

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2017

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

**C.R.P.PD No.216 of 2014
and M.P.No.1 of 2014**

Judgment reserved on 24.11.2017	Judgment pronounced on 12.12.2017
--	--

S.Dinakar

...

Petitioner

Vs

R.Rajan

...

Respondent

Civil Revision Petition is filed under Section 25(1) and (2) of the Tamil Nadu Buildings (Lease and Rent Control Act) 1960 against the judgment and decree dated 18.11.2013 passed by the VII Judge, Court of Small Causes (Rent Control Appellate Authority), Chennai in RCA No.477 of 2011 confirming the order and decree dated 06.07.2011 passed in M.P.No.28 of 2011 in RCOP No.2283 of 2007 by the XI Judge, Small Causes Court, Chennai.

For Petitioner : Mr.R.Parthasarathy

For Respondent : Mr.H.Adaikala Arockiaraj

ORDER

This Civil Revision Petition is filed against the judgment and decree dated 18.11.2013 passed by the VII Judge, Court of Small Causes (Rent Control Appellate Authority), Chennai in RCA No.477 of 2011 confirming the order and decree dated 06.07.2011 passed in M.P.No.28 of 2011 in RCOP No.2283 of 2007 by the XI Judge, Small Causes Court, Chennai.

2. The petitioner is the landlord and the respondent is the tenant in the RCOP No.2283 of 2007 filed before the XI Judge, Small Causes Court, Chennai. The petitioner filed the above RCOP for eviction on the ground of wilful default in payment of rent from December 2003 to November 2007 @ Rs.6,800/- per month for 48 months, totalling to Rs.3,26,400/-. The respondent filed counter and is contesting the RCOP. The petitioner filed MP No.133 of 2008 in RCOP No.2283 of 2007 under Section 11 (3) and (4) of the Tamil Nadu Buildings (Lease and Rent Control Act) for a direction to the respondent to deposit the arrears of rent in to court totalling to Rs.3,46,800/- payable towards rent from December 2003 to February 2008. The learned Rent Controller, by order dated 17.06.2008 directed the respondent to deposit a sum of

Rs.3,46,800/- to the credit of RCOP No.2283 of 2007 within one month from the date of the order failing which order of eviction will be ordered. The respondent did not deposit the arrears of rent into the court. By order dated 08.08.2008, MP No.133 of 2008 was allowed and all further proceedings in RCOP was stopped and eviction was ordered granting two months time to the respondent to vacate and handover the vacant possession of the petition premises to the petitioner.

3. The respondent filed two RCAs viz. RCA No.554 of 2008 against the judgment and decree passed in RCOP No.2283 of 2007 and RCA No.619 of 2008 against the judgment and decree passed in M.P.No.133 of 2008 in RCOP No.2283 of 2007. Alongwith the RCA No.554 of 2008, the respondent also filed M.P.No.575 of 2008 for interim stay of the order passed by the learned Rent Controller. The learned Appellate Authority, granted interim stay on condition that the respondent deposits a sum of Rs.3,94,400/- on or before 30.10.2008. The respondent complied with the said order and deposited the amount to the credit of RCA No.554 of 2008 and subsequently, the same was in vested in Indian Overseas Bank, Egmore Branch, Chennai.

4. The petitioner filed M.P.No.330 of 2009 in RCA No.554 of 2008 for recalling the amount invested in the Indian Overseas Bank, Egmore Branch, Chennai and re-deposit the same to the credit of RCA No.554 of 2008. The said application was allowed on 21.08.2009. The petitioner filed M.P.No.438 of 2009 in RCA No.554 of 2009 for payment out of the said amount deposited to the credit of RCA No.554 of 2008. The respondent filed counter objecting for payment of amount to the petitioner on the ground that the petition premises does not belong to the petitioner and the same stands in the name of some other person and hence he is not entitled to withdraw the amounts deposited. By common judgment dated 04.12.2009, the Appellate Authority allowed both the appeals in RCA Nos.554 and 619 of 2008 by setting aside the order of the learned Rent Controller passed in M.P.No.133 of 2008 in RCOP No.2283 of 2007 and RCOP No.2283 of 2007 and directed the Rent Controller to dispose of the RCOP on merits.

5. After remanding the RCOP No.2283 of 2007, the petitioner filed M.P.No.28 of 2011 seeking for an amendment in RCOP No.2283 of 2007 to include the ground of denial of title under Section 10 (2) (vii) of the Tamil Nadu Buildings (Lease and Rent

Control) Act for eviction of the respondent. The respondent filed counter and opposed the said application. The learned Rent Controller, by order dated 06.07.2011 dismissed M.P.No.28 of 2011 holding that the respondent did not deny the title of the petitioner in the counter filed in RCOP No.2283 of 2007 and counter filed in MP No.438 of 2009 in RCA No.554 of 2008 and cannot be taken into consideration on the ground that the counter filed in MP No.438 of 2009 lapsed when orders were passed in the said M.P. The learned Rent Controller also held that the petitioner has quoted wrong provision of Section 11 of the Tamil Nadu Building (Lease and Rent Control Act) and the petition is a belated one.

6. Against the said order dated 06.07.2011 made in MP No.438 of 2009 in RCA No.554 of 2008, the petitioner filed RCA No.477 of 2011. The learned Appellate Authority, by judgment dated 18.11.2013, dismissed the said RCA holding that there is no finding by the Appellate Authority regarding the alleged denial of title and respondent had not denied the title of the petitioner in the counter filed in RCOP.

7. Against the said judgment and decree dated 18.11.2013 made in RCA No.477 of 2011 confirming the order and decree

dated 06.07.2011 passed in M.P.No.28 of 2011 in RCOP No.2283 of 2007, the present Civil Revision Petition is filed.

8. Both the learned counsel for the petitioner as well as respondent reiterated their respective averments in the affidavit, counter affidavit and contentions raised in the grounds of RCA as well as CRP. The learned counsel for the petitioner, in support of his contention, relied on the judgment reported in **2002 (3) SCC 98 [J.J. Lal Pvt. Ltd. And Ors. v. M.R.Murali and Another]**

16..... *In an action by the landlord the tenant is expected to defend only the claim made against him and if a cause of action arises to the landlord on the basis of the plea set up by the tenant, in such action, it is necessary that the landlord seeking to enforce that cause of action in the same proceedings must do so by amendment or may have recourse to separate proceedings to entitle the landlord to relief on the basis of such cause of action. The principle that the court is to mould the relief taking into consideration subsequent events is not applicable in such cases.*

19. *The basic question was whether the landlords themselves treated the plea taken by the tenants in their additional counter as denial of their title and if that be so the landlords should have amended their application for eviction incorporating the averment that the said additional counter amounted to denial of title of the landlords and such denial was not bona fide. Thereupon the tenants would have had an opportunity of explaining the facts and circumstances in which the additional counter, alongwith the pleas raised therein, came to be filed and if that amounted to denial of landlords'*

title then how did they propose to justify such denial as bona fide. Such pleas could have been subject matter of trial and evidence adduced by the parties followed by expression of opinion by the Controller as to whether a ground for eviction was made out or not. Before the Controller none of the parties were alive to the fact that alleged denial of title by tenants could possibly be clicked by the landlords as a ground for eviction.

9. Heard the learned counsel for the petitioner as well as respondent and perused the materials available on record.

10. The point for consideration in the present Civil Revision Petition is whether the petitioner is entitled to amend the petition in RCOP to include the additional ground of denial of title by the respondent for eviction.

11. Originally, the petitioner filed RCOP for eviction of the respondent on the ground of wilful default. The petition filed by the petitioner under Section 11 (3) and 11 (4) of the Tamil Nadu Buildings (Lease and Rent Control Act) was allowed directing the respondent to deposit arrears of rent. On his failure to deposit the rent within the time limit, the proceedings in RCOP was stopped by order dated 08.08.2008 and eviction was ordered. The respondent filed RCA Nos.554 of 2008 & 619 of 2008, challenging both the orders passed in MP No.133 of 2008 in RCOP No.2283 of 2007 and

RCOP No.2283 of 2007. Pending RCAs, in M.P.No.575 of 2008 filed by the respondent, the learned Appellate Authority, as a condition for stay, directed the respondent to deposit the arrears of rent and the same was deposited by the respondent. When the petitioner filed M.P.No.438 of 2009 for payment out of the said deposit amount, the respondent filed counter and objected to the same on the ground that the petitioner is not the owner of the petition premises. Both the RCAs were allowed and RCOP was remanded back to the Rent Controller. After the matter was remanded, M.P.No.28 of 2011 in RCOP No.2283 of 2007 was filed by the petitioner for amending the RCOP. The said application was rejected by the learned Rent Controller on the ground that the respondent did not deny the title in the main RCOP and counter filed in M.P.No.438 of 2009 cannot be considered and application for amendment is not maintainable. All these three reasons given by the learned Rent Controller are erroneous and are not valid. In the counter filed by the respondent in M.P.No.438 of 2009, the respondent has categorically stated that the petitioner is not the owner of the petition premises. While allowing RCA Nos.554 & 619 of 2008, the learned Appellate Authority has also given a finding that the respondent is disputing the title of the petitioner. In view of the categorical denial of the title by the respondent and finding of

the learned Appellate Authority, the learned Rent Controller ought to have allowed M.P.No.28 of 2011 filed by the petitioner for amendment. Similarly, the learned Appellate Authority also had committed an irregularity in dismissing the RCA on the ground that the respondent did not deny the title of the petitioner in the counter filed in RCOP and there is no finding by the Appellate Authority about the denial of title of the petitioner by the respondent. The judgments of the learned Appellate Authority is contrary to the judgment dated 04.12.2009 made in RCA Nos.554 & 619 of 2008. In para 8 of the said judgment, the Appellate Authority has stated "since then ownership is also disputed by the appellant / tenant". Considering the materials on record as a whole, it is clear that the respondent has denied the title of the petitioner. Both the courts below have erred in dismissing the application on the ground that there is no denial of title by the respondent in the counter filed by him in the RCOP. Any denial of title by the respondent / tenant, even before filing of RCOP or even after filing of counter in the RCOP is relevant in deciding the petition for eviction. The judgment relied on by the learned counsel for the petitioner is squarely applicable to be facts of the present case.

12. The impugned orders dated 18.11.2013 passed in RCA No.477 of 2011 confirming the order and decree dated 06.07.2011 passed in M.P.No.28 of 2011 in RCOP No.2283 of 2007 are liable to be set aside and are hereby set aside. According, M.P.No.28 of 2011 in RCOP No.2283 of 2007 is allowed. The petitioner is directed to carry out the amendment within four (4) weeks from the date of receipt of a copy of this order.

13. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

12.12.2017

rg
Index : Yes/No

To

1.The VII Judge,
Court of Small Causes,
Chennai.

2.The XI Judge,
Court of Small Causes,
Chennai.

WEB COPY

V.M.VELUMANI, J.

rgr



**Order in
C.R.P.PD No.216 of 2014**

WEB COPY

12.12.2017