



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 12.02.2015

CORAM:
THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

C.R.P.(MD).NO.144 of 2015
and
M.P.(MD).No.1 of 2015

P.Mathiazhagan ... Revision Petitioner

vs.

Dhanush Rajavel ... Respondent

PRAYER: This Civil Revision Petition filed under Section 25 of the Tamilnadu Buildings (Lease and Rent Control) Act, 1960, against the fair and decretal order dated 27.11.2014 made in R.C.A.No.3 of 2014 on the file of the Principal Subordinate Judge cum Rent Control Appellate Authority, Virudhunagar confirming the fair and decretal order dated 26.03.2014 made in I.A.No.14 of 2013 in R.C.O.P.No.12 of 2012 on the file of the Buildings Rent Controller, Virudhunagar.

For Petitioner : Mr.S.Subbiah

O R D E R

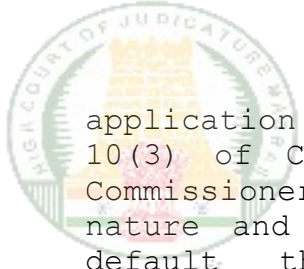
This civil revision petition is directed against the orders of the Rent Control Appellate Authority, (Subordinate Court) Virudhunagar and the Rent Controller(District Munsif), Virudhunagar rejecting the prayer for appointment of an Advocate Commissioner to inspect the petitioner mentioned property.

2.No notice is necessary to the respondent as this Court intends to direct the trial Court to dispose of the O.P at the earliest and it would not cause any prejudice to the respondent.

3.Admittedly, R.C.O.P.No.12 of 2012 was filed by the landlord against the tenant, who is the revision petitioner herein for eviction on the ground of wilful default. That is the only ground on which, the eviction is sought for and the default period is mentioned as between May 2012 and August 2012. The revision petitioner, who is the tenant herein had filed a detailed counter denying that there is no default and also had contended that the Rent Control Proceeding is not applicable to the demised the premises as the lease is perpetual and he has also made permanent structure incurring heavy expenses.

4.It is held in many cases by this Court that the revision is not maintainable against the Interlocutory Application filed in Rent Control Proceedings unless that goes to the root of the matter.

5. In this case, it is only an order of eviction sought for on the ground of wilful default and the burden is on the landlord/respondent to establish his case. Hence, the Authority Below has rightly dismissed the



application for appointing the Commissioner. No doubt under Order 26 Rule 10(3) of C.P.C., the trial Court has got discretion to appoint the Commissioner. But in the Rent Control Proceedings, which is summary in nature and the eviction is sought for only on the ground of wilful default, the appointment of Advocate Commissioner is unnecessary. The Court is not bound to do in each case to appoint the Commissioner to note down the improvements and the physical features of the property, which is not warranted. An appointment of commissioner or rejection is only a procedural order which do not affect the rights or liabilities of petitioner in a rent control proceeding. The object of Section 23(1)(b) of The Tamil Nadu Buildings (Lease and Rent Control) Act, is to give a right of appeal to a party aggrieved by some order which affects his right or liability. In this context of Section 23(b) of The Tamil Nadu Buildings (Lease and Rent Control) Act, "any person aggrieved by an order passed by the controller" though very wide, do not include interlocutory order, which are merely procedural and do not affect the rights of parties. In a pending proceedings a controller may pass many orders of interlocutory nature like summoning of witness, issue of commission, inspection of premises, fix a date for hearing etc. All these are only steps taken for the final adjudication of the proceedings. They are regulatory in nature and not affecting the rights or liabilities of the parties. The order refusing to appoint a commissioner will not affect the rights of the parties. The rights of both the parties are not in any manner affected by the refusal of the Appellate Authority to appoint a commissioner. Hence, the revision is not maintainable. Therefore, the orders of Authority Below are correct and no interference is necessary.

6. With the above observation, the civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed. However, it is open to the petitioner/tenant to raise all the points for maintainability of the RCOP during the trial.

Sd/-

Assistant Registrar (T&P)

/True copy/

Sub Assistant Registrar

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To

1. The Principal Subordinate Judge

cum Rent Control Appellate Authority, Virudhunagar.

2. The Buildings Rent Controller, Virudhunagar.

COPY TO:

THE SECTION OFFICER,

VR. SECTION, MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1CC TO MR. S.SUBBIAH, ADVOCATE SR NO.6476

C.R.P. (MD) .No.144 of 2015

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