

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2013

CORAM

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

C.R.P.(NPD).No.2621 of 2010
and
M.P.No.1 of 2010

Jayavel @ Jayabal

... Petitioner

.. Vs ..

Anuratha

... Respondent

Prayer:- Civil Revision Petition filed under Article 25 of the Tamilnadu Buildings (Lease and Rent) Control Act, 1960, praying to set aside the order dated 19.11.2009 passed in I.A.No.95 of 2009 in R.C.A.No.4 of 2007 on the file of the Rent Controller (Subordinate Judge), Ariyalur.

For Petitioner : Mr.R.Thiagarajan

For Respondent : Mr.P.Valliappan

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ORDER

This Civil Revision Petition is directed against the order dated 19.11.2009 passed in I.A.No.95 of 2009 in R.C.A.No.4 of 2007 on the file of the learned Rent Controller (Subordinate Judge), Ariyalur.

2. The petitioner is a tenant. The respondent/landlady filed

R.C.O.P.No.4 of 2006 under Section 14(1)(b) of the Tamil Nadu Buildings Lease and Rent Control Act, 1960, on the file of the learned Rent Controller [District Munsif], Ariyalur, for eviction on the ground of demolition and reconstruction. The landlady had stated in the petition that the building was very old one, with temporary tinsheet roof in a worst condition. The landlady had examined one Mr.Shanmugam as P.W.1 and has marked Exs.P.1 to P.6 to substantiate her case. The Tenant examined himself as R.W.1 and he had produced one document as Ex.R.1. The learned Rent Controller [District Munsif], Ariyalur, after considering the oral and documentary evidence, allowed the application. Aggrieved by the order, the petitioner had filed an appeal in R.C.A.No.4 of 2007 before the learned Rent Control Appellate Authority, Sub Court, Ariyalur. In the appeal, the petitioner herein had filed an application in I.A.No.95 of 2009 seeking for appointment of an Advocate Commissioner to find out that the building is in good condition. The learned Rent Control Appellate Authority dismissed the said application. Aggrieved by the said order of dismissal, the present revision is filed.

3. Mr.R.Thiagarajan, learned counsel for the petitioner submitted that the petitioner is a tenant and he has been in the

petition premises for long number of years and the respondent landlady filed the application with *mala fide* intention to evict him. So, in order to prove the requirement is not *bona fide*, the petitioner had filed the application to find out the nature of the building. The reason given by the learned Appellate Authority is not sustainable in law.

4. Per contra, Mr.P.Valliappan, learned counsel for the respondent submitted that the respondent filed the application for demolition and reconstruction. The age and condition of the building is not the only criteria as held by the Division Bench in a judgment reported in **(1967) 1 MLJ page 110 [R.P.David Vs. V.N.Danial (died) and others]**. The only requirement of Section 14(1) (b) of the Tamil Nadu Buildings Lease and Rent Control Act is, the next desire of the landlady to demolish the building and such demolition is to be made for the purpose of constructing a new building. The respondent has filed the application for demolition and reconstruction. The onus of proving the requirement is on the landlady, but the tenant had filed the application with *mala fide* intention to drag on the proceedings.

5. In the judgment reported in **2008-3-L.W.160-**

R.Nandakumar v. The Dindigul Co-op. Housing Building Society Limited, this Court has held as follows:-

"8.Appointment of Advocate Commissioner in the appellate state in the appellate Court and receiving the Commissioner's report as additional evidence is not automatic. Under Order 41, Rule 27 of CPC production of additional evidence whether oral or documentary is permitted only under three circumstances (i) the trial Court had refused to admit the evidence though it ought to have been admitted; (ii) the evidence was not available to the party despite exercise of due diligence and (iii) the appellate Court required the additional evidence so as to enable it to pronounce better judgment or for any other substantial cause of like nature. The basic principle requisite for admission of additional evidence is the existence of one or other of the above said conditions".

6. The same view has been followed by this Court in ***2010(1) MWN (Civil) 165-The Principal St.Patrick School and College, v. Amaravathi (deceased) and others.*** In this case, an

Advocate Commissioner was appointed at the appellate stage, that was challenged in the revision before this Court. While setting aside the order of appointment, this Court has held that the appellate Court is bound to act on the basis of the available oral and documentary evidence on record and the Advocate Commissioner cannot be appointed to perform the function of Court or procure evidence, by allowing the plaintiffs to fill up the lacuna, at the appellate stage.

7. As rightly contended by the learned counsel for the respondent that the burden of proof about the requirement for demolition and reconstruction is on the landlady. Apart from that, the petitioner had an opportunity to lead oral and documentary evidence before the Rent Controller. While filing the application for appointment of Advocate Commissioner at the appellate stage, the requirements contained in Order 41 Rule 27 of C.P.C. have to be complied. But, the petitioner has not satisfied the requirements.

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Jrl

8. In view of the above conclusion, there is no infirmity or irregularity in the order passed by the learned Rent Control Appellate Authority (Subordinate Judge), Ariyalur. Hence, the Civil Revision Petition is dismissed.

9. Considering the fact that the appeal is pending from 2007, the learned Rent Control Appellate Authority [Subordinate Judge], Ariyalur, is directed to dispose the appeal on merits and in accordance with law, within a period of one month from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.

20.12.2013

Index : Yes
Internet : Yes
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To

The Rent Controller (Subordinate Judge),
Ariyalur.

C.R.P.(NPD).No.2621 of 2010