

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 23.02.2015

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P (NPD)No.311 of 2015
and M.P.No.1 of 2015

Thiagarajan @ V.S.Sekar ... Petitioner / Tenant

Vs

1.S.Hanumantha Road (since deceased)
2.H.Kanchana
3.H.Karthikeyan ... Respondents / Landlords

Prayer: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control) Act against the fair and decreetal order dated 11.11.2014 in RCA No.536 of 2012 on the file of VIII Judge, Small Causes Court (Rent Controller) and RCOP No.1271 of 2010 on the file of XII Judge, Small Causes Court, Chennai by its order dated 04.09.2012.

For Petitioner : Mr.M.L.Ramesh for
M/s.A.M.Krishnamoorthy

ORDER

This revision is directed against the order dated 11.11.2014 of the Rent Control Appellate Authority in RCA No.536 of 2012 confirming the order made in RCOP No.1271 of 2010 on the file

of XII Judge, Small Causes Court, Chennai by its order dated 04.09.2012.

2. The unsuccessful tenant is the petitioner in this revision. One, Hanumantha Roa, the husband and father of the respondents respectively initiated eviction proceedings against the petitioner under Section 10 (3) (a) (iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act. When the eviction petition was pending, the original owner died and the respondents pursued the eviction petition as legal heirs of the original owner. In the eviction petition, it is averred that the landlord was aged about 72 years and that he is suffering from cardiac related disease coupled with age old ailments for which he is undergoing treatment and therefore he finds it difficult to climb the stairs; that his son H.Karthikeyan, second respondent herein got married and blessed with two children and he is now residing in a rented house at No.23, Doraisamy Road, Ayanavaram, Chennai – 23; that he thought it fit to accommodate his son in the first floor of the petition premises and to get himself occupied in the ground floor of the petition premises; that the landlord is not having any other property of his own in and around the city of Chennai and hence he requires the ground floor of the petition premises for his own use and occupation of his son.

3. The eviction petition was resisted by the tenant/petitioner herein stating that there is only ten stairs and it is very easy to climb to the first floor and that the landlord's son is not married and he eloped with a lady and was residing at Bangalore and recently came to Chennai. It is further stated that the landlord is having yet another property in V.V.Koil Street, Kosapet, Chennai and that the requirement is not bonafide and prayed for dismissal of the eviction petition.

4. Before the Rent Controller, the respondents examined themselves as PWs1 and 2 and marked Exs.P1 to P5. The tenant examined himself as RW1 and produced Exs.R1 to R14. The Rent Controller, after considering the oral and documentary evidence held that the requirement of the landlord is bonafide and ordered eviction. Concurring with the finding of the Rent Controller, the Appellate Authority dismissed the appeal filed by the tenant in RCA No.536 of 2012. Challenging the finding, the present revision has been filed.

5. Mr.M.L.Ramesh, learned counsel for the petitioner submitted that the eviction petition itself is not maintainable in law. It is contended that the landlord was residing in the first floor of the petition premises and he seeks the petition premises for

accommodation of his own use and occupation and therefore the application ought to have been filed under Section 10 (3) © of the Act. However, the petition was admittedly filed under Section 10 (3) (a) (3) of the Rent Control Act. Further, there is no pleading nor evidence let in to ascertain the comparative hardship in the event of eviction as per the proviso to Section 10 (3) (e) of the Act. The learned counsel further submitted that even without pleading, the parties cannot be permitted to lead evidence. The learned counsel relied upon the judgment in ***S.Mohammed Iqbal vs. M.Padmanabhan reported in 1999 (3) CTC 116*** and ***S.M.Subbiah v. S.Nandappan and Ors. reported in 1999 (3) CTC 512.***

6. PW1, wife of the original owner/landlord has given evidence stating that after the demise of her husband Mr.Hanumatha Rao, she is in need of assistance of her son, the second respondent herein. The evidence of PWs1 and 2 would reveal that PW2 contracted a marriage on his own and he was living with his wife away from his parents and only recently difference of opinion disappeared and joined decided to join together. The Rent Controller has observed that the tenant did not establish that the landlords are having some other property of their own in and around Chennai. PW1 has stated that she was owning a property at Door No.23/2,

Venkatesa Naicken Street, Kosapet, Chennai and it was sold out by her husband himself.

7. It is seen that the tenant has pleaded in his counter that he will be put to high irreparable loss and hardship in the event of eviction. The Rent Controller, after considering the evidence, held that the hardship of the landlord would outweigh the hardship of the tenant if eviction petition is not allowed. The Rent Controller Appellate Authority, on independent analysis of the entire evidence held that the requirement of the landlord is bonafide and confirmed the finding of the Rent Controller.

8. It is not in dispute that the second respondent is residing in a rented premises. PW1, the landlady is now aged more than 60 years. The landlord filed the eviction petition for occupation of his son, the second respondent herein. Though the landlord occupied the first floor of the petition premises, since the eviction was sought to accommodate the son of the landlord, the eviction petition was filed under Section 10 (2) (a) (iii) of the Act. Further, the Rent Controller has also given a finding with regard to the relative hardship. It is true that the original landlord has not pleaded about the comparative hardship in the eviction petition . However, the

tenant has understood the requirement of the landlord and also pleaded the relative hardship in his counter. Both the authorities, on the basis of evidence, rendered finding with regard to comparative hardship.

9. In **1996 (2) L.W. 494 [G.R.Raghupathy v. Dr.K.Sankar, etc.]**, it is held as follows -

8. I cannot agree with the said submission of the learned counsel for more than reason. The contention of lack of pleadings was not raised before the Authorities below, and I further find that the lack of pleadings, if any, has not prejudiced the case of the tenant, petitioner herein, in any way. The object of pleading is only to put the parties on notice, of the real matter in issue. But, if the parties are already aware of the real matter in issue and they have also joined in issue over the same, the lack of pleadings can never be treated as a ground to reject the claim. Pleadings before Rent Controller cannot be given that much of importance given to pleadings in a suit before Civil Court. Proceeding before a Rent Control Court is summary in nature and the provisions of the Code of Civil Procedure are not fully made applicable to the extent provided under the statute. We must further note that the Rent Control Court is not a Civil Court and the Act itself is more or less a self-contained Code, so far as the relationship of landlord and tenant is concerned.

10. In **1999 (1) SCC 141 [Ram Narain Arora v. Asha Rani and others]**, it is observed as follows -

11. There cannot be a pedantic or a dogmatic approach

in the matter of analysis of pleadings or of the evidence adduced thereto. It is no doubt true that if the pleadings are clearly set out, it would be easy for the Court to decide the matters. But if the pleadings are lacking or vague and if both parties have understood what was the case pleaded and put forth with reference to requirement of law and placed such material before the court, neither party is prejudiced. If we analyses from this angle, we do not think that the High Court was not justified in interfering with the order made by the Rent Controller.

11. It is settled law that only in respect of requirement of the building for additional accommodation under Section 10(3) (c) the Court has to give finding with regard to comparative hardship and in the case of requirement of the building for own use and occupation, if the court finds that the requirement is bona fide, eviction can be ordered. It is settled law that the defective pleading in the eviction petition or wrong quoting of the provisions cannot be a ground to reject the eviction petition, if the requirement is otherwise proved by the landlord. In the light of the decisions of this Court, I do not find force in the contentions of the learned counsel for the petitioner.

12. In the judgment of this Court in ***S.Mohammed Iqbal vs. M.Padmanabhan, cited supra***, it has been held as follows -

15. The other order cited by the learned

counsel for the respondent/tenant is one delivered in Radhakrishnan v. Seethalakshmi 1988 (1) L.W. 67, wherein the first decision cited above reported in Annakili Ammal and another v. H.C. Hussain and Hassan and another, 1984 (1) M.L.J. 340 has been considered and it is held that "the landlord should fail, in this revision petition because he has not at all pleaded in the eviction petition about the relative hardship that would be caused to the parties nor proved the fact that the relative hardship would be more on his pan than on the part of the tenant. S. 10(3)(e) of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 contemplates that the landlord should prove that the hardship which may be caused to the tenant by granting it will outweigh the advantage to the landlord. Though the petitioner offers to let in evidence on this aspect, I feel that it cannot be allowed at this stage. On this ground alone the eviction petition should be dismissed."

13. In ***S.M.Subbiah v. S.Nandappan and Ors., cited supra***, in that case, there was no pleading nor evidence nor any finding on relative hardship. Therefore, this Court set aside the order of the Rent Control Authorities. I am of the considered view that the judgments relied upon by the learned counsel for the petitioner are not helpful to the case of the petitioner. I do not find any perversity or illegality in the orders impugned in this revision.

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

At this juncture, the learned counsel for the petitioner sought time to vacate and hand over the vacant possession of the petition premises to the landlord. Hence, the tenant is directed to vacate and handover the vacant possession to the landlord on or before 31.07.2015. He is also directed to file an affidavit of undertaking to that effect, within a period of two weeks from today.

23.02.2015

Index:Yes
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To

1.The XII Judge,
Small Causes Court,
Chennai.

2.The VIII Judge,
Small Causes Court,
Chennai.

K.KALYANASUNDARAM,J

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