



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.11.2016

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P(NPD) (MD)Nos.120 and 121 of 2015

and

M.P(MD)No.1 of 2015

D.Sivaganamoorthy : Revision Petitioner/Appellant/
Respondent/Tenant

Vs

G.Nandakumar : Respondent/Respondent/
Petitioner/Landlord

Prayer in CRP NPD(MD)No.120 of 2015: Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, against the judgment and decree, dated 16.09.2014 passed in RCA No.4 of 2010 on the file of the Principal Subordinate Judge, Madurai, by reversing the judgment and decree, dated 26.10.2009 in RCOP No.185 of 2002 on the file of the Additional District Munsif, Madurai Town.

Prayer in CRP NPD(MD)No.121 of 2015: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the judgment and decree, dated 16.09.2014 passed in I.A.No.153 of 2013 in RCA No.4 of 2010 on the file of the Principal Subordinate Judge, Madurai, by reversing the judgment and decree, dated 26.10.2009 in RCOP No.185 of 2002 on the file of the Additional District Munsif, Madurai Town.

For Petitioner : Mr.R.Janakiramulu
For Respondent : Mr.J.Barathan

ORDERS RESERVED DT: 02.09.2016

ORDER DELIVERED DT: 22.11.2016

COMMON ORDER

These revisions arise out of the order passed by the Rent Control Appellate Authority (Principal Subordinate Judge), Madurai, passed in I.A.No.153 of 2013 in RCA No.4 of 2010 and RCA No.4 of 2010.

2.The unsuccessful tenant is the petitioner in these revisions. The respondent herein, as landlord initiated eviction proceedings against the petitioner in RCOP No.185 of 2002 before the Rent Controller (Additional District Munsif), Madurai, under



Sections 10(2)(i), 10(2)(ii)(b), 10(2)(iii), 10(3)(a)(iii) and 10(2) of the Tamil Nadu Buildings (Lease and Rent Control) Act.

3. The case of the landlord is that the petitioner herein was inducted as a tenant in the year 1998 by the previous landlady Mrs. Puspavalli Ammal, on oral lease, on a monthly rent of Rs.1,500/- for the purpose of running a retail shop in rice and cereals; it was agreed between the parties that the tenant shall not use the building for any other purpose or transfer the leasehold right; that the tenant could not make any alteration or addition or amenities in the premises without the written consent of the landlord and that the rent is payable by 5th of the next English Calendar month. But the tenant has been using the petition premises for the purpose other than it was leased out; the tenant is running a coffee & tea stall and also juice centre in the leased out premises, without the consent of the landlady; the demised premises was a hall measuring 19 feet x 8 feet without any other construction; on 08.03.2001, the tenant made alteration in the front side portion of the shop, raising the floor level of that portion by 6 inches for running the tea and coffee shop; despite serious objection by the landlady and such alteration caused damage to the building and also reduced the value and utility of the building. The landlord has further averred that he is running a pawn broker business from the year 1992 at Door No.37, East Marret Street, which belongs to his father. Since, the business expended, he needs the petition premises for running the business.

4. The tenant resisted the eviction petition, on filing a counter contending that he took the petition premises in the year 1982 for running a business and he was running whole sale and retail rice and cereals business, including few stationary items in the name of Senthil Andavar stores. Originally, the East Marret street, where the petition premises situated is a busy area for whole sale and retail rice and grocery. At the time, there was no bus route and traffic in that area. However, subsequently, the buses have been permitted to operate in the street and parking of vehicles were banned. So, the whole sale business was completed stopped and the petitioner without any other alterative, changed his business to suite the available circumstances in that area.

5. It is further stated in the counter that the tenant filed a suit in O.S.No.321 of 2001 before the District Munsif, Madurai against the landlord from evicting him illegally otherwise under due process of law, as a counter blast, this petition was filed with an ulterior motive. It is further stated that the tenant has paid Rs.61,000/- to the previous landlady namely Pushpavalli Ammal and since the respondent became the owner, he paid additional advance of Rs.10,000/-; the tenant is regularly paying the monthly rent, but the landlord failed to issue receipt due to



misunderstanding; he has not committed any act of waste and the requirement of the building was for own use and occupation is not genuine and prayed for dismissal of the eviction petition.

6. Before the Rent Controller, the landlord examined himself as PW1 and also examined one Mr.T.Balakrishnan as PW2 and marked Ex.P1 the rental agreement, Ex.P3 Pawn Broker licence book, Ex.P4 licence renewal receipts, Ex.P5 partition deed, Ex.P6 property tax receipts, Exs.P10 to P14 ledger maintained by the landlord and Ex.P15 photos. On the side of the tenant, he examined himself as RW1 and marked Ex.R1 Rent Receipt, Ex.R2 rent receipt note book and Ex.R3 photo.

7. The Rent Controller, after analysing both the oral and documentary evidence, has come to the conclusion that the tenant has committed willful default, the tenant has changed the business for the purpose other than, it was let out without the written consent of the landlord and also on the ground of act of waste. The ground of own use and occupation was rejected by the Rent Controller and came to the conclusion that in view of the above finding, the Rent Controller, ordered eviction. Aggrieved over the judgment and decree, the tenant preferred an appeal in RCA No.4 of 2010 before the Rent Control Appellate Authority, Madurai. During the pendency of the appeal, the landlord filed I.A.No.153 of 2013 seeking permission to receive the additional evidence.

8. The Appellate Authority allowed the Interlocutory application and eventually dismissed the appeal. Challenging the orders, the present revisions have been filed. The Appellate Court confirmed the order of eviction on the ground of own use and occupation, while rejecting the other grounds.

9. Heard Mr.R.Janakiramulu, learned counsel appearing for the revision petitioner and Mr.J.Barathan, learned counsel appearing for the respondent and perused the materials available on record.

10. Learned counsel appearing for the tenant would mainly contend that the eviction order is passed on the ground of own use and occupation, but the ground of own use and occupation was sought for after lapse of three years of filing of the eviction petition. Although, the landlord had produced the books of account to show that he was doing Pawn Broker business, there is no evidence to prove that his father already closed his business and there is no material to establish that he has been actually conducting business.

11. Per contra, learned counsel appearing for the landlord contends that the respondent herein has obtained licence way back in the year 1992 and he has categorically deposed before the Rent Controller that he has been doing business and Exs.P10 to P14



ledger accounts corroborate the evidence of PW1. So, this court, while exercising the revisional jurisdiction, cannot re-appreciate the findings just based on evidence and prayed for dismissal of the revision petition.

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12.The specific case of the landlord is that he has obtained a pawn broker licence in the year 1992, since then he has been running a pawn broker business at Door No.37 East Marret Street, Madurai. Ex.P21 is the copy of the licence. It is further claimed by the landlord that his father was running the same business in the name and style of A.Chidambaram Chettiar & Sons and after, he closed his business. The petitioner was running the business in the same address and he has been using the unused books of his father by affixing his name in the ledger books.

13.In the counter, the tenant has not disputed the assertion of the landlord that he has been carrying on business in the premises of his father. Though, the landlord had produced Ex.P3 Pawn Broker licence, Ex.P4 licence renewal receipt and the ledger maintained by the landlord to show that he was running the business, he has filed the application in I.A.No.153 of 2013 to mark Exs.P16 to P21. Ex.P16, P18 and P20 to prove that in the said street, the landlord's father was running a pawn broker business in the name of A.Chidambaran Chettiar & Sons in licence No.123/1975. Exs.P17 to P21 would show that the petitioner is running the same business in the street in his licence No.54/1992-93. The Appellate Court allowed the application relying on the decision reported in **2000(2) CTC 600 [Dr.P.S.Salahuddin vs. C.Shameenunnissa]**.

14.It is settled that to meet the ends of justice, the parties can be permitted to mark additional evidence at the appellate stage. The Appellate Court, accepting the evidence of PW1 and based on Ex.P10 to P14 and P16 to P21 held that the landlord is running his business in the premises of his father and his requirement of the petition premises for his own use and occupation is genuine.

15.In the case of **Hindustan Petroleum Corporation Ltd vs. Dilbahar Singh** reported in **2014(5) CTC 217**, the Hon'ble Apex Court has held as follows:-

"45.We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on re-appreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in Revisional jurisdiction under these



Acts is confined to find out that findings of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its Revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an Appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of facts as a Court of First Appeal. Where the High Court is required to be satisfied that the decision is according law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity."

16. In the above decision, the Hon'ble Apex Court has held that while exercising the revisional jurisdiction the High Court cannot re-appreciate the evidence to come to the different conclusion when the finding is based on evidence. In my considered view, the decision squarely applies to the facts of the present case.

17. In the result, the revisions are dismissed. The petitioner/tenant shall vacate and hand over the petition premises within a period of two months from today. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/
Assistant Registrar(C.S-II)

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Sub Assistant Registrar



To

1. THE PRINCIPAL SUBORDINATE JUDGE, MADURAI.

2. THE ADDITIONAL DISTRICT MUNSIF, MADURAI TOWN.

3. THE SECTION OFFICER, VR SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1CC TO MR.T.R.JEYAPALAM, ADVOCATE, SR NO.71920.

+2CC TO MR.R.JANAKIRAMULU, ADVOCATE, SR NO.71523 & 71524.

COMMON ORDER in
C.R.P (NPD) (MD) Nos.120 and 121 of 2015
22.11.2016

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