

IN THE IV ADDITIONAL CITY CIVIL COURT, CHENNAI

Present: J. Chandran,

IV Additional Judge

This Wednesday, the 21th day of February 2024.

I.A.No.3 of 2023

in

Original Suit No.1976 of 2023

CNR No.TNCH01-009054-2023

Mrs. N. Vijayalakshmi

..Petitioner/plaintiff

Rep.by her Power of Attorney

Mr.N.Parthasarathy

No.15, Jagadeeswaran Street,

T.Nagar, Chennai.

/versus/

M/s. Sri Venkata Ramana Travels

...Respondent/Defendant

Rep. by its Proprietor

Mr.Sri Medikonda Ramakrishna

New Nos.5 & 7 (Old Nos.3&4),

Ground Floor, Raghaviah Road

T.Nagar, Chennai.

This petition came up before me for final hearing on 13.12.2023 in the presence of M/s.N.Premkumar, R.Prasanna Vineeth Durai and M.Chinnathambi Counsels appearing for the petitioner/plaintiff and of M/s.E.Vinoth Kumar Counsel appearing for the respondent/defendant, upon

hearing the arguments from the counsels for both side, upon perusing the entire records of this case and having stood over for consideration till this day, this Court passed the following

ORDER

This petition has been filed by the petitioner/plaintiff directing the defendants to furnish adequate security to the claim made in the suit failing which to pass an order of attachment of the Bus (HPV) bearing registration No.AP-16-TH-4554, Engine No.GFEZ40XXXXX belongs to the respondent/defendant pending disposal of the suit Under Order XXXVIII Rule 5 of CPC.

01. The averments found in the affidavit filed along with the petition are as follows:

The respondent became a tenant under the petitioner/plaintiff in respect of a shop portion in the ground floor of the premises of New Nos.5 & 7 (Old Nos. 3 & 4) Ground floor, Ragaviah Road, T.Nagar, Chennai and the tenancy has been let out for non residential use for the purpose of running travels under the name of M/s. Sri Venkata Ramana Travels. Due to some reference of plaintiff's husband's friend the petitioner had earlier let out the tenancy premises to the respondent on temporary measure as they intended to vacate as soon as they got an alternative accommodation. Believing such assurance and promise the

petitioner had let the subject tenancy premises to the respondent and in terms of which no written rental/tenancy agreement has been entered into between them. The monthly rent was fixed at the inception of tenancy at Rs.15,000/- per month exclusive of electricity consumption charges. The tenancy is reckoned according to English Calender Month and the respondent had paid a sum of Rs.1,50,000/- towards advance cum security deposit. From the year 2018 the rent for the tenancy premises has been enhanced to Rs.20,000/-per month excluding the consumption of electricity charges. The respondent was not regular in payment of monthly rents and he has been paying the rent belatedly and the same was also received by the petitioner's husband on behalf of the petitioner under protest.

02. The respondent had also aware the fact that the petitioner had initiated eviction proceedings against the other tenants who are occupying their respective portion of shops on the ground of demolition and for reconstruction. Some of the tenants have vacated on their own and others through Court of law by eviction proceedings. Only a batch of 5 cases vide RCOP No.130 to 133/2014 and 136 of 2014 have been proceeded with the trial on the file of X Small Causes Court, Chennai. The respondent had given a categorical undertaking on 18.01.2014 in writing by stating that they had agreed and assured to vacate the shop portion under their occupation as and when the

petitioner requires the same while progressing the work of demolition and reconstruction. The said undertaking has also been marked as an exhibit in the aforesaid eviction proceedings. In terms of such undertaking letter believing in full confidence on the respondent, the petitioner have not initiated any separate eviction proceedings against the respondent. The Rent Control cases reached finality in CRP.Nos.3407, 3409, 3410 3411 and 3467 of 2022 by a common order dated 09.12.2022 by which an order of eviction had been confirmed by the Hon'ble High Court, Madras and all the respective tenants were directed to vacate and handover the vacant possession of the tenancy premises to the petitioner within a period of 4 months from the date of order that is on or before 08.04.2023.

03. All those 5 tenants had vacated and handed over the vacant possession of their respective portion to the petitioner. But the respondent has not shown any signs of vacating and handover the tenancy portion under the occupation with an oblique motive. At present except this small tenancy portion under the occupation of the respondent entire building has now been lying vacant. The entire property is not in habitable condition and totally unfit for utilizing for any purpose. The plaintiff has already started making arrangements for the work of demolition and reconstruction. The Corporation authorities has also strictly notified about the precarious condition of the entire building and further

directed the petitioner to dismantle it at the earliest in order to avoid causing any danger to the public. Despite all these factors all within the knowledge of the respondent they simply keeping quiet without having any seriousness about the inhabitable condition of the building. The respondent has not paying the monthly rent from April 2020 onwards at the rate of Rs.20,000/- per month. The respondent has lastly paid the rent for the month of February 2020 on 10.03.2020 and March 2020 rent has been paid only in the month of August 2020 i.e., on 20.08.2020 through bank transfer.

04. The respondent has not paid the rents for the tenancy premises despite repeated demands made by and on behalf of the petitioner. The respondent is due and liable to pay a sum of Rs.6,80,000/-from April 2020 to January 2023 at Rs.20,000/- per month as on date of filing the suit. The respondent has simply squatting on the tenancy premises without complying with their mandatory duty to pay the huge arrears of rent. The respondent is a chronic willful habitual defaulter in payment of monthly rent and hence the respondent is liable to be evicted from the tenancy premises. As on date the arrears of rent to be paid by the respondent comes to Rs.7,80,000/-. Nowadays the proprietor of the respondent's Travel is not seen frequently in the tenancy premises and only one or two employees are sitting there. Whenever the petitioner had questioned about the proprietor of the respondent he could not get proper and responsible

answers from them. They are simply evading to answer about the owner. It is visibly seen that the proprietor of the respondent Travels intends to move away from the tenancy premises without clearing the arrears of rent. At present the petitioner had seen that the respondent is operating two Deluxe((luxury) buses on regular basis and the respective registration number of the vehicles are (a) AP-16-TJ-7088 and (b) AP-16-TH-4554 and the 2nd one is stands in the name of the proprietor namely the respondent.

05. The respondent is trying to move away from the tenancy premises along with the aforesaid buses and try to keep them beyond the reach of the petitioner in order to defraud the petitioner. If the respondent succeeds in their attempts the petitioner will be left with nothing to recover with regard to the arrears of rent. Hence in order to protect and safe-guard the bonafide interest of the petitioner an order of attachment before Judgment is vital and necessary. The petitioner has also filed a photograph of the above said bus containing the details about the respondent concern as the online registration certificate and hence he prays for allowing the petition.

06. The averments found in the counter affidavit filed by the respondent are as follows:

This respondent do not know whether the plaintiff had given a General Power of Attorney in favour of the petitioner and whether the same is still in existence to file the present suit and to represent the owner of the suit property. It is an admitted fact that this respondent is a tenant under the plaintiff in respect of a shop portion which is described as suit property for non residential purpose to run a travels under the name and style of Sri Venkata Ramana Travels. There is no written lease agreement between the plaintiff and the respondent. The allegations made in the affidavit that this respondent had taken over the tenancy premises on temporary measure as he intends to vacate as soon as they got an alternative accommodation and by believing such assurance and promise are false. The plaintiff had let out the suit premises to this respondent and is fully aware about the fact that the plaintiff had initiated the eviction proceedings against the other tenants who are occupying their respective portions on the ground of demolition and reconstruction and this respondent do not know the eviction proceedings filed by the petitioner against the other tenants of the petition schedule building and this respondent is not a party to those proceedings and he never received any notice in the above said petitions. Hence the petitioner is put to strict proof of all those allegations which are not admitted by this respondent.

07. This respondent never fell due of any monthly rent to the petitioner and the alleged arrears of rents mentioned in the petition is nothing but created story for the purpose of main suit with an intention to show this respondent as willful defaulter. This respondent is very regular in payment of monthly rent and he never committed any willful default except the period of Corona Pandemic situation. This respondent is very regular in payment of rents and he paid the rent upto July 2023. When this respondent trying to pay the monthly rent of August 2023, the petitioner had failed to receive the same and refuse to receive the rent and demanded to vacate the suit property. As the petitioner already filed the present suit the respondent was advised to file a separate petition to deposit the monthly rents to the credit of this Court to show his bonafide. As this respondent never committed any default in payment of monthly rents, there is no question of attachment before Judgment of the properties of the respondent either movable or immovable properties.

08. The respondent is doing transport business since a long time and he owned several buses in his business in his firm name. The present petition is not maintainable as the schedule bus is hypothecated to Kusalava Finance Limited, Vijayawada on 08.04.2022 itself. This respondent herewith filed the copy of the certificate of registration that is Form-23 which clearly reveals the said fact. This respondent is always ready and willing to file undertaking affidavit by

undertaking that this respondent will not transfer the petition schedule bus till the disposal of the main suit as directed by this Court. As the main suit itself is not maintainable there is no question of furnishing security for the satisfaction of this Court as there were no arrears of rent between the petitioner and the respondent. The plaintiff has not issued any demand notice for the alleged arrears of rent till 2023 when she alleged that the respondent has not paid the rent from April 2022. Why the plaintiff is keeping silent for a long period was not explained. Since the respondent has paid the rent regularly upto July 2023 she has not sent any demand notice for such a long period. As the petition schedule bus bearing registration No.AP-16-TH-4554 is under hypothecation as it has been purchased after obtaining vehicle loan from the finance company, this respondent has no right to sell or transfer or mortgage the said vehicle in favour of any 3rd parties unless the said vehicle is released from hypothecation from the said finance company. The allegations that this respondent is not opened the shop and trying to close the business to avoid the payment of arrears of rent is not true as this respondent is having much reputation in the society including Andhra Pradesh, Telangana State and Chennai as he run the transport business by using several buses in his business name, the question of move away from the tenancy premises along with buses are not correct. This respondent herewith undertake that he will not alienate the petition schedule bus bearing registration No.AP-16-TH-4554, engine No.GFEZ40 to others till the

disposal of the main suit. Hence there is no bonafides in filing this petition and the petition is liable to be dismissed.

09. Point for consideration:

Whether this petition filed to attach the bus bearing registration No.AP-16-TH-4554 is to be allowed or not, is the question to be decided in this petition?

10. No document was marked and no oral evidence was adduced by either side for this petition.

11. To the point:-

It is an admitted fact that the petitioner/plaintiff had filed the main suit for recovery of possession of the suit property from the respondent and directing the respondent to pay the arrears of rent for the period from April 2020 to January 2023 at the rate of Rs.20,000/- per month which comes to Rs.6,80,000/-. It is also an admitted fact that this petition has not been filed along with the plaint but after the appearance of the respondent into the Court through his Counsel this application has been filed by the petitioner through his power of Attorney holder. It is an admitted fact that the plaintiff is the owner of the suit property and she has been represented by her power of Attorney holder

who alone had filed the suit in his capacity and the respondent is the tenant under the plaintiff and the monthly rent for the premises is Rs.20,000/- per month from April 2020 onwards.

12. It is the definite case of the petitioner that some of the tenants had vacated on their own and some of the tenants were vacated as per the eviction order passed by the tenancy Courts and the eviction order was confirmed by the Hon'ble High Court in Civil Revision Petitions and the petitioner is one of the tenant who occupied one of the portion of the premises in ground floor of the suit property who has not vacated as promised by him. The petitioner has also claimed that the eviction proceedings were initiated by the petitioner for demolition of the entire building and for reconstruction as the property was not fit for occupation. It is the further case of the petitioner that the respondent had agreed to vacate and hand over the premises as and when required by the petitioner but he refused to vacate the same subsequently. Further the petitioner has claimed that the respondent is in arrears of rent right from April 2020 and the arrears would accumulated to a total sum of Rs.6,80,000/- and for which the suit for recovery of possession of the suit property and for recovery of the arrears of rent has been filed by the petitioner according to him.

13. This petition has been filed by the petitioner/plaintiff to attach the bus bearing registration No.AP-16-TH-4554 which belongs to the respondent on the ground that the respondent is attempted to flee away from the jurisdiction of this Court. On the other hand the respondent has claimed that the said bus has been hypothecated to a finance company and hence it cannot be transferred to any other person. Further the respondent has also categorically given an undertaking in more than one occasion in his counter affidavit by stating that the respondent will not transfer the petition mentioned bus till the disposal of the suit if directed by this Court. In para Nos 5 and 7 of the counter affidavit the respondent had stated as follows:

“Further, this respondent herewith undertakes that he will not alienate the petition schedule bus bearing No.AP-16-TH-4554, engine No.GFEZ40 to others till the disposal of the main suit.”

The respondent has claimed that the said bus has already been hypothecated to a finance company, and he has stated the particulars of the said finance company namely Kusalava Finance, Vijayawada in which the bus has been hypothecated. Further the respondent has also produced the documentary evidence to prove that the bus in question has been hypothecated to a finance company and is still in force. Though the respondent has stated in his counter affidavit as if he has submitted the relevant documentary evidence along with the said counter affidavit, he has not produced any such documentary evidence in this petition

while filing this counter affidavit or at the time of filing the written statement. But he filed some documentary evidence in connected petition filed by him in this suit. When this Court has posed a question to the learned counsel appearing for the petitioner that whether the said affidavit of undertaking is sufficient to dispose of the petition, the learned counsel appearing for the petitioner has not accepted the said suggestion and he reiterated his stand that the bus has to be attached for the amount due to be paid by the respondent to the petitioner.

14. It is to be pointed out that the respondent himself has categorically admitted that the bus in question is belongs to him. The petitioner has also produced the xerox copy of RTO vehicle information with regard to the said bus in which the name of the respondent alone was mentioned as the owner of the said bus and the same was purchased and registered on 01.06.2016. In the said document the age of the bus has been mentioned as 7 years 1 month and 13 days but the year of manufacturing has not been stated in the said document but it has been stated as if it was in active condition as mentioned in the status of the said bus. It is also an admitted fact that the said bus is an Omni bus used for the business purpose for transporting the passengers from one place to other as admitted by both the parties. A semi deluxe omni bus can be worth nearly Rs.10 crores but the petitioner had sought for to attach the said moving bus which is used for transportation of the passengers only for a sum of Rs.7,30,000/-. When the

worth of the bus would be more than Rs.10 crores at this point of time claiming of the petitioner that the said bus has to be attached for a sum of Rs.7,30,000/- is completely disproportionate to his claim. As the bus has been hypothecated the respondent will be used to collect the money earned through the bus by plying on the road and repaid the hypothecation amount to the finance company and the same is to be treated as a livelihood for the respondent. Hence the claim of the petitioner that the bus worth about Rs.10 crores is to be attached for the sum of Rs.7,30,000/- is highly unacceptable one. The petitioner can choose any other property of the respondent to the said value and claiming of attachment of a plying bus which is in a condition to mobilize the people from one place to another is not acceptable one to meet the ends of justice.

15. It is not the case of the petitioner that the respondent has made an attempt to transfer the name of the bus or alienate the ownership of the bus to any other person after filing the suit. It is also not the case of the petitioner that the respondent had violated in any manner the affidavit of undertaking stated by him in the counter affidavit. When the respondent has obeyed and followed the undertaking given by him in the counter affidavit as of now the said undertaking can be made as a binding effect on the respondent till the disposal of the suit and the petition can be disposed of based on the undertaking given by the

respondent to meet the ends of justice. It is to be pointed out that the bus while plying on the road for the use of the public can earn much amount per month and if the bus has been attached and kept as an ideal, the machineries available in the bus will be loss its value and the engine will be seized and the bus may not be in a useful plying condition after some time. Claiming of the petitioner to keep the bus in an ideal manner after attaching the said property is not a correct way of approach.

16. If the petitioner had a doubt about the fleeing of the respondent from the jurisdiction of this Court he has to identify the other property of the respondent enable the Court to attach the same. More over the claim of attaching the bus worth about Rs.10 crores for the suit amount of Rs.7,30,000/- cannot be a valid relief sought for by the petitioner which is completely disproportionate to his claim itself. When comparing to the irreparable loss caused to the parties the respondent will be put into serious hardship and irreparable loss if the property has been attached and on the other hand the gravity of the irreparable loss caused to the petitioner is only a minimal comparing to the loss caused to the respondent. When the respondent himself has given an undertaking by affirming that he will not alienate/transfer the ownership of the bus the undertaking can be made as binding effect on the respondent Considering the above stated circumstance and in the interest of justice this Court finds that the petition can

be disposed of by dismissing the application after recording the affidavit of undertaking given by the respondent in his affidavit and with a condition that the respondent shall keep the undertaking given by him in the affidavit till the disposal of the suit and he shall not alienate or transfer the ownership of the bus in any manner without permission of this Court till the disposal of the suit and this point has been decided accordingly.

In the result this petition is disposed of by imposing the condition that the respondent shall abide by the undertaking given by him in the counter affidavit filed in this petition and the respondent is directed not to alienate or to transfer the ownership of the bus bearing registration No.AP-16-TH-4554 to anybody-else till the disposal of the suit as undertook by him. The parties are directed to bear their own cost.

This Order has been dictated by me to the steno typist, transcribed and computerized by her, corrected and pronounced by me in the open Court on this Wednesday, the 21st day of February 2024.

IV Additional Judge,

IV Additional City Civil Court, Chennai.

List of witness examined and exhibit marked

on the side of both the parties:

Nil

IV Additional Judge,

IV Additional City Civil Court, Chennai.