

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P.(NPD) No.3461 of 2016

and

CMP.No.17660 of 2016

Mr.Mathews Petitioner/Appellant/Respondent Tenant

Vs.

Mrs.P.Kanchana ... Respondent/Respondent/Petitioner
landlady

Prayer: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 against the fair and final order dated 10.03.2016 passed by the learned Principal Subordinate Judge cum Rent Control Appellate Authority, Coimbatore in R.C.A.No.10 of 2015 confirming the Fair and Final Order dated 17.11.2014 passed by the learned Principal District Munsif cum Rent Controller, Coimbatore in RCOP.No.129 of 2011.

For Petitioner : Mr.L.Mouli
For Respondent : Mr.S.Gopalaratnam

O R D E R

Civil Revision Petition is filed challenging the fair and final order dated 10.03.2016 passed by the learned Principal Subordinate Judge cum Rent Control Appellate Authority, Coimbatore in R.C.A.No.10 of 2015 confirming the Fair and Final Order dated 17.11.2014 passed by the Learned Principal District Munsif cum Rent Controller, Coimbatore in RCOP.No.129 of 2011.

2.The respondent-landlady filed a petition in R.C.O.P.No.129 of 2011 for eviction of the petitioner-tenant on the ground of wilful default and owner's occupation. The Principal District Munsif/Rent Controller, Coimbatore, ordered eviction on the ground of wilful default and owners occupation, against which, the tenant has preferred a R.C.A.No.10 of 2015. The Principal Subordinate Judge/Rent Control Appellate Tribunal,

Coimbatore has not accepted the finding of the Rent Controller in respect to the tenant committing a wilful default and eviction ordered on the basis of wilful default has been set aside, but confirmed the eviction on the basis of owners occupation, against which the present revision has been filed by the tenant.

3. Learned counsel for the respondent-landlady would submit that even though she has not filed any separate revision for dismissing the eviction on the ground of wilful default, she can contest the same in the revision petition filed by the tenant. For this, he relied on a decision reported in (1989) 1 MLJ 89 in M.R.M.Duraiappa Nadar Vs. P.Thirupurasundariammal. Learned Counsel for the petitioner also stated that he does not have any quarrel over the same. He also advanced his arguments on both grounds. Considering the statement made by the Respondent/landlady and also relying on a decision reported in (1989) 1 MLJ 89 in M.R.M.Duraiappa Nadar Vs. P.Thirupurasundariammal, I am of the view, the respondent-landlady is entitled to put forth her case also on the ground of wilful default.

4. Learned counsel appearing for the petitioner-tenant would submit that the Rent Control Appellate Authority has considered the evidence of PW1's cross examination and came to the correct conclusion that there is no default in payment of rent. He submitted that the rent was fixed at Rs.850/- per month. The respondent-landlady filed R.C.O.P.No.181 of 1991, in which, fair rent has been fixed at Rs.1125/- per month, against which the tenant preferred a R.C.A.48 of 1996 and that has been allowed and rent has been fixed at Rs.850/- per month, against which the landlady preferred a revision, in which a fair rent has been fixed at Rs.1125/- per month. So the rent fixed at Rs.1125/- per month by this Court has attained finality. But, when PW1 was in the witness box, he submitted that he had already paid Rs.850/- per month. Subsequently from January 2011 onwards, he paid Rs.1125/- per month. At that time, the learned counsel for the landlady submitted that she received the rental arrears, but there is anomaly and defects between the rent passed and the actual rent received by the landlady. Considering the submissions made, I am of the view that the learned Rent Control Appellate Authority has rightly come to the conclusion that there is no default in payment, that too wilful default. Hence, eviction ordered on the ground of wilful default is not sustainable and the order of the Rent Control Appellate Authority does not warrant any interference.

5. This court has to decide whether both the Courts below have rightly held that the requirement of owners occupation, is bonafide. Admittedly, the petitioner is in

occupation of the building and is running a tailoring shop. Now, the landlady requires the demised premises in order to park her car, which is now parked in "Shakthi Apartments" paying a monthly rent of Rs.750/- per month and submitted a receipt for the payment of the same, which is marked as Ex.P.10. Learned counsel appearing for the tenant would submit that Ex.P.10 has been concocted for the purpose of case. It is not a true and genuine document and it has not been proved in accordance with law. It is further submitted that the person who had signed in the Ex.P.10 has not been examined before the learned Rent Controller and hence, he prayed for discarding Ex.P.10. But the possession of the car by the landlord and the fact that it is now parked in "Shakthi Apartments" was not disputed. Hence, the argument put forth by the learned counsel appearing for the petitioner/tenant does not merit acceptance. It is a well settled dictum of the Hon'ble Apex Court that the tenant cannot dictate terms to the landlord as to which premises the landlord must use. Furthermore, considering the evidence of R.W.1/tenant, both the Courts below has rightly held that the house of the landlord is situated on the backside of the shop. That factum was rightly considered and on the basis both the Courts below has held that the requirement for personal occupation of the landlord is bonafide. Hence, I am of the view that both the learned Rent Controller as well as the learned Rent Control Appellate Authority has considered the evidence of P.W.1 and R.W.1 and came to a correct conclusion that the requirement for personal occupation is bonafide. So, I am of the view that, the building in front of her house is conducive for parking her car. Hence, her requirement is bona fide. Both the Courts below have rightly ordered for eviction. There is no reason for interference with the judgments of both the Courts below and thereby they are confirmed. Accordingly, the Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is also closed. No costs.

6. Learned Counsel for the petitioner-tenant seeks six months' time for vacating the premises in question. Considering the requirement of the landlord, three months time is granted to the tenant for vacating the premises and handing over it to the respondent-landlady.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Principal District Munsif,
Coimbatore.

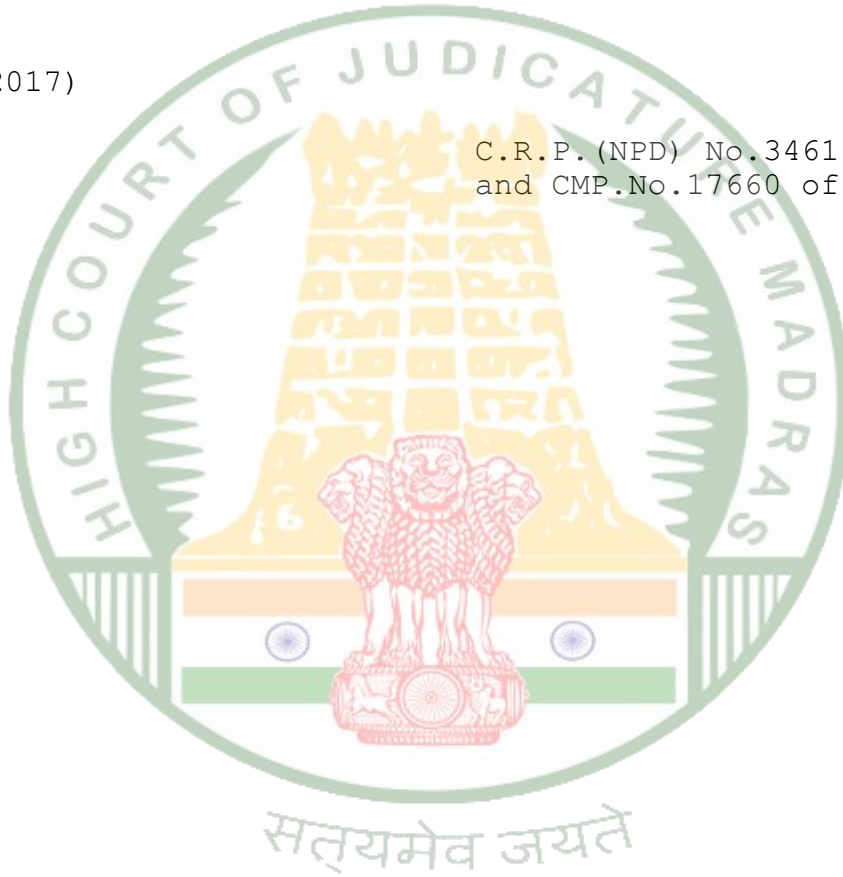
2. The Principal Subordinate Judge,
Coimbatore.

+lcc to Mr.L. Mouli , Advocate, S.R.No.673

+lcc to Mr.S. Gopalarathinam, Advocate, S.R.No.325

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