

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	Orders Pronounced on
27.04.2017	24.11.2017

CORAM

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(NPD) No.4309 of 2015
and M.P.No.1 of 2015

- 1 M.Madheswari
- 2 Sri Jai Maruthi Traderrs
a firm represented by its Partner
M.Madheswari
- 3 K.Mathiyalagan
- 4 M.Prabhu
- 5 M.Balaji
- 6 M.Muralidharan .. Petitioners/Tenants

(1st petitioner died and the same was recorded vide order, dated 25.1.2017 in
C.R.P.(NPD) No.4309 of 2015 in Memo S.R.No.866 of 2017)

Vs.

- 1 D.Murugesan
- 2 D.Thanikachalam
- 3 A.Ranganayaki
- 4 D.A.Karthikeyan .. Respondents/Landlords

This Civil revision is filed under Sec.25 of Tamilnadu Building
(Lease and Rent Control) Act 18/1960 against the order, dated 03.09.2015,
made in R.C.A.No.1 of 2015 by the learned Rent Control Appellate Authority

(Principal Subordinate Judge), Erode confirming/modifying the order, dated 14.2.2014 made in R.C.O.P.No.6 of 2013 by the learned Rent Controller (I Additional District Munsif, Erode.

For Petitioners : Mr.R.Rajarajan
for Mr.E.P.Senniyangiri
For Respondents : Mr.T.Murugamanickam
Senior counsel for
Mrs.Zeenath Begum

ORDER

The brief facts of the case is as under:

The respondent herein filed R.C.O.P.No.6 of 2013 before the Rent Controller (I Additional District Munsif), Erode seeking eviction of the petitioners/tenants from the premises on the grounds of wilful default under Sec.10(2) (i) of the Tamilnadu Buildings (Lease and Rent Control) Act, Subletting the premises by inducting the petitioners 3 to 5 as partners under Sec.120(2) (ii) (a) of the Act, change of user by converting the business from Provision store into a shop dealing with cosmetic and gold covering jewellery under Sec.10(2) (ii) (b) of the Act, act of waste by demolishing front side steps, removing the entire marble flooring in the premises and blocking the pathway in the premises and thereby impairing the utility of the building under Sec. 10(2) (iii) of the Act and for own occupation for non residential purpose

under Sec.10(3) (a) (iii) of the Act. The learned Rent Controller taking into consideration of the oral and documentary evidence and the submissions made by both sides, negated the ground of wilful default, subletting the premises raised by the respondents herein/Landlord, however, allowed the RCOP on the ground of change of user, acts of waste, requirement of the premises for own use and occupation. Aggrieved by the said order, the tenant/respondent therein preferred an appeal in R.C.A.No.1 of 2015 before the Appellate Authority challenging the order passed by the learned Rent Controller allowing the RCOP on the ground of "Change of user", Act of waste" and "Own use and occupation". The Landlord/petitioner therein preferred Cross appeal in Cross R.C.A.No.1 of 2015 against the order passed by the Rent Controller in so far as the order rejecting the grounds of wilful default and subletting the premises under Sec.10(2) (i) and 10(2) (ii) of the Act. The learned Rent Control Appellate Authority set aside the order passed by the learned Rent Controller in so far as it relates to the findings under Sec.10(2) (i) and 10(2) (ii) of the Act namely wilful default and subletting the premises and confirmed the order passed by the learned Rent Controller with regard to all other aspects.

2 According to the learned counsel for the respondents/

Landlords, the first petitioner has sublet the premises by converting the proprietorship firm into partnership concern by inducting the petitioners 3 and 4 as partners and thereby, the petitioners are liable to be evicted under Section 10(2) (ii) (c) of the Act. Further, the petitioners/tenants converted the business from Provision Store to shop dealing with cosmetic, gold covering jewellery without any permission from the Landlord. Further, it is also the case of the respondents/Landlord that the entire marble flooring and front side steps in the premises were demolished and blocked the pathway in the premises. Therefore, the said act of the revision petitioners/ tenants amounts to act of waste and the petitioners seeking for the petition mentioned property for his own use and occupation, intended to start textile business in the premises by the fourth respondent herein. Counter statement has been filed by the petitioners/tenants in the said RCOP rebutting the averments made in the petition.

3 The main contention of the learned counsel for the revision petitioners/tenants is that without appreciating the finding rendered by the Rent Controller simply confirmed the order by stating that with regard to the ground of change of user, act of waste and for own occupation, the reasonings

given by the lower court with regard to the above aspects does not needs any interference and accordingly the same is upheld. In view of the above findings there is no necessity for this court to have a detailed discussion on the above grounds.

4. The contention of the learned counsel for the petitioners/tenants is that the Appellate Court had simply accepted the findings of the learned Rent Controller without considering the grounds raised by the appellants in the appeal. The Appellate Authority without analysing the facts and law on the ground of act of waste and the premises required for own use and occupation dismissed the appeal. The prayer sought for by the respondents/Landlord on the ground of wilful default according to the learned counsel for the petitioner, the delay in payment is mere default but it is not a wilful default. The Landlord received rent through his agent and there was no objection by the Landlord till received notice. Therefore, law of acquiescence will apply to the facts of the present case. According to the learned counsel for the revision petitioners/tenants there is no subletting by the revision petitioners/tenants. It is the case of the petitioners/tenants that the proprietorship concern running a Provision store as converted into Partnership

concern will not amount to transfer of right and could not be construed as subletting. The Appellate Court has misconstrued the criteria for the test and confirmed the order of the learned Rent Controller. The revision petitioners/tenants particularly denied the replacement of tiles and hence, act of waste does not arise. The revision petitioners/tenants clearly established before the Court below that the Landlord seeking for eviction on the ground of own use and occupation does not satisfy the condition under Sec.10(a) (iii) of the act. Without showing the bonafide reason by the respondents/Landlords, the relief of eviction on this ground cannot be granted. Therefore, the Appellate Court has completely failed to consider the contention of the revision petitioner and erroneously confirmed the order passed by the Rent Controller without appreciating the contention raised by the petitioner. Therefore, the order passed by the court below is illegal and the same is liable to be interfered with by this Court.

5 Per contra, the learned counsel for the respondents/Landlord would submit that the grounds raised by the appellants have been considered in detail by both the authorities and rightly rejected the contention of the revision petitioners/tenants. The respondents/Landlords have satisfied both

the Rent Controller and Appellate Authority to prove that the petitioners/tenants are liable to be evicted on the ground of wilful default under Section 10(2) (i) of the Tamilnadu Building (Lease and Rent Control) Act, subletting the premises under Sec.10(2) (ii) (a) of the Act, Different User under Sec.10(2) (ii) (b) of the Act, Act of waste under Sec.10(2) (iii) of the Act and also for own use and occupation for Non-Residential purpose under Sec.10(3) (a) (iii) of the Act. Both the courts have accepted the case of the respondents/Landlords by considering the oral and documentary evidence and rival submissions made by the parties. The Appellate Court also set aside the order passed by the learned Rent Controller in so far as it relates to Wilful default, subletting the premises and different user. Therefore, there is no warrant to interfere with the order passed by the Courts below.

6 Except the aforesaid grounds, no other ground has been raised in the Civil revision petition.

7 Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials on records and the decisions cited.

8 Now, the point for consideration before this Court is that whether the judgment passed by the learned Rent Control Appellate Authority is legally sustainable ?

9 The learned Rent Control Appellate Authority by holding that the premises was originally let out for Provision store and without written consent of the Landlord, converted into Fancy store and removed the marble flooring and replaced with tiles, concurred with the findings of the learned Rent Controller. In so far as the eviction sought for on the ground of own use and occupation as claimed by the Landlords, the findings of the learned Rent Controller was confirmed by the Appellate Authority. In so far as the grounds of wilful default and subletting the premises are concerned, the Appellate Court set aside the order passed by the Rent Controller and held that originally the premises was leased out to the revision petitioners/tenants as proprietorship concern for running the provision store. Subsequently, the petitioners/tenants converted the same into partnership concern by running Fancy store which amounts to act of subletting the premises.

10. This Court in **Vellappa Gounder and 2 others vs.**

Palaniammal and another [2001(4) CTC 673] has held as under:

"11. The Hon'ble Apex Court in a case reported in State of Rajasthan v. Harphool Singh (dead) through his Lrs, has held as follows:

"A close scrutiny of the judgment of the first appellate court shows that there was no due or proper application of mind or any critical analysis or objective consideration of the matter made, despite the same being the first appellate court. On the other hand, by merely reproducing the findings of the trial court a mechanical affirmation seems to have been made of them without any reference to the principles of law or the criteria to be satisfied before the claim of the plaintiff of perfection of title by adverse possession could be sustained."

12. On a perusal of the judgment of the first appellate court, it is clear that the first appellate court has simply reproduced the evidence recorded by the trial court and so also the para-wise discussions in verbatim, made by the trial court to arrive at the finding. From the judgment of the first appellate court it is more explicit that it has neither considered the evidence adduced by the parties before the trial court nor applied its mind nor had it focused its attention on the specific and rival contentions which arose for decision, when an Imperative duty and an obligation is cast upon the court of appeal viz. the first

appellate court, it being the final court of facts, is duty bound to apply its mind independently afresh on the evidence adduced by the parties before the trial court and to explain its reasons for the findings and conclusions arrived at. In the instant case, the judgment of the first appellate court is a glaring example of non-application of mind and breach of the imperative duty imposed on it by the mandatory provision under Order 41, Rule 31. The court may hasten to say that without any critical analysis or objective consideration of the material on hand, the first appellate court has merely reproduced the findings of the trial court and has made a mechanical affirmation without exercising the due care to follow the principles of law laid under Order 41, Rule 31. Needless to say that the judgment of the first appellate court, under the aforesaid circumstances, is not only defective, but also not a judgment in the eye of law and hence without any hesitation whatsoever, the judgment of the first appellate court has got to be set aside, but the same be remitted back to the first appellate court with direction to dispose of the appeals afresh on merits and in accordance with law and after affording reasonable opportunity to both the parties. It is brought to the notice of the court by the Bar that the litigation which commenced in 1977 is pending for more' than two decades and hence it has got to be disposed of within a time frame. Hence the court feels it fit to give a direction to the lower appellate court to dispose of the

appeals within three months from the date of the receipt of the copy of this judgment."

12. In view of the decision rendered by the Hon'ble Supreme Court and this Court, the appellate court is duty bound to apply its mind independently afresh on the evidence adduced by the parties before the trial court and to explain its reasons for the findings and conclusions arrived at. In the instant case, a reading of the impugned judgment would make it clear that the first appellate Court has failed to do so. Therefore, without going into the merits or otherwise of the rival contentions, put forth by the parties, the Appellate Authority without applying its mind independently on the evidence adduced before the trial court has mechanically confirmed the findings of the trial court.

13 In the result, the Civil revision petition is allowed. The judgment of the learned Rent Control Appellate Authority (I Additional District Munsif), Erode in R.C.A.No.1 of 2015 is set aside. The appeal is remanded to the learned Rent Control Appellate Authority to decide the matter afresh on merit and in accordance with law and dispose of the appeal within a period of three months from the date of receipt of copy of this order. No order as to

costs. Consequently, connected miscellaneous petition is closed.

26.11.2017
D.KRISHNAKUMAR, J.

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Speaking/Non Speaking order

Index : Yes / No

Internet : Yes / No

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To

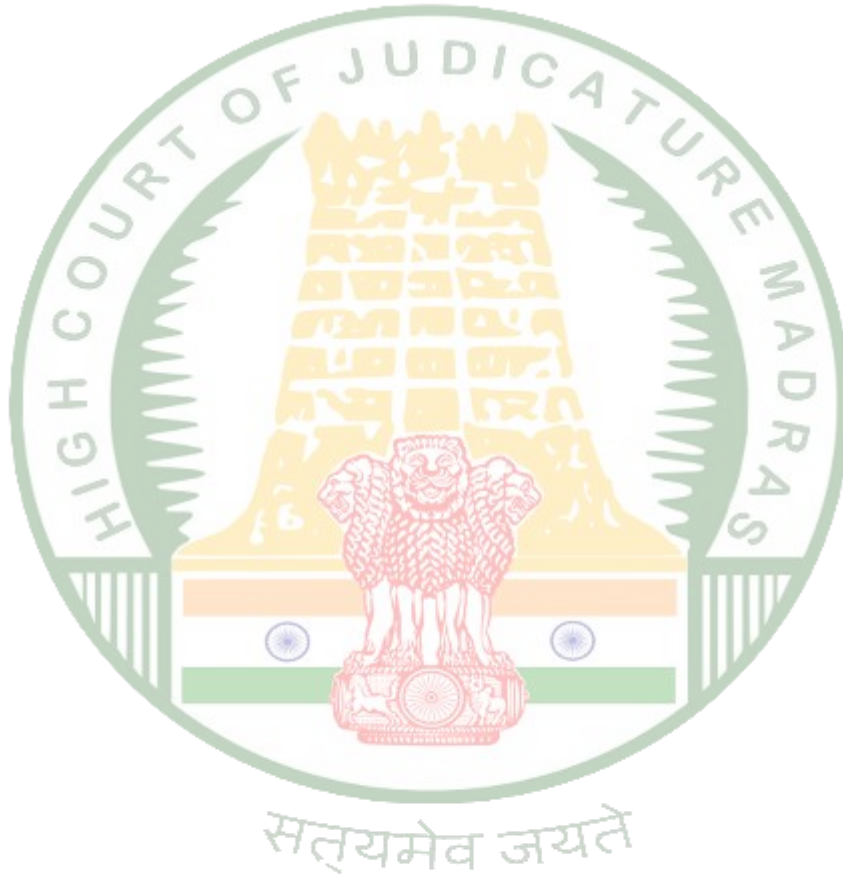
The Rent Control Appellate Authority
(Principal Subordinate Judge), Erode



Pre-Delivery order in
C.R.P.(NPD) No.4309 of 2015
and M.P.No.1 of 2015

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Dated: .11.2017



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