

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED :13.02.2017****CORAM :****THE HONOURABLE MS.JUSTICE R.MALA****C.R.P(NPD).No.691 of 2014**
and M.P.No.1 of 2014

Orders reserved on 01.02.2017	Orders pronounced on 13.02.2017
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1.Ashok Kumar Jain
2.Prakash D.Jain

.. Petitioners

Vs.

The Madras Kirana Merchants Association
Rep. by its Secretary, Ramesh Kumar Rathore
No.18, Audiappan Naicken street
Chennai-600 079.

.. Respondent

Prayer:- Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1959, against the decree and judgment dated 02.01.2014 passed in R.C.A.No.1619 of 2004 by the learned VII Judge (Appellate Authority) Small Causes Court, Chennai, against the fair and decretal order dated

18.12.2001 made in R.C.O.P.No.2247 of 1999 on the file of the learned XI Judge, Court of Small Causes, Chennai (Rent Controller) passed in R.C.O.P.No.2247 of 1999.

For Petitioners : Mr.R.Parthasarathy

For Respondent : Mr.V.Lakshminarayanan

ORDER

This civil revision petition is filed against the decree and judgment dated 02.01.2014 passed in R.C.A.No.1619 of 2004 by the learned VII Judge (Appellate Authority) Small Causes Court, Chennai, against the fair and decreetal order dated 18.12.2001 made in R.C.O.P.No.2247 of 1999 on the file of the learned XI Judge, Court of Small Causes, Chennai (Rent Controller) passed in R.C.O.P.No.2247 of 1999.

2.The respondent has filed a petition in R.C.O.P.No.2247 of 1999 for eviction. The petitioner has filed a counter and contested the same. That petition was dismissed, against which, the respondent has preferred R.C.A.No.1619 of 2004, which was allowed and eviction was ordered. Challenging the same, the

petitioners preferred this revision.

3.Learned counsel for the petitioners would submit that the petition mentioned building is a commercial building, in which, the revision petitioners are doing dry fruits business for the past three decades. In the first floor, there is a conference hall and the same was leased out, so the respondent can very well start a medical clinic in the first floor. He would further submit that now no commercial building is available to the petitioners for shifting their business and that subsequent event has to be looked into. For the reason, he has relied upon the decision of this Court reported in **2004 (4) LW 751 (S.G.S.Soundarapandian v. P.M.R.Muthukaruppan Servai (deceased) and others)**. While considering the petition for eviction on the ground of additional accommodation, comparative hardship to both the parties should be considered. For the reason, he has relied upon the decision of the Apex Court reported in **(1998) 7 SCC 138 (B.Kandasamy Reddiar v. O.Gomathi Ammal)**. It is further submitted that the property is belonging to his mother and the shops have been leased out to third parties and they are doing business. So it is very difficult for them to vacate the tenants/third parties. That factum was not considered by the appellate authority. Therefore, he prays

for allowing the revision.

4. Resisting the same, learned counsel for the respondent's association would submit that the property is owned by the association even in the year 1940 and their intention is to give medical assistance to the members of the association and inhabitants of the locality. In clause-71 of the Rules and Bye Laws of the association, it is clearly mentioned that the first floor is required for the purpose of starting a clinic. He would further submit that the petitioners are doing the same business at No.17, Strotten Muthia Mudali street, Chennai-79 from 1995-1996 & 2000-2001 and the same have been evidenced by the documents filed by the petitioners/tenants as well as the income tax returns. They are doing business at No.17, Strotton Muthiah Mudali street, Chennai-79. So the arguments advanced by the learned counsel for the petitioners that the property is belonging to their mother and now it is leased out to the third parties are not correct. It is further submitted that the respondent has filed an affidavit stating that the association has only one property and they sought for the demise premises to open a medical centre to all the economically backward people and so it is for public interest. It is further stated that demise building will not be leased out to anybody. Hence, he prays for

dismissal of the revision.

5. Heard both sides and perused the typed set of papers.

6. The landlord-tenant relationship and quantum of rent are not disputed. Admittedly, the building is a commercial building, wherein the petitioners/tenants are doing dry fruits business. It is also an admitted fact that the petitioners are residing with their mother jointly at No.17, Strotten Muthia Mudali street, Chennai-79 and they are also having their own building. While framing Rules and Bye laws of Madras Kirana Merchants Association, the respondent had an intention to start a medical centre in the association premises and charity charges are collected by the members and paid to the Association for this purpose. So it is appropriate to extract Rule 71 hereunder, which finds place in page No.40 of the typed set of papers-II:

"71. Charity Charges of 0.30 paise per package, bag, case bale, drum etc. be collected by members from 1-5-1988 and out of this 0.20 paise be paid to the Association for the purpose of starting a Primary Medical Centre in the Association premises. Members should remit once in 3 months of the charity collections in one payment."

7. Admittedly, the first floor of the demise building has been used for clinic and now the respondent's association want to expand the same. After filing of the petition also, they started to give treatment to the poor every year. Number of patients are increased and that has been mentioned in the additional affidavit. Except this building, the respondent's association is having no other building. As already stated that the first floor has been used as medical clinic. Now the petition mentioned premises is vacated and they are proposed to use the same as dialysis centre.

8. At this juncture, it is appropriate to consider the following decisions relied upon by the learned counsel for the petitioners:

(i) In **(1998) 7 SCC 138 (B.Kandasamy Reddiar v. O.Gomathi Ammal)**, wherein it is held that while deciding additional accommodation, the Court ought to have considered the comparative hardship caused to both the parties. Para-5 is extracted hereunder:

“5. Having heard the learned counsel for the appellants and the respondent, we are of the view that the factual aspects of the case need not be

gone into as these appeals must be allowed for the simple reason that in disposing of the revision petitions the High Court did not at all take into consideration the following proviso, which finds place under clause (e) of Section 10(3) and reads as under :-

"Provided that in the case of an application under clause (c), the Controller shall reject the application if he is satisfied that the hardship which may be caused to the tenant by granting it will outweigh the advantage to the landlord."

Apart from the fact that while dealing with the question of eviction of a tenant on the ground of requirement of additional accommodation, the consideration of the above proviso is mandatory, in the instant case it is all the more necessary in view of the admitted facts that the respondent has now taken possession of door No. 143, earlier occupied by Co-optex, and that she has also initiated execution proceeding for eviction of the tenant of door No. 147 A. As the mandatory requirement of the above quoted proviso has not at all been adverted to by the High Court in the light of the materials already on record and the above subsequent events, we set aside the impugned judgment so far as it relates to the three appellants and remand the matter to it for fresh disposal of

the three connected revision petitions in accordance with law and in the light of the observations made hereinbefore. Since the matter is long pending, the High Court is requested to dispose of the above petitions as expeditiously as possible, preferably within a period of six months from the date of communication of this order. There shall be no order as to costs."

As per the document filed by the respondent's association, the petitioners' are having dry fruits shop in their mother's property. The respondent's association want the premises only for the purpose of starting the clinic. In the first floor, a clinic has already been running and now they want to expand the same, due to increase of patients. On considering the above decision, the hardship caused to the landlord is more than that of the tenant, because the landlord has required the demise building for expanding the medical clinic and they are giving free medical aid to the poor. While applying the dictum laid down by the Apex Court in **(1998) 7 SCC 138 (B.Kandasamy Reddiar v. O.Gomathi Ammal)**, I am of the view that great hardship is caused to the landlord not to the tenant, if the demise building is not vacated.

(ii) In **2004 (4) LW 751 (S.G.S.Soundarapandian v. P.M.R.Muthukaruppan Servai (deceased) and others)**, the subsequent events have to be looked into. Para-9 is extracted hereunder:

"9.Going by the principles set out therein though the first two stipulations are satisfied while considering the subsequent event of the death of the first respondent herein, as far as, the third stipulation is concerned, I find the death of the first respondent herein has got every bearing on the relief sought for by the landlord in the original application. In the application for eviction, the main thrust of the claim was that the first respondent was suffering from urinary infection and therefore he needed constant treatment at Madurai and in order to reside at Madurai, he needed the sole premises owned by him viz., the petition premises. It is true that in paragraph 6 of the application, it was claimed that his family members were also staying along with him in the portion which was allowed to be occupied by the petitioner. But, that single statement cannot be taken that the requirement of the other family members also to stay at Madurai, was only for the purpose of assisting the first respondent to take treatment at

Madurai. Similarly, the deposition of the first respondent before the learned Rent Controller that his son was practising at Madurai and that he was coming from his village and therefore he needed the premises was a stray statement made in the course of his evidence and the said version had no co-relation to the real claim made in the application for eviction. Therefore, if the subsequent event of the death of first respondent is taken note of, it will have to be held that the real claim of the first respondent in the application for eviction unfortunately cease to exist by the death of the first respondent. When that be the legal consequence to the application for eviction it will have to be necessarily held that the eviction originally ordered, which was subsequently confirmed by the appellate authority cannot be sustained. "

There is no quarrel over the above proposition. But the above decision is not applicable to the facts of the present case. In the above decision, the landlord is suffering from urinary infection and he requires constant treatment at Madurai. He did not own any house at Madurai. The portion of the petition mentioned building is allotted to the tenant and eviction was ordered and appellate

authority also confirmed the same. During pendency of the revision, the landlord died. Therefore, it is held that if the subsequent event of the death of first respondent is taken note of, it will have to be held that the real claim of the first respondent in the application for eviction unfortunately cease to exist by the death of the first respondent. When that be the legal consequence to the application for eviction it will have to be necessarily held that the eviction originally ordered, which was subsequently confirmed by the appellate authority cannot be sustained.

9. In the case on hand, the building is required for additional accommodation for expanding the clinic to give medical assistance to the poor public, as the cause of action is in existence, the above citation is not applicable to the facts of the present case.

10. Considering the aforestated circumstances of the case, I am of the view that the petitioners are doing dry fruits business in the building owned by their mother in the name and style of Dhanraj Nivas. It contains ground and first floor. In the ground floor, there were commercial shops. The petitioners stated that they does not know to whom the building is leased out. As already stated that

the respondent's association is not having any other building except the demise building. Therefore, on considering the public interest, the respondent is entitled to get the order of eviction and that has been rightly considered by the learned Appellate Authority. Hence, I do not find any merits in the revision. The fair and decreetal passed by the Rent Control Appellate Authority does not suffer any infirmity or illegality and it is hereby confirmed. Consequently, the revision is dismissed.

11.In the result, the Civil Revision Petition stands dismissed. Three months time is granted for eviction. No costs. Consequently, connected Miscellaneous Petition is closed.

13.02.2017

Index:Yes/No

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To

1.VII Judge (Appellate Authority) Small Causes Court, Chennai.

2.XI Judge (Rent Controller), Court of Small Causes, Chennai.

R.MALA,J.

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Pre-delivery order made in
C.R.P(NPD).No.691 of 2014
and M.P.No.1 of 2014

Dated: 13.02.2017

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