

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(NPD)No.2214 of 2012

and

M.P.No.1 of 2012

S.A.Mujeebur Rahman

.. Petitioner

Vs.

P.D.Deepa

Rep. by her power of Attorney

Agent A.P.Premraji W/o C.T.Palgunan

No.148, Gill Nagar extn II,

Chennai 600 094.

.. Respondent

Prayer: Civil Revision Petition filed under Section 25 of Tamil Nadu Buildings (Lease and Rent) Control Act, 1960, as amended by Act, 23, 1973 and 1/80, against the judgment and decree in RCA.No.264 of 2010 dated 27.09.2011, on the file of the Rent Control Appellate Authority cum VIII Court of Small Causes, Chennai, in confirming the judgment and decree in RCOP.No.1673 of 2007 dated 11.02.2010 on the file of X Small Causes cum Rent Controller, Chennai.

For Petitioner : Mr.V.Raghavachari

For Respondent : Mr.T.L.Thirumalaisamy

for M/s.K.S.Ganesh Babu

ORDER

The petitioner has filed this Civil Revision Petition to set aside the Order and decretal order passed by the Learned VIII Court of Small Causes Court at Chennai in R.C.A.No.264 of 2010 dated 27.09.2011 confirming the order and decretal order passed in R.C.O.P.No.1673 of 2007 dated 11.02.2010 on the file of the X Small Causes Court of Chennai.

2.The tenant is the revision petitioner in this Civil Revision Petition challenging the order of the eviction on the ground of Act of Waste and using of petition premise shop other than for let out purpose. It is the case of respondent /land lord, the petition premise Shop No IV situated in D.No 5, Ramarajar Nagar-II Street, Chennai belongs to her and the same was rented out to the Revision petitioner in the year 1999 vide a Rental Agreement dated 12.01.1999 for the purpose of running a Tailor Shop. The monthly rent was arrived at Rs.1,500/ -p.m.

3. According to the respondent/ landlord, the revision petitioner without consent and prior permission from the respondent has started to run a Fast Food shop in the name and Style of Park Briyani in the petition premise by making structural alteration in the shop and thereby caused damages, nuisance, inconvenient to the entire premises. Further cooking smoke caused damage and inconvenience to the building and other tenants. Wherefore the respondent through her Power agent filed R.C.O.P.No.1673 of 2007 under Section 10 (2) (ii) (b) and Section 10 (2) (iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 on the file of the X Small Causes Court of Chennai, seeking eviction of the Revision petitioner.

4. Resisting the same, the revision petitioner contended that since from the inception as Tenant he has been selling Briyani in the above premise. The monthly rents were paid to the landlord regularly and there is no default. No cooking activities is carried out in the shop premise and the Briyani is being sold without causing nuisance or inconvenient to the public. No structural alteration of the building was done. The respondent having allowed the revision petitioner to sell Briyani in the above premise for more than 10 years from inception of Tenancy, now is estopped from agitating the same. Hence the revision petitioner /tenant prayed to dismiss the eviction petition.

5. On the side of the landlord one witness was examined and 3 documents were marked. On the side of the tenant two witness was examined and 4 documents were marked. The Learned Rent Controller after careful consideration of oral and documentary evidence adduced on either side was pleased to order eviction on the ground of Act of Waste under Section 10(2)(ii)(b), however the Learned Judge negatived respondent's claim made under Section 10(2)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 by an order and decree dated 11.02.2010. Aggrieved over the same the revision petitioner filed appeal in R.C.A.No.264 of 2010 before the Learned VIII Court of Small Causes Court at Chennai. The Learned Rent Control Appellate Authority was also pleased to confirm the eviction order passed by the Learned Rent Controller by an Order dated 27.09.2011. Being aggrieved over the same, the revision petitioner has come up with this Civil Revision Petition.

6. I heard Mr.V.Raghavachari, learned counsel for the petitioner and Mr.L.Thirumalaisamy for M/s.K.S.Ganesh Babu, learned counsel for the respondent and perused the entire material available on records.

7.It is seen from the records that the revision petitioner apart from Shop No IV is also a tenant under the respondent in respect of shops No. I and II in the building premise. There is no quarrel over the factum of Title or Tenancy in either side. The only dispute for adjudication remains as to see whether the revision petitioner without consent and prior permission from the respondent has started to run a Fast Food shop in the name and Style of Park Briyani in the petitioner premise by making structural alteration in the shop and thereby caused damages, nuisance, inconvenient to the entire premises and therefore liable to be evicted on the ground of Act of waste under Section 10 (2) (ii) (b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

8.At the outset, it is to be borne in mind by this Court to the Decision of the Hon'ble Apex Court reported in **2016 (2) CTC 292 in the matter of Kasthuri Radhakrishnan & Others -Vs- M. Chinniyan & Another**, wherein it is held that "So far as the issue pertaining to exercise of Revisional Jurisdiction of the High Court while hearing Revision Petition arising out of eviction matter is concerned, it remains no more res integra and stands settled by the constitutional Bench of this Court in **Hindustan Petroleum Corporation Limited -Vs- Dilbahar Sing, 2014 (3)**

MWN (Civil) 334 (SC) : 2014 (9) SCC 78. Justice R.M.Lodha, the then Hon'ble Chief Justice speaking for the Bench held in para 43 thus: We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the first appellate court/first appellate authority because on reappreciation of the evidence, its view is different from the court/authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the court/authority below is according to law and does not suffer from any error of law. A finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned

before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappraise or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity."

9. Now coming to the case on hand it is found from Ex-P2 dated 12.01.1999, Tenancy agreement that there is no specific mentioning as to the nature of business to be carried out by the Revision petitioner. However at the same time this Court is able to notice that the revision petitioner had issued Ex-P3 legal notice dated 11.05.2007 stating that the revision petitioner, despite the petition premise was let out for Tailoring shop, without consent and prior permission from the respondent has started to run a Fast Food shop.

10. More so, the revision petitioner during his cross examination

had admitted the receipt of Ex-P3 legal notice dated 11.05.2007. Yet he further admits that he had not issued any reply notice stating that the Fast Food shop was put up with the consent and prior permission from the respondent or by raising any other ground.

11. Therefore, this Court is of the opinion that an adverse inference has to be drawn against the petitioner for not having issued any suitable reply to Ex-P3. It is equally important to say that the Revision petitioner had not substantiated his own claim that respondent had allowed the revision petitioner to sell Briyani in the above premise for more than 10 years from inception of Tenancy without any interruption. At the least the revision petitioner ought to have demonstrated his case that no cooking activities is carried out in the shop premise and that the Briyani is being sold without causing nuisance or inconvenient to the public, in line with his pleadings by sufficiently placing records before this Court.

12. When it is the specific contention of the respondent/landlord that even after receipt of lawyer notice, the revision petitioner failed to wind up the Fast Food shop, provided also the fact remain that the revision petitioner had failed to prove that the Fast Food shop was put up with the consent and prior permission from the respondent, the Courts below were right in ordering eviction on the ground of Act of

waste under Section 10(2)(ii)(b). At the same time as the respondent failed to prove the alleged structural alteration of the building by the revision petitioner, the Courts below have rightly negated respondent's claim made under Section 10 (2) (iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

13.As per the above Judgment of the Hon'ble Apex Court, the revisional jurisdiction of the High Court is very limited. This court is bound to follow the dictum laid down by the Hon'ble Supreme Court and the finding of fact recorded by the authorities below is according to law and does not suffer from any error of law and it is not open to this court to correct, unless if the finding of facts recorded by the authority below, is perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of evidence is grossly erroneous.

14.In view of the discussion made above and in the light of the Judgment referred above, I do not find any merits in this Civil Revision Petition and the order of eviction passed by the authorities below are liable to be confirmed and accordingly confirmed.

15.In the result:

a) this civil revision petition is dismissed by confirming the order in RCA.No.264 of 2010 dated 27.09.2011, on the file of the VIII Judge, Small causes Court, Chennai, confirming the order in RCOP.No.1673 of 2007, dated 11.02.2010, on the file of the X Judge, Small causes Court, Chennai;

b) the time for eviction is three months from the date of receipt of this order. No costs. Consequently, connected miscellaneous petition is closed.

27.04.2017

vs

Note:Issue order copy on 13.04.2018

Index:Yes

Internet:Yes

To

1.The VIII Judge, Small causes Court, Chennai.

2.The X Judge, Small Causes Court, Chennai

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M.V.MURALIDARAN, J.

VS



Pre-Delivery order made in
CRP(NPD)No.2214 of 2012
and
M.P.No.1 of 2012

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