

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3568 of 2015
& C.M.P.No.3188 of 2017

Dawood Sherif

.. Petitioner

Vs.

Mumtaj Begam

.. Respondent

PRAYER: Civil Revision Petition filed under Rule 25(1) of the Tamil Nadu Buildings Lease and Rent Control Act 1974, against the fair and decretal order dated 03.01.2013 made in R.C.A.No.470 of 2011 on the file of the VIII Small Causes Court, Chennai, reversing R.C.O.P.No.86 of 2010 on the file of the XIV Small Causes Court, Chennai.

For Petitioner : Mr.V.Lakshminarayanan

For Respondent : Mr.B.R.Sankaralingam

ORDER

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This Civil Revision Petition has been filed against the fair and decretal order dated 03.01.2013 made in R.C.A.No.470 of 2011 on the file of the VIII Small Causes Court, Chennai, reversing R.C.O.P.No.86 of 2010 on the file of the XIV Small Causes Court, Chennai.

2.The petitioner is the landlord and respondent is the tenant in R.C.O.P.No.86 of 2010. The petitioner filed the said R.C.O.P against the respondent for eviction on the ground of owner's occupation. According to the petitioner, he is owner of the building measuring about 450 sq.ft at Door No.10/36, Dr.Ansari 5th Street, Pulianthope, Chennai-12. The petition mentioned property was let out to the respondent for residential purpose. At the time of letting out the petition premises, the petitioner was residing in a rented premises at No.2/9, Indhra Gandhi Street, Kilpaukam Road, Chennai-600 010 due to his business. After solving his business commitments and after winding up his business of distributorship in stationery articles, the petitioner requires his own house, as the landlord of the petitioner demanded vacant possession of the rented premises wherein the petitioner and his family members are residing. The respondent is owning more than 2 houses in Ambattur and in and around the city of Chennai. The petition premises is situated where the petitioner's relatives are residing and his hereditary Mosque is situated. The petitioner is not owning or residing in the residential premises of his own, in the city of Madras.

3.The respondent filed counter statement and denied all the averments made by the petitioner. The respondent submitted

that the petitioner is residing in his own house and not in a rented house. The petition building consists of 2 floors. The respondent is in occupation of the ground floor portion measuring to an extent of 170 sq.ft for residential purpose. The entire first floor in the said premises is lying vacant for the past 6 months and if the petitioner really wanted his residential premises, he could have occupied the first floor portion and one portion in the ground floor which are vacant. In the circumstances, the requirement of the petitioner is not bonafide. The petitioner demanded enhanced rent. But the respondent refused to pay the same and the respondent is depositing the monthly rent into the Court in R.C.O.P.No.551 of 2008 on the file of X Small Causes Court, as the petitioner refused to receive the rent.

4. Before the learned Rent Controller, the petitioner examined himself as PW1 and one Jayalakshmi, landlord of the petitioner, wherein he is residing as PW2 and marked 3 documents as Exs.P1 to P3. The respondent examined one M.Shaik Hussain, husband of the respondent as RW1 and marked authorization letter as Ex.R1.

5.The learned Rent Controller, considering the pleadings, oral and documentary evidence, ordered eviction, directing the respondent to vacate and hand over the vacant possession within a period of 2 months.

6.Against the said order, the respondent filed R.C.A.No.470 of 2011 on the file of the VIII Small Causes Court at Chennai. The learned Appellate Authority allowed the R.C.A on the ground that the petitioner has sought for eviction of the respondent from the entire building whereas the respondent is residing only in a portion of the petition premises. The petitioner has not filed any petition to amend the description of the property. The petitioner admitted in his evidence that he has let out two portions to his relative after filing R.C.O.P.

7.Against the said judgment dated 03.01.2013, made in R.C.A.No.470 of 2011, the present Civil Revision Petition is filed by the petitioner.

8.The learned counsel for petitioner submitted that petitioner requires the petition premises for his own occupation and has proved the necessity and that the Appellate Authority

erroneously allowed the well considered order of the learned Rent Controller. The reasons given by the Appellate Authority are not valid and legal.

9.The learned counsel for the respondent submitted that the requirement of petitioner is not bonafide and has not occupied the portion of property when it was vacant and rented out two portions to third parties after filing R.C.O.P. The Appellate Authority has properly appreciated all the materials in proper perspective and there is no reason to set aside the judgment of the learned Appellate Authority.

10.The learned counsel for the respondent, relied on the judgment reported in **2002 (2) LW 559 (S.Loganathan Vs. V.s.Rangasamy):**

“20.The Tenant has clearly stated in the counter that before filing the R.C.O.P, a building belonging to the petitioner, which is situate behind the petition mentioned property, fell vacant and that if really the requirement of the petitioner is bonafide, he should have occupied the same, P.W.1, the landlord, has stated in his evidence that he owns Gingelly oil mill at a distance of 400 feet away from the petition mentioned building and that the above building is not suitable for doing retail business and that therefore, he requires the petition mentioned

building. The landlord has also filed licence Ex.P-6 dated 30.11.90. The above document will show that licence was issued for wholesale business. P.W.1 has clearly admitted in his evidence that he owns a godown behind the petition mentioned building at a distance of 10 feet away from the petition mentioned building and that the above godown is situate in the street called "Venkatachalam Street" and that the above property measures 60 feet x 15 feet. He has stated that he let out the above building for rent after filing the R.C.O.P. But in the same evidence, he has also stated that he let out the said building before filing the R.C.O.P. And that one Arumugham was using the said property as an oil godown. It is, thus, clear that the landlord owned another building for doing or expanding his business. Even though the above building fell vacant, the landlord did not take possession of the same for expanding his business. On the other hand, the above godown was let out on rent to one Arumugham. If really the petitioner/landlord requires any non-Residential Building for doing retail business, he would not have let out the building, which is situate behind the petition mentioned building, to a third party. The above vital aspect of the case was not properly considered by the Rent Controller and the Appellate Authority. It is, thus, seen that even through the building suitable to do retail business was available, the landlord without taking possession of the same has let out the building to a third party before filing the R.C.O.P. He has not even pleaded in the petition as to why he let out the godown, which is situate behind the petition mentioned building, to a third party when it fell vacant. In the above circumstances, the findings of the Rent Controller that the tenant failed to prove that the

Landlord was in possession of another building for doing business cannot be sustained. The findings of the Rent Controller and Appellate Authority on the question of own occupation are vitiated by perversity. Therefore, I hold that the findings of the Courts below that the petition mentioned building is required for landlord's own use and occupation are liable to be set aside. I hold that the tenant cannot be evicted on the above grounds."

11. Heard the learned counsel for the petitioner and perused the materials available on record.

12. From the records, it is seen that the petitioner has sought for eviction of the respondent from the portion of the building bearing Door No.10/36, Dr. Ansari 5th Street, Pulianthope, Chennai-12. The petitioner has not given extent and portion under occupation of the respondent. On the other hand, the respondent has admitted in the counter statement that she is in occupation of 170 sq.ft in the ground floor for residential purpose. The learned Rent Controller, considering the pleadings and evidence, concluded that there is no dispute with regard to the identity of the property under occupation of the respondent. The respondent's contention is that petitioner is occupying his own building for residential purpose and he is not a tenant. The petitioner proved that he is a tenant in the building where he is residing by examining PW2, the landlord of the building and marking the lease agreement dated 01.09.2000 as

Ex.P3. The respondent has not let in any evidence to substantiate her case to show that petitioner is in occupation of his own building. On the other hand, the husband of the respondent/RW1 has stated that he does not know whether the petitioner is occupying his own building or not. The petitioner also proved that he requires entire building for his own occupation due to the fact that only one bath room is available in the ground floor for entire building. The learned Rent Controller, considering all the above facts ordered eviction. The learned Appellate Authority, on misconception that the petitioner has not properly described the portion under occupation of the respondent and that petitioner has not impleaded other tenants occupying the other portion of the building, allowed the R.C.A. The learned Appellate Authority failed to appreciate the evidence of PW1. The persons in occupation of the other portions are his relatives and they are occupying temporarily. The learned Appellate Authority has not considered the entire materials on record and order of the learned Rent Controller and has not given any valid and proper reason for reversing the order of the learned Rent Controller. In view of the above facts, the judgment relied on by the learned counsel for the respondent is not applicable to the facts of the present case and the judgment of the learned Appellate Authority is set aside. The order of the learned Rent Controller is restored and

confirmed. The eviction of the respondent is ordered. Time for eviction is 2 months.

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

21.11.2017

Index: Yes/No
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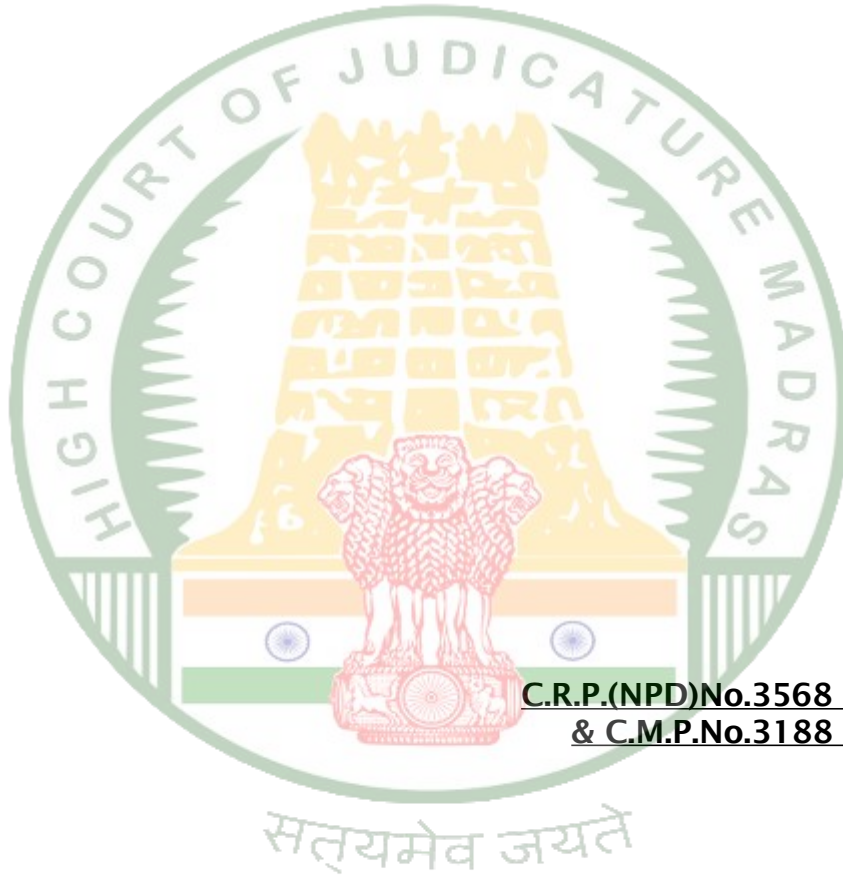
To

1. The Judge,
VIII Small Causes Court,
Chennai
2. The Judge,
XIV Small Causes Court,
Chennai

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V.M.VELUMANI,J.

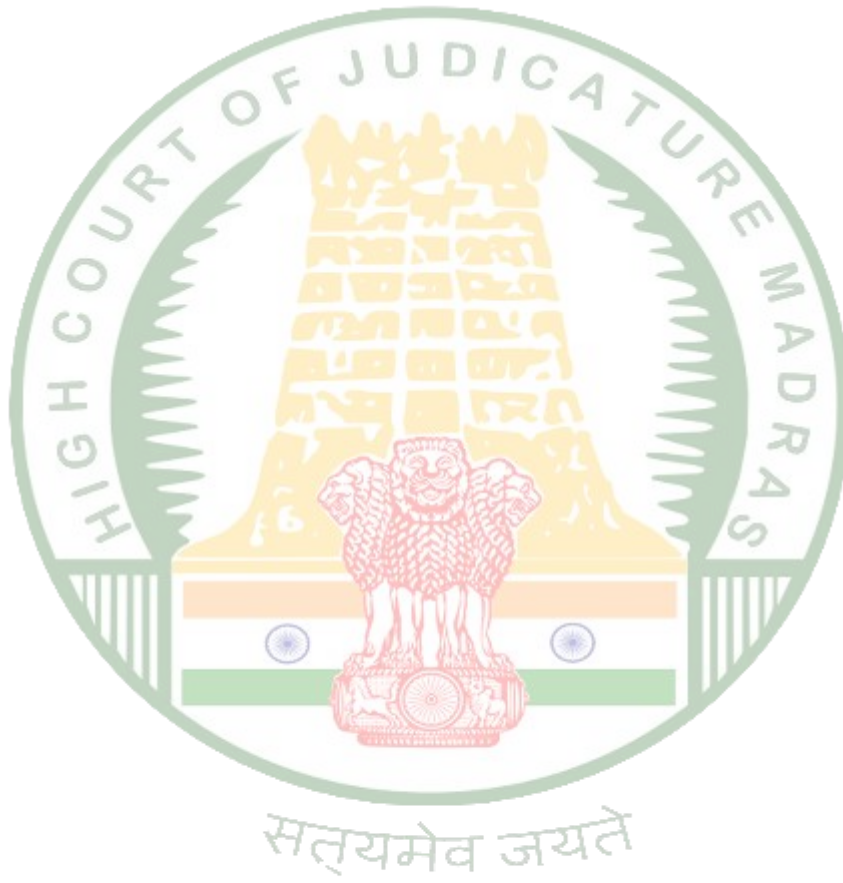
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