

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2016

CORAM

THE HON 'BLE Dr. JUSTICE S.VIMALA

Civil Revision Petition (NPD) No.1556 of 2015

A.M.Farouq Basha

... Petitioner/Landlord

Vs

Mrs. S.Shayada Begum

... Respondent/Tenant

Prayer : Civil Revision Petition (NPD) filed under under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, to set-aside the order and decree passed by the learned VII Small Causes Court (Appellate Authority), Chennai, in RCA No.468 of 2013, dated 07.01.2015, in reversing the order in RCOP No.32 of 2012, dated 19.07.2013, passed by the XII Small Causes Court, Chennai.

For Petitioner : Mr. M.J.Jaseem Mohammed

For Respondent : No Appearance

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ORDER

The landlord is the Revision Petitioner herein.

1.1. The landlord filed RCOP No.32 of 2012 before the XII Small Causes Court, Chennai, seeking eviction of the tenant on the ground that the premises is required for the business of the landlord's younger son. The Rent Controller, by the order, dated 19.07.2013,

allowed the Eviction Petition granting two months time.

1.2. Challenging the same, the tenant filed RCA No.468 of 2013, which was allowed and the order of the Rent Controller got set-aside, by the judgment, dated 07.01.2015. Aggrieved over the same, the landlord has filed this Civil Revision Petition.

2. The brief facts, which are necessary for the disposal of the petition, are as follows:-

The tenant took the premises belonging to the landlord for non-residential purpose, on a monthly rent of Rs.1,500/-. The landlord had two sons and four daughters. The elder son is running a business in a rented premises. The landlord wanted to set-up a separate business for his younger son and therefore, petition seeking eviction of the tenant was filed.

2.1. This Application was opposed by the tenant on the ground that the: (a) landlord's second son is working as clerk and he is not doing any business; (b) he is also not having any experience to do business; (c) landlord is in occupation of his own shop adjoining the tenanted shop in the same building; (d) there were other tenants who are in occupation of the other portions of the tenement; (e) requirement is not bonafide.

3. On the side of the landlord, he himself has been examined as P.W.1 and his son has been examined as P.W.2 and Exs.P-1 to P-5 have been marked. On the side of the tenant, one witness has been examined as R.W.1 and Exs.R-1 to R-3 have been marked.

4. The relationship of landlord and tenant between the petitioner and respondent herein is an admitted fact. The purpose of tenancy and the nature of property let out are also admitted, i.e., the property was let out for non-residential purpose and that the amount of monthly rent was Rs.1,500/-.

5. When a claim is filed for eviction under Section 10 (3) (a) (iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, (hereinafter referred to as "the Act"), the following ingredients have to be proved before the Rent Controller:

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

(ii) the landlord should be carrying on business on the date of his applying for eviction;

(iii) landlord should not be occupying any other non-residential building belonging to him for the purpose of his business;

(iv) landlord's claim is bonafide for his business needs and not based on oblique motives, like trying to obtain more rent or harass the tenant;

6. When a landlady / landlord files a petition for eviction on the ground that his son requires the place for carrying on business, it is enough if it is proved that the son does not occupy any non-residential premises of his own; it is so held in the case of **Radhakrishnan v. S.M.Loganatha Mudaliar, 1998 (3) CTC 108 (SC)**.

7. It is also settled law that "Carrying on business need not necessarily mean that the landlord had begun the trade vigorously. It is enough if all the preparations have been made. Carrying on business mainly consists of a series of step and even one step is proved, there is no reason why it cannot be held that the requirement is satisfied"; it is so held in the case of **Nilgiri Dairy Firms v. Manoharan, 1978 (1) MLJ 357 @ 260**.

8. It had been the contention of the tenant that the requirement of the landlord is not bonafide.

8.1. It is not known on what basis the intention of the

landlord is termed to be not bonafide. In the proof affidavit of the son of the landlord, it has been stated that the premises is going to be used for the purpose of putting up papers and plastic shops.

8.2. The Rent Control Appellate Authority has observed that, for this business, what are the steps that the landlord has taken is not proved.

8.3. Whether this finding is justified is the issue in this Revision Petition.

8.4. The step to be taken in respect of each business is different, depending upon the type of business. To start a paper and plastic shop, excepting the premises, no other preparatory step is required and no licence is required. It is important to note that an averment has been made that the second son has learnt the art of doing business by working under the elder son and the Court can safely conclude that the art / technique of conducting a business is the most essential preparatory step to commence any business. When that has been done, no further step is required to be proved, having regard to the nature of the business alleged.

8.5. The Rent Control Appellate Authority has declined the request of the landlord on the ground that the business of the elder brother is totally different from the business to be started and therefore, the requirement of the landlord is not a bonafide.

8.6. The goods to be sold in each shop may be different, but the basic principles of business is one and the same and if business techniques are learnt, that should be applied in respect of the sale of any goods. Therefore, the contention that the goods to be sold are different is no ground to dislodge the claim of the landlord.

9. The learned counsel for the Revision Petitioner pointed out the evidence of P.W.1, wherein he has stated that he wanted to put up a separate business for his younger son. In cross-examination also, he has stated that the business would be for the sale of papers and disposable cups. The extent of property is stated to be 1,500 sq.ft., He has further deposed that at 64 Bazaar Road, Mylapore, he is selling betel-nuts, vegetables, coconuts and disposable cups.

9.1. P.W.2 has also stated, in his cross-examination, that he had the requisite experience of selling disposable cups, along with his brother's son. Therefore sufficient evidence has been produced by the landlord to prove that his requirement is bonafide.

10. The learned counsel for the landlord / petitioner herein submitted that the tenant has closed the business premises and that is evident from the Inland Letter (Ex.P-2) returned on the dates 22, 23, 24th of November, from the shop of the tenant.

10.1. Contending that subsequent events should also be taken note of, in moulding the relief, the learned counsel for the landlord relied upon the decision reported in **2001 (2) SCC 604 (Gaya Prasad v. Pradeep Srivastava)**, in which it has been held as follows:-

"The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the court is not precluded from taking a cautious cognizance of the subsequent changes of fact and law to mould the relief."

10.2. But, in the very same decision, it has been pointed out that such subsequent developments can be taken note of, provided fairness can be done to both sides and the relevant observation reads as under:-

"We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceedings provided

the rules of fairness to both sides are scrupulously obeyed.”

10.3. From the mere return of the letter (Ex.P-2), one cannot come to the definite conclusion that the business of the tenant is closed forever. Possibly, the business could have been closed for a limited / special occasion also.

11. Yet another contention of the learned counsel for the landlord is the extent of proof required in a Rent Control Proceedings is not proof beyond reasonable doubt, the decision reported in **2000 (1) CTC 287 (Akbar Ali v. Donian Rodingo)** is relied upon, in which, it has been held that the approach of the lower appellate court as though it is a criminal proceeding it is trying and that the landlord must prove it beyond reasonable doubt is an approach unjust and uncalled for; the approach and the discussion by the lower appellate authority is as though they are deciding criminal proceedings; it is not a proper approach; by such approach, the appellate authority would be placing the landlord only at a disadvantage; the law does not intend to place such a handicap upon the landlord; ***Just as a tenant is entitled to be protected from unreasonable eviction, the landlord is equally entitled to get possession on reasonable ground;*** that benefit should not be deprived by placing a too narrow

and to pedantic interpretation; the approach by the lower appellate court is more to pick holes in the case of the landlord, then to consider broadly whether the need is genuine or not; as a result, the lower appellate court has committed a grave error, which has led to miscarriage of justice.

12. Considering the totality of the circumstances, the approach of the Rent Control Appellate Authority, in dealing with the requirement of the landlord, cannot be appreciated. Therefore, the order passed by the Rent Control Appellate Authority is set-aside and the Civil Revision Petition is allowed. The tenant / respondent shall handover the possession of the petition mentioned premises within a period of two months from the date of receipt of a copy of this order. No costs.

28.04.2016

Index : Yes / No

Web : Yes / No

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Note to office.: Issue order copy on 11.05.2016

S.VIMALA, J.,

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To

1. VII Small Causes Court (Appellate Authority), Chennai
2. XII Small Causes Court, Chennai

C.R.P.(NPD) No.1556 of 2015

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