

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 19.01.2015

CORAM

The Hon'ble Mr.Justice **K.KALYANASUNDARAM**

**CRP NPD No.5031 of 2014
and M.P.No.1 of 2014**

Moorthy

.. Petitioner/Tenant

Vs

1.Stella

2.Manokar

3.Nimalkishore

4.Premila

.. Respondents/Landlords

Prayer: Civil Revision Petition is filed under Section 25 of Tamilnadu Lease and Rent Control Act 18 of 1960 as amended by Act 23 of 1973 and act 1 of 1980 against the fair and final order of the Rent Control Appellate Authority (Principal Sub Court) Mayiladuthurai, dated 29.10.2014 made in RCA No.4 of 2013 confirming the fair and final order of Rent Controller (Principal District Munsif), Mayiladuthurai dated 07.02.2013 made in RCOP No.1 of 2012.

For Petitioner : M/s.S.Sounthar

ORDER

This revision is directed against the fair and final order of the Rent Control Appellate Authority (Principal Sub Court) Mayiladuthurai, datd 29.10.2014 made in RCA No.4 of 2013 confirming the fair and final order of Rent Controller (Principal District Munsif), Mayiladuthurai dated 07.02.2013 made in RCOP No.1 of 2012.

2. The unsuccessful tenant in the eviction petition is the petitioner in this revision petition. The respondents filed RCOP No.1 of 2012 before the Rent Controller, Mayiladuthurai seeking eviction under Section 10 (3(a) (iii) of the Tamil Nadu Buildings (Lease & Rent Control Act). The landlords have averred in the petition that they intend to start a xerox and stationery business in the petition premises and that the petition premises is required for their own use and occupation. It is further stated that they have experience in that field and money for starting xerox and stationery business.

3. The petition was resisted by the tenant stating that the requirement is not bonafide and it was filed with oblique motive to vacate the tenant.

4. Before the Rent Controller, the second petitioner was

examined as PW1 and one Ajay Kumar was examined as PW2. The landlords have also marked Exs.A1 to A5. The tenant examined himself as RW1 and produced Exs.P1 to P3. The Rent Controller held that the requirement of the landlord is bonafide and ordered eviction. The Appellate Authority confirmed the order of the Rent Controller and dismissed the appeal. Questioning the order, the present revision petition is filed.

5. Mr.S.Sounthar, learned counsel appearing for the petitioner submitted that there is no specific averment in the petition and in the pre-suit notice also, the landlords have not averred about the nature of business they are going to start and whether they were already carrying on business and there is no averment with regard to the financial capacity of the landlords. When the tenant has specifically denied the bonafide of the landlords and the financial capacity, the burden is on the landlords to establish the facts. It is further submitted that there is no material produced by the landlords to show that they have already taken atleast one step to start a business.

6. There is no dispute with regard to jural relationship and quantum of rent in this case. In Ex.A2 notice, the landlords have stated that they require the petition premises for their own use and

occupation. However, in the eviction petition, they have categorically stated that they need the petition premises for their own use and occupation to commence a xerox and stationery business. Pws1 & 2 have given evidence to substantiate the case of the landlords.

7. It is settled law that the landlords who are seeking eviction under Section 10 (3) (a) (iii) have to establish four conditions-

(i) The building should be non-residential in character ;

(ii) The landlord should be carrying on business on the date of filing of the petition ;

(iii) They should not occupy any other non-residential building of their own ;

(iv) The landlord claims should be bona fide and not based on oblique motives like trying to obtain more rent or harass the tenant.

8. In a decision of the Hon'ble Supreme Court in ***Ram Babu Agarwal v. Jay Kishan Das reported in 2009 (6) SC 772***, it is held as follows -

7. However, as regards the question of bonafide need, we find that the main ground for rejecting the landlord's petition for eviction was that in the petition the landlord had alleged that he required the premises for his son Giriraj who wanted to do footwear business in the

premises in question. The High Court has held that since Giriraj has no experience in the footwear business and was only helping his father in the cloth business, hence there was no bonafide need. We are of the opinion that a person can start a new business even if he has no experience in -3- the new business. That does not mean that his claim for starting the new business must be rejected on the ground that it is a false claim. Many people start new businesses even if they do not have experience in the new business, and sometimes they are successful in the new business also.

9. In ***The Regional Manager, Tamil Nadu Handloom Weavers' Society Ltd.v.Co.op. Society Ltd. v. N.Natarajan reported in 2010 (6) CTC 454***, this Court has held as follows -

18. *It is not in dispute that the respondent was doing brass-ware business along with his father and brother and therefore, he has got good experience in that business. Though, it has been stated that the landlord should be carrying on business on the date of application, this Court has interpreted the same and held that to satisfy the 2nd requirement, the business need not be carried on, before filing of the eviction petition and the lower Court relied upon the judgment reported in (1983)96 LW 128 at page 130 [Tamil Nadu Wakf Board, rep by its Secretary K.T.Fakir Ahmed vs. S.Syed Inam Saheb and another] and (1985)98 LW 666 [[Thiru Chelliah Pandithan vs. Tmt.Anthoniammal and two others](#)]. Hence, from the above judgments, it is made clear that it is not necessary for the landlord to carry on*

business for filing eviction application under section 10(3)(a)(iii) and it is sufficient if he has the bona fide intention to start the business.

10. The Rent Controller and the Appellate Authority, on proper appreciation of evidence, held that the requirement of landlords is bonafide. Both the authorities have also considered the financial capacity of the tenants and the business proposed to be started by the landlord. In the light of the judgments referred supra, I do not find any substance in the contentions of the learned counsel for the petitioner.

11. It is settled law that the concurrent findings of facts recorded based on evidence cannot be upset in exercising revisional jurisdictions. I do not find any perversity or material illegality in the orders passed by the authorities warranting interference of this Court.

12. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

19.01.2015

Index : Yes/No
rgr

K.KALYANASUNDARAM,J

rgr

To

1. The Principal Subordinate Judge,
Mayiladuthurai.
2. The Principal District Munsif,
Mayiladuthurai.

C.R.P(NPD)No.5031 of 2014

19.01.2015