

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **22.06.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D).No.1949 of 2012 and
M.P.No.1 of 2012

S.Thirumalaivendan

...Petitioner

Vs

1.Chitra Hariharan

2.N.Hariharan

...Respondents

Prayer:- Civil Revision Petition filed under Section 25 of the Tamil Nadu Building (Lease and Rent Control) Act, 18/60 As Amended by Act 23 of 1973 and Act of 1980, against the judgment and decree passed in RCA.No.25/2011 on the file of the Learned Subordinate Judge, Tambaram setting aside the Fair and Decretal order dated 26.04.2011 in R.C.O.P.No.54/2009 on the file of Principal District Munsif, Alandur.

For Petitioner : Mr.R.Ragavendran

For Respondents : Mr.M.VenkataKrishnan

ORDER

the Principal District Munsif Alandur, under Section 10(3) (a) (i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. The respondents contended that they are in *bona fide* use and occupation of the premises in question and as such, the petitioner should be evicted. The Trial Court, considered the claim regarding *bona fide* use and ultimately arrived at a factual finding that the respondents failed to prove the ingredients of Section 10(3) (a) (i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. The matter was taken up in appeal by the respondents. The learned appellate Judge without considering the merits of the matter including the finding rendered by the learned Rent Controller, allowed the appeal by judgment dated 21 February 2012. Feeling aggrieved by the judgment in R.C.A.No.25/2011, the tenant is before this Court.

2. The learned counsel for the petitioner by placing reliance on the observation made by the Trial Court on the basis of evidence, contended that there was a clear finding rendered to the effect that the respondents miserably failed to prove the *bona fides*. According to the learned counsel, the first Appellate Court without considering the reasons given by the Rent Controller allowed the appeal. Eviction was ordered only on the ground that there was an undertaking to vacate the

premises by the tenant within a period of six months. According to the learned counsel, being a first appeal, the Trial Court was expected to consider the entire matter taking into account the pleadings and evidence adduced by the parties. Since no such consideration was made, the impugned judgment is liable to be set aside.

3. The learned counsel for the respondents on the other hand contended that there was a clear undertaking given on behalf of the petitioner in an earlier suit filed by him in O.S.No.159 of 2009, that he would vacate the premises within a period of six months. According to the learned counsel, since the petitioner has given such an undertaking, the learned appellate Judge correctly observed that the petitioner is liable to be evicted.

4. The respondents filed R.C.O.P.No.54/2009 contending that they have decided to settle down in Tamil Nadu. According to the respondents, their daughter is presently at Muscat and for her better education, they want to come over to Chennai. The learned trial Judge arrived at a clear conclusion that the respondents miserably failed to plead and prove the *bona fides*. The eviction petition was dismissed.

5. The respondents filed R.C.A.No.25 of 2011 before the Subordinate Court, Tambaram, challenging the order dated 26 April 2011 in RCOP.No.54 /2009.

6. The learned Appellate Judge adopted a shortcut method for disposal of appeal. The Appellate Authority was expected to consider the entire matter taking into account the evidence adduced by the parties. Since it was a statutory appeal, earlier matter was at large before the Appellate Authority. The Appellate Authority was expected to scan the evidence available on record and decide as to whether the trial Court was correct in negating the plea made by the respondents. Unfortunately, no such attempt was made by the Appellate Authority. Merely because the petitioner in an earlier proceeding undertook to vacate the premises within a period six months, it cannot be said that the Appellate Authority is relieved of the duty to consider the matter on merits. In fact, the primary ground of challenge by the respondents before the Appellate Authority was with regard to the findings rendered by the trial Court on the question of *bona fides*. Such being the factual position, the Appellate Authority was not correct in deciding the appeal solely on the ground that there was an undertaking to vacate the

premises, without considering the challenge made by the respondents to the order in appeal. I am therefore, of the view that the impugned judgment is liable to be set aside.

7. In the result, the judgment dated 21 February 2012 is set aside. The Rent Control Appeal is remitted for fresh consideration.

8. The Appellate Authority is directed to consider the entire issue raised by the respondents in the appeal in the light of the counter affidavit filed by the petitioner and the evidence adduced by both the parties and arrive at a clear finding with regard to the *bona fides*. Such exercise shall be completed within a period of six months from the date of receipt of a copy of this order.

The Civil Revision Petition is allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

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dna/gms

K.K.SASIDHARAN,J.

dna

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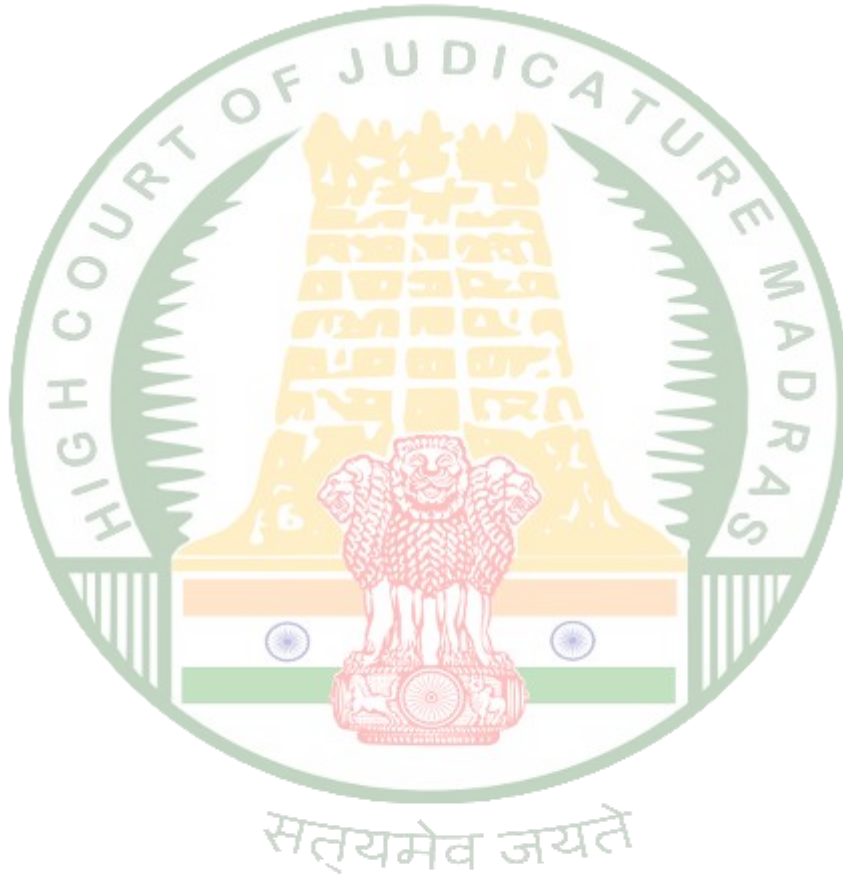
- 1.The Subordinate Court, Tambaram.
- 2.The Principal District Munsif Court,
Alandur.



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