

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(NPD).No.94 of 2017
and C.M.P.No.455 of 2017

M/S.Castle Builders Designers
Decoraters and Furnishers
Represented by its Proprietor Mr.T.K.Prasad
Old No.319, New No.465
Mount road, Chennai-35. .. Petitioner

Vs.

Simon George .. Respondent

Prayer:- Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 as amended upto date, against the fair and decreetal order dated 18.10.2016 made in M.P.No.102 of 2016 in R.C.A.No.173 of 2010 on the file of IX Small Causes Court, Chennai (Appellate Authority).

For Petitioners : Mr.M.Premkumar
For Respondent : Mr.G.RM.Palaniappan

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 18.10.2016 made in M.P.No.102 of 2016 in

R.C.A.No.173 of 2010 on the file of IX Small Causes Court, Chennai (Appellate Authority).

2.The respondent as a landlord filed R.C.O.P.No.1453 of 2007 for eviction on the ground of wilful default. After contest, the petition was allowed and eviction was ordered, against which, the petitioner/tenant has preferred R.C.A.No.173 of 2010. During pendency of appeal, the petitioner has filed M.P.No.102 of 2016 to appoint an Advocate Commissioner to inspect the internal basic amenities of the petition premises and to file his report. That petition was also dismissed. Challenging the same, learned counsel for the petitioner has preferred this revision.

3.Learned counsel for the petitioner would submit that if the petition for appointment of Advocate Commissioner is allowed, no prejudice would be caused to the respondent/landlord. Because no basic amenities are available in the petition premises except E.B. connection. He would further submit that the petitioner/tenant has paid a sum of Rs.3,500/- per month. Since there is no basic amenities available, if the amount will be adjusted, no default is committed by the petitioner. Therefore, he prays for allowing the revision.

4. Resisting the same, learned counsel for the respondent/landlord would submit that R.C.O.P. was filed in the year 2007 and that eviction was also ordered in the year 2010. Thereafter, the petitioner/tenant has preferred R.C.A.No.173 of 2010, which is pending for six years and the present petition has been filed in the year 2016. So it clearly shows that the petitioner/tenant with a view to drag on the proceedings has filed the petition for appointment of Advocate Commissioner. He would further submit that the Rent Control Appellate Authority has relied upon the decision reported in **2014(1) MWN (civil) 378 (Jayavel @ Jayabal v. Anuratha)**, wherein it is held that in the appellate stage, the tenant is not entitled to file a petition for appointment of Commissioner and that they came to the correct conclusion. Therefore, he prays for dismissal of the revision.

5. Considered the rival submissions made on both sides and perused the typed set of papers.

6. The respondent as the landlord filed R.C.O.P.No.1453 of 2007 for eviction on the ground of wilful default. After contest,

eviction was ordered in the year 2010, against which, immediately, the petitioner/tenant has preferred R.C.A.No.173 of 2010. After receipt of records, the appeal has been posted for arguments. Thereafter, the petitioner/tenant has filed the petition for appointment of Advocate Commissioner in the year 2016 to verify whether water service connection is available in the petition premises. Admittedly, the petition for eviction on the ground of wilful default, is not for fixation of fair rent. If the landlord has filed a petition for fixation of fair rent, then only the Court has to decide whether the basic amenities are available in the petition premises. Under such circumstances, appointment of Commissioner is not necessary.

7.Furthermore, on perusal of the fair and decreetal order passed by the Rent Control Appellate Authority, it reveals that M.P.No.98 of 2014 was filed under Section 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act and the same was allowed subject to condition. The petitioner/tenant has also complied with the condition by paying some amount.

8.It is pertinent to note that the petitioner has preferred

R.C.A.No.173 of 2010 and the same is pending for six years. But the petitioner kept quite all along and when the appeal was posted for arguments, he has filed the petition for appointment of Advocate Commissioner only in the year 2016. So it is clear that the petitioner with the malafide intention to drag on the proceedings has filed the petition after six years. In my opinion, the Rent Control Appellate Authority after considering all the aspects in proper perspective manner, has rightly dismissed the petition. So the fair and decreetal order passed by the Rent Control Appellate Authority does not warrant any interference and it is hereby confirmed. Consequently, the civil revision is dismissed.

9.In the result, the Civil Revision Petition stands dismissed. Since R.C.A.No.173 of 2010 is pending for more than six years, the learned Rent Control Appellate Authority is directed to dispose of the same within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

01.02.2017

Index:Yes/No
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R.MALA,J.

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To

IX Small Causes Court, Chennai (Appellate Authority).

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