. The Order dated 1st July, 1998 cannot be allowed to stand. We, therefore, set aside the Order dated 1st July, 1998. The Trial Court is directed to now dispose of the eviction petition in accordance with law. We further direct that the Appellant shall deposit within a period of two months from today all arrears of rent upto December, 2001. The Appellant will also continue to deposit future rent till the disposal of the case. The first of such rent, for the month of January, 2002 to be deposited on or before the 10th February, 2002. The rent of each subsequent month to be deposited on or before 10th day of each succeeding month.

The Appeals stand disposed of accordingly. There will be no order as to costs.

..J.
(SYED SHAH MOHAMMED QUADRI)

J.
(S. N. VARIAVA)

February 1, 2002