

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2016

CORAM

THE HON 'BLE **Dr.JUSTICE S.VIMALA**

Civil Revision Petition (NPD) No.3341 of 2013

Dr. M.V.Shantha .. Petitioner / landlord

Vs

Mr. Ratan Lal Dalmia .. Respondent / tenant

Prayer:- Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1963, to set-aside the order and decretal order, dated 17.06.2013, passed by the VIII Small Causes Court, Chennai, in R.C.A.No.147 of 2009, reversing the judgment and decretal order, dated 08.04.2009, passed by the XIV Small Causes Court, Chennai, in R.C.O.P.No.1029 of 2008.

For Petitioner : Mr. V.V.Giridhar
For Respondent : Mr. H.Mohammed Farook

- - -

ORDER

The rule “ei incumbit probatio qui decit, non qui negat”, i.e., the burden of proving a fact rests on the party who substantially asserts the affirmative and not upon the party who denies it; for a negative is usually incapable of proof – is the excuse offered by the tenant for his non-examination and whether this contention is justified is the main issue raised in this Civil Revision Petition.

1.1. In other words, (a) when the tenant did not follow

the basic rules of pleadings; (b) when the denial regarding relationship is not specific, but general and evasive; and (c) when the tenant refrained from examining himself as well as suppressed best evidence being available to the Court, whether can succeed by pointing out omission on the part of the landlord.

2. The landlord is the Revision Petitioner.

2.1. The landlord filed R.C.O.P.No.1029 of 2008, under Section 10(3)(a)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1963, (hereinafter referred to as "the Act") seeking eviction of the respondent / Tenant. The eviction was ordered on 08.04.2009. Aggrieved by the order, the tenant preferred an appeal in R.C.A.No.147 of 2009. The said appeal was allowed by the judgment, dated 17.06.2013. Challenging the same, this Revision Petition has been filed by the landlord.

Brief facts:-

3. The landlord and the tenant entered into a lease agreement, dated 01.04.1990, under which, the monthly rent was fixed at Rs.4,000/-. The extent of occupation is 1,575 sq.ft., The location of the property is in the posh area of Nungambakkam High Road, Chennai. The husband of the landlord had been suffering from paralytic attack and for the purpose of taking treatment, at

Chennai, the landlord wanted to get back the possession. The request of the landlord to vacate the premises went in vain and that made the landlord to file the application for eviction.

3.1. The objection to the petition for eviction filed in the form of counter, consists of nine paragraphs. Excepting paragraph-9, which contains the denial of relationship of landlord and the tenant, rest of the paragraphs are dittos of denial allegation.

Petition	Counter
Paragraph 1	Pertains to address for service.
Paragraph 2	General denial of all averments made.
Paragraphs 3, 4, 5 and 6	Denial of allegations made in paragraphs 3, 4, 5 and 6 of the petition.
Paragraph 7	Denial of allegations made in paragraphs 7 and 8 of the petition.
Paragraph 8	Denial of allegations made in paragraphs 10, 11 and 12 of the petition.

4. The learned Rent Controller framed the following essential points for consideration:-

1. Whether there is any landlord and tenant relationship between the petitioner and the respondent and whether this petition for eviction is maintainable as against the respondent? and
2. If so, whether the petitioner is entitled for eviction on the

ground of owner's occupation?

5. A perusal of the records reveals that the petitioner herself has been examined as P.W.1 and six documents have been marked. On the side of the respondent, the Personal Assistant to the respondent has been examined as R.W.1 and Authorization letter, given to R.W.1, has been marked as Ex.R-1.

6. The learned Rent Controller, while ordering eviction, has considered the following factors:-

(i) The tenant did not make any specific averment in the counter stating that the tenant is only the Company and not the individual respondent (tenant) herein;

(ii) The lease agreement between the landlord and the tenant is not produced;

(iii) By production of the copy of the sale deed, the property tax card, Ex.P-3-Bank passbook (into which the rent is credited) and Ex.P-4-vouchers, the petitioner has proved that she is the owner-cum-landlord of the premises;

(iv) The non-examination of the respondent is fatal, when he has chosen to deny the relationship of the landlord and the tenant;

(v) The tenant did not issue any reply, when Ex.P-5-legal

notice was issued by the landlord, seeking eviction;

(vi) When the eviction of the tenant is sought for in respect of a non-residential building for residential purposes, the criteria is not the use of the building to which it is put, but the structure of the building. Considering the structure of the building (flat), it is permissible for the landlord to seek eviction.

(vii) Under Sections 102 and 103 of The Indian Evidence Act, 1872, the burden of proof lies on the tenant to show, how there is no relationship of landlord and tenant, when there is a prima facie proof of "let in" by which the tenant is shown to be in possession.

7. When these findings were under challenge in R.C.A.No.147 of 2009, the Appellate Court felt that the landlord did not include the Private Limited Company in the main RCOP, as necessary parties, when Ex.P-4-vouchers show that it is the Private Limited Company and therefore, the non-joinder of the company is fatal to the case of the landlord. It has been further held that there is no need to consider the ground of the owner's use and occupation, because the proper and necessary parties are not even added in the main RCOP. On these grounds, the findings of the Rent Controller have been reversed. Challenging the same, this Civil Revision Petition has been filed.

8. Before entering into the merits of the findings, it will be useful to refer to Section 10 (3) of the Act, which reads thus:-

“10. Eviction of Tenants.-

(1) A tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of this Section or Sections 14 to 16:

Provided that nothing contained in the said sections shall apply to a tenant whose landlord is the Government :

Provided further that where the tenant denies the title of the landlord or claims right of permanent tenancy, the Controller shall decide whether the denial or claim is bona fide and if he records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in a Civil Court and the Court may pass a decree for eviction on any of the grounds mentioned in the said sections, notwithstanding that the Court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded.

(2)

(3) (a) A landlord may, subject to the provisions of clause (d), apply to the Controller for an order directing the tenant to put the landlord in possession of the building-

(i) in case it is a residential building, if the landlord requires it for his own occupation or for the occupation of any member of his family and if he or any member of his family is not occupying a

residential building of his own in the city, town or village concerned ;

(ii) in case it is a non-residential building which is used for the purpose of keeping a vehicle or adopted for such use, if the landlord requires it for his own use or for the use of any member of his family and if he or any member of his family is not occupying any such building in the city, town or village concerned which is his own;

(iii) in case it is any other non-residential building, if the landlord or any member of his family is not occupying for purposes of a business which he or any member of his family is carrying on, a non-residential building in the city, town or village concerned which is his own :

Provided that a person who becomes a landlord after the commencement of the tenancy by an instrument inter vivos shall not be entitled to apply under this clause before the expiry of three months from the date on which the instrument was registered:

Provided further that where a landlord has obtained possession of a building under this clause, he shall not be entitled to apply again under this clause-

(i) in case he has obtained possession of a residential building, for possession of another residential building of his own;

(ii) in case he has obtained possession of a non-residential building, for possession of another non-residential building of his own.

(b) where the landlord of a building, whether residential or non-residential, is a religious, charitable,

educational, or other public institution, it may, if the building is required for the purposes of the institution, apply to the Controller, subject to the provisions of clause (d), for an order directing the tenant to put the institution in possession of the building.

(c) A landlord who is occupying only a part of a building, whether residential or non-residential, may, notwithstanding anything contained in clause (a), apply to the Controller for an order directing any tenant occupying the whole or any portion of the remaining part of the building to put the landlord in possession thereof, if he requires additional accommodation for residential purposes or for purposes of a business which he is carrying on, as the case may be."

9. The learned counsel for the Revision Petitioner would submit that when the respondent is in possession and in occupation of the petition mentioned premises and when he is also running the company in the same premises, as admitted by R.W.1 in the cross-examination, then the tenant is under an obligation to show that the company is the tenant and not the individual; this burden is more, when the respondent himself is the Managing Director of the Company and other family members are the Directors of the company.

9.1. The second contention of the learned counsel for the Revision Petitioner is that the purpose for which the building was

let out was only residential and even assuming that it was let out for non-residential purpose, when the building sought for possession is structurally a residential building, then there is no bar for the landlord to ask the same for residential purposes.

9.2. The following decision is in support of the said proposition:

9.3. Where the tenancy is for both residential and non-residential purposes, the landlord can invoke either Section 10 (3) (a) (i) of the Act or Section 10 (3) (a) (iii) of the Act, on proof of bona fide requirement of the premises for the purpose for which the landlord requires the said premises. This is the dictum laid down in the decision reported in **(2001) 1 TNLJ 1 (Thavamani Nagesh v. Ramadoss)**.

10. The learned counsel for the petitioner / landlord relied upon the following decisions, in order to support the contention that it is not the use of the building, but the structure of the building, which would decide as to whether the landlord would be entitled to ask for the same for residential / non-residential purposes:-

(i) **1988-2-L.W.454 : (1989) (1) M.L.J. 186 (Indira and Others v. Vinayagam Chettiar):-**

“Building with a bathroom, kitchen and other

amenities which are characteristic of a residential building must be treated as a residential building notwithstanding its use for non-residential purpose.”

(ii) **1989-1-L.W. 400 (S.Raman v. T.Pakkirisamy**

Pather):-

“... When a portion of the pial of a house which is meant for residential purpose was made use of for a non-residential purpose for a certain number of years, it cannot be said that it had acquired independently the character of a non-residential building permanently.....”

(iii) **1997-1-L.W.585 (Kovilpatti Nadar v. Tiresha**

Ammal):-

“... if the structure of a building indicates that it is a residential purpose, and it is used for non-residential purpose, a petition for eviction filed against a tenant who is carrying on business in that place, is maintainable by the landlord, who wants it for residential purpose.”

(iv) **2006 (4) CTC 139 (Mathew Philips, M. v.**

S.Rm.S.Narayana Chettiar):-

“... When structure of building is primarily residential in nature, landlord cannot be shut out from invoking Section 10 (3) (a) (i) even though building is used for commercial purpose, like for running a school.”

(v) 2008-5-CTC 404 (M.Vedapuri v. O.M.Raj and another):-

"Landlord is entitled to seek a non-residential building for residential use if requirement is bonafide. Landlady suffering from leprosy and also a heart patient requiring premises let out for non-residential use for her residential purpose for treatment in nearby hospital. Therefore, the Eviction order passed by the Courts below are confirmed."

(vi) 2001-2-L.W.647 (South Indian Bank Ltd. v. Saroja Govindarajan):-

"12. The expression "bona fide" is not a meaningless Jargon and it has proper connotation and has been explained by several judgments of the Apex Court. The Supreme Court has given a categorical guideline to find out as to the bona fide requirement of the premises by the landlord. The bona fide requirement has to be culled out from the averments contained in the petition and from the evidence adduced in the proceedings and on such objective determination, if it is proved with certain materials, that the requirement is bona fide, then, definitely, under the provisions of the Act, the landlord is entitled to an order of eviction. The proof required for proving the said bona fide is also only to the satisfaction of the Court to arrive at an objective determination and it is not always necessary to prove the bona fide beyond all reasonable doubt as in criminal

proceedings.

(vii) **2007 (4) CTC 699 (Kothandaraman v.**

K.Rajammal):-

“Landlady aged 70 years suffering from hypertension and diabetics wanted to occupy ground floor. There can be no impediment in allowing such a requirement considering the age and ailments of landlady. Therefore, eviction order passed concurrently upheld.”

(viii) **2000 (1) CTC 287 (Akbar Ali and 4 others v.**

Donian Rodrigo and another):-

“12. ... The lower appellate court has proceeded to discuss the case rather putting the odds against the landlords. The Rent Control Act is meant to the benefit both the tenant and the landlord. The idea is to protect the tenant from unjust eviction. It does not mean that the legitimate request of the landlord to recover possession should be turned down. The idea that the tenant is a victimised person, and he is a weaker section of the society no longer holds good. If certain circumstances are established, then the landlord is entitled to get an order of eviction. It is not open to the Rent Controller or the Appellate Authority to place an unwarranted rigidity and construe the request of the landlord too narrowly. As held by the Supreme Court in a recent decision the court must place itself in the armchair of the landlord and construe the request. A

pedantic approach is unwarranted. The approach must be to see whether under circumstances, he is entitled to an order of eviction. 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 too 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. In adopting such a rigid stand the lower appellate court has committed grave error. Therefore, in such circumstances, I have no hesitation in holding that the order of the lower appellate court has to be set aside, restoring the order of the Rent controller. In other words, I am satisfied that the landlords have established that the requirement is genuine and therefore, they are entitled to an order of eviction."

11. So far as this case is concerned, the lease deed is not filed by both sides. An attempt has been made by the landlord to mark the lease deed through the cross-examination of R.W.1. But that also did not workout, as R.W.1 did not admit the signature of the respondent in the lease deed. Under such circumstances, this Court has to decide the issue only with the materials available on record.

12. The learned Rent Controller had the benefit of only the evidence of P.W.1 (petitioner herself). The tenant has not chosen to enter into the witness box. The landlord has admitted that the suit property was let out for non-residential purpose. The suit property is located in the sixth floor. As per the description, it is the flat. In the evidence, the petitioner (P.W.1) has stated that, she requires the premises for the occupation of herself and her husband, for the purpose of giving medical treatment to her husband in Apollo Hospitals, Chennai. A Medical Certificate has been filed to show that there is a necessity to take medical treatment. Having regard to the age of the petitioner and her husband, the contention that the petition mentioned property is required for personal occupation, for the purpose of taking treatment, cannot be ruled out.

13. From the decisions (cited supra) relied upon by the learned counsel for the petitioner and from the description made in the sale deed-Ex.P-1 that it is a residential flat, it is clear that the property is fit for the use and occupation for residential purpose and as such, the landlord is entitled to ask for the same for residential purposes.

14. In the cross-examination, R.W.1 has stated that the company-Alarmic is located in the petition mentioned building. The respondent is stated to be the Managing Director of the company. If it is the case of the tenant that there is no jural relationship between the petitioner and the respondent, then having occupied the petition mentioned property, it is for the respondent to state / explain, under what circumstances, he came to be in possession of the property, when the landlord has made an averment that the respondent is the tenant. It is not even stated in the counter that the company is the tenant of the petition mentioned property and not the individual (respondent herein).

15. The learned counsel for the respondent / tenant relied upon Ex.P-4-Rental Vouchers, in order to support the contention that the property has been let out to the company and not to the

individual (respondent).

15.1. A perusal of the Rental vouchers would go to show that Ex.P-4-Rental Vouchers are not issued by the landlord, but they are the self-description made by the Tenant himself. From Ex.P-4, one cannot conclude, whether the petition mentioned property has been let out to the company or let out to the individual (Director of the company). The evidence of R.W.1 is that the house of the landlord is their office and his daily working is from the said house.

16. The cumulative facts and circumstances only indicate that the petition mentioned property should have been the residential property, which is used for both purposes, i.e., residential and non-residential. Even assuming that it is used for non-residential purpose, when the structure of the building is only residential, the landlord is entitled to ask for eviction of the said building for her own residential purpose.

17. The defence that the petition mentioned property was leased out only for the company and not for the individual respondent (Director) is not open to the tenant, because such a defence is not taken before the learned Rent Controller.

17.1. Without pleadings, the tenant cannot take that

defence during arguments.

17.2. As already pointed out, the counter is the general denial of all the allegations made in the petition and the half-hearted denial of the relationship of landlord and tenant (as per paragraph 9 of the counter).

17.3. Even though in paragraph-9 of the counter it is stated that there is no landlord and tenant relationship between the petitioner and the respondent, in respect of petition mentioned property, it is not explained, in what relationship / capacity the tenant is in occupation of the property; if the respondent is not the tenant, who-else is the respondent? If the respondent is not residing in the capacity as tenant, in what other capacity, he is residing in the property?

17.4. Without any explanation and if there is an evasive denial, the court need not attach any importance to such frivolous and evasive denial.

18. The learned counsel appearing for the tenant / respondent relied upon the decision reported in **AIR 1974 Delhi 221 (V.61, C.44) (Rajinder Kumar Jain v. H.C.Arora and another)**, in which, it has been held that the initial burden of proof, on the landlord, when he makes a petition for permission to file a Proceeding against the tenant for eviction, is ***to aver and to***

prove that the ***relationship of landlord and tenant exists*** between the parties and that the tenant is in occupation of the premises of the landlord.

18.1. This decision will not apply to the facts of this case, as the landlord has made sufficient averments and has adduced proof, by examining herself and it is only the tenant, who failed to discharge the shifted burden on his shoulder.

19. The learned counsel for the petitioner / landlord pointed out that it is the duty of the parties to adduce best evidence before the Court and the tenant, having avoided from giving evidence, is guilty of suppression of truth. Pointing out the implication of non-examination of a party to the case, the learned counsel for the petitioner relied upon the decision reported in **1997-1-L.W.250 (Mrs. Sucharita Gunasekaran v. Sudhir Ramchand and Others)**. The relevant paragraph of the decision, cited supra, reads thus:-

"33. Mr. Narottam Jain submitted that the 2nd respondent firm was the tenant of the demised premises and not the 1st respondent and in support of his contention reliance was placed on the letters addressed by the 2nd respondent regarding payment of rent by way of cheque and the receipts issued therefor. The 2nd respondent firm might have paid the rent on

behalf of the 1st respondent, who is admittedly its partner, and the unsuspecting landlord had received the same. Merely because the 2nd respondent has sent the cheques towards rent it cannot be accepted as proved that the 2nd respondent is the tenant especially when P.W. I has stated that it was the 1st respondent who approached him for lease and that he leased out the premises to the 1st respondent for residential purposes, which evidence was not controverted and disproved by examining the 1st respondent. Even if a presumption arises in favour of the 2nd respondent as tenant on account of payment of rent by it, such a presumption could only be rebuttable by positive evidence. The said presumption stands rebutted by the evidence of P.W.1 and the **non-examination of the material witness** viz., the 1st respondent. In these circumstances, the evidence of P.W.1 carries more weight and deserves to be accepted and on that basis it should be held that the 1st respondent is the tenant of the demised premises and not the 2nd respondent partnership firm as claimed by the respondents."

20. From the cited decision, it is clear that the tenant, who did not even follow the basic rules of pleadings, believing in playing hide-and-seek game even before the Court and having

failed in discharging the burden of proof, cannot take advantage of the non-production of the lease deed alone (especially when the respondent is also a party to the lease deed) and cannot contend that the Civil Revision Petition has to be dismissed.

21. Therefore, for the foregoing reasons, this Civil Revision Petition is allowed. No costs. Two months time is hereby granted for the tenant / respondent to vacate and handover the possession of the petition mentioned premises to the landlord / petitioner.

21.04.2016

Index : Yes / No
Web : Yes / No
srk

S.VIMALA,J.

srk

To

1. VIII Small Causes Court, Chennai
2. XIV Small Causes Court, Chennai
3. The Section Officer, V.R.Section, Madras High Court,
Chennai – 104

CRP (NPD) No.3341 of 2013

21.04.2016