

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2015

Coram:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(PD)No.1133 of 2015
and M.P.No.1 of 2015

1.V.S.Sajith
2.N.K.Sarala

... Petitioners

vs.

K.P.Madhavan

... Respondent

Civil Revision petition filed under Article 227 of the Constitution of India against the common order and decree dated 13.10.2014, passed in M.P.No.442 of 2014 in RCOP No.576 of 2013, on the file of XIII Judge, Court of Small Causes, Chennai.

For Petitioners : Mr.V.Manohar
for Mr.C.Rajan

ORDER

This revision arises out of the order passed by the Rent Controller XIII Judge, Small Causes Court, Chennai, in M.P.No.442 of 2014 in RCOP No.576 of 2013.

2. The respondents in RCOP No.576 of 2013 are the revision petitioners. The respondent/landlord initiated eviction proceedings against the petitioners/tenants under Section 10(2)(i), 10(2)(vi) and 10(3)(c) of Tamil Nadu Buildings [Lease and Rent Control] Act.

3. The case of the landlord is that the tenants have failed and neglected to pay rent from October 2012 and they have also ceased to occupy the petition premises continuously for more than six months. Further, the landlord also requires the petition premises to have an office to look after the affairs of all the tenants. After the evidence of the landlord was over and when the eviction petition was posted for evidence of the tenants, they filed M.P.Nos.442 and 443 of 2014 to re-open the evidence of the landlord and to recall P.W.1 for further cross examination.

4. It is averred in the affidavit filed in support of the petitions that the respondent/landlord had taken possession of portion of the premises to an extent of 2400 sq.ft. and therefore, the requirement of 'owner's use and occupation' is not *bona fide* and to prove the case of the tenants, further examination of P.W.1 is required.

5. The applications were opposed by the landlord stating that after the examination of witnesses by the landlord, the tenants filed M.P.No.289 of 2014 for appointment of an Advocate Commissioner to note down the physical features of the petition premises, which was dismissed on 11.07.2014 and thereafter, these applications were filed to prolong the litigation. The Rent Controller dismissed the applications. Aggrieved by the said order, the present revision is filed.

6. Mr.V.Manohar, learned counsel appearing for the petitioners submitted

that the eviction petition was filed for 'owner's use and occupation', but after institution of this case, the landlord has taken possession of about 2400 sq.ft. in RCOP No.2035 of 2012 and therefore, further cross examination of P.W.1 is necessary.

7. It is seen that the eviction petition was filed on 14.03.2013 and after examination of witnesses by the landlord, the tenants earlier filed an application for appointment of an Advocate Commissioner and after dismissal of the petition, they chose to file this application.

8. It is settled law that the tenants cannot dictate terms to the landlord as to which portion they have to occupy. In **(2009) 4 Supreme Court Cases 410, (Vadiraj Naggappa Vernekar (Dead) through Lrs Vs.Sharadchandra prabhakar Gogate)**, the Apex Court held as follows:

"28. The power under the provisions of Order 18 Rule 17 CPC is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and re-examination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18 Rule 17 CPC.

29. It is now well settle that the power to recall any witness under Order 18 Rule 17 CPC can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit, but as indicated herein above, such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination."

In the light of the decision of the Hon'ble Apex Court and also considering the facts of this case, I do not find any reason to interfere with the impugned order.

K.KALYANASUNDARAM,J.,

gms

In the result, the civil revision petition is dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

gms

23.03.2015

To
XIII Judge, Court of Small Causes, Chennai.

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