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C.R.P.(NPD).No.3706 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(NPD).No.3706 of 2019

and

C.M.P.No.24362 of 2019

Babita Agarwal

... Petitioner

VS

Chandra Devi

... Respondent

Prayer: Civil Revision Petition is filed under Section 25 of the Tamilnadu Buildings [Lease and Rent Control] Act 1960 as amended under Act 23 of 1973, praying to set aside the decree and judgment in RCA No.663 of 2014 dated 06.09.2019 by the learned VIII Judge, Court of Small Causes, Chennai confirming the decree and judgement in RCOP No.1714 of 2011 dated 22.08.2014 on the file of the learned X Judge, Court of Small Causes, Chennai, allowing the said petition filed by the Respondent herein for eviction under Section 10 (3) (a) (iii) of the Act and to set aside the said decree and judgment.



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For Petitioner : Mr.D.Prathap
for M/s.G.Saravanan

For Respondent : Mr.G.D.Vaishnav

ORDER

The Civil Revision Petition is filed challenging the order of eviction passed by the Court below under Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

2. The petitioner is the tenant. The respondent/landlord filed rent control eviction petition on the ground of owners occupation. It was the specific case of the respondent that demised premisses was required for her son-Anil Ranka for his own use and occupation for financial business. The respondent issued a notice on 03.08.2011 calling upon the petitioner to vacate premises to enable her son to occupy the same. But the petitioner failed to vacate the premises and hence, the respondent was constrained to file a petition seeking eviction.



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3. The eviction petition filed by the respondent on the ground of owners occupation was resisted by the petitioner mainly on the ground that the respondent/landlord got a vacant shop in the very same premises. It is also further stated by the petitioner that the respondent is owning other non-residential building in the city and therefore, the present petition is not a *bona fide* one.

4. The learned Rent Controller on appreciation of oral and documentary evidence let in by the parties, came to the conclusion that the requirement of the respondent is *bona fide* one and ordered eviction. Aggrieved by the same, the petitioner had preferred rent control appeal in R.C.A.No.663 of 2014 and the same was dismissed. Hence, the petitioner is before this Court.

5. The learned counsel appearing for the petitioner by taking this Court to the evidence of PW.1 submitted that the respondent's son, who was examined as PW.1 clearly admitted that Shop No.3 available in the same premises was vacated three years back and the said admission clearly proved



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when eviction petition was filed by the respondent, Shop No.3 was vacant.

Therefore, when a non-residential building belonging to the respondent was vacant on the date of filing of the petition, the eviction petition filed by the respondent cannot be treated as a *bona fide* one. The relevant portion of evidence of PW.1 during his cross examination reads as follows:-

“மனுசொத்து வந்த பிறகு பைனாஸ் தொழிலை கூட்டாக செய்யுள்ளோம். உண்மையில் மனுசொத்து எனக்கு தேவையில்லை என்றால் சரியல்ல. என்னுடைய தேவை நியாயமானது இல்லை என்றால் சரியல்ல. முதல் கடை எதிர்மனுதாரர் வசம் உள்ளது. 2ம் கடை ராஜேஸ்வரி மெடிக்கல்ஸ் கடை. 3வது கடையில் நரேந்திர மங்கள் நடத்தி வந்தார். அவர் தற்போது காலி செய்துவிட்டார். நரேங்கிர மங்கள் கடையை பூட்டிவிட்டு சென்று விட்டார் பின்னர் நீதிமன்ற மூலம் அந்த கடையில் சுவாதினத்தை நான் பெற்றேன். அந்த கடையில் சுவாதினத்தை எந்த தேதியில் எடுத்தேன் என்று எனக்கு ஞாபகம் இல்லை. எனது தாயார் தான் அந்த வழக்கை தொடுத்தார். அந்த கடையை காலி செய்து சுமார் 3 வருடங்களாகிறது. சுமார் 1 1/2 வருடத்திற்கு கடை எண் 3 யை ராஜேஸ்வரி மெடிக்கல்சுக்கு எனது தகப்பனார் வாடைகைக்கு கொடுத்தார்.”

6. A reading of above evidence of PW.1 would indicate that Shop No.3 in the very same premises was vacated three years back and the same was let



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out to Rajeshwari Medicals. Therefore, though Shop No.3 was vacated even prior to the filing of the eviction petition, according to the evidence of PW.1, the said shop was let out to Rajeshwari Medicals. The evidence of PW.1 has to be read along with the averment found in the counter of the petitioner. The petitioner/tenant in her counter affidavit clearly admitted a shop in the ground floor of the same premises got vacated in April, 2011 and the same had been rented out to a third party for Rs.7,000/- per month. Therefore, the petitioner herself admitted a shop in the very same premises was vacated and same was let out to a third party. It is not case of the petitioner that some other shop is vacant and available for occupation in the very same premises.

7. Though the petitioner in her counter affidavit also claimed that respondent is owning several building in the very same city, the petitioner has not let in any evidence to substantiate the same. Therefore, the contention raised by the petitioner as if, the respondent is owning some other non-residential building is not acceptable to this Court.



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8. The son of respondent was examined as PW.1. He deposes that he would like to start financial business as soon as he gets vacant possession of the demised premises. In such circumstances, finding rendered by the Rent Controller as well as Rent Control Appellate Authority that the requirements of the respondent/landlord is *bona fide* is based on appreciation of evidence available on record and there is no perversity in the orders passed by the Courts below.

9. Accordingly, I do not find any error or illegality in the orders passed by the Courts below and consequently, the Civil Revision Petition stands dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.

16.02.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm



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To

- 1.The VIII Judge, Court of Small Causes,
Chennai.
- 2.The X Judge, Court of Small Causes,
Chennai.



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S.SOUNTHAR,J.

This matter is posted today under the caption 'For being mentioned' at the instance of the learned counsel for the petitioner.

2.The learned counsel for the petitioner submits that petitioner is the tenant carrying on business in non-residential building. Therefore, time may be given for vacating the premises.

3. The learned counsel for the respondent was heard on this aspect.

4. Having regard to the fact that the petitioner is carrying on business in non-residential building, this Court is inclined to grant six months time to the petitioner to vacate and hand over vacant possession to the respondent without driving him to the execution proceedings on following conditions:-

a) The petitioner shall file an affidavit of undertaking within a period of one week that he would hand over vacant possession to the respondent on or before 26.08.2024 without driving the respondent to execution proceedings.



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b) The petitioner shall continue to pay the agreed rent of Rs.5000/- on or before 10th of succeeding month starting from February 2024.

c) If the petitioner fails to comply with any one of the conditions mentioned above, the time granted for vacating the premises will not enure to him. The respondent is at liberty to proceed with execution proceedings.

5. Registry is directed to issue fresh order copy by incorporating the above said changes.

26.02.2024

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S.SOUNTHAR,J.
nr

C.R.P.(NPD).No.3706 of 2019
and
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26.02.2024