

For Respondent : Mr.V.Raghavachari
for Mr.R.Veeramani

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order passed in RCA SR No.2781 of 2017 dated 10.02.2017 filed against the order made in M.P.No.535 of 2016 in RCOP No.1129 of 2013 on the file of the learned VII Small Causes Court at Chennai.

2. The petitioner/tenant is the respondent in RCOP No.1129 of 2013. The respondent/landlord filed said RCOP under Section 23 (1) (b) of the Tamil Nadu Buildings (Lease and Rent Control) Act for owner's occupation.

3. According to the respondent, the entire property in F-192, 1st Street, Anna Nagar, Chennai - 600 102 belonged to her husband K.S.Venkatachalam. He settled a portion of the property on his daughter's name in the year 2009. He settled another portion of the property being the petition mentioned property in favour of the respondent who is his wife. The petitioner was a tenant under the respondent's husband in respect of the petition premises on a monthly rent of Rs.3,000/- and paid a sum of Rs.25,000/- as security deposit. After settlement in favour of the respondent by her husband, the petitioner attorned the tenancy in her favour by letter dated 30.03.2013.

The petitioner was remitting the then monthly rent of Rs.10,700/- to the respondent.

4. The respondent is a Medical Practitioner spealized in Obstetrics & Gyneocology. She retired as Professor and HOPD for the Gynecology Department in Kilpauk Medical College, Chennai on 30.06.2009. After retirement, she is working as Professor in SRM Medical College at Kattankolathur. She is running a clinic at V.K.Medical Centre, A-45, Anna Nagar, Chennai - 102 by paying a monthly rent of Rs.6,000/- per month. The petition premises is suitable for her clinic and therefore, the respondent requested the petitioner to vacate the premises but the petitioner refused to vacate the said petition premises. The respondent is residing in the rear side portion of the petition premises and it will be very convenient for her to have her clinic and her requirement is bonafide and genuine. The respondent is not occupying or owning any other non-residential property in Chennai.

5. The petitioner filed reply statement denying all the averments and filed M.P.No.535 of 2016 in RCOP No.1129 of 2013 under Section 19 of Tamil Nadu Buildings (Lease and Rent Control) Act, to raise preliminary issue regarding maintainability of RCOP No.1129 of 2013 filed by the

respondent. According to the petitioner, the respondent's husband, as owner of the petition premises, earlier filed RCOP No.1225 of 2006 for demolition and re-construction. He also filed RCOP No.1222 of 2006 for fixation of fair rent. The petitioner's husband was examined and cross examined as PW1. Subsequently, an Engineer was examined as PW2 and evidence on his behalf was closed. The petitioner filed applications for re-opening and re-calling the respondent's husband for further cross examination. The said application was dismissed. The RCA filed by the petitioner was also dismissed. In CRP PD No.450 & 451 of 2009 filed by the petitioner, this Court, by order dated 29.07.2009, gave an opportunity to the petitioner to cross examine the respondent's husband on 07.08.2009, in the forenoon itself. The respondent's husband did not appear on 07.08.2009 and subsequently for three adjournments. In view of the same, RCOP No.1225 of 2006 was dismissed on 27.08.2009. The respondent's husband filed RCOP No.1019 of 2010 against the petitioner on the very same ground mentioned in RCOP No.1225 of 2006. The petitioner filed MP No.574 of 2010 to dismiss RCOP No.1019 of 2010 on the ground of Section 19 of Tamil Nadu Building (Lease and Rent Control) Act. The said application was dismissed by Rent Controller. The petitioner filed RCA No.672 of 2011 against the said order. By order dated 10.12.2012, the Appellate Authority allowed RCA No.672 of 2011.

In order to overcome the order of dismissal of earlier two RCOPs filed by the husband of the respondent and to evict the petitioner, the respondent's husband has settled the property on the respondent. The respondent has filed the present RCOP, knowing fully well the dismissal of earlier RCOPs filed by her husband and she has not mentioned the same in the present RCOP. The petitioner's husband has disconnected the electricity connection and only after the order of this Court, the electricity service connection was restored. The respondent's husband gave a complaint against the petitioner and his brother and he was forced to sign blank stamp papers at K-4, Anna Nagar Police Station. The respondent's husband tried to vacate the petitioner with the help of rowdy elements. The petitioner filed O.S.No.5877 of 2006 on the file of I Asst. Judge, City Civil Court, Chennai. The said suit was decreed exparte. The respondent's husband having failed in his attempt has settled the property on the respondent. The issue involved in RCOP No.1225 of 2006 and 1019 of 2010 is the same as the issue involved in the present RCOP and the said issue was already decided between the same party. Therefore, the issue of maintainability has to be decided as preliminary issue since the issue in the present RCOP is directly involved in the earlier RCOPs filed by the husband of the petitioner and has been finally decided by the Court.

6. The respondent denied all the averments made by the petitioner. According to the respondent, she did not know the rent control proceedings initiated by her husband and due to the same, she could not mention the proceedings initiated by her husband in the RCOP. The petition premises is settled on her and she bonafide requires the same for her own occupation to run her clinic. The ground on which her husband claimed eviction is entirely different from the ground on which she claimed eviction. The earlier proceedings initiated by her husband has not attained finality on merits. The earlier proceedings and the present proceedings are not on the same ground and are not between the same parties. In the present RCOP, trial commenced and both the parties closed the evidence on their behalf. When RCOP was posted for arguments, the petitioner has come out with the present application. Earlier, the petitioner filed Transfer CMP No.65 of 2015 before this Court for transferring the present RCOP outside Tamil Nadu and subsequently, withdrew the said petition. For the reasons stated above, she prayed for dismissal of M.P.No.535 of 2016.

7. The learned Judge, considering all the materials on record the grounds on which the earlier RCOPs were filed and ground on which the present RCOP is filed, the parties in the earlier RCOPs and present RCOP,

dismissed the application by order dated 09.12.2016 holding that the parties and the grounds in the earlier and present RCOPs are different and earlier RCOPs were not decided on merits.

8. The petitioner filed RCA SR No.2781 of 2017 challenging the said order. The learned Appellate Authority, considering the materials on record and the order of Rent Controller, rejected the RCA SR No.2781 of 2017 as not maintainable.

9. Against the said order of rejection dated 10.02.2017 made in RCA SR No.2781 of 2017, the petitioner has come up with the present Civil Revision Petition.

10. The learned counsel for the petitioner reiterated various averments made in the affidavit filed in support of M.P.No.535 of 2016 in RCOP No.1129 of 2013, the grounds raised in RCA SR No.2781 of 2017 and the present Civil Revision Petition. The learned counsel for the petitioner extensively referred to the materials in the typedset of papers and submitted that the ground in the earlier RCOPs & present RCOP and the parties are one and the same and the earlier RCOP has attained finality. The learned counsel for the petitioner has contended that the

learned Appellate Authority has erroneously held that the order of the learned Rent Controller in MP No.535 of 2016 did not decide the rights of the parties. On the other hand, the learned Appellate Authority ought to have seen that had the Rent Controller allowed the petition, the right of the petitioner would have been decided in his favour in the RCOP itself. In view of the order passed in M.P No.535 of 2016, the Rent Controller cannot take a different view with regard to *resjudicata* in the main RCOP. The courts below erred in relying on the judgment reported in **2015 (4) CTC 696 [Rajendran v. Akkammal]** and ought to have followed the judgment in **1996 LW 85 [Hyath Basha v. Tajan Bi]**. This Court, not considered the earlier judgment reported in **1996 LW 85** cited above and the Appellate Authority ought to have followed the earlier judgment. The learned Appellate Authority has not given any reasons as to why the order passed by the learned Rent Controller did not decide the rights and liabilities of the parties. The learned counsel for the petitioner relied on the following judgment –

(i) 1967 SC 799 [The Central Bank of India Ltd. v. Gokal Chand]

3. The object of S.38 (1) is to give a right of appeal to a party aggrieved by some order which affects his right or liability. In the context of S.38 (1), the words "every order of the Controller made under this Act"! though very wide, do not include

interlocutory orders, which are merely procedural and do not affect the rights or liabilities of the parties. In a pending proceeding, the Controller may pass many interlocutory orders under Ss.36 and 37, such as orders regarding the summoning of witnesses, discovery, production and inspection of documents, issue of a commission for examination of witnesses, inspection of premises, fixing a date of hearing and the admissibility of a document or the relevancy of a question. All these interlocutory orders are steps taken towards the final adjudication and for assisting the parties in the prosecution of their case in the pending proceeding; they regulate the procedure only and do not affect any right or liability of the parties. The legislature could not have intended that the parties would be harassed with endless expenses and delay by appeals from such procedural orders. It is open to any party to set forth the error, defect of irregularity, if any, in such an order as a ground of objection in his appeal from the final order in the main proceeding. Subject to the aforesaid limitation, an appeal lies to the Rent Control Tribunal from every order passed by the Controller under the Act. Even an interlocutory order passed under S.37 (2) is an order passed under the Act and is subject to appeal under S.38 (1) provided it affects some right or liability of any party. Thus, an order of the Rent Controller refusing to set aside an ex parte order is subject to appeal to the Rent Control Tribunal.

(ii) 1996 LW 85 [Hyath Basha v. Tajan Bi]

5. all interlocutory orders passed through the proceedings under the Act cannot be said to be orders within the meaning of [S. 23\(1\)\(b\)](#) of the Act and that only the orders that affect the rights and liabilities of the parties, in the sense that they become final orders though passed in interlocutory applications, such as refusing to set aside ex parte orders etc., are appealable and that it is however, open to the parties to set forth the error, defect or irregularity, if any, in such an order as the ground of objection in his appeal from the final order in the main proceedings
 Therefore, it is clear from the above decisions that unless it is shown that the orders passed in the interlocutory application affect the rights and liabilities of the parties, in the sense that they became final orders, such orders, which are procedural in character, cannot said to be final orders coming within the definition of 'order' occurring in [S. 23\(2\)](#) of the Act.

(iii) 2015 (4) CTC 696 [Rajendran v. Akkammal]

3. In a Rent Control proceedings, where it is filed for eviction, any Interlocutory Application may be filed. However, the Orders passed in such Interlocutory Application, unless it affects the rights and liabilities of the parties in the main petition, are not appealable, much less a Revision is not

maintainable against the same. Even assuming that the Petitioner is entitled to challenge the Order impugned, he should have only filed an Appeal before the Rent Control Appellate Authority and should not have moved this Court under Article 227 of the Constitution of India. Any order, passed by the Rent Controller in an Interlocutory Application, which does not affect the rights and liabilities of the parties, cannot be challenged. By rejecting an Interlocutory Application, no finality is reached in the main Original Petition. The rejection of the Petition to reopen and recall does not affect the rights of the parties.

(iv) 2010 (5) MLJ 378 [[M.Sivagami v. K.S.Ganesan]

8. Even from the cursory look of the said provision, it is made clear that if any order is passed by the Rent Controller and if any person is aggrieved by the same, he or she should prefer an appeal before the Appellate Authority having jurisdiction.

(v) 1983 (2) MLJ 293 [S.Mani v. T.K.Jacob]

10. In the present case, also, the decision of the learned Rent Controller that the applicability of Section 19 of the Tamil Nadu Buildings (Lease and Rent Control) Act need not be tried as a preliminary

issue but can be decided along with the other issues is only a procedural one and cannot be considered to be an order affecting the rights of the parties. But, on the other hand, if the Bent Controller comes to the conclusion that the principle of res judicata laid down in [Section 19](#) of the above said Act is applicable to the present case and dismissed the rent control petition on that ground, then such an order may be said to be an order affecting the rights of parties.

11. As observed in the above decisions the ground of res judicata even if found against the tenant in the enquiry, can be agitated as one of the grounds in the appeal. In view of the principles laid down that an appeal can be maintained only in respect of orders which affect the rights of parties and in view of the fact that the order in question cannot be said to be an order affecting the rights of the parties I will have to conclude that the appeal to the appellate authority itself is not maintainable.

11. Per contra, the learned counsel appearing for the respondent submitted that the petition under Section 19 of the Act is not maintainable as the parties and grounds of earlier RCOP Nos.1225 of 2006 & 1019 of 2010 and present RCOP are entirely different and previous RCOPs were not decided on merits and they were dismissed for default. The present RCOP is not hit by Principles of Resjudicata. All the

orders passed by learned Rent Controller are appellable under Section 23 of the Act. Both the Hon'ble Apex Court as well as this Court have held that only the orders of learned Rent Controller which are finally determine the rights of parties in the main RCOP are appellable. In the present case, the learned Rent Controller had not decided the issue in main RCOP and said RCOP is still pending for final disposal. No appeal lies against the order of the learned Rent Controller passed in Interlocutory Application except when the said order finally decides the rights of the parties in the main RCOP. The petitioner has filed the MP only to drag on the proceedings. A petition has been filed after completion of evidence when the RCOP is posted for arguments. The learned Appellate Authority has considered all the facts and judgments of this Court and Hon'ble Apex Court and rejected the RCA SR No.2781 of 2017. The reasons given by learned Appellate Authority are valid and there is no circumstances warranting interference by this Court. The learned counsel for the respondent relied on the following judgments –

(i) Judgment of this Court reported in 1992 (2) MLJ 111 [K.A.Syed Ali v. Saradambal] wherein it is held as follows –

2. At the outset, it should be said that the appeal before the Appellate Authority was not

maintainable. The order of the Rent Controller dismissing I.A.No.89 of 1990 did not decide the rights of either parties. It merely said that the question raised by the petitioner could not be gone into as a preliminary issue and it could be decided in the proceedings only after trial and the recording of evidence is closed. The order not having decided any rights of parties was not appealable.

(ii) Judgment of this Court reported in 1994 LW 745 [Chinnaraju Naidu v. Bavani Bai] wherein it has been observed as follows –

14. The quintessence of the above discussion, in the light of the observations made in the various decisions referred to above, is to the effect that all interlocutory orders passed during the proceedings under the Act cannot be said to be orders coming within the meaning of Sec.23 (1)(b) of the Act, but only the orders which affect the rights and liabilities of the parties, in the sense that they become final orders though passed on interlocutory applications, such as refusing to set aside ex parte orders, etc. are appealable. However, it is open to the parties, to set forth the error, defect or irregularity, if any, in such an order as a ground of objection in his appeal from the final order in the main proceedings.

12. Heard the learned counsel for the petitioner, respondent and

perused the orders passed in MP No.535 of 2016, RCA SR No.2781 of 2017, arguments and judgments relied on by the parties and the materials available on record.

13. Section 23 (1) (b) of the Tamil Nadu Buildings (Lease & Rent Control) Act reads as follows –

23 (1) (b) – Any person aggrieved by an order passed by the Controller may, within fifteen days from the date of such order, prefer an appeal in writing to the Appellate Authority having jurisdiction.

As per the above Section, any person aggrieved by an order passed by the Rent Controller can file an appeal within 15 days from the date of such order to the Appellate Authority. The question whether all the orders passed by the Rent Controller are appealable or not has been considered in the judgments of the Hon'ble Apex Court and this Court, relied on by the learned counsel for the petitioner as well as respondent. The judgments relied on by the learned counsel for the parties clearly hold that all the orders passed by the Rent Controller are not appealable. Only when the order finally determines the rights of the parties in the

main RCOP is appealable. The order passed in the Interlocutory Application which are administrative in nature, which are steps taken towards final adjudication and for assisting the parties to conduct their case are not appealable. They do not affect any rights or liabilities of the parties in the main RCOP. The Hon'ble Apex Court in the judgment reported in *1967 SC 799 cited supra* has given a few illustrations of the orders passed by the Rent Controller in the Interlocutory Application which are not appealable namely summoning of witnesses, discovery, production, inspection of documents and inspection of premises. In the judgment reported in *1997 LW 100 cited supra*, this Court has held that there is no provision in the Rent Control Act to decide the issue as a preliminary issue. In the present case, the petitioner has filed M.P.No.535 of 2016 in RCOP No.1129 of 2013 regarding the issue of maintainability of said RCOP on the ground of *resjudicata*.

14. Section 19 of the Act reads as follows –

19. Decisions which have become final not to be reopened - Any application under Section 3-A or Section 12, and any application under sub-section (2) or sub-section (3) or sub-section (3-a) of Section 10 or under Sections 14, 15 or 16 shall be summarily rejected by the Authorised Officer or the Controller,

as the case may be, if such application] raises between the same parties or between parties under whom they or any of them claim, substantially the same issues as have been finally decided or as purport to have been finally decided, in a former proceeding -

- (i) under this Act , or

(ii) under any other law from time to time in force before the date of the commencement of this Act and relating to matters dealt within this Act.

15. A reading of the above said Section makes it clear that the RCOP can be dismissed on the ground of resjudicata only when the earlier RCOP and present RCOP are between the same parties on the very same ground and it was finally decided on merits. In the present case, the learned Rent Controller, considering all the facts had held that the earlier RCOP and present RCOP are not between the same parties and the ground is also different and dismissed the petition holding that the present RCOP is not hit by principles of resjudicata. By this Order, the learned Rent Controller did not finally decide the issue between the petitioner and the respondent in the main RCOP but the issue whether the respondent is entitled to evict the petitioner on the ground of owner's

occupation is still kept open and the Rent Controller has to decide the issue on merits based on the oral and documentary evidence let in by the parties. The learned Appellate Authority, considering all the materials on record, the order of the learned Rent Controller and the judgments relied on by the parties, held that the appeal is not maintainable as the order of the learned Rent Controller dismissing the application to decide the issue of resjudicata as preliminary issue does not affect the rights of the parties and rejected the RCA SR No.2781 of 2017. The Appellate Authority has given cogent and valid reasons for its finding that the order of the learned Rent Controller did not finally decide the issue in the main RCOP.

16. The contention of the learned counsel for the petitioner that had the Rent Controller decided the issue of resjudicata as preliminary issue in favour of the petitioner, that would have finally decided the issue in the RCOP in his favour, is purely an hypothetical contention. The courts cannot pass orders on surmises and assumptions. The Courts have to pass orders based on facts and law. The issue before the Appellate Authority was whether the order of the learned Rent Controller dismissing M.P.No.535 of 2016 is appealable or not. The learned Appellate Authority, considering the scope of Section 23 (1) (b) of the

Act, facts of the case and judgments of the Hon'ble Apex Court and this Court, rejected the Memorandum of Association as not maintainable by giving cogent and valid reasons. Therefore, the contention of learned counsel for petitioner that the order of the learned Rent Controller is appealable, is devoid of merits. In view of the judgment of the Hon'ble Apex Court and this Court, I hold that the order of the learned Rent Controller dated 09.12.2016 made in M.P No.535 of 2016 in RCOP had not finally decided the issue in the main RCOP between the parties and the learned Appellate Authority has rightly rejected RCA SR No.2781 of 2017 as not maintainable, as the order of the learned Rent Controller is not appealable.

17. In view of the above reasons, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

29.06.2017

Speaking/Non-speaking order
Index : Yes/No
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V.M.VELUMANI, J.

rgr

To

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

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

C.R.P. PD No.803 of 2017

29.06.2017

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