



C.R.P.No.5032 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.01.2024

PRONOUNCED ON: 12.02.2024

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

Civil Revision Petition No.5032 of 2023

and

Civil Miscellaneous Petition No.29300 of 2023

1. Shakilur Rahman
2. Abdul Fayaz
3. Zareena Begum
4. Malika Noorullah
5. Noorunnissa
6. Hussain
7. Rahamathullah
8. Shabeer Ahmed

...

Petitioners



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Arifa Sultana Khaleel

Vs

...

Respondent

Prayer: Civil Revision Petition has been filed under Article 227 of the Constitution of India to set-aside the fair and decreetal order dated 19.10.2023, passed in R.L.T.A.No.113 of 2022 by the Hon'ble XVII Additional Judge, City Civil Court, Chennai.

For Petitioners : Mr N. Sivaprakash

For respondent : Mr.N.A.Nassir Hussain

ORDER

This Civil Revision has been preferred against the fair and decreetal order passed by the Hon'ble XVII Additional Judge, City Civil Court, Chennai in RTLA No.113 of 2022 dated 19.10.2023.

2. The fact of the case is that the respondent herein is the owner of the property situated at No.23, Ammai Ammal Street, Pulianthope, Chennai -12, in which, the first petitioner herein is the tenant under the lease agreement dated 01.11.2014 on a monthly rent of Rs.50,000/-. The first petitioner has



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also paid a sum of Rs.5 lakhs as security deposit to the respondent herein/landlord. As agreed by the parties, the rent of the premises is to be increased by 10% every year and the last agreed rent was Rs.60,000/-. The first petitioner/tenant failed to pay the rent from November 2016 and the lease period has also expired on 31.10.2017. After deducting the advance of Rs.5 lakhs a sum of Rs.31,60,000/- is due till 01.11.2021. The first petitioner/tenant had sub-let the premises to the petitioners 2 to 8 herein on receiving huge sums. Since the first petitioner/tenant is trying to grab the property, the respondent/landlord issued a notice dated 01.11.2021 to the petitioners/tenants calling upon them to pay the arrears of rent and vacate and hand over possession. Even thereafter, neither the petitioners/tenants paid the arrears nor hand over possession, and hence, the respondent/landlord filed a petition in RLTOP No.118 of 2022 before the XII Small Causes Court, Chennai for repossession of the tenanted premises on the ground of failure to enter into an agreement in writing as per section 4(2) of the Act and the same was allowed on 24.08.2022. Against which, the petitioners/tenants filed an appeal in RLTA N.113 of 2022 on the file of the XVII Additional City Civil



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Court, Chennai. The learned Appellate Judge, by an order dated 19.10.2023 dismissed the appeal, thereby confirmed the order passed by Rent Court. Aggrieved over the same, the present revision petition has been filed.

3. The learned counsel for the petitioners submitted that the Rent Court and the Appellate Court failed to note the fact that the tenancy agreement was entered on 01.11.2014 and the period expired on 31.10.2017 and failed to note that Section 5(3) of The Tamil Nadu Regulation of Rights and Responsibilities of LandLords and Tenants Act, 2017 (herein after referred as "Act") stipulates that the Landlord should have demanded vacant possession within 6 months from the period of expiry of tenancy agreement. In this case, it was expired on 31.10.2017 and the respondent/landlord has not demanded vacant possession within 6 months from the period of expiry of tenancy agreement. The respondent/landlord has demanded possession only on 01.11.2021, which is not within 6 months as required under Section 5(3) of the Act. The petition under Section 21(2)(a) of the Act is not maintainable in this type of cases. Only on failure of landlord and tenant to enter into an agreement under



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Section 4(2) of the Act, Section 21(2)(a) is applicable. The Trial Court and the Appellate Court failed to consider this aspect and the ordered eviction. To support his contention, the learned counsel relied upon the judgment of this Court in Civil Revision Petition (NPD) 3056, 3061, 3062, 3063, 3067, and 3094 of 2021 dated 04.02.2022 and thus, seeks to allow the revision by setting aside the order.

4. The learned counsel for the respondent supported the impugned order of the Trial Court and contended that after the lapse of the agreement period, i.e. 31.10.2017, the first petitioner/tenant had entered into a oral agreement with the respondent's husband/landlord as he is at Qatar and they continued the oral agreement. Since he failed to enter into the written agreement under Section 4(2) of the Act, the Rent Controller and the Appellate authority ordered for re-possession. There is no illegality in the order passed by the Courts below and there is no ground to interfere with the impugned order and thus, pleaded to dismiss the revision.



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5. This Court considered the matter in the light of the submissions made by the learned counsel on either side and also perused the materials available on record carefully.

6. On perusal of the materials on records, the fact reveals that the respondent is the owner of the property mentioned in the petition. The petitioners are tenants therein. The building was leased out to the 1st petitioner/tenant by the respondent's husband(deceased) under the lease agreement, dated 01.11.2014 on a monthly rent of Rs.5,000/- and the 1st petitioner/tenant had paid a sum of Rs.5 lakhs as security deposit. The rent for the premises is to be increased by 10% every year as it was agreed by the parties and the last agreed rent was Rs.60,000/-. The lease period was expired on 31.10.2017. On perusal of records, it is noticed that after 31.10.2017, there was no written lease agreement between the parties. At the time of argument, the petitioner take this advantage and challenged the impugned order. On perusal of the evidence, it is noticed that the 1st petitioner/tenant had admitted during his oral examination that after 2017, he had entered into the oral agreement with the landlord as the landlord was at Qatar. The evidence is



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recorded by the Trial Court, which runs as follows :

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“ நான் மனுதாரரிடம் வாடகைதாரராக இல்லை. மனுதாரருக்கு நான் கட்டிடங்கள் கட்டி கொடுத்த வகையில் எனக்கு ரூ.14,00,000./ பணம் மனுதாரர்கள் எனக்கு தரவேண்டி இருந்தது. அதற்காக அவர்களுக்கு சொந்தமான வீட்டை அவர் என்னை வாடகைக்கு இருக்குமாறு அனுமதி அளித்து அதில் இருந்து வரும் வாடகை பணத்தை மனுதாரர்கள் கொடுக்க வேண்டிய பணத்திற்கு ஈடு செய்து கொள்ளுமாறு என்னிடம் கூறி 01.11.2014 தேதியில் என்னுடன் வாடகை ஒப்பந்தம் செய்துக்கொண்டார்கள். அவர்கள் அனுமதியுடன் நான் 2 முதல் 8 வரையிலான எதிர்மனுதாரர்களுக்கு குத்தகைக்கு விட்டுள்ளேன். அதன் பின்னர் 2017 மற்றும் 2020 ஆண்டுகளில் மனுதாரர் கத்தாரில் இருந்ததால் அவர்களுடன் வாய்மொழியாக ஒப்பந்தத்தை புதுப்பித்துள்ளேன்”.

The evidence runs further as follows:

“நான் மனுதாரரிடம் பலமுறை எழுத்துப்பூர்வமான ஒப்பந்தம் செய்துகொள்ள கேட்டேன். அவர் முன்வரவில்லை மேலும் மனுதாரர் எனது உறவினர் என்பதாலும் அவருக்கு உடல்நிலை சரியில்லாத காரணத்தாலும் நாங்கள் எழுத்துப்பூர்வமான ஒப்பந்தம் ஏற்படுத்திக்கொள்ளவில்லை”

The above said evidence exposes the fact of oral agreement between the parties.



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7. Section 21(2)(a) entitles the Rent Court to pass the order for recovery of possession on the ground that the landlord and tenant have failed to enter into an agreement of tenancy as contemplated under Sub-Section (2) of Section 4. The proviso to Sub-Section (2) of Section 4 enables both the landlord and tenant to apply for termination of tenancy by invoking this sub-clause. In this case, the 1st petitioner, during his cross examination stated that several times, he had requested the landlord to execute the written agreement. But, he has not come forward to execute the written agreement, which is not an acceptable reason for invoking Section 21(2)(a) of the Act. The applicability of Sub -Section (2) of Section 4 reads as follows:

“ Failure to enter into a tenancy agreement :

Clause (a) of Sub-Section (2) entitles the Rent Court to pass an order for recovery of possession on the ground that the landlord and tenant have failed to enter into an agreement of tenancy as contemplated under sub-section (2) of Section 4. The proviso to sub-section (2) of Section 4 enables both the landlord and tenant to apply for termination of tenancy invoking this sub-clause.

The applicability of sub-section (2) of Section 4 carves out an exception. The ground for recovery of



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possession under Section 21(2)(a) is specifically made available only to tenancies created before the commencement of this Act subject to absence of a written agreement and also a failure to enter into a written tenancy agreement within the time prescribed for the same, after the commencement of this Act. There may be instances where tenancy agreements in writing existed prior to the commencement of this Act but expired soon after this Act came into force and in such cases there may be a failure to enter into a fresh written tenancy agreement viz., tenancies contemplated under sub-section(3) of Section 4. In certain instances, the tenancies, though in writing may not be registered as mandated under Sub-Section (3) of Section 4. These cases cannot come under the purview of clause(a) of sub-section(2) of Section 21.”

8. In view of the statement of the 1st petitioner/tenant, the argument of the learned counsel for the petitioner that the agreement expired on 31.10.2017 and the owner has not demanded possession within 6 months from the date of expiry of the agreement as contemplated under Section 5(3) of the Act is not



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an acceptable one. Section 5(3) of the Act will not be applicable since the 1st petitioner/tenant admitted the oral agreement after the expiry of written agreement. Therefore, the case of this respondent/landlord is covered by Section 4(2) and its proviso and the landlord could have right to invoke Section 21(2)(a) of the Act. Considering all the above aspects, the Rent Court as well as the Appellate Court rightly ordered for eviction. Therefore, I find no infirmity in the order passed by the Rent Court and the Appellate Court and there is no ground to interfere with the impugned order and I find no merit in this revision the same is liable to be dismissed.

9. Accordingly, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

12.02.2024

Index: yes/no
Internet:yes/no
mrp



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To

1. XVII Additional Judge,
City Civil Court,
Chennai.
2. XII Judge,
Small Causes Court,
Chennai.



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V. SIVAGNANAM, J.

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