

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P.(NPD).No.2588 of 2016
and
C.M.P.No.13356 of 2016

Date of Reserving the Judgment	Date of Pronouncing the Judgment
24.01.2017	01.02.2017

K.N.Palaniappan
S/o.Late K.K.Kannappa Chettiar
Sole Proprietor of
M/s.Alenke PL Industries
Shop No.13, Door No.138
Sriram Building
Kaleeswara Mill Road
Coimbatore - 641 009.

.. Petitioner/Appellant/Respondent/Tenant

-Vs.-

V.Saraswathi @ Sunitha
W/o.Late K.Rameshraj
Care of Selvi Natarajan
C-167, Cheran Colony
Thudiyalur
Coimbatore 641 034.

.. Respondent/Respondent/Petitioner/Landlady

Prayer:

Civil Revision Petition is filed under Section 25(1) of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 against the judgment and decree dated 30.10.2015 made in R.C.A.No.30/2013 on the file of the Principal Subordinate Judge, Coimbatore (Rent Control Appellate Authority) confirming the fair and

final order dated 04.07.2013 made in R.C.O.P.No.95/2010 on the file of the Principal District Munsif, Coimbatore (Rent Controller).

For Petitioner : Mr.R.Bharathkumar

For Respondent : Mr.H.Nazirudeen
for Mr.R.Tholgappian

ORDER

The revision petitioner/tenant having lost the battle before the learned Rent Controller as well as the learned Rent Control Appellate Authority has come forward with the present Civil Revision Petition challenging the judgment and decree dated 30.10.2015 made in R.C.A.No.30/2013 on the file of the Principal Subordinate Judge, Coimbatore (Rent Control Appellate Authority) confirming the fair and final order dated 04.07.2013 made in R.C.O.P.No.95/2010 on the file of the Principal District Munsif, Coimbatore (Rent Controller).

2.The learned counsel appearing for the revision petitioner would submit that the revision petitioner/tenant is carrying on business of hardware materials in the demised premises. While so, the respondent/landlady sought for eviction on the ground that the demised premises is required for her personal occupation and she needs the building to run the textile business. However, she has not filed any documents to show that she is having experience

in the said business and she is making arrangements to start the said business. But both the Trial Court as well as the first appellate Court had failed to consider the said aspect and ordered for eviction on the ground of personal occupation. Hence, the learned counsel for the revision petitioner prayed for setting aside the orders passed by both the Courts below. To substantiate the said argument, the learned counsel relied upon the following decisions:

1. 1995 (2) M.L.J 67, N.Mohambaram v. M/s.C.K.C.M.Kader Shah and Brothers.
2. 1988 (2) L.W.1, Hameedia Hardware Stores v. Mohan Lal Sowcar.
3. 1981 (1) M.L.J 40, K.Gopalan Nair v. V.Kamalammal.

3.On the other hand, the learned counsel appearing for the respondent/landlady would submit that the landlady is a widowed lady and she intends to start a textile business. After considering the oral and documentary evidences, both the Courts below had rightly ordered for eviction and hence, the learned counsel for the respondent prayed for dismissal of the Civil Revision Petition. To substantiate his contention, the learned counsel relied on the following decisions:

1. 2012-2-L.W.22, Syed Safiullah Husaini v. M.Raghupathi
2. 2010 (6) CTC 454, The Regional Manager, Tamil Nadu Handloom Weavers' Coop. Society Ltd., v. Natarajan

4.Considered the rival submissions made by both sides and perused the typed set of papers.

5.It is an admitted fact that there is no dispute with regard the tenancy relationship, quantum of rent and the nature of building (non-residential). It is also not disputed that the petitioner is carrying on hardware business. Now the landlady seeks for eviction of the tenant on the ground of personal occupation. Both the Courts below had held that the personal requirement of the demised premises is bonafide and hence, ordered for eviction of the tenant.

6.At this juncture, it would be appropriate to consider the decisions relied on by the learned counsel for the revision petitioner.

6.1.The learned counsel for the revision petitioner relied upon the decision reported in **1981 (1) M.L.J 40, K.Gopalan Nair v. V.Kamalammal** and submits that mere intention of starting business is not sufficient for ordering eviction. Carrying on a business may consist of a series of steps and even if one step is proved, the requirement of the building for that purpose will be satisfied. It would be appropriate to incorporate paragraph 3 of the said decision:

“3.It is not possible to sustain the order of the learned Appellate Authority. As already stated, the allegation in the eviction petition is that the non-residential building is required for the business of the respondent's husband "who is a Government contractor." But the respondent's husband examined as P, W. 1. has admitted that he has ceased to be a Government contractor at present, but he added that he intends to start a textile business in the demised property, on the ground that he has previous experience in that kind of business. I am firmly of the opinion that the learned Appellate Authority should not have looked into this piece of evidence of P.W.1 in the absence of any allegation that the non residential building is required for any textile business of the respondent's husband, for no amount of evidence can be looked into on a plea which has not been put forward. The evidence of P.W.1 shows that he has merely an intention to start a textile business because he claims to have previous experience in such kind of business and the respondent is. therefore, stated to require the non-residential building bona fide for that purpose. A Bench of this Court has in P.M. Raju Chettiar v. The State of Tamil Nadu, represented by the Secretary, Home Department (Accommodation Controller) and

others¹ held, on a consideration of the language employed in section 10 (3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act of 1960 that while literal construction placed by the Honourable Judges of this Court does not commend itself to them the other view appears to be reasonable and that they think so because "carrying on a business" may consist of a series of steps, and even if one step is proved, they did not see why the requirement is not satisfied, but if there is no step at all whatever and the matter is only in the stage of intention, it is difficult to bring such a case within the phraseology of the statute, namely section 10(3)(a)(iii) of the Act. This decision squarely applies to the facts of the present case."

6.2. In the decision reported in **1995 (2) M.L.J 67, N.Mohambaram v. M/s.C.K.C.M.Kader Shah and Brothers**, it was held that in order to obtain possession under Section 10(3)(a)(iii) of the Act, the landlord must show that he is carrying on his business in a rented premises on the date of filing of the petition. It would be appropriate to incorporate paragraph 9 of the said decision:

"9. The petition for eviction was filed under Section 10(3)(a)(iii) of the Act. According to the landlord he was carrying

on his cycle business in a rented premises at No. 57, Thatha Muthiapppan Street, Madras-1. The landlord filed R.C.O.P. No. 57085 of 1981 for eviction. The eviction petition was ordered. The landlord herein preferred an appeal and the appeal was also dismissed. As against that order, the landlord preferred C.R.P. No. 5571 of 1983 before this Court and that was also dismissed. Thereafter, the landlord herein surrendered possession of the rented premises to his landlord on 17.8.1984. On 29.9.1984 the landlord filed the present petition for eviction against the tenant herein. The landlord submitted that after surrendering possession of the rented premises, he required the petition premises bonafide for conducting his own cycle business. After surrendering the possession of the rented premises, he stored the entire materials belonging to the cycle business in his residence. The landlord further submitted that he is not having or in occupation of any other non-residential premises of his own in the City of Madras. For these reasons according to the landlord he was carrying on his business on the date of filing the eviction petition. Therefore according to the landlord he established his bonafide requirement of petition premises under Section 10(3)(a)(iii) of the Act.”

But the above decision is not applicable to the facts of the present case.

6.3. In the decision reported in **1988 (2) L.W.1, Hameedia Hardware Stores v. Mohan Lal Sowcar**, it was held that by merely proving that the premises in question is a non-residential building and that the landlord or his family is not occupying for the purpose of a business which he or any member of his family is carrying on in any residential building in the city, town or village concerned which is his own, the landlord cannot in the context in which Section 10(3)(a)(iii) appears, get a tenant evicted. It would be appropriate to incorporate paragraph 12 of the said decision:

“12. We are of the view that by merely proving that the premises in question is a non-residential building and that the landlord or any member of his family is not occupying for the purpose of a business which he or any member of his family is carrying on any residential building in the city, town or village concerned which is his own, the landlord cannot in the context in which section 10(3)(a)(iii) appears get a tenant evicted. He must show in view of clause (e) of section 10(3) that his claim is bona fide. The word 'claim' means "a demand for something as due" or "to seek or ask or for on the ground of right" etc. In the context

of Rent Control Law which is enacted for the purpose of giving protection to tenants against unreasonable evictions and for the purpose of making equitable distribution of buildings amongst persons who are in need of them in order to prove that his claim is bona fide a landlord should establish that he deserves to be put in possession of the premises which is in the occupation of a tenant. Any decision on the question whether a landlord deserves to be put in possession of a premises in the occupation of a tenant should naturally depend upon the bona fides of the landlord's requirement or need. The word 'claim' in clause (e) of section 10(3) of the Act should, therefore, be construed as 'the requirement' of the landlord or his deservedness. 'Deserve' means 'to have a rightful claim' or 'a just claim'. Since clause (e) of section 10(3) of the Act is also applicable to a petition filed under sub-clause (iii) of section 10(3)(a) of the Act it becomes necessary to examine whether the requirement of the landlord is bona fide. Otherwise a landlord will be able to evict a tenant to satisfy his whim by merely proving the ingredients mentioned in section 10(3)(a)(iii) of the Act. Take a case where a landlord for some oblique reason wishes to get rid of his tenant from a non-residential building of the category mentioned in section

10(3)(a)(iii) and to achieve his aim fakes to start money-lending business (for which indeed no specified separate portion in a building may be needed) in a building not belonging to him and to create evidence even actually lends money to some of his friends or relatives and a week thereafter applies for eviction of the tenant on the ground that he is carrying on business and has no non- residential building of his own in his occupation in the city, town or village concerned. Apparently, the conditions prescribed in the aforesaid sub-clause (iii) are fulfilled. If the requirement of "claim" being "bona fide" as contained in section 10(3)(e) is construed to mean that genuineness of the need of the landlord for the non-residential building is not to be considered and the circumstances that the landlord on the date of making the application is factually carrying on business and has no non-residential building of his own in his occupation in the city, town or village concerned is to be construed sufficient to make his claim bona fide, the tenancy of no non-residential building will be secure. It will be preposterous to attribute such an intention to the legislature. Such a contingency should be avoided as it would be against the very object of the Act itself. The need of the landlord should be genuine. That is the object of enacting

clause (e) of section 10(3) of the Act. When once we reach the above conclusion it is not enough that the landlord should merely desire to use or occupy the premises. What is necessary is that he should bona fide need them for his own use and occupation or for occupation by any of the members of his family as held by this Court in [Phiroze Bamanji Desai v. Chandrakant M. Patel & Ors.](#), [1974] 3 S.C.R. 267 and [Mattulal v. Radhe Lal](#), [1975] 1 S.C.R. 127. The learned Judge who decided the case out of which this appeal arises was, therefore, in error in holding that the landlord need not prove that his requirement was bona fide but that his claim was bona fide as provided in clause (e) of section 10(3) of the Act. The learned Judge has made a distinction between 'requirement' and 'claim' in the present case without there being a difference."

But the above decision is not applicable to the facts of the present case.

7. Now it would be appropriate to consider the decisions relied on by the learned counsel for the respondent.

7.1. The learned counsel for the respondent relied on the decision reported in 2012-2-L.W.22, [Syed Safiullah Husaini v. M. Raghupathi](#), wherein

it was held that a reading of Section 10(3)(a)(iii) of the Act makes it clear that the landlord is entitled to order of eviction if (a) building is non-residential in character; (b) landlord should be carrying on business on the date of application for eviction; (c) landlord should not be occupying any building of his own; and (d) the claim should be bonafide. It was also held therein that the phrase “carrying on business” does not mean that the landlord should carry on business actually and it is enough if the landlord bonafide intended to start business in the premises in the occupation of the tenant. It would be appropriate to incorporate paragraphs 5 and 8 of the said decision.

“5.A reading of section 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act makes it clear that the landlord is entitled to order of eviction if (a) building is non-residential in character; (b) Landlord should be carrying on business on date of Application for eviction; (c) Landlord should not be occupying any building of his own; (d) claim should be bona fide.

8.As per section 10(3)(a)(iii), the landlord should be carrying on business on the date of application and the claim should be a bona fide one. In the same judgment, I have incorporated the meaning of the phrase "carrying on business" and the landlord need not carry on business actually and it is

enough if the landlord bona fide intended to start business in the premises in the occupation of the tenant. ”

7.2.The decision reported in 2010 (6) CTC 454, **The Regional Manager, Tamil Nadu Handloom Weavers' Coop. Society Ltd., v. Natarajan** relied on by the learned counsel for the respondent is referred to in the previous decision, wherein it was clearly stated about the ingredients that are necessary to maintain the petition for eviction as per Section 10(3)(a)(iii) of the Act.

8.Considering the facts of the present case in the light of the above decisions, now this Court has to consider the following aspects:

(a)The building is non-residential in character.

Since, the revision petitioner/tenant is carrying on hardware business in the demised premises, the character of the building must be a commercial one. Hence, the said aspect is proved and further, the same is also not disputed.

(b)The landlord should be carrying on business on the date of application for eviction.

Admittedly, the same has not been pleaded. But during the course of the cross-examination, the petitioner/tenant himself had extracted statement

from the landlady that she is carrying on cloth business in her house. It would be appropriate to incorporate the relevant portion of the evidence.

“Jzpf;fil tpahghuk; tPl;oy; itj;J bra;J tUfpnwd;/ ehd; tPl;oy;
itj;J Jzp tpahghuk; bra;J tUtij Fwpj;J vdJ kDtpnyh Kjy;
tprhuizapnyh brhy;ytpy;iy vd;why; mJ gw;wp vdf;F
bjhpa hJ/”

The above extract would reveal that the second ingredient has been fulfilled. At this juncture, it would be appropriate to consider the contention raised by the learned counsel for the petitioner that without pleading, no evidence can be looked into. There is no quarrel over the said proposition. However, in the instant case, the evidence has been elicited only during the cross-examination of P.W.1. In such circumstances, the evidence can be looked into and thus, the evidence of P.W.1 has clearly proved that on the said date, she is doing business.

(c)The landlord should not occupy any building of his own.

It is also an admitted fact that except the petition demised building, no other commercial building is available to the respondent/landlady. In such circumstances, I am of the view that the claim of the petitioner is a bonafide one.

9.In view of the above stated position, I am of the considered view

that the learned Rent Controller as well as the learned Rent Control Appellate Authority had rightly held that the respondent/landlady had established her bonafide requirement for carrying on business in the petition mentioned property. Further, it is also pertinent to note that the revision petitioner/tenant is also carrying on business in the adjacent property. Hence, the requirement of the respondent for personal occupation is bonafide. So, I do not find any reason to interfere with the finding of the Courts below.

10. In fine, the Civil Revision Petition stands dismissed as devoid of merits. Three months time is granted to the petitioner to vacate the premises and handover vacant possession of the property. Consequently, connected miscellaneous petition is closed. No costs.

01.02.2017

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Index: Yes/No

To

1) Principal Subordinate Judge, Coimbatore

2) Principal District Munsif, Coimbatore

R.MALA, J.

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Pre-Delivery order made in
C.R.P.(NPD),No.2588 of 2016

Dated : 01.02.2017

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