

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(NPD).No.3500 of 2016
and C.M.P.No.17815 of 2016

Sahabudeen

...Petitioner

Vs

Kunchithapatham
...Respondent

Civil Revision Petition is filed under Section 25 of Tamil Nadu Lease and Rent Control Act, 18 of 1960 as amended by Act 23 of 1973 and Act 1 of 1980, against the fair and decreetal order dated 05.03.2016 made in R.C.A.No.1 of 2015 confirming the fair and decreetal order dated 31.10.2014 made in R.C.O.P.No.6 of 2010 on the file of the Rent Controller (District Munsif Cum Judicial Magistrate) Nannilam.

For Petitioner : Mr.S.Sounthar
For Respondent : Mr.A.Muthukumar

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 05.03.2016 made in R.C.A.No.1 of 2015 confirming the fair and decreetal order dated 31.10.2014 made in R.C.O.P.No.6 of 2010 on the file of the Rent Controller (District Munsif Cum Judicial Magistrate) Nannilam.

2.The respondent/landlord has filed R.C.O.P.No.6 of 2010 for eviction on the ground of wilful default and also owners occupation. After contest, R.C.O.P. was allowed, eviction was ordered on both grounds. Aggrieved over the same, the petitioner/tenant has preferred R.C.A.No.1 of 2015. That appeal was dismissed. Challenging the same, the petitioner has preferred this revision.

3.Learned counsel for the petitioner/tenant would submit that R.C.O.P. has been filed on 22.09.2010 as if the petitioner has committed default in payment of rent for the month of August 2010. As per Ex.P4, the rental agreement, in clause-2, it was specifically stated that rent for the month has to be paid at the end

of the succeeding month. So rent for August month has to be due till 30.09.2010. But the application has been filed on 22.09.2010. So there is no default that too wilful default. That factum was not considered by both the Courts below. Further, August and September months rent have been paid subsequently. As on today, there is no arrears of rent. Hence, he prays for setting aside the eviction order on the ground of wilful default.

4.The second limb of argument advanced by the learned counsel for the petitioner is that both the Courts below have held that requisition of building by the respondent is for his personal occupation. But the said aspect is not proved by the respondent in accordance with law. Because while issuing notice under Ex.P2 on 20.08.2010, even though it was stated by the respondent that it is for personal occupation, he has not stated that what business, he is going to start, since the demise building is commercial one. He further submitted that in the petition itself, he has stated that they want to start electrical business. But whereas in his evidence, the respondent stated that he is doing brokerage in purchasing of house. So there is contradiction in the purpose for the requirement of the building. Further, to prove the bona fide, the respondent has

not taken any steps to start the business. So the requirement of landlord for personal occupation is not bona fide. Therefore, he also prays for setting aside the eviction order on the ground of personal occupation and allowing the revision.

5.In respect of wilful default is concerned, learned counsel for the respondent would submit that one month default is also wilful default, because August and September months rent have been paid in October, October and November month rent was paid in December. It shows the conduct of the petitioner/tenant is irregular in payment that amounts to wilful default. He would further submit that after filing of RCOP also, the petitioner has not paid the rent regularly. Hence, he prays for dismissal of the revision in this aspect.

6.In respect of personal occupation is concerned, learned counsel for the respondent would submit that the petitioner has purchased four shops. One shop is the petition mentioned property. Other shops are in possession of other tenants. The revision petitioner/tenant has possessed six shops in the same locality. In Mayiladuthurai to Thiruvarur main road, he has possessed four

shops and in Mayiladuthurai to Karaikal road, he has possessed four more shops, in which, his brother is having two shops and other two shops are given to his brother for his business. The respondent/landlord has two sons and the second son is educated. He has done Electrical and Electronics Engineering. He wants to start electrical business, so his requirement is bona fide. In his evidence, R.W.1/petitioner himself admitted that sons of the respondent is sitting idle in the house without any job and they will start the electrical business at any point of time. Both the Courts below have rightly considered all the above aspects and ordered eviction. Therefore, he prays for dismissal of the revision.

7.Considered the rival submissions made on both sides and perused the materials available on record.

8.The admitted facts are that the respondent is the owner of the property. The petitioner has entered into a rental agreement, as per Ex.P4. The building is commercial one. The only dispute is whether the rent for August month is default by the petitioner that too wilful default. On perusal of clause-2 of Ex.P4, it reveals that the rent has to be paid at the end of succeeding month. Here, rent

for August month is not paid. The RCOP has been filed on 22.09.2010. So on 22.09.2010, there is no cause of action for filing the petition for eviction on the ground of wilful default.

9. At this juncture, it is appropriate to consider the argument of the learned counsel for the respondent that the delay in payment of rent for subsequent month is default. But the argument does not hold good. Because, once the ground for wilful default is made out, this Court has to consider the payment of rent for subsequent month, the petitioner is knowing fully well the consequence of non payment of rent for subsequent month, then only, it amounts to default that too wilful default. On the date of filing of RCOP, there is no default in payment of rent for August month. The petitioner has time to pay August month rent on or before 30.09.2010. But the petition is filed on 22.09.2010. In such circumstances, that factum was not considered by both the Courts below. Therefore, eviction ordered on the ground of wilful default is unsustainable and it is hereby set aside.

10. Now this Court has to decide whether the findings of the Courts below in respect of requirement of the building for owners

occupation is bona fide? Admittedly, the landlord has owned four shops and all the shops are in the hands of the tenant. It is to be noted that the landlord as per his wish, can choose any of his own building to start a business and file a petition for eviction. It is pertinent to note that the petitioner/tenant has possessed six shops in the same locality. One of the tenant is examined as R.W.2. It is true, Ex.P2 notice was issued on 20.08.2010, in which, it is stated that building is required by the landlord for his personal occupation. But the respondent has not specifically mentioned that for what purpose, the building is required and what business he is going to start. In the petition, the respondent has stated that he required the petition mentioned property to start electrical business.

11.At this juncture, learned counsel for the petitioner/tenant has drawn attention of this Court through the deposition of P.W.1. P.W.1/respondent in his evidence stated that he is doing brokerage in purchasing and selling of house. But he has not stated that for what purpose, he required the building. In the proof affidavit, the respondent has stated that he required the building to start the electrical business. R.W.1/petitioner in his evidence, stated that

the landlord is having two sons and they are not going for job and they are sitting idle in their house. In his cross-examination, he stated that the name of the first son is Murali and second son is Muthukumar. The second son has completed Electrical and Electronics Engineering. From his evidence, it is clear that the requirement of the building to start electrical business is bonafide. But the respondent/landlord has to take steps to prove his requirement is bonafide. For that reason, he must obtain license from the Tamil Nadu Sales Tax and also from the Town Panchayat. The petitioner/tenant is in occupation. So it is not possible for purchasing the electrical goods without evicting the tenant.

12.It is pertinent to note that R.W.1 in his evidence, stated that he has taken steps to evict his own tenants. In such circumstances, I am of the view that not taking steps for starting electrical business is not a fatal to the case. Because as per the evidence, the petitioner is having six shops and the respondent owned four shops, one is petition mentioned property. Other three shops are in the occupation of other tenants. Even though the sons of the respondent are educated, they are not having any job. So their intention to start business is bonafide. That factum was

rightly considered by both the Courts below. So eviction granted on the ground of personal occupation does not warrant any interference and it is hereby confirmed.

13. In the result, the Civil Revision Petition is partly allowed. Three months time is granted to evict the premises. No costs. Consequently, connected Miscellaneous Petition is closed.

27.02.2017

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To

The Rent Controller (District Munsif Cum Judicial Magistrate)
Nannilam.

R.MALA,J.

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