

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(NPD) NOS.1970, 1971 AND 1803 OF 2017

AND

CMP NOS.9557, 9558 AND 8577 OF 2017

CRP (NPD) NO.1970 OF 2017

M/s.Krystal Metals
(Formerly M/s.Sona Metals)
Rep. by its Partner Ramesh Jain
Old Door No.496, New Door No.232,
Mint Street, Park Town,
Chennai - 600 003.

... Petitioner

Vs.

P.Prakash

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decree in RCA No.760 of 2014 dated 06.04.2017 on the file of IX Court of Small Causes, Chennai, in RCOP No.651 of 2012 dated 05.11.2014 on the file of the XII Court of Small Causes, Chennai.

For Petitioner	:	Mr.V.Raghavachari
For Respondent	:	Ms.S.Chitra Sampath
		Senior Advocate
		for Mr.P.S.Vasantha Kumar

CRP (NPD) NO.1971 OF 2017

Ramesh Jain

... Petitioner

Vs.

P.Prakash

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decree in RCA No.761 of 2014 dated 06.04.2017 on the file of IX Court of Small Causes, Chennai, in RCOP No.652 of 2012 dated 05.11.2014 on the file of the XII Court of Small Causes, Chennai.

For Petitioner : Mr.V.Raghavachari
 For Respondent : Ms.S.Chitra Sampath
 Senior Advocate
 for Mr.P.S.Vasantha Kumar

CRP (NPD) NO.1803 OF 2017

M/s.International Metal Wires
 Rep. by its Partner
 Mr.T.Rajendira Kumar
 Old No.496, New No.232,
 Mint Street, Park Town,
 Chennai - 600 003.

... Petitioner

Vs.

P.Prakash

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decree in RCA No.762 of 2014 dated 06.04.2017 on the file of IX Court of Small Causes, Chennai, in RCOP No.752 of 2012 dated 05.11.2014 on the file of the XII Court of Small Causes, Chennai.

For Petitioner : Mr.G.Veerapathiran
For Respondent : Mr.P.S.Vasantha Kumar

COMMON ORDER

Aggrieved over the common judgment dated 06.04.2017 passed in RCA Nos.760, 761 and 762 of 2014 respectively, against RCOP Nos.651, 652 and 752 of 2012 respectively, on the file of IX Court of Small Causes, Chennai, the petitioners have preferred the above Civil Revision Petitions.

2. The important grounds raised by the petitioners is that the eviction petitions lacks *bonafide* and the appellate Court prevented the tenants from adducing evidence to disprove the pleadings. So also, the application for appointment of Advocate Commissioner is one of the additional evidence and it cannot be disposed of independent of the appeal. Though the learned Rent Control Appellate Authority has cited

the judgments of the Hon'ble Supreme Court, he had not discussed the facts of the case and given independent findings. Moreover, the structural stability as well as the financial position were not proved by the landlord and therefore, in the absence of any proof, the eviction petitions ought to have been dismissed.

3. Ms.S.Chitra Sampath, learned Senior Counsel appearing for the respondent would oppose the above contentions and would submit that the landlord has shown his *bonafides* and the order of the Court for eviction is very much justified.

4. The main objection raised by the petitioners is that the Rent Control Appellate Authority has not discussed the issues of the case and given findings on facts. On the other hand, a perusal of the judgments shows that the Appellate Authority, after relying on the judgments reported in **[2004 (2) CTC 270]**, **[2006 (2) CTC 615]** and **[2007 (3) CTC 45]** has found that the landlord has obtained sanction plan from the concerned authority and started demolishing the building. The petition premises could not be demolished because of the stop notice issued by the Corporation. So also, it is discussed that the

petitioners have failed to elicit any point with respect to the present stage of the stop notice. He has also given a finding that the apprehension of the landlord that the petition premises may fall at any point of time is reasonable. The Appellate Authority has also found that the petition premises is situated in a very busy commercial area.

5. Relying on the judgment of the Hon'ble Supreme Court in **[2007 (3) CTC 45]** the Appellate Authority has held that the above citation is squarely applicable to the petitioners / appellants and had found that to disprove the stability of the building, the tenant has not taken any photography of the same. The stop notice issued by the Corporation by itself is not enough to prove the plea of the tenant. Since the other tenants are totally dismantled, relying on the photographs filed by the landlord, the appellate authority has held that the landlord has proved his case on preponderance of probability. Further, relying on the judgments of the Hon'ble Supreme Court in **[2005 (8) SCC 252]** and **[2004 (8) SCC 490]** the plea of the landlord has to be seen on the date of the petition and subsequent events intervening due to the protracting litigations will not be relevant. Therefore, the crucial date is held to be the date of petition.

Therefore, a finding has been given by the Appellate Authority that there is no error or irregularity in the order passed by the Rent Controller in all the three petitions.

6. The reasoning given by the tenant for not producing the documents within time with proper manner was not accepted by the Appellate Authority. The additional documents relied on by the petitioner was office copy of the notice dated 17.01.2015, reply dated 02.02.2015 and rejoinder dated 14.02.2015. Therefore, the Appellate Authority has come to a conclusion that by taking pragmatic approach on the matter, the landlord cannot sit idle nor can the development of the events be stopped by him. Therefore, the petitions filed in M.P.Nos.73/2015, 74/2015 and 75/2015 were held to be irrelevant and the same were rejected. In the considered opinion of this Court, the Appellate Authority has clearly applied his mind and has rightly arrived at a finding that the appeals does not merit consideration and accordingly, rejected the same.

7. The learned counsel for the petitioners would rely on the judgments of this Court in **S.SANTHANA SELVARAJ VS. JAFFAR**

KHAN AND 2 OTHERS [1998 (III) CTC 138] and **DR.C.MOHAN REDDY VS. DR.S.FLORET [2010 (1) CTC 666]** wherein this Court has held that whenever an additional evidence is produced, in the appellate stage, the Appellate Authority shall consider the same, along with the appeal and it is not open to the Appellate Authority to take up the application for additional evidence independently. In the instant case also, the Appellate Authority has taken up the petition for adducing additional evidence, along with appeal. Therefore, I do not find any discrepancy with regard to the same.

8. In so far as the disposal of application for appointment of Advocate Commissioner is concerned, the Appellate Authority has relied on a judgment of the Hon'ble Supreme Court in **GAYA PRASAD VS. PRADEEP SRIVASTAVA [2001 (2) SCC 604]** wherein it has been categorically held that the landlord should not be penalised for the slowness of legal system and the crucial date for deciding the matter is the date of application for eviction. So also, the rights of the parties have to be decided as on the date of the petition, as held in **[1997 (2) LW 607]**. Therefore, the Rent Control Appellate Authority has rightly decided that the crucial date is the date of petition filed by the

landlord for eviction. Therefore, the appointment of Advocate Commissioner, after a period of three years, was considered to be unnecessary and when the entire building was demolished and only the petition premises alone stands within the premises, as admitted by the petitioners, cannot be considered as an additional evidence, by way of report of the Advocate Commissioner.

9. Therefore, in the circumstances, the appointment of an Advocate Commissioner and his report cannot be considered as an additional evidence and even assuming that the Advocate Commissioner files a report, it will show the status of the property as on date and not as on the date on which the landlord filed the petition for eviction or on the date on which the landlord had taken steps to demolish the building. In this aspect, the contention of the learned Senior Counsel for the respondent is that for seeking eviction on the grounds under Section 14(1)(b) of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960, the building should be in a dangerous and dilapidated condition, requiring a minimum demolition. In assessing the *bonafides* of the landlord's existing condition and age of the building, the preparation made by the landlord are irrelevant facts to be considered

and the landlord is in possession of sufficient funds and he has taken steps for getting approval for planning permission itself is sufficient to show the *bonafides* of the landlord as held by this Court in ***HOTEL A.R.A.P. (P) LTD., VS. BUHARI SONS PVT. LTD., [2017 (1) CTC 603]*** is quite reasonable and acceptable.

10. The Hon'ble Supreme Court has repeatedly held that the landlord need not prove his *bonafides* by showing the currencies on hand. There are several financial institutions to lend financial assistance. In the instant case, the Appellate Authority has rightly considered the sanctioned plan and approval plan submitted by the landlord and also the statement of the landlord that he has sufficient funds for the construction. Therefore, the landlord has established his *bonafides* and his financial stability. So also, the admitted position of the building is that all the other shops were demolished, except the petition premises, that too because of the shop notice issued by the Corporation.

11. In such circumstances, I hold that both the Rent Controller as well as the Rent Control Appellate Authority, have rightly

ordered eviction, on the grounds of demolition and reconstruction under Section 14(1)(b) of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960. Therefore, all the Civil Revision Petitions merit no consideration and accordingly, stands dismissed. However, at the time of pronouncing orders, the learned counsel for the petitioner / tenant undertook to file an affidavit of undertaking to vacate and deliver the peaceful vacant possession of the petition premises to the respondent / landlord within three months. He has further undertook to file the affidavit of undertaking by tomorrow (15.09.2017) itself. On such undertaking being filed, the Registry is directed to keep the undertaking as part and parcel of this order. No costs. Consequently, connected civil miscellaneous petitions are closed.

सत्यमेव जयते

14.09.2017

Index : Yes/No
Internet : Yes/No
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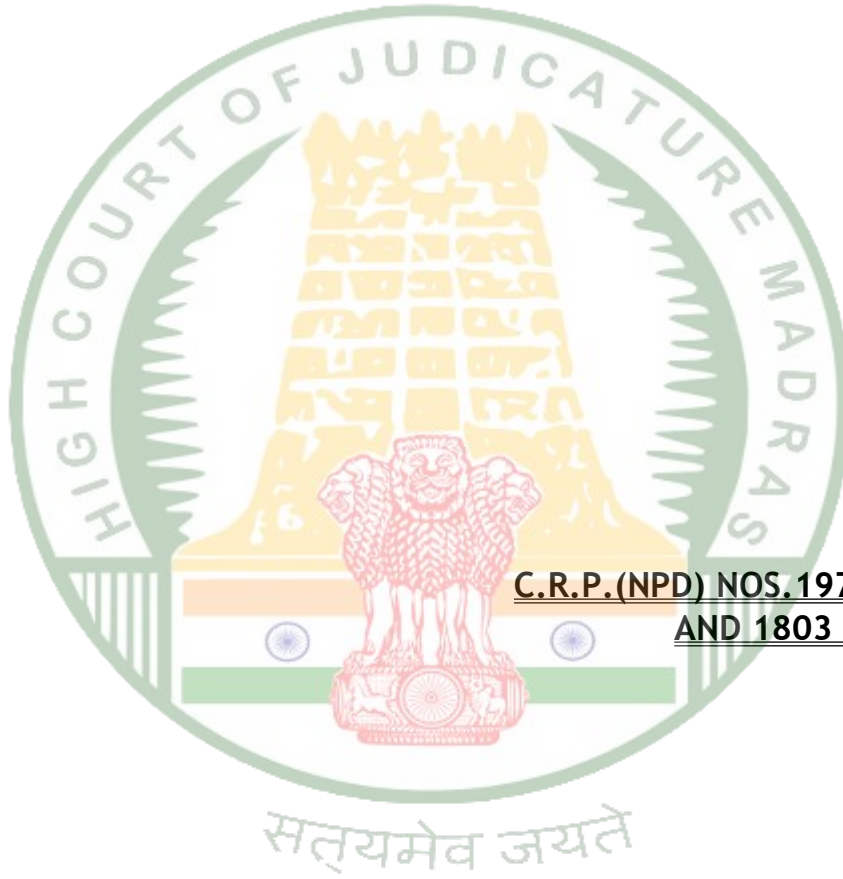
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To

- 1.The IX Court of Small Causes
Chennai.
- 2.The XII Court of Small Causes
Chennai.

M.GOVINDARAJ, J.

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