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CRP. No.1908 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.06.2024

PRONOUNCED ON : 15.07.2024

CORAM

THE HONOURABLE **MR.JUSTICE BATTU DEVANAND**

C.R.P. (NPD) No.1908 of 2015

&

MP No. 2 of 2015

Rampratap Metals,
Proprietor Meghraj Sharma,
no.42, Hanumantharayan Koil Street,
Ground Floor,
Chennai-600 003

.. Petitioner/appellant

Vs.

S.B.Somasekar (died)
Lalitha Sekar

.. respondent

(Respondent brought on record as lr of the deceased sole respondent vide court order dated 28.07.2023 made in CMP Nos.4679, 9278, 10166 of 2022 in CRP Nos.1624 & 1908 of 2015 by VLNJ)

Prayer : Civil Revision Petitions have been filed under Article 227 of the Constitution of India, against the fair and decreetal order made in RCA No. 462 of 2006 on the file of the 8th Judge, Small Causes Court, Chennai/Appellate Authority dated 21.01.2015 confirming the fair and decreetal order dated 28.03.2006 made in RCOP No.2558 of 2005 on the



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file of the 12th Judge, Small Causes Court, Chennai/Rent Controller.

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For Petitioner : Mr.A.C.Kumaragurubaran
For Respondent : No appearance

ORDER

This Civil Revision Petition arise out of the judgment and decree dated 21.01.2015 made in RCA No.462 of 2006, passed by the learned 8th Judge/Rent Control Appellate Authority, Court of Small Causes, Chennai confirming the fair and decreetal order dated 28.03.2006 made in RCOP No. 2558 of 2005 passed by the learned 12th Judge/Rent Controller, Small Causes Court, Chennai, in and by which, both the Courts below has ordered eviction of the tenant on the ground that the tenant/petitioner herein has committed act of waste and caused damage to the property.

2.The brief facts of the case are as follows:

The revision petitioner is the tenant under the landlord namely Thiru.S.B.Somasekar, who died during the pendency of the present revision petition, is now represented by the respondent.



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3.For the sake of convenience, the parties herein after will be referred to, as "tenant and landlord".

4.The landlord has filed RCOP No.2558 of 2005 against the tenant for eviction under Section 10(2)(iii) of the Tamilnadu Building(Lease & Rent)Control Act on the ground of acts of waste. According to the landlord, the tenant has committed act of waste by digging borewell in the rented premises and thereby causing diminision of value of property and also caused damage to the property.

5.The tenant has resisted the RCOP filed against him by way of counter affidavit, wherein, it is stated that there is no toilet provision and water supply for the rented premises and mere digging of borewell will not any way fall under the definition of act of waste and causing damage to the building. The landlord, only for the purpose of filing the petition for eviction has taken the ground that the tenant has committed act of waste and sought for eviction, which is not maintainable. The landlord was in the habit of filing the petition by petition repeatedly solely with an intention to evict the tenant from the premises. Therefore, the tenant has sought for dismissal of



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RCOP filed by the landlord.

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6.On consideration of both oral and documentary evidence adduced by both the parties, the learned Rent Controller vide order dated 28.03.2006 has categorically come to the conclusion that the tenant has committed an act of waste and caused damage to the building and thereby ordered eviction of the tenant.

7.Aggrieved by the order of eviction, the tenant has preferred an Appeal in RCA No.462 of 2006 before the learned Rent Control Appellate Authority, who in turn, on appreciation of the findings of the learned Rent Controller by judgment dated 21.01.2015 has confirmed the findings of the learned Rent Controller.

8.Challenging the judgment of the learned Rent Control Appellate Authority, the tenant has constrained to file the present revision petition.

9.Mr.A.C.Kumaragurubaran, learned counsel for the petitioner/tenant would vehemently contend that both the Courts below have erred in holding



that the tenant has committed act of waste and thereby ordering eviction of tenant, which cannot be sustained. He would further contend that absolutely the tenant has not committed any act of waste and the landlord has not adduced any evidence to establish the act of digging borewell in the rented premises would diminish the value and utility of the building. The learned counsel pointed out that the landlord was in the habit of filing eviction petitions against the tenant and in the present case, he filed RCOP on the same ground that as if the tenant has dug borewell and committed acts of waste but the fact remains is that in the rented premises there is only one well. He would further contend that in fact the tenants have not dug any borewell but one of the tenant namely Gumanmal has dug well for the purpose of running her hotel business in the first floor of the premises, while so, both the Courts below have not appreciated the evidence adduced on behalf of the tenant. The learned counsel would contend that in any event digging a borewell and making the rented premises with water facility would no way impire the value and utility of the building. On the other hand, it will increase the value of the premises. Therefore, the learned counsel would submit that the tenant has not committed any act of waste and thereby, the finding of both the Courts below are perverse and liable to be set aside.



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10. In spite of service of notice, there is no representation on behalf of the respondent. Accordingly, this Court is proceeded with the case basing on the material available on record.

11. Having heard the learned counsel for the petitioner and having gone through the entire material available on record, the only issue to be considered is whether the order of the VIII Court of Small Causes(Appellate Authority) at Chennai in confirming the order of the learned Rent Controller in allowing RCOP on the ground of act of waste is correct or not?

12. In the proceedings held before the Rent Controller, on the petitioner's side PW1 was examined and Ex.P1 was marked. On the respondent's side, RW1 was examined and no documents were marked. After hearing both the parties and on appreciation of the oral and documentary evidence available on record, the learned Rent Controller has allowed RCOP No.2558 of 2005 on 28.03.2006 on the ground of act of waste. Aggrieved by the same, the tenant has preferred an Appeal in RCA No.462 of 2006. The said appeal was dismissed confirming the order and



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decree passed by the learned Rent Controller. Aggrieved by the same, the present CRP has been filed.

13.The contention of the landlord is that the tenant has committed the act of waste and thereby diminished the value of the building and impairs the utility of the building. As seen from Ex.P1 in para 8, wherein, it is stated that "the respondent further submits that there is no toilet facility and water supply and that therefore, the tenant only dug a borewell at his costs". As such, it appears that the tenant dug a borewell at his costs. Now it has to be considered whether he dug a borewell with the permission of the landlord or not? But there is no iota of proof of obtaining such permission from the landlord. It is the case of the tenant that the landlord has to prove that the unauthorised act of the tenant, has caused damage to the building and such damage materially impaired its value or utility. But the Appellate Court has rightly came to the conclusion on considering the fact that in the present case, there is no evidence on the side of the tenant to establish the act of waste committed by him that he has not dug a borewell and has not impaired the value and utility of the building. It is his duty to prove that he has not impaired materially the value and utility of the building. As such



the oral contention of the tenant that he has not caused any damage to the building, the evidence adduced by the petitioner/tenant is not accepted.

Considering these facts, the Appellate Court came to a considered opinion that the tenant has committed the act of waste as he dug borewell, which would certainly affect the strength and stability of the basement of the building and thereby impairs materially the value and utility of the building.

14. On careful perusal of the entire records, this Court is also of the considered opinion that as the tenant admitted that he has dug a borewell and in the absence of proof or evidence that he dug a borewell with the permission of the landlord, his argument that the digging a borewell has not caused any damage to the building, is not acceptable one. The trial Court has considered all these aspects and they have thoroughly appreciated the facts and law in a proper perspective and has rightly passed the order for eviction of the tenant in RCOP, which was rightly confirmed by the Appellate Court in RCA. As such, in the considered opinion of this Court, the order of the trial Court and the Appellate Court do not suffer from any illegality or infirmity and hence, the same requires no interference of this Court in this Civil Revision Petition.



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15. Accordingly, this Civil Revision Petition is dismissed.

No costs.

Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Internet : Yes / No

To

1. The learned 8th Judge,
Small Causes Court/Appellate Authority, Chennai.

2. The learned 12th Judge,
Small Causes Court/Rent Controller, Chennai.

BATTU DEVANAND.J.,



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Pre-Delivery Order in
C.R.P. (NPD) No. 1908 of 2015

15. 07.2024