

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).Nos.2583 and 2585 of 2015
and M.P.No.1 of 2015

R.Venkatesan
Proprietor
Sri Sarada Colour Lab,
Old No.15, New No.27,
Neelakanda Mehta Street,
T.Nagar,
Chennai – 600 017.

...Petitioner in both the petitions

Vs

1. Sharada Rajamani
2. Rajkumar Rajamani

...Respondents in both the petitions

Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the order and decree dated 27.03.2015 passed in M.P.Nos.10 and 11 of 2015 respectively in RCOP No.705 of 2013 pending on the file of XI Small Causes Court, Chennai.

For Petitioner : Mr.D.Sadhasivan

For respondents : Mr.K.V.Sundararajan

COMMON ORDER

Civil Revision Petitions are filed against the fair and decreetal order dated 27.03.2015 passed in M.P.Nos.10 and 11 of 2015 respectively in RCOP No.705 of 2013 pending on the file of XI Small Causes Court, Chennai.

2.The respondents herein as the landlords filed a petition in R.C.O.P.No.705 of 2013 on the ground of own use and occupation. The revision petitioner herein, who is a tenant, filed a detailed counter and contesting the same. Respondents/landlords' side evidence has already been over and the second respondent herein was examined as P.W.1 and his cross-examination was over. When the matter was posted for further oral evidence on the side of the revision petitioner/tenant, he has come forward with three applications in M.P.Nos.10 and 11 of 2015 to reopen and recall P.W.1 and M.P.No.48 of 2015 for reception of additional counter in R.C.O.P.No.705 of 2013. The trial Court, after hearing both sides, allowed M.P.No.48 of 2015, against which, no revision has been preferred. The trial Court dismissed the applications in M.P.Nos.10 and 11 of 2015, against which, the present revisions have been preferred.

3.Learned counsel for the revision petitioner/tenant submits that once the trial Court allowed the application for reception of additional counter, they ought to have allowed the applications for reopen and recall P.W.1. Since he put up superstructure in 200 sq.ft. after obtaining permission from the landlords and also to prove that R.C.O.P. is not maintainable, recalling P.W.1 and marking of those documents are necessary. He further submits that in the interest of justice, reopen and recall P.W.1 is necessary. Hence, he prayed for allowing the revision petitions.

4.Resisting the same, learned counsel for the respondents/landlords submits that the revision petitioner has preferred those applications only with a view to drag on the proceedings. Once the revision petitioner/tenant was set exparte and he has filed an application for setting aside the exparte order along with an application for condonation of delay. Then the revision petitioner/tenant has filed petitions in M.P.Nos.527 and 528 of 2014 for reopening and recalling P.W.1. The said petitions were allowed and P.W.1 was recalled and again cross-examined in length. Subsequently, revision petitioner/tenant had let in evidence and he was cross-examined in length. Thereafter, he has come

forward with the present applications. Now those documents sought for to be marked are not relevant to decide the matter. He further submits that as a tenant without evicting the premises, he has filed series of applications. That factum was rightly considered by the trial Court. Further, no person will be permitted to fill up the lacuna and gaps in the evidence. Therefore, he prayed for dismissal of the revision petitions.

5. Considered the rival submissions made on both sides and perused the materials available on record.

6. The respondents herein as landlords filed eviction application on the ground of own use and occupation. The revision petitioner herein as a tenant filed a counter resisting the same. According to the respondents/landlords, the revision petitioner/tenant has filed series of applications only with a view to drag on the proceedings. At first, the revision petitioner/tenant was set *ex parte* and hence, he has filed an application to set aside the *ex parte* order along with a petition for condonation of delay. That delay was condoned and an opportunity was given to him. Secondly, after P.W.1 was examined, landlords' evidence has been

closed, the revision petitioner/tenant filed M.P.Nos.527 and 528 of 2014 for reopen and recall P.W.1 and the same were allowed. P.W.1 was cross-examined in length and the revision petitioner was examined as R.W.1. Thirdly, the revision petitioner/tenant has filed M.P.Nos.10, 11 and 48 of 2015. M.P.No.48 of 2015 for reception of additional counter was allowed and M.P.Nos.10 and 11 of 2015 were dismissed.

7.Now this Court has to decide for rendering complete justice, whether reopen and recall P.W.1 is necessary? Admittedly, application in M.P.No.48 of 2015 for reception of additional counter was allowed and additional counter was received. Merely because additional counter has been received, we cannot say that the tenant is entitled to cross-examine P.W.1 again.

8.According to the revision petitioner/tenant, those documents are necessary to prove that the landlords are residing in commercial area not in residential area. In my view, it is immaterial that whether the property is situated in commercial or residential area, whether R.C.O.P. is maintainable and whether the tenant has made construction in the petition mentioned property

and the same can be decided by the Rent Controller and not by this Court while dealing with C.R.P. In such circumstances, those documents are not relevant to decide the issue.

9. It is well settled dictum of the Apex Court that as per Order XVIII Rule 17 C.P.C., no person will be permitted to fill up the lacuna and gaps in the evidence by way of reopen and recall the evidence. It is pertinent to note that before filing the present applications, the revision petitioner/tenant has filed M.P.Nos.527 and 528 of 2014 for the same relief and those applications were allowed and thereafter, landlords evidence has been closed. The revision petitioner/tenant has filed his proof affidavit and he was submitted himself for cross-examination. It clearly shows that the revision petitioner/tenant with a view to drag on the proceedings, filed series of applications. Under such circumstances, I am of the view, the revision petitioner/tenant is not entitled to reopen and recall P.W.1. The trial Court has rightly considered the same. So the order passed by the trial Court does not suffer any infirmity or illegality and it is hereby confirmed. The revision petitions deserve to be dismissed and they are hereby dismissed.

10. In the result, the Civil Revision Petitions are dismissed. Since R.C.O.P. is of the year 2013 and it is posted for tenant/respondent's further evidence, the Rent Controller is directed to dispose of the same within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

07.12.2015

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To

XI Small Causes Court, Chennai.

R.MALA,J.

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