

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.2047 of 2014
and M.P.No.1 of 2015

M.D.Paramasivam

.. Petitioner

Vs.

The Mylapore Hindu Permanent Fund Limited
Rep. by its Secretary
No.22 & 24, South Mada Street
Mylapore, Chennai – 600 004.

.. Respondent

PRAYER: Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings Lease and Rent Control Act 1960 (Tamil Nadu Act 18 of 1960 as amended by Act 23 of 1973 Act 1 of 1980), against the decree and common judgment dated 06.12.2013 in R.C.A.No.136 of 2012 on the file of the VIII Small Causes Court/Appellate Authority, Chennai, confirming the judgment and decree dated 13.12.2011 made in R.C.O.P.No.634 of 2010 on the file of the XIII Small Causes Court/Rent Controller, Chennai.

For Petitioner : Mr.Sriram

For Respondent : Mr.S.Janarthanan

ORDER

The Civil Revision Petition is filed against the decree and common judgment in R.C.A.No.136 of 2012 dated 06.12.2013 on the file of the VIII Small Causes Court/Appellate Authority, Chennai, confirming the judgment and decree dated 13.12.2011 made in R.C.O.P.No.634 of 2010 on the file of the XIII Small Causes Court/Rent Controller, Chennai.

2. The petitioner is the land lord and respondent is the tenant in R.C.O.P.No.634 of 2010 on the file of the XIII Small Causes Court/Rent Controller, Chennai. The petitioner filed the said R.C.O.P. for eviction on the ground of wilful default and additional accommodation. The respondent filed counter statement and denied various averments made by the petitioner.

3. The learned Rent Controller considering the pleadings, oral and documentary evidence, ordered eviction on the ground of wilful default and rejected the claim of the petitioner for additional accommodation. The petitioner/landlord filed R.C.A.No.136 of 2012 on the file of the VIII Small Causes Court, Chennai, challenging the dismissal of R.C.O.P. rejecting the claim for additional

accommodation. The respondent/tenant filed R.C.A.No.96 of 2012 for ordering eviction on the ground of wilful default. Both the R.C.As. were taken up together and the learned Appellate Authority by common judgment dated 06.12.2013, dismissed R.C.A.No.136 of 2012 filed by the petitioner/landlord and allowed R.C.A.No.96 of 2012 filed by the respondent/tenant.

4. The petitioner filed C.R.P.(NPD)No.2046 of 2014, challenging the order allowing the R.C.A.No.96 of 2012 filed by the respondent/tenant and the present C.R.P.(NPD).No.2047 of 2014 against the order of dismissing the R.C.A.No.136 of 2012, confirming the order of the learned Rent Controller, rejecting his claim for additional accommodation. C.R.P.(NPD)No.2046 of 2014 filed by the petitioner was dismissed by this Court vide order dated 12.06.2014.

5. The petition premises is consisting of two floors; ground and first floor. First floor is under the occupation of the petitioner for residential purpose. Ground floor is let out to the respondent/tenant for commercial purpose. The respondent is carrying on business in the name and style of 'The Mylapore Hindu Permanent Fund

Limited'. The petitioner sought the portion under the occupation of the respondent for his residential purpose on the ground that he and his wife are aged persons and due to their ailments, the doctors have advised them not to climb the stair case.

6. The respondent in the counter statement stated that the respondent is one of few financial companies still carrying on business. If it is evicted, it will be put to hardship. The hardship which may be caused to the respondent will outweigh the advantage that may accrue to the petitioner.

7. Before the learned Rent Controller, the petitioner examined himself as P.W.1 and marked 14 documents as Exs.P1 to 14. The respondent examined two witnesses as R.W.1/R.Maheshlal and R.W.2/P.Mohankumar and marked one document as Ex.R1/Authorisation letter.

8. The learned Rent Controller considering the pleadings, oral and documentary evidence, rejected the claim of the petitioner for additional accommodation on the ground that the petitioner is seeking additional accommodation of non-residential portion for

residential purpose and seeking additional accommodation of 1940 sq.ft., which is more than the area of what is presently occupied by the petitioner in the first floor and the petitioner along with his wife often visit the foreign country and used to stay with their son.

9. The learned Appellate Authority dismissed the R.C.A.No.136 of 2012 filed by the petitioner on the ground that the hardship is more to the respondent, if eviction is ordered.

10. Against the said decree and common judgment dated 06.12.2013 made in R.C.A.No.136 of 2012, the present Civil Revision Petition is filed by the petitioner/landlord.

11. Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record. The issue in the present Civil Revision Petition is whether the petitioner is entitled to an order of eviction on the ground of additional accommodation.

12. From the materials available on record, it is seen that the learned Rent Controller erred in holding that the petitioner is not

entitled to seek any additional accommodation of non-residential portion for his residential purpose. The learned Rent Controller failed to see that use of the building is not a criteria but nature of the building has to be considered to determine whether the building is the one for non-residential or residential one. When different portions of the building are occupied for residential as well as non-residential purpose, the authorities must decide as to which category it belongs, with reference to the pro-dominant purpose for which the building is let out. When the building is let out equally for residential as well as non-residential purpose, then the landlord can maintain a petition for additional accommodation of a non-residential portion for residential purpose.

In the present case, the petitioner/landlord is occupying first floor of the building for residential purpose while let out the ground floor for non-residential purpose.

Further, the learned Rent Controller erred in rejecting the claim of the petitioner for additional accommodation on the ground that the portion which the petitioner is seeking as additional accommodation is more than that of the extent of the portion occupied by the petitioner presently in the first floor. Similarly, third reason given by the learned Rent Controller is that the petitioner

and his wife often go to Abroad and therefore, they are not entitled for additional accommodation. All the above reasons are not valid and are erroneous.

13. The learned Appellate Authority dismissed the application filed by the petitioner on the ground that hardship to the respondent will be more than the hardship that will be caused to the petitioner. The learned Appellate Authority failed to consider whether it is possible or not for the respondent to get accommodation on rent, similar to that of the building under his occupation in the same locality. Unless the respondent alleged and proved that it is not possible for the respondent to get the building on rent for their business in the same locality, it cannot be stated that relative hardship to the respondent is more than that of the petitioner. Both the learned Rent Controller and Appellate Authority failed to consider the claim of the petitioner for additional accommodation on health ground. The petitioner has let in oral evidence and also filed two documents as Exs.P12 and P13/medical certificates, which are issued by the physician, who treated the petitioner and his wife, to prove their health conditions. The respondent has not disputed the said documents filed by the petitioner.

14. Considering the relative hardship, health of the person outweigh the hardship, which may be caused to the respondent in finding alternate accommodation in the same locality or nearby locality.

15. It is not the case of the respondent that the building is situated in commercial area and the portion under their occupation cannot be conveniently used for residential purpose. The learned Rent Controller, without considering these aspects, erroneously rejected the claim of the petitioner for eviction of the respondent. Hence, the findings of the Courts below are liable to be set aside for not considering the relevant material facts and it is hereby set aside.

16. For the above reasons, the order of the learned Rent Controller and the judgment of the learned Appellate Authority are set aside.

17. After passing orders, the learned counsel for the respondent filed an affidavit of undertaking to vacate the petition premises and hand over the vacant possession to the petitioner

within a period of four months.

18. The said affidavit of undertaking filed by the respondent is taken on file and the same is recorded. For the above reasons, the order of the learned Rent Controller and decree and judgment of the learned Appellate Authority are set aside and the Civil Revision Petition is allowed. The respondent is directed to vacate and handover the premises to the petitioner within four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

27.11.2017

Index : Yes/No
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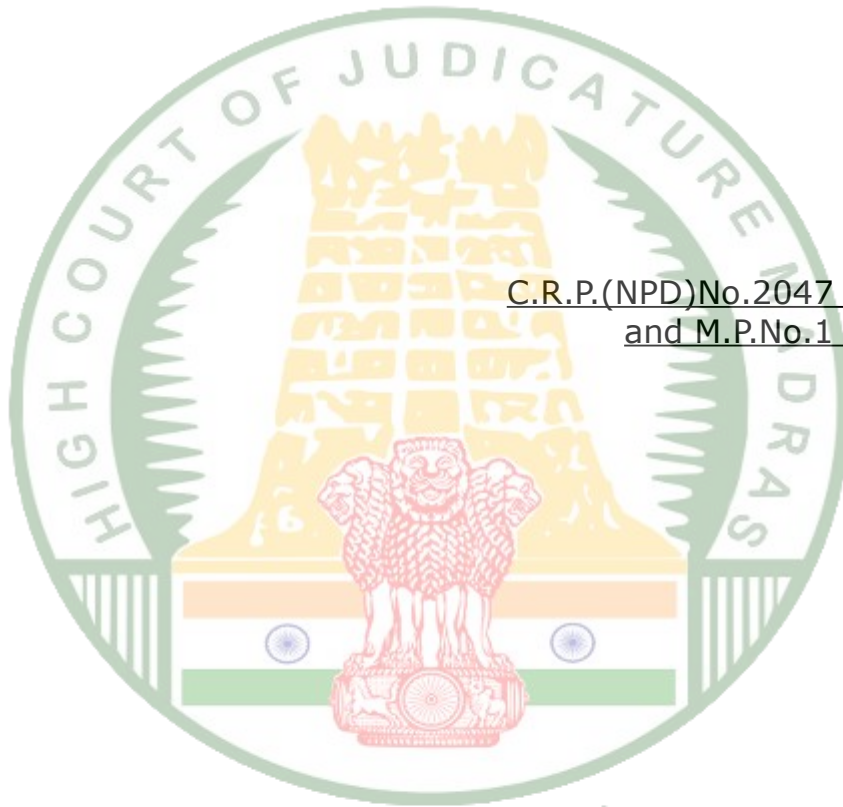
1.The VIII Small Causes Court/
Appellate Authority, Chennai.

2.The XIII Small Causes Court/
Rent Controller, Chennai.

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V.M.VELUMANI, J.

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