

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P.(NPD).No.526 of 2014

and

M.P.No.1 of 2014

A.Kumaresh

S/o.Arunachalam

.. Respondent/Respondent/Petitioner

Vs.

K.Vishwanathan

S/o.Kalyanasundaram

.. Petitioner/Appellant/Respondent

**Prayer:**

Civil Revision Petition is filed under Article 227 of the Constitution of India as against the order and final order made in R.C.A.No.3 of 2013 on the file of the Rent Control Appellate Authority/Principal Subordinate Judge, Erode dated 20.09.2013 reversing the order and final order made in R.C.O.P.No.9 of 2011 on the file of the Rent Controller-cum-Principal District Munsif, Erode dated 17.11.2012.

For Petitioner : Mr.R.Bharanidharan

For Respondent : Mr.T.Dhanasekaran

**ORDER**

The present Civil Revision Petition has been filed against the fair and decreetal order dated 20.09.2013 passed in RCA.No.3 of 2013 on the file of the Rent Control Appellate Authority/Principal Subordinate Judge, Erode, wherein the appeal came to be allowed by reversing the fair and decreetal order dated 17.11.2012 made in RCOP.No.9 of 2011 on the file of the Rent Controller-cum-Principal District Munsif, Erode.

2.The respondent herein as a landlord has filed RCOP.No.9/2011 for eviction on the ground of additional accommodation. After the filing of counter by the tenant, the Trial Court considering the oral and documentary evidences had dismissed the application against which the landlord as an appellant preferred RCA.No.3 of 2013. The learned Rent Control Appellate Authority, after hearing both sides had allowed the RCA by setting aside the fair and decreetal order made in RCOP.No.9/2011 by the learned Rent Controller, against which the present Civil Revision Petition has been preferred.

3.The learned counsel appearing for the revision petitioner/tenant

would submit that the landlord had filed the RCOP.No.9/2011 under Section 10(3)(c) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 [hereinafter called as the 'Act'] for eviction on the ground additional accommodation and in para '3-f' of the petition, he has stated the reasons for additional accommodation. Admittedly, the landlord has sought the premises which is a commercial building only for residential purpose. The property in question is situated in Erode Corporation, Municipal Ward No.22, Eswaran Kovil street, Erode and the revision petitioner/tenant is doing business in the name and style of 'Siva Pooja Stores'. In paragraph 6 of the counter filed in RCOP.No.9/2011, the revision petitioner/tenant has stated that the premises in question can be used only for commercial purpose and not for residential purpose. Further, in paragraph 17 of the chief examination of R.W.1, it was stated that the premises is not conducive for additional accommodation. It is further contended that after filing of RCOP.No.9/2011, the landlord had made construction of a residential building and let out the same to the third parties which would show the malafide intention of the landlord to vacate the petitioner/tenant. Further, while dealing with the petition for eviction on the ground of additional accommodation, the Court ought to have scrutinized the hardship caused to both the landlord as well as the tenant and the in the instant case, the hardship caused to the tenant is more than the one caused to the landlord. Hence, the learned counsel for the petitioner prayed for setting

aside the order passed by the first appellate court. To support his contention, the learned counsel for the petitioner relied upon the following decisions:

1. 1998-1-L.W.67, Radhakrishnan v. Seethalakshmi
2. (2009) 8 MLJ 560, A.Subramani v. S.Gnanasekaran

4. On the other hand, the learned counsel appearing for the respondent/landlord would submit that at the time of filing this petition in RCOP.No.9/2011, the landlord was in need of the premises in question for additional accommodation. He would further submit that in the ground floor, the petitioner is in occupation of a small room in which the motor and pump sets have been fixed and other house hold material have been stored. The said factum was also accepted by the tenant during the course of the examination. Hence, he would submit that the hardship cause to the landlord is more than that of the tenant. The learned counsel would further submit that the tenant cannot dictate terms to the landlord as to which premises the landlord must use. Further, he would submit that it is true that in the cross-examination, the landlord has admitted that it is a commercial property and there is no window, but it can be used for stocking waste goods and the same was also considered by the Trial Court. Furthermore, the fair and decreetal order passed by the learned Rent Control Appellate Authority does not suffer any irregularity and hence, the learned counsel for the respondent prayed for dismissal of the Civil

Revision Petition.

5.Considering the rival submissions made by both sides and on perusal of the typed set of papers, it is seen that the respondent/landlord has filed RCOP.No.9/2011 for eviction on the ground of additional accommodation. Admittedly, the revision petitioner/tenant has been doing business in pooja materials in the name and style of “Siva Pooja Stores”. It is also an admitted fact that the premises in question is only a small room without any ventilation facilities with only a shutter. Further, the respondent/landlord in the occupation of a part of the said building in the upstairs and in the ground floor. It would be appropriate to consider the relevant portion in para '3-f' of the petition in RCOP.No.9/2011 which reads as follows:

*“In the ground floor, the petitioner is in occupation of a small room of an area of 11 x 8 feet, in which motor and pump sets have been fixed and other house hold materials have been stored. The petitioner is not having a separate bed room. The petitioner has been put to very much hardships for want of additional accommodation”.*

6.It would also be appropriate to incorporate the relevant portion of the evidence in the cross-examination of R.W.1.

“நான் கடை வைத்த பகுதியில் மேல்மாடியில் தான் மனுதாரர் குடியிருக்கிறார். கடைக்கு பின்னால் மோட்டார் பம்பு செட்டு அறையை மனுதாரர் உபயோகப்படுத்தி வருகிறார்,”

7.The above extract would clearly reveal that the respondent/landlord is using the motor pump shed and it forms part of the property. Further, it is pertinent to note that only after filing of RCOP.No.9/2011 for eviction, the respondent/landlord has made new construction and had let out the same to the third parties. However, it is a well settled dictum that the tenant shall not dictate terms to the landlord as to which premises the landlord should reside or taken as additional accommodation. In such circumstances, the argument advanced by the learned counsel for the revision petitioner/tenant that the landlord only with a malafide intention to evict the tenant from the premises in question had filed the RCOP proceedings, though he has got alternate accommodation facilities does not merit acceptance.

8.At this juncture, it would be appropriate to consider the decisions relied on by the learned counsel for the petitioner reported in **1998-1-L.W.67**, **Radhakrishnan v. Seethalakshmi**, wherein at paragraph 5 it was held as

follows:

*“5. There is one other ground on which the landlord should fail, in this revision petition. He has not at all pleaded in the 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 part 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. This Court has held in Annakili Amma v. Hussain and Hassan, that in order to enable the Rent Controller to give effect to the proviso to S.10(3)(e) that the hardship that may be caused to the tenant by an order of eviction will outweigh the advantage to the landlord, it would be necessary for the parties to plead so and place necessary materials in support thereof. In this case, I find that no such pleading is found in the eviction petition nor is there any evidence on this aspect. Though the learned counsel for 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.”*

9.The next decision relied on by the learned counsel for the petitioner is reported in **(2009) 8 MLJ 560, A.Subramani v. S.Gnanasekaran**, wherein at paragraphs 11 and 13, it was held as follows:

*“11.As for the hardship to be experienced by the petitioner, it is pleaded that he has paid huge advance, that he has invested heavily in the business and if he vacated the premises, he will put into heavy loss and that he will be completely ruined if he is asked to vacate the premises. While this Court bestows its careful attention to the above said circumstances, this Court is of the considered view that the hardships which would be experienced by the landlord would be more than those of the tenant.*

*13.He also placed much reliance upon a decision of the Supreme Court in AIR 1999 SC 2507 [Shiv Sarup Gupta v. Dr.Mahesh Chand Gupta] wherein Their Lordships have observed that the concept of bona fide need or genuine requirement needs a practical approach instructed by realities of life and that an approach either too liberal or too conservative or pedantic must be guarded against and that the judge of facts should place*

*himself in the arm chair of the landlord and then ask the question to himself whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest and if the answer be in the positive, the need is bona fide.”*

10. Considering the facts of the present case in the light of the above decisions wherein it was held that in order to enable the Rent Controller to give effect to the proviso to S.10(3)(e) the parties must plead and prove that the hardship that may be caused to the tenant by an order of eviction will outweigh the advantage to the landlord, as stated already, it would be relevant to consider para '3-f' of the petition filed in support of RCOP.No.9/2011 wherein it was stated that in the ground floor, the petitioner is in occupation of a small room of an area of 11 x 8 feet, in which motor and pump sets have been fixed and other house hold materials have been stored and the petitioner is not having a separate bed room and the petitioner has been put to very much hardships for want of additional accommodation. Further, taking into consideration of the dictum laid down in several decisions that the landlord is entitled to choose his own option for additional accommodation and the tenant shall not dictate terms, I am of the view that the learned Rent Control Appellate Authority had rightly considered the genuineness of the claim made

by the respondent/landlord and passed an order of eviction which does not require interference by this Court.

11. Accordingly, the Civil Revision Petition is dismissed. Consequently, the fair and decreetal order passed by the first appellate Court in R.C.A.No.3/2013 is hereby confirmed and the petitioner/tenant is granted three months time to evict the premises. Connected miscellaneous petition is closed. No costs.

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