

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED: 14.06.2017****CORAM****THE HON'BLE MR. JUSTICE M.V.MURALIDARAN****CRP(NPD)No.4787 of 2011
and
M.P.No.1 of 2011**

V.Murugadas

.. Petitioner

Vs

B.Chellappa (died)
1.Chandra
2.B.C.Venkatakrishnan
3.B.C.Archana Kalyani

.. Respondents

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control, Act 1961) as amended by the Act 23 of 1973, against the Judgment and decree of the learned (Appellate Authority) VII Judge Small Causes Court, Chennai made in RCA.No.806 of 2005 dated 30.06.2008 confirming the order and decretal order of the learned Rent Controller XII Judge, Small Causes Court, Chennai dated 08.07.2005 in M.P.No.380 of 2005 in RCOP.No.1887 of 2004.

For Petitioner : Mr.G.Jermiah

For Respondents : Mr.P.K.Sivasubramaniam

ORDER

The tenant is the revision petitioner and the landlord is the respondent herein. The revision petitioner questioning the ex-parte order of eviction passed against him in M.P.No.380 of 2005 in RCOP.No.1887 of 2004, dated 08.07.2005 on the file of the learned XIIth Judge of Small Causes Court, Chennai, which was confirmed in RCA.No.806 of 2005, Dated 30.06.2008, on the file of the learned VIIth Judge, Small Causes Court, Chennai.

2.The case of the respondent herein is that the revision petitioner was inducted as tenant in a non residential building on a monthly rent of Rs.2000/-. The tenant committed default in paying the monthly rent from 01.05.2003 to 31.08.2004. Despite repeated demands made by the landlord, the tenant willfully failed to pay the monthly rent and thereby committed willful default in payment of rent for the demised premises. Hence the respondent herein filed the above eviction proceedings under Sections 10(2)(1) & 10 (2) (7) of Tamil Nadu Buildings (Lease and Rent Control) Act.

3.According to the revision petitioner, he was regularly paying the monthly rent. Further one Pangajammal was the original owner of the petition premises under whom the revision petitioner entered into

a sale agreement on 28.06.2002 in respect of the petition premises for total sale consideration of Rs.15 Lakhs and a sum of Rs.2,50,000/- was paid towards advance.

4.It is further contended by the tenant that the original owner Pangajammal died, thereafter her legal heirs failed to complete the sale transaction, hence he filed a suit for specific performance in C.S.No.217 of 2003, against the legal heirs of Pangajammal. Further, when the legal heirs of Pangajammal attempted to dispossess the revision petitioner, he filed a suit in O.S.No.2589 of 2004 for permanent Injunction not to disposes him without due process of Law.

5.Before the Learned Rent Controller, no witness was examined on either side and on the side of Land Lord Exs-P1 to P8 were marked and no documents were exhibited on the side of revision petitioner.

6.Upon considering the available materials, the learned Rent Controller, ordered eviction on the ground of willful default by order dated 23.03.2005. According to the tenant, it was an ex-parte order hence he filed an application in M.P.No.380 of 2005 to set aside the ex-parte order and decree and the same was dismissed on

08.07.2005. Against which the tenant filed appeal in RCA.No.806 of 2005 on the file of learned Rent Control Appellate Authority/VIIth Court of Small Cases, Chennai and he also filed another appeal in R.C.A.No.963 of 2005 as against the ex-parte order of eviction. The Learned Rent Control Appellate Authority has taken up both the appeals together and passed a common order by dismissing both appeals by Judgment and Decree dated 30.06.2008. As against R.C.A.No.806 of 2005 the present Civil Revision Petition is filed.

7.I heard Mr.G.Jermiah, learned counsel appearing for the petitioner and Mr.P.K.Sivasubramaniam, learned counsel appearing for the respondents and the entire materials available on record are perused.

8.It is the submission of the learned counsel for the revision petitioner is that though the revision petitioner has contested the case by filing counter statement and attacked the revision petition on various grounds, an ex-parte order of eviction was passed against him which could be found from the bare reading of the order made in RCOP.No.1887 of 2004 dated 23.03.2005. The revision petitioner filed M.P.No.380 of 2005 in RCOP.No.1887 of 2004 to set aside the ex-

parte order of eviction on the ground that his counsel has wrongly noted that date and therefore he was not aware of the eviction order passed against him.

9. According to the revision petitioner, he is having vital documents to prove his case, since no opportunity was given to him to establish his case by adducing oral and documentary evidence. However the application filed by the revision petitioner to get the ex-parte order set aside, was dismissed by the Learned Rent Controller on 08.07.2005, holding that despite several opportunities were given to the revision petitioner, he has not turned up to contest the case.

10. It is also stated that aggrieved over the main order of eviction and also the order passed in M.P.No.380 of 2005, the revision petitioner filed two appeals in RCA.No.963 of 2005 against RCOP.No.1887 of 2004 and RCA.No.806 of 2005 against M.P.No.380 of 2005 in RCOP.No.1887 of 2004. The learned Rent Controller Appellate Authority dismissed both the above RCAs by common Judgment dated 30.06.2008. The present Civil Revision petition is filed as against the order passed in M.P.No.380 of 2005.

11.The learned counsel for the revision petitioner submitted that one more opportunity to be given to the revision petitioner to put forth his case by producing relevant documents and get a contested order on merits. The learned counsel also prays this Court that the revision petitioner will co-operate for the earlier disposal of RCOP.

12.On the other hand, the learned counsel for the respondents strongly opposed to allow this civil revision petition stating that despite so many opportunities given by the learned Rent Controller to the revision petitioner to cross examine the Landlord and also given sufficient time for the evidence of revision petitioner, he failed to appear before the Court and therefore the learned Rent Controller has rightly rejected the contention of the revision petitioner by dismissing M.P.No.380 of 2005. Hence the learned counsel submitted that no leniency could be shown to the revision petitioner.

13.From the perusal of the impugned orders it is seen that both the impugned order of the learned Rent Controller and the learned Rent Controller Appellate Authority have not discussed the merits of the case on either side and eviction was ordered only by accepting the case of the Land Lords which in the considered opinion of this Court

may not be fair and proper and the same is liable to be set aside in the interest of the justice. Always it is the view of this Court that the parties to the litigation should get orders on merits.

14. Considering the arguments advanced on either side, this Court though found some lapses on the part of the revision petitioner, inclined to allow this civil revision petition to render substantial Justice to the parties. If an opportunity is given to the revision petitioner with a specific direction to the learned Rent Controller to dispose the RCOP with in a time frame no prejudice would be caused to the respondents/Land Lords.

15. In the result:

(a) this Civil Revision Petition is allowed, by setting aside the order passed in RCA.No.806 of 2005, dated 30.06.2008, on the file of the learned VIIth Judge, Small Causes Court, Chennai and M.P.No.380 of 2005 in RCOP.No.1887 of 2004, dated 08.07.2005, on the file of the learned XIIth Judge, Small Causes Court, Chennai, and the M.P.No.380 of 2005;

(b) the Learned Rent Controller viz., XIIth Judge, Small Causes Court, Chennai, is directed to give fair opportunity to the

petitioner/tenant and complete the trial within a period of three months from the date of receipt of a copy of this order. No cost. Consequently, connected Miscellaneous Petition is closed.

14.06.2017

Note: Issue order copy on 01.02.2019
vs

Index: Yes
Internet: Yes

To

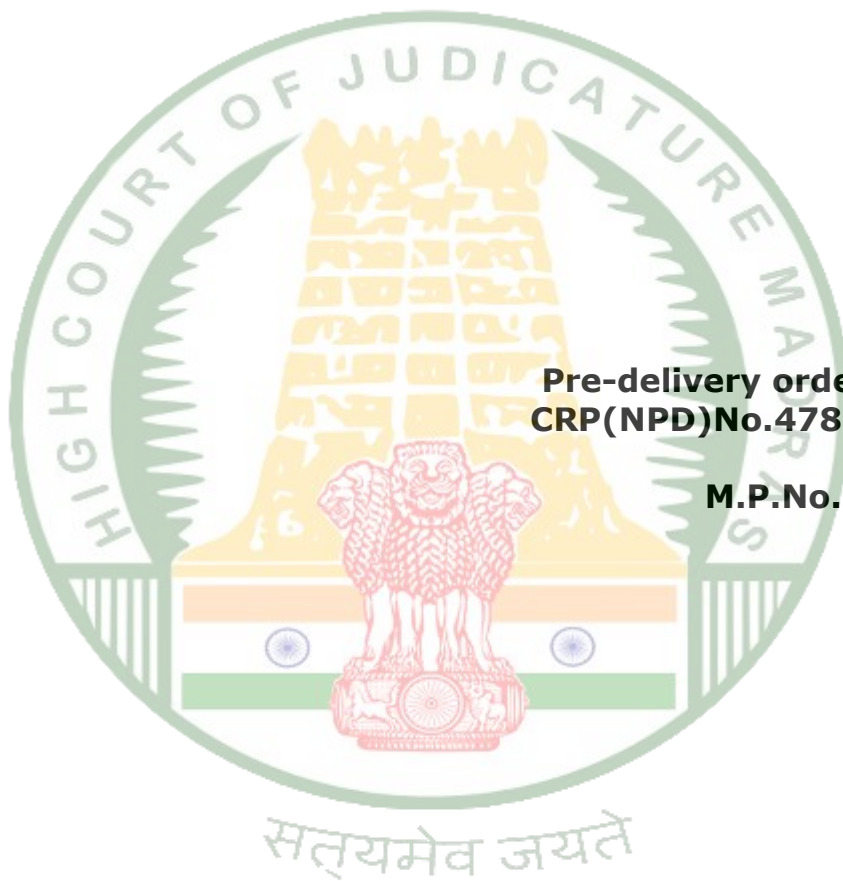
1. The (Appellate Authority) VII Judge,
Small Causes Court, Chennai.
2. The Rent Controller, XII Judge,
Small Causes Court, Chennai.



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M.V.MURALIDARAN,J.

VS



**Pre-delivery order made in
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and
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